

PARKING LEASE  
(OCEAN GATEWAY GARAGE)

THIS PARKING LEASE (the "Parking Lease") is entered into as of the \_\_\_\_ day of SEPT., 2007, by and between OCEAN GATEWAY GARAGE LLC, a Maine limited liability company with an address of Two Market Street, Portland, Maine 04101 ("Owner") Owner of the Ocean Gateway Garage at 161 Fore Street, Portland, Maine 04101 and The Village At Oceangate, LLC, a Maine limited liability company ("Tenant") with an address c/o GFI Partners, 133 Pearl Street, Suite 400, Boston, MA 02110.

WITNESSETH:

WHEREAS, Owner owns the Ocean Gateway Garage, a parking garage which, once constructed, will have approximately seven hundred twenty (720) spaces located on a parcel of land approximately thirty-seven thousand (37,000) square feet in area located at 161 Fore Street in the City of Portland, County of Cumberland and State of Maine and shown as "Proposed Lot 3" on plan entitled "Subdivision/Recording Plat" by Owen Haskell, Inc., dated March 22, 2006 as last revised April 13, 2006, and recorded in the Cumberland County Registry of Deeds in Plan Book 207, Page 54 (the "Garage"); and

WHEREAS, Owner and Tenant desire to enter into this Parking Lease for the purpose of setting forth the terms and conditions of a certain arrangement between them relating to the use of parking spaces in the Garage by Tenant; and

WHEREAS, in order to provide shared use of parking spaces at different times of the day and night for multiple tenants, the Owner and Tenant agree to limit and manage the hours of use of the Garage Parking Spaces by Tenant; and

WHEREAS, Tenant and/or its assignees or sublessees will occupy residential condominium units, retail spaces and commercial offices located at a project to be known as "The Bay House Condominium," to be developed at 113 Newbury Street and 40 Hancock Street, Portland, Maine (the "Condominium") and will use the Parking Spaces for residents, employees and business invitees as defined hereinafter.

NOW, THEREFORE, for good and valuable consideration including the mutual covenants and agreements herein, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Use of Parking Spaces.

a. Owner hereby leases to Tenant the right to use twenty (20) parking spaces (the "Parking Spaces") in the Garage in accordance with and subject to the terms and conditions below and such reasonable rules and regulations established from time to time by Owner governing the leasing and use by monthly and transient users of parking spaces in the Garage. The Parking Spaces are to be used as follows: ten (10) of the Parking

Spaces shall be to serve retail and/or commercial space in the first phase of the Condominium (the "Nonresidential Spaces"), five (5) of the Parking Spaces shall be to serve residential units in the first phase of the Condominium (the "Phase I Residential Spaces"), and the remaining five (5) Parking Spaces shall be to serve residential units in the second phase of the Condominium (the "Phase II Residential Spaces"). Tenant understands and agrees that, in accordance with customary garage operations and management practices, specific parking spaces are not reserved or dedicated for Tenant and the availability of any specific parking space is not guaranteed. The Parking Spaces are intended for use for automobile, motorcycle, van, pick-up truck and SUV parking only, not for the parking of any large commercial trucks or other commercial vehicles.

b. In particular, Owner will make available to Tenant twenty (20) parking access cards (or such parking codes or other "keys" or means of convenient 24-hour access as shall be available from time to time) which shall in turn be made available to Tenant's employees, agents, assignees and/or subtenants.

c. It is understood and agreed that (i) this Lease may be assigned, in whole or in part, by Tenant to the Condominium Association (the "Association") to be established by Tenant, and (ii) Tenant or the Association may sublease the Parking Spaces to owners or occupants of Condominium Units. Both parties hereto understand and agree that Parking Spaces may only be sublet or assigned to users who own or occupy Phase I or II residential condominiums or Phase I retail and/or commercial condominiums or spaces in the Bay House Condominium development.

d. It is understood that in accordance with customary garage operations and management practices, Owner will enter into parking agreements with other tenants to use the Parking Spaces at times they are not being used by Tenant. To better manage such shared use of Parking Spaces, Owner and Tenant agree the Nonresidential Spaces may be used from 7:45 AM to 5:15 PM Monday through Friday (the "Nonresidential Parking Time Frame"), and that at any one time no more than twenty percent (20%) of the Tenant's Nonresidential Parking Spaces may be used beyond such Nonresidential Parking Time Frame or on the weekends. In the event Tenant or its assignee or subtenant(s) use more than twenty percent (20%) of the Nonresidential Parking Spaces beyond the Nonresidential Parking Time Frame, Tenant shall pay to Owner as additional monthly payment an amount equal to the then maximum daily rate charged by the Garage for each day and for each Nonresidential Parking Space so utilized in excess of the allowable twenty percent (20%) of the Nonresidential Parking Spaces.

2. Deposits. There shall be no Deposit for this Lease, but Tenant shall pay to Owner customary fees and charges imposed by Owner for lost cards or replacement cards and/or reimbursement for out-of-pocket expenses arising therefrom.

3. Term. The initial term of this Parking Lease shall be ten (10) years, commencing (a) on the date when the Phase I Condominium Buildings receive a Certificate of Occupancy from the City of Portland, as to the Nonresidential Spaces and five (5) of the Residential Spaces, and (b) on the date when the Phase II Condominium Buildings receive a Certificate of

Occupancy from the City of Portland, as to the remaining five (5) Residential Spaces (the "Commencement Dates"). Provided that Tenant is not in default hereunder at the time of renewal, the Term may be extended for an additional one (1) term (the "Option Term") of ten (10) years beginning on the tenth (10<sup>th</sup>) anniversary of each Commencement Date. The extension of the Term shall be automatic unless the Tenant delivers to Owner not less than twelve (12) months prior to the end of the expiration of the then current term a notice that Tenant elects not to extend the Term of the Lease.

4. Monthly Rate. The Monthly Parking Rate for each Parking Space shall be the market rate as reasonably determined annually by Owner.

The Monthly Parking Rate shall be set at the commencement of the Parking Term and may be increased on July 1<sup>st</sup> of each year of the parking Term, provided, however, that Owner shall deliver to Tenant not less than thirty (30) days prior to an increase, written notice of any increase in such rate.

5. Payment. Beginning on the Commencement Date, Tenant shall pay Owner the amount due for the Parking Spaces by one check or wire transfer to be received by Owner in advance on or before the first day of each month at Owner's address hereinafter set forth or to such other address (e.g., a manager's) as may be designated by Owner in writing to Tenant from time to time. If the Commencement Date does not fall on the first day of the month, then pro-rated rent for the first partial month shall be due on the Commencement Date.

6. Late Payment. If the monthly payment for the Parking Spaces is not received by Owner by the 1<sup>st</sup> day of each calendar month, Tenant shall pay Owner (a) all unpaid amounts due with respect to the Parking Spaces, and (b) an additional late charge in the amount of five percent (5%) of the monthly payment for the Parking Spaces. In the event that the payment of any amounts due from Tenant is not received by Owner within fifteen (15) days of delivery of written notice from Owner to Tenant of such non-payment, then Owner shall have each and every remedy provided by law including the right to immediately terminate their Parking Lease and evict Tenant in a forcible entry and detainer ("FED") action for non-payment of rent. Owner shall also be entitled to a reimbursement of its reasonable attorneys' fees incurred in such FED action. By way of clarification, if there is a dispute over the amount of rent due or whether rent was timely paid, it shall be handled under Paragraph 15 below.

7. Registration of Vehicles. All vehicles utilizing Parking Spaces shall be registered with Owner on forms provided to Tenant by Owner. Tenant agrees to keep a current log of names of users and license numbers for employees using parking spaces and, if requested by Owner, provide updated copies of the log to Owner for inspection.

8. Parking Times. The Parking Spaces shall be available for use 24 hours per day, 7 days per week subject to the terms and provisions hereof and as more specifically set forth in paragraph 1(d) above (the "Parking Times").

9. Insufficient Parking Spaces. Owner agrees to use reasonable good faith efforts to ensure that there are sufficient parking spaces available in the Garage to satisfy the rights of

Tenant hereunder. In the event there exists insufficient parking spaces in the Garage to meet the requirements of Tenant at any time Tenant exercises its rights to use parking spaces under this Parking Lease, Owner shall be obligated to terminate a sufficient number of monthly tenant-at-will parkers in the Garage within forty-five (45) days thereafter as will, in Owner's reasonable judgment, ensure the regular availability of sufficient parking spaces to meet such requirements of Tenant hereunder. If Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in the Garage during allowable Parking Times, Tenant shall notify the Owner of the Garage, or Owner's garage manager as designated from time to time by Owner, within two (2) hours thereof (if between 9 a.m. and 5 p.m.) or if after 5 p.m. then by 10 a.m. on the day after Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in the Garage, following which Tenant shall be entitled to a credit against the next month's parking fee in an amount equal to the hourly parking rate at the Garage times eight (8) for each day that an employee of Tenant is unable to find a parking space, unless Owner can reasonably establish and document that a parking space was available in the Garage. The credits against parking fees set forth in this Section do not relieve Owner of its obligation to use reasonable good faith efforts to ensure that sufficient spaces are available, as provided herein.

10. Maintenance and Repair of Garage. Subject to the provisions of Paragraph 12 below, Owner shall maintain the Garage in good condition and repair. Owner shall not be deemed in default in any of its obligations under this Parking Lease during any period in which all or any portion of the Garage is closed for required maintenance and repairs, provided that except in cases of emergency Owner provides Tenant with seven (7) days written notice of such closing of all or any significant portion of the Garage (i.e., more than 75 spaces at any one time), or for any other reasons beyond the control of Owner. Owner will use reasonable efforts to undertake such maintenance and repair during such times as will, in the reasonable judgment of Owner, minimally interfere with parking in the Garage. If such maintenance shall cause the Parking Spaces or some significant portion thereof to be unavailable for three (3) or more consecutive days, Tenant shall be entitled to a pro rata credit against the monthly parking fee to the extent of any adverse impact of the availability of the twenty (20) spaces for Tenant.

11. Insurance. Each party shall maintain or cause to be maintained commercial general liability insurance, the form of which and amount of coverage to be reasonably acceptable to the other party but at any rate not less than \$2,000,000 combined single limit. Each party further agrees to maintain such insurance with acceptable coverage limits during the term of this Parking Lease and shall provide the other party with not less than fifteen (15) days written notice prior to the cancellation or expiration of any insurance policy required to be maintained pursuant to this Parking Lease. Owner shall be listed an additional insured on Tenant's liability policy.

12. Damage to Vehicles or Personal Property. Owner shall not be responsible for any damage or loss to vehicles or personal property belonging to any person using any of the Parking Spaces, except for such damage or loss resulting from the gross negligence of Owner.

13. Cessation of Garage Business. Owner shall not be deemed in default in any of its obligations under this Parking Lease in the event Owner ceases to operate the Garage, or any portion thereof, due to events beyond the control of Owner, which events may include without

limitation, acts of government, embargoes, fire, flood, explosions, hurricanes, tornadoes, acts of God, terrorism or public enemy, strikes, labor disputes, vandalism, commotion, riots, or any similar events which, in the reasonable judgment of Owner, make use of the Garage impossible or impractical. If there is a "Casualty Event" (as defined below) the Owner shall have the right to elect whether or not to rebuild or restore the Garage within 120 days of the Casualty Event. If Owner elects to rebuild or restore the Garage, then this Parking Lease shall remain in effect except that Tenant's obligation to pay rent shall abate pro-rata so long as some or all of the Parking Spaces are not available. If Owner elects not to rebuild or restore the Garage, then this Parking Lease shall terminate upon notice thereof from Owner to Tenant. If Owner elects to rebuild or restore the Garage, Owner agrees to use diligent good faith efforts to complete the reconstruction or restoration within a reasonable period of time. Notwithstanding the foregoing, Owner agrees that if there is a Casualty Event, Owner will elect to rebuild or restore the Garage, if the insurance proceeds available by reason of such Casualty Event are sufficient to rebuild or restore and so long as said proceeds are not otherwise claimed by Owner's lender under any mortgage on the Garage or otherwise unavailable. A "Casualty Event" shall occur if (i) there is substantial destruction of the Garage which leaves the use of the Garage impossible or impractical in the reasonable judgment of Owner, or (ii) Owner notifies Tenant that the City of Portland or a licensed engineer has determined that the Garage is structurally unsound or unsafe requiring the cessation of parking in the Garage. Upon such termination of this Parking Lease by either Owner or Tenant, all rights and obligations of Owner and Tenant hereunder shall cease and shall be of no further force and effect except for such obligations as shall by their express terms, survive termination of this Parking Lease, subject to compliance with Paragraph 14 below. Tenant shall remain liable to Owner for payments due Owner accrued and unpaid up to the date of said termination.

14. Compliance with Terms and Conditions: Indemnity. Tenant shall be responsible for ensuring that the use of the Garage by its employees, assignees and sublessees complies with the terms and conditions of this Parking Lease and such other reasonable rules and regulations as are established from time to time by Owner governing the use of the Garage by parking patrons. Tenant hereby agrees to indemnify and hold harmless Owner from any claim, costs, liability and expense including, but not limited to, reasonable attorneys' fees and expenses, arising from or attributable to Tenant's or its guest's or employee's use of the Garage hereunder. This agreement to indemnify Owner shall survive termination of this Parking Lease.

15. Disputes.

a. Any controversy, claim or cause of action arising out of or relating to this Agreement shall be finally settled by arbitration by an arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the power to grant equitable remedies in addition to imposing monetary damages. Arbitration shall be held in Portland, Maine, or such other location as the parties agree. The arbitration shall include (i) a provision that the prevailing party in such arbitration shall recover his or her costs of arbitration and reasonable attorneys' fees from the other party and (ii) the amount of such costs and fees. All arbitration under this paragraph shall be final, binding and conclusive.

b. Despite subparagraph a. above, if any party believes it necessary to seek injunctive relief or a provisional remedy (such as forcible entry and detainer or an attachment or trustee process), such party may file a civil action in any court having jurisdiction for such foreclosure, injunctive relief or provisional remedy. The arbitration procedures specified in subparagraph a. above, however, will apply to the determination of the merits of any monetary claim or defense, and the court proceeding will extend no further than to provide a kind of relief or remedy not readily available under the subparagraph a. above procedures.

c. Tenant and Owner for themselves, their heirs, successors, and assigns hereby knowingly, willingly and voluntarily waive any and all rights such party may have to a trial by jury in any forcible and detainer ("FED") action or proceeding brought by Owner or Owner's successors and/or assigns based upon or related to the provisions of this Parking Lease. Owner and Tenant hereby agree that any such FED action or proceeding shall be heard before a single judge of the appropriate District Court or a single justice of the appropriate Superior Court, or a Federal District Court Judge sitting in the District of Maine.

16. Estoppel Certificate. At any time, and from time to time, upon the written request of Owner or any mortgagee, Tenant within ten (10) days of the date of such written request agrees to execute and deliver to Owner and/or such mortgagee, without charge and in a form reasonably satisfactory to Owner, Tenant, and/or such mortgagee, a written statement: (i) ratifying this Lease; (ii) confirming the commencement and expiration dates of the term of this Lease; (iii) certifying that Tenant is in occupancy of the Leased Premises, and that the Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated and agreeing not to amend, modify or cancel this Lease without mortgagee's written consent; (iv) certifying that all conditions and agreements under this Lease to be satisfied or performed by Owner have been satisfied and performed except as shall be stated; (v) certifying that Owner is not in default under the Lease and there are no defenses or offsets against the enforcement of this Lease by Owner, or stating the defaults and/or defenses claimed by Tenant; (vi) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid and agrees not to prepay rent more than 10 days in advance; (vii) reciting the amount of security deposit deposited with Owner, if any; and (viii) any other information which Owner or the mortgagee shall reasonably require.

17. Subordination. Tenant agrees that, except as hereinafter provided, this Lease is, and all of Tenant's rights hereunder are and shall always be, subject and subordinate to any mortgage or leases of Garage pursuant to which Owner has or shall retain the right of possession of the Garage or security instruments (collectively called "Mortgage") that now exist, or may hereafter be placed upon the Garage and to all advances made or to be made thereunder and to the interest thereon, and all renewals, replacements, modifications, consolidations, or extensions thereof; provided that so long as Tenant is in full compliance with the terms and provisions of this Lease (with all defaults, if any, fully and timely cured within applicable grace periods), any such Mortgagee, lessor or purchaser at a foreclosure sale shall recognize Tenant in accordance with the terms hereof; provided further that if the holder of any such Mortgage ("Mortgage") or if the purchaser at any foreclosure sale or at any sale under a power of sale contained in any Mortgage shall at its sole option so request, Tenant will attorn to, and recognize such Mortgagee or purchaser, as the case

may be, as Owner under this Lease for the balance then remaining of the term of this Lease, subject to all terms of this Lease, and that the aforesaid provisions shall be self-operative and no further instrument or document shall be necessary unless required by any such Mortgagee or purchaser. Should Owner or any Mortgagee or purchaser desire confirmation of either such subordination or such attornment, as the case may be, Tenant upon written request, and from time to time, will execute and deliver without charge and in form satisfactory to Owner, the Mortgagee or the purchaser all instruments and/or documents that may be requested to acknowledge such subordination and/or agreement to attorn, in recordable form. In the event Tenant fails to execute and deliver the instruments and documents as provided for in this paragraph within the time period set forth herein, Owner may treat such failure as an event of default.

18. Miscellaneous.

a. This Parking Lease and the rights and obligations hereunder shall be binding upon the Owner and its successors and assigns in interest. In the event that Owner sells the Garage to a third party, upon the assignment and assumption of this Parking Lease by the third party, the Owner shall have no further obligations hereunder for any period of time following the assignment and assumption. Except as provided above, this Agreement may not be assigned, transferred, encumbered or conveyed, or hypothecated, in whole or in part, by Tenant to any other person or entity, under any circumstances, without the express prior written consent of the Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

b. Except as otherwise provided herein, any notice relating in any way to this Parking Lease shall be in writing and shall be either hand delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

To Owner:                    Ocean Gateway Garage LLC  
                                      c/o Drew E. Swenson  
                                      P.O. Box 17536  
                                      Portland, ME 04112

To Tenant:                    The Village At Oceangate, LLC  
                                      c/o GFI Partners  
                                      133 Pearl Street, Suite 400  
                                      Boston, MA 02110

and such notice shall be deemed delivered upon the earlier of actual receipt or three days after deposit in the U.S. mails as set forth above or, in the case of hand delivery, when received in person with a written acknowledgement of receipt. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above and also add persons or addresses for notices to lenders or their counsel.

c. All paragraph headings in the Parking Lease are for convenience of reference only and are of no independent legal significance.

d. This Parking Lease may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

e. Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Parking Lease, which alone fully and completely expresses their entire Parking Lease.

f. If any part of any term or provision of this Parking Lease shall be held or deemed to be invalid, inoperative or unenforceable to any extent by a court of competent jurisdiction, such circumstance shall in no way affect any other term or provision of this Parking Lease, the application of such term or provision in any other circumstances, or the validity or enforceability of this Parking Lease.

g. ~~The language chosen by the parties to express their mutual intent and no rule of strict construction will be applied against either party.~~ The language used in this Parking Lease shall be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction will be applied against either party. Without limiting the generality of the foregoing, the language in all parts of this Parking Lease shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against any party hereto, and without implying a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who drafted the same. It is hereby agreed that the representatives of both parties have participated in the preparation hereof.

h. This Parking Lease may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument.

i. This Parking Lease may not be recorded but a Memorandum hereof containing such information as is required by 33 M.R.S.A. § 201 may be recorded by either party but only on or after the Commencement Date. Owner agrees to execute and have acknowledged and delivered to Tenant for recording at the Cumberland County Registry of Deeds, such a Memorandum, if tendered by Tenant.

j. This Parking Lease shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

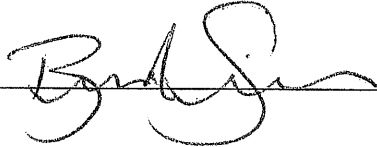



IN WITNESS WHEREOF, the undersigned have caused this Parking Lease to be executed by their duly authorized representatives.

WITNESS

OWNER:

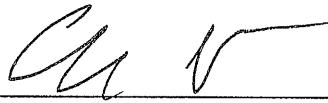
OCEAN GATEWAY GARAGE LLC  
By: Riverwalk, LLC, Its Manager

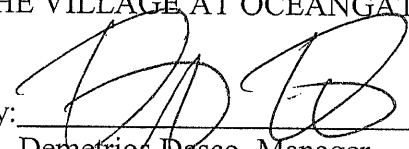
  
\_\_\_\_\_

By:   
Drew E. Swenson, its Manager

TENANT:

THE VILLAGE AT OCEANGATE, LLC

  
\_\_\_\_\_

By:   
Demetrios Dasco, Manager