

SEA PINES CONDOMINIUM [#]

GRANT OF LIMITED COMMON AREA

THIS AGREEMENT AND CONDITIONAL GRANT OF LIMITED COMMON AREA (“Agreement”) is made this day of _____, 20__ by and between the undersigned **Board of Managers of the Sea Pines Condominium ___ Association** (hereinafter referred to as “the Board”), the governing body of the organization of unit owners of the Sea Pines Condominium _____ (the “Condominium”), under the amended Condominium Bylaws dated _____ and recorded with the Barnstable County Registry of Deeds (the “Registry”) in Book _____, Page ____ (as further amended of record, “the Bylaws”), which Condominium is located in Brewster, Massachusetts and was created pursuant to M.G.L. Chapter 183A (the “Act”) by Master Deed dated _____ and recorded with the Registry, in Book _____, Page _____, (as amended of record, the “Master Deed”), and _____ **[name]** _____, the owner(s) of Unit ____ in the Condominium (the “Unit Owner”).

RECITALS

WHEREAS the Unit Owner is the owner of Unit ____ in the Condominium (the “Unit”) by unit deed dated _____ and recorded with the Registry in Book _____, Page _____; and

WHEREAS the Unit Owner desires to install, use, and maintain a solar photovoltaic system, described in the attached Exhibit A, which is incorporated herein by reference, (all such equipment, together with all appurtenances and connections, are hereinafter referred to as the “Equipment”) for the Unit Owner’s benefit on a portion of the common area roof (the “Roof”) of the Condominium building located at _____, and known/numbered as _____, which portion of the roof is located directly above the Unit, and connecting to the Unit through other common areas of the Condominium, all as shown on the plans attached hereto as Exhibit B (“the Plans”), which are incorporated herein by reference; and

WHEREAS, pursuant to Article II, Section 2 of the Bylaws and in accordance with Section 5(b)(2)(ii) of the Act, the Board has the power to grant the Unit Owner the exclusive right to use, as limited common area, the portion of Roof and such other Common Elements (including walls of the Building) on or through which the Equipment may be installed, all as specified in the Plans, (the “Easement Area”) on or through which to install and maintain the Equipment; and

WHEREAS the Unit Owner has submitted a description of the Equipment and the Plans for installation of the Equipment on the Roof and other Common Elements, which Plans contain a diagram representing the location, number, arrangement, size, material, and color of the solar photovoltaic cells to be installed on the Roof and the total size of the Easement Area on the Roof, to Sea Pines Facilities Management Board (“FMB”), who has approved the Plans pursuant to Bylaws Article XIV, Section 1, Nos. 7 (structural change to the Common Elements) and 10 (alteration or construction in the Common Elements);

WHEREAS the Unit Owner has submitted the name, license information, and other required information for each contractor to be involved in the installation and maintenance of the Equipment, which contractors have been approved by the FMB; and

WHEREAS, _____ [and _____], the record holder(s) of mortgages on the Unit, have accepted and consented to this grant of limited common area pursuant to the provisions of G.L. c. 183A, Section 5(b)(2)(ii), as amended, as evidenced by the Mortgagee Consent(s) attached to this Grant as Exhibit C, which are hereby incorporated herein by reference; and

WHEREAS, the Unit is the only Condominium unit shown on the recorded condominium floor plans as immediately adjoining (i.e., next to or touching at some point or along a line) the Easement Area or the Equipment, and the Easement Area and Equipment do not directly and substantially impede access to any other unit in the Condominium; or the owners of any other unit that either immediately adjoins the Easement Area or Equipment or the access to which is directly and substantially impeded by the Easement Area or Equipment, and the first mortgagees of said units whose consent is required by G.L. c. 183A, s. 5(b)(2)(ii), have consented to this grant of limited common area pursuant to the provisions of said G.L. c. 183A, s. 5(b)(2)(ii), as amended; and no other unit owner's consent is required for this grant pursuant to the provisions of said G.L. c. 183A, Section 5(b)(2)(ii), as amended; and

WHEREAS,

- a. No mortgagees holding first mortgages on units within the Condominium have given notice to the Board of their desire to be notified of the grant of limited common area pursuant to G.L. c. 183A, Section 4(5), such that no mortgagees are required to consent to this grant of easement pursuant to the provisions of G.L. c. 183A, Section 5(b)(2)(ii), as amended; or
- b. At least fifty-one (51%) percent of the number of all mortgagees holding first mortgages on units within the Condominium who have given notice to the Board and Unit Owner of their desire to be notified of the grant of limited common area pursuant to G.L. c. 183A, Section 4(5) have consented to this grant of limited common area pursuant to the provisions of G.L. c. 183A, Section 5(b)(2)(ii), as amended.

GRANT AND AGREEMENT

NOW, THEREFOR, in consideration of the foregoing, the promises, covenants and agreements set forth below and for consideration of less than One Hundred Dollars (\$100.00) paid and other good and valuable consideration, the receipt of which is hereby acknowledged, the Unit Owner, as owner of the Unit, and the Board, acting in accordance with Article II, Section 2 of the Bylaws and G.L. c. 183A, Section 5(b)(2), hereby agree as follows:

1. THE GRANT. The Board hereby grants the Unit Owner the exclusive right to install the Equipment in the Easement Area, as shown on Exhibit B, and to connect such facilities to the Unit through the Equipment installed in such Easement Areas also shown on Exhibit B, and to operate, maintain, repair, replace and decommission said Equipment at any time

and from time to time as deemed necessary by the Unit Owner in its reasonable discretion, subject to the conditions of this Agreement. The Board further grants the Unit Owner the right to access the Roof and other Common Elements of the Condominium necessary to access the Easement Areas at any time and from time to time, upon prior notice to the Board (except in the case of emergency) in order to exercise the rights granted hereunder.

2. EQUIPMENT OWNERSHIP. All Equipment installed pursuant to this Grant and Agreement shall be and remain the personal property of the Unit Owner and no part of it shall become or be deemed a fixture, notwithstanding the manner in which the Equipment may be attached to the Roof or other Common Elements of the Condominium, and the Board shall have no right, title or interest in the Equipment or any component thereof, notwithstanding that such Equipment or portions thereof may be physically mounted or adhered to the Roof and other Common Elements of the Condominium. Installation and any maintenance, repair, or replacement work shall be performed by a qualified and insured contractor, who has been approved in advance by the FMB, in a good and workmanlike manner, in compliance with all applicable statutes and regulations of the Commonwealth, including but not limited to the Building Code and Electrical Code, and pursuant to all applicable permits required by the Town of Brewster and Commonwealth of Massachusetts, copies of which shall be provided to the FMB prior to any installation, maintenance, repair, or replacement work. The Unit Owner shall also provide the FMB with a certificate of the contractor's insurance, in such form and amount reasonably satisfactory to the FMB, naming the Board and FMB as additional insured parties.
3. EQUIPMENT MAINTENANCE. None of the Equipment shall constitute Common Elements of the Condominium and the Unit Owner shall be solely responsible for maintaining, repairing, replacing and insuring the Equipment as necessary from time to time, at the Unit Owner's sole cost and expense, except for damage caused by the FMB or the Board, or their agents and employees, which damage the FMB or Board shall repair or cause to be repaired in a good and workmanlike manner when notified of such damage by the Unit Owner. The Unit Owner shall arrange for disconnecting and temporarily removing the Equipment when requested by the FMB, in its reasonable discretion, solely for the purpose of repair and/or replacement of the Roof or other Common Elements, as the Board or FMB deem necessary or appropriate. The Unit Owner shall pay for all costs related thereto, including any costs of re-installation, provided that the FMB or Board, as the case may be, make reasonable efforts to avoid and minimize any need for repair or re-installation.
4. ACCESS TO SUNLIGHT. The Unit Owner shall be responsible for removing snow and ice from the Easement Area, at the Unit Owner's sole cost and expense. The Unit Owner shall not conduct or permit activities on or about the Roof that have a reasonable likelihood of causing damage or impairment to, or otherwise adversely affecting, the Roof or the Equipment. If the Unit Owner believes that a structure, landscaping element, or temporary or permanent equipment located in the Condominium's common areas is unreasonably impeding or blocking the Equipment's access of sunlight the Unit Owner shall notify the FMB in writing and request that the FMB remove, move, or trim the structure, landscaping element, or temporary or permanent equipment. The Unit Owner shall not be entitled to

remove, move, trim, or otherwise take any self-help action with respect to any such landscaping, equipment or structures. The FMB shall, within a reasonable time after receiving the Unit Owner's request, determine whether to grant the request or otherwise take such action as it reasonably deems appropriate. If the FMB grants such request or otherwise takes action in response to same, the FMB will charge all costs incurred in connection with fulfilling the request to the Unit Owner pursuant to Section 9, entitled COSTS, below.

5. EQUIPMENT REMOVAL. The Unit Owner shall not remove the Equipment without prior written notification to the Board, and in case of such removal, the Unit Owner shall restore the portion of the Roof and other Common Elements affected thereby to approximately the same condition they were in prior to the installation thereof, reasonable wear and tear and damage by fire or other casualty excepted (the "Restoration").
6. INDEMNIFICATION. The Unit Owner shall indemnify and hold harmless the FMB and the Board, their agents, servants and employees, and the other unit owners in the four Sea Pines Condominiums against and from any and all damage or loss to persons or property, including without limitation any loss suffered due to interruption of electric service, caused by or resulting from the installation, use, maintenance, repair or removal of the Equipment, except to the extent caused by the negligence or willful misconduct of an indemnified party hereunder.
7. DEFAULT AND TERMINATION. If the Unit Owner fails to perform any of its obligations under to this Agreement within thirty (30) days after written notice thereof from the FMB or Board, or such shorter period in the event of emergency, the Unit Owner shall be in default hereunder and the FMB or Board may proceed to perform said obligation on the Unit Owner's behalf. All reasonable costs incurred by the Board and FMB in the performance thereof shall be charged to the Unit Owner and paid promptly upon request. Upon such default of the Unit Owner, the Board may terminate the Unit Owner's rights and the easement granted hereunder by written notice to the Unit Owner and recordation of a Notice of Termination with the Barnstable County Registry of Deeds, and the Board may require the Unit Owner to perform the Restoration.
8. LIMITATION OF REMEDIES. The foregoing shall not be construed as a limitation of the remedies available to the FMB and Board upon a default by the Unit Owner hereunder, at law or in equity, which remedies shall be cumulative and not exclusive.
9. COSTS. The Unit Owner agrees to pay all reasonable costs incurred by the Board and FMB in connection with this Agreement, including, but not limited to, legal and professional fees. In addition, all reasonable costs incurred by the Board and FMB in the enforcement of this Agreement, including reasonable attorneys' fees, shall be assessed to the Unit Owner. Such costs, together with all other reasonable costs or expenses assessed to the Unit Owner by the Board or FMB under this Agreement, and all costs of collection (including reasonable attorneys' fees), shall constitute a lien on the Unit until paid, and may be collected by the Board in the same manner as unpaid common charges.

10. WARRANTEES AND REPRESENTATIONS OF THE BOARD. The Board represents and warrants to the Unit Owner that this Agreement is made in accordance with all applicable provisions of the Master Deed and the Bylaws, in accordance with applicable law, and that the Board is authorized to enter into this Agreement with the Unit Owner.
11. WARRANTEES AND REPRESENTATIONS OF THE UNIT OWNER. The Unit Owner warrants and represents that the Equipment will neither affect nor jeopardize the utility services delivered by such Common Elements or the structural integrity and the soundness or safety of the Condominium building.
12. SEVERABILITY. With the exception of the recitation of compliance contained in paragraph 16 below, the invalidity of any provision herein shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement and, in such event, all of the other provisions herein shall continue to be in full force and effect as if such invalid provision had never been included herein.
13. SUCCESSORS AND ASSIGNS. The rights and obligations established in this Agreement inure to the benefit of and are binding upon the parties hereto and their successors in title, and shall be covenants running with the land.
14. AMENDMENT. This Agreement may be amended only by an instrument in writing signed by the Unit Owner and the Board, which shall be effective upon the recording of same with the Barnstable County Registry of Deeds.
15. NOTICE. Notices shall be personally delivered, or mailed by prepaid, certified mail, or overnight courier to:

Sea Pines Managing Agent

Mercantile Property Management
(or then current managing agent)
18 Waterhouse Rd.
Buzzards Bay, MA 02532.

Unit Owner

Primary Address

16. RECITATION OF COMPLIANCE; EFFECTIVE DATE. This grant is made pursuant to the provisions of Section 5(b)(2)(ii) of the Act. The Board and the Unit Owner certify that they have complied with the provisions of said Section 5(b)(2)(ii) with respect to this grant. As provided in said Section 5(b)(2)(ii), this grant shall be effective thirty (30) days following its recording with the Barnstable County Registry of Deeds.

(SIGNATURE PAGE FOLLOWS)

Executed under seal this _____ day of _____, 20__.

_____, Manager of Sea
Pines Condominium ___ Association

_____, Manager of Sea
Pines Condominium ___ Association

The undersigned Unit owner(s)/grantee(s) hereby agrees to and accepts this Grant of Limited Common Area.

_____, Owner of Unit ___ in
Sea Pines Condominium _____

_____, Owner of Unit ___ in
Sea Pines Condominium _____

_____, Owner of Unit ___ in
Sea Pines Condominium _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared the above-named _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the above document and acknowledged to me that _____ signed it voluntarily for its intended purpose as Manager of the Sea Pines Condominium Association.

Notary public
My commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared the above-named _____, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the above document and acknowledged to me that _____ signed it voluntarily for its intended purpose.

Notary public
My commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared the above-named _____, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the above document and acknowledged to me that _____ signed it voluntarily for its intended purpose.

Notary public
My commission expires: _____

EXHIBIT A
DESCRIPTION OF PHOTOVOLTAIC EQUIPMENT

EXHIBIT B
DIAGRAM OF PHOTOVOLTAIC CELLS AND EASEMENT AREA

EXHIBIT C
MORTGAGEE CONSENT(S)

_____, holder of a mortgage on Unit ___ in
Sea Pines Condominium _____, hereby consents to the foregoing Grant of Limited Common
Area.

(Name of mortgage holder)

By: _____

Print name & _____
Title

STATE OF _____

County of _____, ss.

On this _____ day of _____, 20___, before me, the undersigned notary
public, personally appeared _____, who proved to me
through satisfactory evidence of identification, which was _____,
to be the person whose name is signed above, and acknowledged to me that he/she signed it
voluntarily for its stated purpose as _____ for _____.

Notary Public
My Commission Expires: _____