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Skagit County Auditor

Return Address:

Cove at Fidalgo Bay Condominium Owners Association

4501 Fidalgo Bay Road, BOX A

Anacortes, WA 98221

Telephone: 425-830-4981

Document Title:

Rooftop Solar Easement Agreement

Reference Number(s) of Documents assigned or released:

None

Grantor(s) Exactly as name(s) appear on document:

1. Cove at Fidalgo Bay Condominium Owners Association

Grantee(s) Exactly as name(s) appear on document

OATES KENNETH M

Legal description (abbreviated: i.e. lot, block, plat or section, township, range):

THE COVE ON FIDALGO BAY, A CONDOMINIUM, PHASE 1, UNIT 702,
RECORDED UNDER AF#200209120077
Quarter SE Section 30 Township 35 Range 02

Assessor's Property Tax Parcel/Account Number: P1194997 4800-000-702-0000

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

ROOFTOP SOLAR EASEMENT AGREEMENT

This Rooftop Solar Easement Agreement (this "Agreement") is made, dated, and effective AUGUST 19, 2018 (the "Effective Date") by and between OATES KENNETH M ("Grantee") and the Cove at Fidalgo Bay Condominium Owners Association, a Washington non-profit corporation ("Grantor") acting by and through the undersigned members of the Board of directors of the Cove at Fidalgo Bay Condominium Owners Association (the "Board") under Declaration of Covenants, Conditions, Restrictions, and Reservations recorded with the State of Washington Secretary of State, UBI # 620016958, and recorded in the records of the Skagit County Auditor on September 12, 2002 as Document No. 20020912007.

RECITALS

- A. Grantor is the owner of the common areas of the condominium known as Cove at Fidalgo Bay Condominiums (the "Condominium"), located at 4501 Fidalgo Bay Road in Anacortes, Washington (the "Property"), created by Survey and Map Plans for "The Cove at Fidalgo Bay", a Condominium, Phase, in Portions of Government Lot 5, Section 30, Gov't Lot 6, Section 31, Township 35 North, Range 2 East of the W.M., and Tract 13, Plate 11, Anacortes Tidelands recorded with Skagit County Auditor on September 12, 2002 as Document No. 200209120078 and Declaration and Covenants, Conditions, Restrictions and Reservations for Cove at Fidalgo Bay Condominium recorded with Skagit County Auditor as Doc. No. 200209120077 on September 12, 2002 (the "CCRs").
- B. Grantee is the owner of Unit 702 (the "Unit") of the Condominium by unit deed dated 2/28/2013 and recorded in the official records of Skagit County, Washington on 2/28/2013 as 201302280124.
- C. Grantee desires to install a 8.4-kilowatt solar photovoltaic system and related equipment (together, with all appurtenances and connections, the "System") on that Board-designated portion of the Common Element roof of the Condominium more particularly described on the attached Exhibit A and incorporated herein by this reference, consisting of approximately 500 square feet (the "Roof Space") and connecting through other Common Elements of the Condominium described herein (together with the Roof Space and the Cabling Space (defined below), the "Easement Area") in order to provide electrical energy to Grantee's Unit.
- D. Grantee has submitted to the Board plans and specifications attached to this Agreement as Exhibit B and incorporated herein by this reference (together, the "Plans") for the installation of the System on the Roof Space and use of the Easement Area, which Plans have been approved by the Board.
- E. Grantee desires to obtain an easement on, over, across, and through the Easement Area for the installation, maintenance, operation, use, repair, and removal of the System; In accordance with Section 10.8 of the CCRs, eighty percent (80%) of the unit owners of the Condominium have voted to authorize the granting of the easement described in this Agreement; and Grantor is thus willing to grant such an easement on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the above recitals which are hereby affirmed and in mutual consideration of the covenants contained herein, the parties agree as follows:

1. **Grant of Easement; Purpose and Allowed Uses.** Grantor hereby grants to Grantee the right and easement to install the System on the Roof Space and to install, operate, and maintain wires, cables, conduits and pipes running interior of the Condominium between and among the Easement Area (the "**Cabling Space**") and to all necessary electrical utility sources located on the Property in order to connect the System to electrical panel located in the garage of the Condominium, as generally described and depicted on the attached **Exhibit A** all in accordance with the Plans; and to operate, maintain, repair, replace and decommission such System at any time and from time to time as deemed necessary by Grantee in its reasonable discretion (all of the foregoing rights, the "**Easement**"). Grantor further grants Grantee the right to access the Roof Space 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. Nothing in the foregoing grant of Easement and access rights shall modify or alter Grantor's rights to maintain, repair, and replace any existing equipment located in the Roof Space. Grantee's use of the Easement Area shall be limited to those uses and activities expressly provided for this **Section 1** and for no other use. All power generated from the System will strictly be used to benefit Grantee's Unit and for no other Unit or off taker of any kind.

2. **Term.** The term of this Agreement and the Easement and rights granted herein shall commence on the Effective Date and shall continue for a period of twenty-five (25) years unless earlier terminated or extended pursuant to a written amendment executed by both Parties.

3. **RoofSpace**

Grantor is to provide all Unit Owners access to Roof Space for optimal solar energy production on as fair and equitable basis as is reasonably possible. The space necessary for a standard electrical draw Owners Unit currently requires an allocation of Roof Space for 12 panels (the Standard Roof Space). Two of the units in the Condominium currently have excess electrical draw requirements requiring additional Roof Space exceeding 12 panels (the Excess Roof Spaces).

Grantee acknowledges it may be required to relinquish a portion of the Excess Roof Spaces granted by this Easement and be reassigned so as to provide a requesting Standard Roof Space Unit Owner access to a more optimal location. The Grantee will retain a minimum of the Standard Roof Space (12 panels) in the optimal location. The conditions under which the reallocations will be made are at the sole discretion of the Grantor, and its decision will be final.

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

OCT 23 2018

Amount Paid \$
Skagit Co. Treasurer
By *BT* Deputy

4. **Ownership of System.** Grantor acknowledges and agrees that Grantee is the sole owner of the System, and no part of the System shall be become or be deemed a fixture, notwithstanding the manner in which the System may be attached to the Easement Areas; and the Board shall have no right, title or interest in the System or any component thereof, notwithstanding that such System or portions thereof may be physically mounted or adhered to the Roof Space and other common areas of the Condominium. The System and any portion or component thereof shall not be deemed or otherwise constitute Common Elements (as defined in the CCRs) of the Condominium. Notwithstanding the foregoing,

5. Nothing in this **Section 4** or any other provision of this Agreement shall limit Grantor's rights or Grantee's obligations under the CCRs.

6. **Installation and Maintenance of System; Standard of Care.**

6.1. **Installation.** Grantee hereby covenants and agrees that installation of the System shall be performed by a qualified and insured contractor, in a good and workmanlike manner, with materials free of defects in design, construction, workmanship or materials, pursuant to all applicable laws and permits required by the City/Town of Anacortes, copies of which shall be provided to the Board prior to commencement of installation. Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor that Grantee's contractors are duly licensed in accordance with all applicable laws and properly trained to install the System and perform any maintenance or repair of the same. Grantee shall use reasonable efforts to minimize any disruption to the residents of the Condominium during the installation of the System. Grantee shall also provide the Board with a certificate of the contractor's insurance, in such form and amount reasonably satisfactory to the Board, identifying Grantor and the Board as an additional insured thereunder.

6.2. **Maintenance and Repair.** Grantee is solely responsible for maintaining, repairing, and replacing the System and for all costs related thereto, except for damage caused by Grantor, its members (other than Grantee), agents, contractors, and employees. Grantee shall be solely responsible, at its sole cost and expense, for removing any snow, ice, dust, or other debris from the System and Roof Space, as directed by the Board. Upon failure by Grantee to remove snow, ice, dust, or other debris from the System and Roof Space after reasonable notice, the Board may perform such removal of snow or ice from the System and Roof Space, and Grantee shall, upon delivery of receipts therefor, reimburse the Board for such costs and expenses. Grantee shall give reasonable notice to Grantor of any inspection of the Easement Area or the System by any governmental authority and the opportunity to attend such inspection with its agents or invitees. Throughout the term of this Agreement, Grantee shall not permit any vibration or noise to emanate from the System or any of the wires, cables, conduits or pipes associated therewith.

6.3. **Removal and Restoration.** Prior to removal of the System, Grantee shall notify Grantor in writing of Grantor's desire to the remove the System from the

Roof Space. Following delivery of such notice, Grantee shall remove the System from the Roof Space within sixty (60) days and shall thereafter restore the Roof Space and other Common Elements affected thereby to approximately the same condition as such Roof Space and Common Elements were in prior to the installation of the System, reasonable wear and tear and damage by fire or other casualty excepted (the "**Restoration**"). At all times, any replacement, repair, removal, or Restoration work shall be conducted in a good and workmanlike manner, free of defects in design, construction, workmanship, or materials, and in accordance with all applicable laws.

6.4. **Damage.** In the event of any damage to the System or Roof Space caused by Grantee, its agent, member, contractor, or employee, Grantee shall arrange for disconnecting and temporarily removing the System (or applicable portion thereof) when requested by the Board, in its commercially reasonable discretion, solely for the purpose of repairing such System or Roof Space. Grantee shall be solely responsible for all costs related thereto, including any costs of re-installation.

7. **Authority of Grantor.** Pursuant to the CCRs, the owner of Unit(s) 703; 803; 903; 1003, located directly below the Roof Space, has consented to and agreed to the Easement and other rights granted to Grantee under this Agreement. No consent by any other person is required to be obtained in order for Grantor to enter into this Agreement.

8. **No Interference.** Neither Grantor nor Grantee shall not conduct or permit activities on or about the Roof Space that may cause damage or impairment to, or otherwise adversely affect, the System. In no event shall the System be connected to or interfere with any electrical service for any other resident of the Condominium. Without limiting the generality of the foregoing, Grantor shall not erect or permit the erection of any permanent equipment, facilities, or structures on the Property that block or impede the access of sunlight to the System. Without limiting the generality of the foregoing, Grantor shall have no responsibility or liability for any trees, vegetation, temporary construction or road equipment, cranes, or any other permanent or temporary equipment installed, placed, planted, or otherwise located on real property adjoining, abutting, or in the vicinity of the Property.

9. **Taxes.** Grantee shall pay any personal property, real estate, or other taxes, assessments, or charges imposed on the Condominium which Grantor demonstrates is the result of Grantee's use of the Easement Area and/or the installation, maintenance, and operation of the System, including any increase in real estate taxes arising from the System or Grantee's use of the Easement Area. Grantee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge, or seek modification of any tax assessment for which Grantee is wholly or partly responsible for payment, provided that Grantee shall not commence any such process unless and until Grantee has conferred with Grantor concerning the same. Grantor shall reasonably cooperate with Grantee, at Grantee's expense, in filing, prosecuting, and perfecting any appeal or challenge to taxes or assessments.

10. Indemnity and Insurance.

10.1. Indemnity by Grantee. Grantee shall indemnify and hold harmless Grantor, the Board, its members, agents, contractors, servants and employees ("Grantor Indemnified Parties"), for, from, and against any and all damage, personal injury, 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 a Grantor Indemnified Party.

10.2. Insurance. Grantee shall, at its sole cost and expense, insure the System in its entirety, and maintain comprehensive liability insurance for injury or death of one or more persons and for damage or destruction to property (including the Condominium building) in an amount and form of insurance satisfactory to the Board. The Board and Grantor shall be identified in such policies as Additional Interests. Upon the Board's written request, from time to time (but not more often than once every 180 days), Grantee shall deliver to Grantor certificates evidencing the insurance coverage required by this Section 9.2.

10.3. Indemnity by Grantor. Grantor shall indemnify and hold harmless Grantee against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of Grantor, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Grantee, its contractors, or agents.

10.4. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, OR ANY OF THE OTHER'S AGENTS, REPRESENTATIVES, OR CONTRACTORS, FOR ANY LOST REVENUE, LOST PROFITS, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE.

11. Default and Termination.

11.1. Termination by Grantee. Provided that Grantee is not in default of this Agreement, Grantee shall have the right to terminate this Agreement and the Easement at any time upon thirty (30) days' notice to Grantor.

11.2. Termination by Grantor for Failure to Complete Installation. If Grantee does not complete installation of the System within 90 days after the Effective Date, then Grantor shall have the right to terminate this Agreement and the Easement and rights granted to Grantee hereunder if, following written notice to Grantee of failure to complete installation, Grantee does not use commercially reasonable efforts to complete installation and begin operation of the System.

11.3. Default: Termination for Default. Upon failure of either party (the "Defaulting Party") to perform any obligation of such party under 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 Grantee, Grantor may, by written notice to Grantee, terminate the Easement

and rights granted to Grantee hereunder, and require Grantee to commence and perform to completion the Restoration.

11.4. Effect of Termination. Upon termination of this Agreement and the Easement, Grantee shall, as soon as practicable thereafter, remove the System and perform all Restoration. If Grantee fails to remove the System and perform the Restoration within sixty (60) days after termination of this Agreement and the Easement, Grantor may do so, in which case Grantee shall reimburse Grantor for reasonable and actual costs of removal incurred by Grantor, less any salvage value received by Grantor, which shall be credited to Grantor, within thirty (30) days after receipt of an invoice from Grantor.

11.5. Cumulative Remedies. Nothing in this Section 10 shall 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.

12. Costs and Expenses. Grantee 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 CCRs Article 19 (Easements). In addition, all reasonable costs incurred by the Board in the enforcement of this Agreement, including reasonable attorneys' fees, shall be assessed to Grantee. Such costs, together with any other reasonable costs or expenses assessed to Grantee 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.

13. Representations, Warranties, and Covenants by Grantor. Grantor acknowledges and agrees that it has been independently informed and is satisfied that the Roof Space is structurally capable of handling the System; and that Grantor is not relying on any representation or warranty of Grantee in connection therewith. Grantor represents to Grantee that installation and operation of the System, as set out in the Plans, will not void any roof warranty in connection with the Roof Space. Grantor represents and warrants to Grantee that (a) there is no existing mortgage recorded against the building of which the Roof Space is a part or other matter of record that might prohibit or materially interfere with this Agreement; (b) this Agreement has been approved by the members of Grantor in accordance with all applicable provisions of the CCRs, the Declaration and the Bylaws of the Condominium and in accordance with applicable law; and (c) the Board has been duly authorized and directed to enter into this Agreement with Grantee.

14. Miscellaneous.

14.1. Entire Agreement; Amendments. This Agreement, together with the CCRs, Bylaws of the Condominium, and Solar Guidelines of the Condominium dated 5/5/, 2018, constitutes the entire agreement between Grantor and Grantee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Easement or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a

writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

14.2. **Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the Laws of the State of Washington.

14.3. **No Conflict.** In the event of any conflict between the terms of this Agreement, and the CCRs, the CCRs shall control in all events. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the CCRs.

14.4. **Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

14.5. **Successors and Assigns.** 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 Grantee and Grantor, and may be amended only by an instrument in writing signed by Grantee and the Board, on behalf of Grantor. This Agreement and the Easement and rights granted herein shall not be sold, transferred, assigned, or conveyed except as part of concurrent transfer or conveyance to the same party of Grantee's fee title to its Unit.

14.6. **Recording.** Grantee and Grantor agree that this Agreement may be recorded in the official records of Skagit County, Washington. Grantee shall record this Agreement at its sole cost and expense within 30 days after the Effective Date.

14.7. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to Grantor:

Cove at Fidalgo Bay HOA
4501 Fidalgo Bay Road, Box A
Anacortes, WA 98221

If to Grantee:

Kenneth M Oates
4501 Fidalgo Bay Road, Unit 702
Anacortes, WA 98221

Telephone No.: n/a

Telephone No.: 360-708-4182

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

12.8 **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, each of Grantor and Grantee has caused this Agreement to be executed and delivered as of the Effective Date.

GRANTEE:

KENNETH M OATES



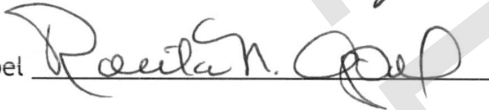
GRANTOR:

COVE AT FIDALGO BAY HOA BOARD:

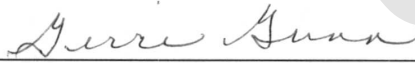
Steaven M Jahn



Roberta Apel



Gerri Gunn

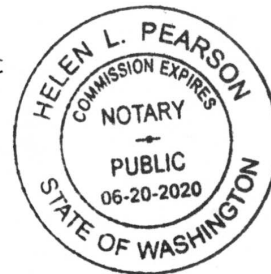


STATE OF WASHINGTON)

COUNTY OF SKAGIT, City of ANACORTES)

On this 22nd day of August, 2018, before me, the undersigned notary public, personally appeared the above-named Kenneth M. Oates, Trustee(s) as aforsaid, proved to me through satisfactory evidence of identification, which was WA State Driver's License, to be the person(s) whose name(s) is are signed on the above document, and acknowledged to me that he signed it voluntarily for its intended purpose.

Helen L Pearson Notary public
My commission expires: 6-20-2020



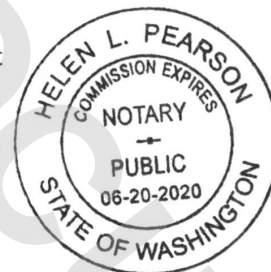
STATE OF WASHINGTON)

COUNTY OF SKAGIT, City of ANACORTES)

On this 24th day of August, 2018, before me, the undersigned notary public, personally appeared the above-named Steven M. Jahn, Roberta Apel, Gerri Gurnin*, proved to me through satisfactory evidence of identification, which was WA Driver's Licenses, to be the person(s) whose name(s) is/are signed on the above document, and acknowledged to me that they signed it voluntarily for its intended purpose.

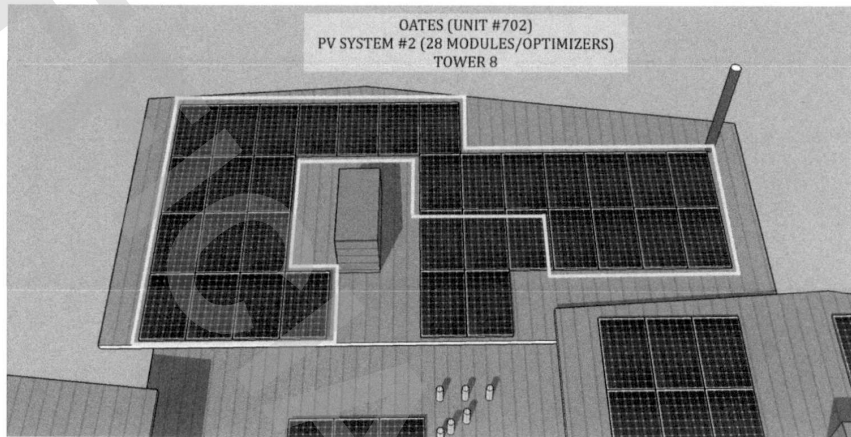
Helen L Pearson Notary public
My commission expires: 6-20-2020

* HOA Board members as aforesaid,



**EXHIBIT A
DESCRIPTION OF THE EASEMENT AREA**

Part I: Roof Space 500 square feet of roof on Tower 8 of the Cove at Fidalgo Bay Condominium as shown in the reference.



Part II: Cable Space - Wall space in the garage of the Cove at Fidalgo Bay to install a 8.4 Kw solar system electrical components to code, as shown on the reference.

