

## APPENDIX B

## Example Grant of Easement

***Engage your own attorney before executing any easements or legal documents***

THIS GRANT OF EASEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the undersigned members of the Board of Trustees of the \_\_\_\_\_ Condominium Trust (hereinafter referred to as the “Board”) under Declaration of Trust (the “Declaration”) dated \_\_\_\_\_ and recorded with \_\_\_\_\_ Registry of Deeds (the “Registry”) in Book \_\_\_\_\_, Page \_\_\_\_\_, and \_\_\_\_\_ (the “Unit Owner”).

WHEREAS, the Board is the owner of the condominium known as \_\_\_\_\_ (the “Condominium”), located at \_\_\_\_\_ in \_\_\_\_\_, Massachusetts, created by Master Deed recorded with said Deeds in Book \_\_\_\_, Page \_\_\_\_ (the “Master Deed”);

WHEREAS, the Unit Owner is the owner of Unit \_\_\_\_ (the “Unit”) of the \_\_\_\_\_ Condominium by unit deed dated \_\_\_\_\_ and recorded with said Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_; and

WHEREAS, the Unit Owner desires to install a solar photovoltaic system (together, with all appurtenances and connections, hereinafter referred to as the “Equipment”) on a portion of the common roof (the “Roof”) of the Condominium building, located directly above the Unit and connecting to the Unit through other common areas of the Condominium, all as shown on the Plans, defined below (all such equipment, together with all appurtenances and connections, is hereafter referred to as the “Equipment”); and

WHEREAS, the Unit Owner has submitted plans and specifications (together, the “Plans”) for installation of the Equipment on the Roof to the Board, which Plans have been approved by the Board; and

WHEREAS, the Board has agreed to grant the Unit Owner an easement to install and maintain the Equipment on the Roof above the Unit (“Easement Area”) in accordance with the Plans; and

WHEREAS, the Unit is the only unit immediately adjacent to the Roof on which the Equipment will be installed and no other Unit Owners are required to consent to this grant of easement pursuant to the provisions of G.L. c. 183A, Section 5(b), as amended;<sup>1</sup>

<sup>1</sup> Note that if this clause cannot be stated with certainty, the easement needs to address other required approvals.

NOW THEREFORE, in consideration of the above recitals which are hereby affirmed and for consideration of less than One Hundred Dollars (\$100.00) paid, and in mutual consideration of the covenants contained herein, the parties hereto agree as follows:

1. The Board hereby grants the Unit Owner the right and easement to install the Equipment on the Roof above the Unit and to connect the Equipment to the Unit through the common areas of the Condominium in the Easement Area in accordance with the Plans 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. The Board further grants the Unit Owner the right to access the Roof and common areas of the Condominium 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 easement and rights granted hereunder. Installation shall 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 areas 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 areas of the Condominium. Installation shall be performed by a qualified and insured contractor, in a good and workmanlike manner and pursuant to all applicable permits required by the City/Town of \_\_\_\_\_, copies of which shall be provided to the Board prior to installation. The Unit Owners shall also provide the Board with a certificate of the contractor's insurance, in such form and amount reasonably satisfactory to the Board, naming the Board as an additional insured.
2. None of the Equipment shall constitute Common Elements of the Condominium and the Unit Owner shall be solely responsible for maintaining, repairing and replacing the Equipment as the Unit Owner deems necessary from time to time, at the Unit Owners' sole cost and expense, except for damage caused by the Board, its agents, servants and employees which damage the Board shall repair in a good and workmanlike manner within twenty (20) days of being notified of such damage by the Unit Owner. The Unit Owner shall arrange for disconnecting and temporarily removing the Equipment when requested by the Board, in its commercially reasonable discretion, solely for the purpose of repair and/or replacement of the Roof, its appurtenances or building components. The Unit Owner shall pay for all costs related thereto, including any costs of re-installation, provided that the Board shall make reasonable efforts to avoid and minimize any need for repair or re-installation.
3. The Unit Owner shall be responsible for removing snow and ice from the Easement Area, at their sole cost and expense, as directed by the Board. Upon failure to do so after reasonable notice, the Board may perform such removal of the Equipment. The Unit Owner shall not conduct or permit activities on or about the portion of the Roof on which the Equipment is located that have a reasonable likelihood of causing damage or impairment to, or otherwise adversely affecting, the Equipment. Without limiting the generality of the foregoing, the Board shall not erect or permit the erection of any temporary or permanent equipment or structures that block or impede the access of sunlight to the Equipment and the Unit Owner shall be entitled to remove, store, and dispose of any such equipment or structures that the Board does not remove within thirty (30) days of notice of the need for such removal delivered by the Unit Owner to the Board and charge all costs thereof to the Unit Owner as a common expense pursuant to Paragraph 8 below.

4. 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 areas 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”).
5. The Unit Owner shall indemnify and hold harmless the Board, its agents, servants and employees, and the other unit owners of the Condominium for and from any and all damage or loss to persons or property 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.
6. Upon failure of either party (the “Defaulting Party”) to perform any of its obligations pursuant to this Agreement within sixty (60) days after written notice thereof from the other party (the “Non-Defaulting Party”) (except in case of emergency), the Non-Defaulting Party may proceed to perform said obligations on the Default Party’s behalf. All reasonable costs incurred by the Non-Defaulting Party in the performance thereof shall be charged to the Defaulting Party and paid promptly upon request. Upon such default of the Unit Owner, the Board may also terminate the Unit Owner’s rights hereunder by written notice to the Unit Owner, and require the Unit Owner to perform the Restoration.
7. The foregoing shall not be construed as a limitation of the remedies available to a Non-Defaulting Party upon a default by a Defaulting Party hereunder, at law or in equity, which remedies shall be cumulative and not exclusive.
8. The Unit Owner agrees to pay all reasonable costs incurred by the Board in connection with this Agreement, including, but not limited to, legal and professional fees as required by G.L. c. 183A. In addition, all reasonable costs incurred by the Board in the enforcement of this Agreement, including reasonable attorneys’ fees, shall be assessed to the Unit Owner. Such costs, together with any other reasonable costs or expenses assessed to the Unit Owners by the Board pursuant to this Agreement, and all costs of collection (including reasonable attorney’s 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.
9. The Board acknowledges and agrees that it is satisfied that the Roof of the Condominium is structurally capable of handling the Equipment and that it is not relying on any representations of Unit Owner in this regard. The Board further represents to the Unit Owner that installation and operation of the Equipment will not void any roof warranty in connection with the Roof. The Board represents and warrants to the Unit Owner that there is no existing mortgage recorded against the building of which the Roof is a part or other matter of record that might prohibit or materially interfere with this Agreement, that this Agreement has been approved by the Unit Owners in accordance with all applicable provisions of the Master Deed, the Declaration and the Bylaws of the Condominium and in accordance with applicable law, and that the Board has been duly authorized and directed to enter into this Agreement with the Unit Owner.<sup>2</sup>

<sup>2</sup> Note that the Board and the Unit Owner should check the building’s title for existing mortgages and other problematic items of record.

10. This Agreement shall constitute a covenant running with the land, and shall inure to the benefit of, and be binding upon, any successors in title to the Unit Owner and the Board, and may be amended only by an instrument in writing signed by the Unit Owner and the Board.

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

A MAJORITY OF THE TRUSTEES  
OF THE CONDOMINIUM TRUST

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Unit Owner

**COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF \_\_\_\_\_, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, Trustee as aforesaid, 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: \_\_\_\_\_

# MERRILL & McGEARY

ATTORNEYS AT LAW

## SAMPLE GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the undersigned members of the Board of Trustees of the \_\_\_\_\_ Condominium Trust (hereinafter referred to as the "Board") under Deceleration of Trust dated, \_\_\_\_\_ and recorded with Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and, \_\_\_\_\_ (together, the "Unit Owners").

WHEREAS, the Unit Owners are the owners of Unit \_\_ (the "Unit") of the \_\_\_\_\_ Condominium (the "Condominium") by unit deed dated \_\_\_\_\_ and recorded with said Deeds in Book \_\_\_\_\_, Page \_\_; and

WHEREAS, the Unit Owners desire to Install a solar photovoltaic system on the common roof ("the Roof") of the Condominium building, connecting to their Unit through other common areas of the Condominium (all such equipment, together with all appurtenances and connections, is hereafter referred to as the "Equipment"); and

WHEREAS, the Unit Owners have submitted plans and specifications (together, the "Plans") for Installation of the Equipment to the Board, which the Board has approved; and

WHEREAS, the Board has agreed to grant the Unit Owners an easement to install and maintain the Equipment on the Roof above the Unit in accordance with the Plans; and

WHEREAS, the Unit is the only unit immediately adjacent to said area of the Roof and no other Unit Owners are required to consent to this grant of easement pursuant to the provision of G.L. c. 183A, Section S(b) as amended;

NOW THEREFORE, for consideration of less than One Hundred Dollars (\$100.00) paid, and in mutual consideration of the covenants contained herein, the parties hereto agree as follows:

1. The Board hereby authorizes the Unit Owners to install the Equipment In accordance with the Plans.

2. None of the Equipment shall constitute Common Elements of the Condominium and the Unit Owners shall be solely responsible for maintaining, repairing, and replacing the Equipment as may be necessary from time to time, at the Unit Owners' sole cost and expense. The Unit Owners shall arrange for disconnecting, removing, and/or relocating the Equipment when requested by the Board, in its sole discretion, for the Inspection, repair and/or replacement of the Roof, Its appurtenances or building components .The Unit Owners shall pay for all costs related thereto, including any costs of re-Installation.
3. The Unit Owners shall not remove the Equipment without the prior written permission of the Board, and in case of such removal, the Unit Owners shall restore the Unit and any of the Common Elements affected thereby to the same condition they were in prior to the installation thereof.
4. In addition to Paragraph 2 above, if at any time the Board determines, In Its reasonable discretion, that the Equipment constitutes a nuisance or hazed to the Condominium building or the occupants thereof, the Board may require the Unit Owners to remove the Equipment from the common area of the Condominium, giving thirty (30) days advance written notice thereof, except In case of emergency in which case such notice may be Immediate. If the Unit Owners fall to remove the Equipment as aforesaid, the Board and/or its agents may remove the Equipment and charge all costs thereof to the Unit Owners. Such charges shall, together with all costs of collection, constitute a lien on the Unit and shall be collected by the Trustees in accordance with Paragraph 7 below. Notwithstanding the foregoing, if the Board exercises its right of removal as aforesaid, it shall bear no obligation to store, maintain, or otherwise care for such Equipment and may dispose of it at its discretion.
5. The Unit Owners shall Indemnify and hold harmless the Board, its agents servants and employees, and the other unit owners of the Condominium for and from any and all damage or loss to persons or property resulting from the installation, use, maintenance, repair or removal of the Equipment, including, but not limited to, any damages or expenses Incurred as a result of any nullification of the roof warranty caused by the installation thereof.

6. Upon failure of the Unit Owners to perform any of their obligations pursuant to this Agreement within thirty (30) days after written notice thereof from the Board (except in case of emergency), the Board may proceed to perform said obligations on the unit Owners' behalf. All costs incurred by the Board in the performance thereof shall be charged to the Unit Owners in accordance with Paragraph 7 below. Upon such default, the Board may also terminate the Unit Owners' rights hereunder by written notice to the Unit Owners, and require the Unit Owners to remove the Equipment on such terms and conditions specified by the Board, and restore the Condominium building to its prior condition.
  
7. The Unit Owners agree to pay all costs incurred by the Board in connection with this Agreement, including, but not limited to, legal and professional fees as required by G.L.c. 183A. In addition, all costs incurred by the Board in the enforcement of this Agreement, including attorneys' fees, shall be assessed to the Unit Owners. Such costs, together with any other reasonable costs or expenses assessed to the Unit Owners by the Board pursuant to this Agreement, and all costs of collection (including reasonable attorney's 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.
  
8. This Agreement shall constitute a covenant running with the land, and shall inure to the benefit of, and be binding upon, any successors in title to the Unit Owners, and may be amended only by an instrument in writing signed by the Unit Owners and the Board.

Executed under seal this day of \_\_\_\_\_, 20\_\_

**A MAJORITY OF THE TRUSTEES OF THE CONDOMINIUM TRUST**

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UNIT OWNER

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UNIT OWNER

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_, SS

On this \_\_\_ day of \_\_\_, 20\_\_\_

, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, Trustee as aforesaid, 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: \_\_\_\_\_