

7.33 **Solar Energy Systems.** In connection with the residential development of the Lots, Declarant may offer devices and/or structures that are used primarily to transform solar energy into thermal, chemical or electrical energy including roof-integrated photovoltaic roof tiles, roof-mounted panels or other roof-mounted devices that collect solar energy and generate energy by exposure to the sun (“**Solar Energy Systems**”). The components of the Solar Energy Systems may change in the future with the availability of newer technology or as may be installed by an Owner, subject to this Declaration. Solar Energy Systems may not be placed on or around any Dwelling during the Development Period except as may be installed by Declarant or otherwise as approved by Declarant. Following the Development Period, except with the written permission of the ACA, no Solar Energy Systems may be placed on or around any Dwelling. The ACA may deny permission to place Solar Energy Systems on or around any Dwelling if (1) the Solar Energy System does not comply with applicable laws; (2) the Solar Energy System is to be placed on any Common Area or any portion of the Property owned by the Declarant; (3) the Solar Energy System is to be placed anywhere other than an Owner’s roof, patio or within such Owner’s fenced yard; (4) the Solar Energy System is to extend beyond the roofline of any Dwelling; or (5) the Solar Energy System is to be taller than the Owner’s fence.

a. **Shading Restrictions.** The generation of energy by Solar Energy Systems will be reduced or even eliminated if trees, other landscaping, structures or other improvements are allowed to cause shading of the Solar Energy Systems. Therefore, for optimal operation and efficiency it is essential that the Solar Energy Systems have direct access to sunlight. To ensure optimal operation of the Solar Energy Systems, Declarant desires to set forth herein certain restrictions relating to the Solar Energy Systems and restrictions on obstruction to the Solar Energy Systems. Subject to Section 7.31.b, neither the Association nor any Owner shall allow any trees, other landscaping, structures or other improvement(s) to be installed or maintained within the Property, which cast or may at any time in the future cast a shadow over greater than ten percent (10%) of a solar collector absorption area upon the solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local time (“**Prohibited Shading**”). Before constructing or installing any improvements, including, but not limited to, trees, other landscaping, structures or other improvements on a Lot or any Common Area the Owner, or the Association as the case may be, shall ensure all such improvements comply with the Shading Restrictions. In addition, each Owner shall comply with the architectural review and other requirements set forth in the Declaration and the requirements set forth in Section 7.30g below. All Owners and the Association must consider the height at maturity of all trees, shrubs and other landscaping and the location and the height of all structures and other improvements installed on their respective Lot, in order to prevent Prohibited Shading of any Solar Energy Systems. Each Owner and the Association shall not permit the planting of any tree or other landscaping on any portion of the Property that, at its generally-accepted mature height, will likely cause Prohibited Shading whether the Solar Energy Systems are located on the Owner’s Lot or on a neighboring Lot.

b. **Application of Shading Restrictions.** The Shading Restrictions shall not apply to improvements that were installed or constructed by an Owner in compliance with the Shading Restrictions, prior to the installation of the Solar Energy Systems that are being shaded (“**Existing Improvements**”). Notwithstanding the foregoing, if an Owner has Existing Improvements which are causing or may in the future cause Prohibited Shading on Lots being developed by Declarant, such Existing Improvement shall be subject to the Shading Restrictions and Declarant shall have the right to require such Existing Improvements be removed at the sole cost and expense of the Owner on whose property the Existing Improvements are located. The Shading Restrictions are intended to apply, control and be enforceable regardless of the fact that an applicable local governmental agency or the ACA has issued an approval, authorization or permit for the

improvement causing the Prohibited Shading. These Prohibited Shading restrictions do not apply to shading caused by the residential structures or any other improvements constructed or installed by Declarant within the Property.

c. **Maintenance Requirements.** Each Owner and the Association shall continually prune, cut-back and otherwise limit the height and fullness of trees, shrubs and other landscaping located within the Property owned or required to be maintained by the respective Owner and/or the Association to prevent Prohibited Shading within the Property.

d. **Impact of Shading Restrictions.** The Shading Restrictions mean that the dimensions of some Lots may not accommodate (i) the planting of any trees, or the planting of medium or large trees, in the yard area of the Lot, (ii) the installation of any upper-floor additions, roof-top structures or other tall improvements, and/or (iii) the growth of trees and shrubs to mature heights. For example, the planting of shade trees and the construction of upper-floor additions may be prohibited as a result of the restriction against Prohibited Shading. Also, the Shading Restrictions may have the foregoing impacts on Lots on which no Solar Energy Systems are installed or constructed. Each Owner must carefully review and comply with the Shading Restrictions, in connection with the planning of all improvements.

e. **Tree Selection.** Once the planned height and distance of trees has been determined, the Owner and the Association, in making any selection of trees to be planted on their respective Lots, shall select a tree species that has the appropriate mature height restriction.

f. **No Restriction on Adjacent Property.** In some cases the Lots may be adjacent to other real property that is not encumbered by this Declaration, similar prohibited shading covenants, or similar prohibitions against shading imposed by law. In such cases, adjacent real property might not be restricted from causing Prohibited Shading of any roof-mounted Solar Energy System installed on one or more of the Lots.

g. **Limited Scope of Review of Improvements.** As provided under this Declaration, all improvements installed by Owners other than Declarant shall be approved by the ACA prior to installation in accordance with the procedures set forth in this Declaration. As part of such review, the ACA shall consider whether the improvements will result in a violation of the Shading Restrictions, including without limitation, whether any trees or shrubs which have the potential to grow to a height that would result in a violation of the Shading Restrictions. The ACA's obligation shall be limited to requiring the Owner to obtain a certification from a landscape architect or solar or other consultant otherwise acceptable to the ACA ("**Shading Certification**"), as applicable, that the proposed improvement will not result in Prohibited Shading of existing Solar Energy Systems, and the ACA shall be entitled to rely upon such Shading Certification and shall have no obligation to conduct any other independent review and shall have no liability to any Owner or the Association for any inaccuracies in the Solar Certification. The ACA shall not issue any approval to any Owner if the improvements planned would result in Prohibited Shading of any Solar Energy Systems, including, without limitation, a Solar Energy System installed by Declarant. The ACA shall not be allowed to issue variances from the Shading Restrictions.

h. **Declarant Exemptions.** Declarant shall be exempt from any Shading Restrictions relating to improvements constructed by Declarant.