

EASEMENT AND LIMITED COMMON AREA AGREEMENT

This Easement and Limited Common Area Agreement (the “Agreement”) is made this ____ day of _____, 20____, by the **Board of Trustees of the Sugarloaf Condominium Trust** (the “Trustees”), acting on behalf of the organization of unit owners of the Sugarloaf Condominium (the “Condominium”), a condominium created pursuant to M.G.L. c. 183A and established by a Master Deed and Declaration of Trust recorded with the Franklin County Registry of Deeds at Book 7288, Page 201, and Book 7288, Page 267, respectively, as amended, and [_____], of [_____, South Deerfield, MA 01373] (collectively, the “Owners”).

WHEREAS, the Owners are the current owners of record of **Unit** ____ at the Condominium, located at [_____, South Deerfield, MA 01373] (the “Unit”) pursuant to a unit deed recorded with said Registry at Book _____, Page _____;

WHEREAS, the Owners have petitioned the Board to install and maintain a solar panel or panels and other associated equipment such as mounts, frames, wires and conduits (collectively, the “Solar Photovoltaic System”) in the common areas adjacent to the Unit as more particularly shown on the plans and specifications attached hereto and incorporated herein by reference as *Exhibit A*; and,

WHEREAS, the Owners and the Trustees desire to memorialize the terms and conditions upon which the Solar Photovoltaic System shall be permitted to remain in the common areas of the Condominium in compliance with the Master Deed and M.G.L. c. 183A;

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Pursuant to the authority set forth in the Condominium documents and M.G.L. c. 183A et. seq., the Trustees hereby grant their permission for the Owners to maintain the Solar Photovoltaic System, as more particularly shown on the plan(s) and specifications/details attached hereto as *Exhibit A*, incorporated herein by reference, and to allow the same to exist upon the Condominium property, conditioned upon the Owners’ compliance with the terms of this Agreement. The parties agree that the granting of permission hereunder shall constitute, to the extent allowable under the law, an easement and limited common area grant pursuant to M.G.L. c. 183A, §5(b) (hereinafter the “Grant”) and that the same exists by the permission of the Trustees which may be revoked pursuant to this Agreement.
2. The Owners shall be the deemed the owners of the Solar Photovoltaic System servicing their Unit. The Solar Photovoltaic System shall remain personal property and no part of it shall become or be deemed a fixture, notwithstanding the manner in which the Solar Photovoltaic System may be attached to the roof or other common areas of the Condominium.
3. The Owners represent that:

- a. the Owners have obtained, or will obtain, at Owners' expense, all necessary approvals, variances, permits and/or licenses to install and maintain the Solar Photovoltaic System authorized hereunder;
 - b. all work authorized hereunder (including any subsequent modification, repair, replacement or maintenance of the Solar Photovoltaic System) shall be performed at the Owners' expense, by licensed and insured professionals, in a good and workmanlike manner and in full compliance with all applicable federal, state and local laws, ordinances, codes, bylaws and rules;
 - c. conditions in para. 3b. (above) also apply both to the removal of the Solar Photovoltaic System and to the restoration of Condominium Common Property related to the same.
 - d. the Solar Photovoltaic System has been installed in substantial compliance with the plan(s) and specifications/details attached hereto as *Exhibit A* and shall not be altered or modified except with the prior written authorization of the Trustees.
4. The Owners shall be responsible for all costs and expenses related to the installation, removal, restoration, and any ongoing maintenance, repair, replacement and upkeep of the Solar Photovoltaic System, and any equipment or improvements associated therewith.
 5. In the event that the Trustees are required or deem it necessary or appropriate to conduct inspections, repairs or replacements to the roof area or other common areas upon which the Solar Photovoltaic System is located, and the Trustees determine, in their reasonable discretion, that the Solar Photovoltaic System must be removed to conduct any such work, the Owners shall be responsible for all costs and expenses associated with the removal and, if permitted, replacement of the Solar Photovoltaic System, and all component parts or other elements associated therewith. Any replacement of the Solar Photovoltaic System shall be subject to the prior written approval of the Board, and any approved replacement shall be conducted at the Owners' expense and in accordance with the terms and conditions set forth herein as they relate to compliance with applicable law, use of licensed and insured professionals, etc.
 6. Notwithstanding the above, the Trustees shall have the right, but not the obligation, to arrange and/or perform necessary maintenance, repair, upkeep or replacement or removal of the Solar Photovoltaic System as if the same were common areas as defined under the Master Deed and any and all costs or expenses associated with such maintenance, repair or replacement undertaken by the Trust shall be assessed to the Owners as common area fees. Said fees may be collected by the Trustees as a common area fee pursuant to M.G.L. c. 183A, §6 and, if unpaid, shall constitute a lien on the Unit, together with all costs of collection thereof, including reasonable attorney's fees. Nothing in this Agreement shall create an affirmative duty or obligation on the part of the Trustees to undertake any maintenance, repair, replacement or removal of the entirety or any part of the Solar Photovoltaic System. Furthermore, nothing herein shall create any right of the Owners to demand that the

Trustees undertake any maintenance, repair, replacement or removal of any part of the Solar Photovoltaic System.

7. The Owners shall be responsible for any damage or injury caused by the installation of the Solar Photovoltaic System. If the roof or any of the common areas are damaged by the installation, operation, maintenance, repair, or replacement of any part of the Solar Photovoltaic System, the Owners shall be responsible for the costs of repairs to the roof and/or common areas as well as the cost to disconnect and temporarily remove the solar panels as necessary to allow for said repairs. All of the above also applies at time of permanent removal of the Solar Photovoltaic System. In the event following receipt of written notice from the Trustees, the Owners fail within twenty (20) days to disconnect and temporarily remove the solar panels and/or any other portion of the Solar Photovoltaic System to allow for the repair or replacement of the roof or other common areas, the Trustees shall have the right but not the obligation to have such work performed, and the Owners shall be responsible and liable for all costs and expenses incurred by the Trustees arising out of said disconnection, removal and re-installation and re-connection.
8. The Owners shall have all right, title and interest in and to any solar energy credits, federal, state and local tax incentives, rebates of other associated rights and interests (collectively, the “Solar Photovoltaic System Energy Rights”) associated with its Solar Photovoltaic System. At the time of any sale and/or transfer of title to the Unit, the Owners, by deed or by separate assignment, shall grant and assign to the new owner of the Unit all of Owners’ right, title and interest in the Solar Photovoltaic System and the Solar Photovoltaic System Energy Rights.
9. The Owners agree to maintain, for any period of time during which the Solar Photovoltaic System remains on the Condominium property, insurance in such amount and format as is acceptable to the Trustees or amounts required by law, whichever coverage is greater. Certificates of insurance acceptable to the Trustees shall be filed with the Trustees. Furthermore, notwithstanding any provisions in the Condominium documents, the Owners waive and release the Trustees, the Trust and other unit owners for any amounts due for any deductibles as a result of any loss which may be incurred regarding the Solar Photovoltaic System.
10. For the purposes of this Agreement, the term “Owners” shall include any family member of the Owners, as well as any trust, limited liability entity, corporate entity, or partnership that shall hold title to or occupy the Unit, including any lawful successors or assigns of the undersigned Owners.
11. Except as expressly set forth herein, nothing in this Agreement shall be construed as to alter the parties’ respective rights or obligations under the Condominium Master Deed, the Declaration of Trust, the Rules and Regulations, or the Unit deed. Furthermore, except as expressly set forth herein, nothing in this Agreement shall be construed as to alter the boundaries of the Unit, any exclusive use or limited common areas appurtenant to the Unit, or the Condominium common areas. Nothing in this Agreement shall be construed as to authorize or permit any other exterior modifications to the Unit or to any other part of the Condominium property except as expressly set forth herein.

12. The Owners understand and agree that the Owners maintain the Solar Photovoltaic System at the Owners' own risk, and that neither the Trust nor the Trustees shall be responsible for any individual's safety or property as a result of any defect related to the Solar Photovoltaic System, or for any damages caused by or related to the Solar Photovoltaic System. The Owners agree to indemnify and hold harmless the Trustees, the Trust and the other Unit Owners, together with their respective agents, counsel, insurers and employees, from any and all claims, damages, liabilities, expenses, or causes of action which may arise involving the Solar Photovoltaic System, this Agreement, or the Owner's obligations hereunder. This indemnification shall include the obligation to reimburse the Trustees for any costs to enforce this Agreement, as well as the costs incurred by any of the indemnified parties of any demands or legal action brought against them, and/or judgments issued against them. Further, this indemnification shall include the obligation of the Owners' to make payment of any judgments awarded as a result of damages, whether personal and/or to property, concerning the Solar Photovoltaic System, this Agreement, the breach of this Agreement, or arising out of any work contemplated hereunder. The Owners shall also hold the Trustees harmless and indemnified from and against any and all loss, damage, liability or expense by reason of the filing of any notices of contract or liens against the Unit or the Condominium by any contractor, subcontractor or other laborer or supplier engaged by the Owners or the commencement of any legal proceedings against the Trustees, including, without implied limitation, the Trustees' attorneys' fees and expenses for removing or defending against any of the foregoing and for enforcing this indemnification and for bond premiums or other expenses for removing such liens or notices of contract.

13. Any and all sums due or payable by the Owners pursuant to this Agreement shall be a personal liability of the Owners and shall be collectable as a lien pursuant to M.G.L. c. 183A and M.G.L. c. 254, §5 and §5(a). All remedies hereunder shall be cumulative.

14. When notice is required to be given hereunder, it shall be sent by certified mail, return receipt requested as follows, which addresses may be changed by written notice:

If to Owners:

South Deerfield, MA 01373

If to the Trust:

Board of Trustees

The Sugarloaf Condominium Trust

c/o Kendrick Property Management

P.O. Box 3220

Amherst, MA 01004

15. This Agreement, and all rights and remedies of the parties shall be determined as to the validity, construction and enforcement and in all other respects to the same pursuant to the laws of the Commonwealth of Massachusetts. This Agreement is intended to take effect as a sealed instrument.

16. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their permitted successors and permitted assigns.
17. In the event any party to this Agreement shall be required to initiate legal proceedings against the other in connection with the enforcement of their respective rights under this Agreement, the non-prevailing party shall reimburse the prevailing party for its reasonable expenses incurred as a result thereof, including court costs and attorney's fees.
18. This Agreement may be executed in one or more counterparts or duplicate copies and by facsimile signature, and any signed counterparts, duplicate or facsimile copy shall be the equivalent to a signed original for all purposes.
19. Each party will conduct its business at its own initiative, responsibility and expense. This Agreement shall not create any relationship between the parties other than that which may currently exist under applicable law.
20. No course of dealing or failure of a party to strictly enforce any term, right or condition hereunder will be construed as a waiver of such term, right or condition. If any provision of this Agreement is determined to be invalid, such invalidity will not invalidate the entire Agreement, but rather the entire Agreement will be construed as if it did not contain the particular invalid provision(s), and the rights and obligations of Owners and Trustees will be construed and enforced accordingly.
21. The terms and provisions of this Agreement constitute the entire agreement between the Owners and the Trust. The provisions of this Agreement supersede all prior oral and written quotations, communications, promises, agreements and understandings of the parties, if any, with respect to the subject matter hereof. Except as otherwise provided herein, this Agreement can be modified only by a written amendment executed by duly authorized representatives of the parties.
22. This grant shall become effective thirty (30) days from the recording of this Agreement in the Registry of Deeds.
23. The Owners agree to reimburse and pay the Trustees all costs associated with this Agreement, including attorney's fees and recording costs. Said sums shall be due within ten (10) days from the execution hereof.
24. In the event that it shall ever be determined that the signature of any Trustee and/or the Owners, or its successors or assigns, is required on any document which effectuates the intent of this Agreement, then the Trustees and their successors and assigns shall be empowered, as attorney-in-fact for the Trustees and/or the Owners to execute and deliver any such instrument by and on behalf of and in the name of the Trustees and/or the Owners and the Owners hereby constitute and appoint the Trustees, and each of them, its attorney-in-fact for such purpose. This power of attorney is coupled with an interest, and hence shall be irrevocable and shall be binding upon each and every present and

future Trustee and Owners, and all other persons claiming by, through or under them (including the holder of any mortgage or other encumbrance) or any other party whatsoever.

[Signatures appear below and on the Following Page(s)]

Executed under seal on the date and year first written above.

OWNERS

_____ (Unit _____)

_____ (Unit _____)

SUGARLOAF
CONDOMINIUM TRUST
BOARD OF TRUSTEES

_____, as Trustee

_____, as Trustee

_____, as Trustee

_____, as Trustee

_____, as Trustee

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss: _____, 20____

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the persons whose names appear on the preceding or attached document and acknowledged to me that they signed it voluntarily, for its stated purpose.

Official Signature and Seal of Notary

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss. _____, 20__

On this ____ day of _____, 202__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as a duly authorized Trustee of the Sugarloaf Condominium Trust.

Official Signature and Seal of Notary

My Commission Expires:

Pursuant to M.G.L. c. 183A, §5(b)(2), this Agreement is assented to by the following adjoining unit owners to the Unit described above:

Print Name: _____

Owner of unit #: _____ located at _____, South Deerfield, Massachusetts 01373

Print Name: _____

Owner of unit #: _____ located at _____, South Deerfield, Massachusetts 01373

EXHIBIT A

Solar Energy System Plan(s) and Specifications/Details (see included)