

ABUTTERS AGREEMENT

by and between

OCEAN GATEWAY GARAGE LLC

and

EAST INDIA LAND COMPANY LLC

With respect to premises located at:

167 FORE STREET
and
25 INDIA STREET
PORTLAND, MAINE

ABUTTERS AGREEMENT

THIS ABUTTERS AGREEMENT (“Agreement”), made and effective as of May 1, 2013, by and between Ocean Gateway Garage LLC, a Maine limited liability company with a local address of 167 Fore Street, Portland, Maine 04101 (“Ocean Gateway”), East India Land Company LLC, a Maine limited liability company with a local address of 25 India Street, Portland, Maine 04101 (“East India”).

WHEREAS, Ocean Gateway is the owner of property located at 167 Fore Street, Portland, Maine (collectively, “167 Fore Street”) upon which Ocean Gateway is currently operating a parking garage containing approximately 720 parking spaces (together with 167 Fore Street, “Ocean Gateway Garage”); and

WHEREAS, East India is the owner of property adjacent to the Ocean Gateway Garage located at 25 India Street, Portland, Maine described in a deed recorded in the Cumberland County Registry of Deeds in Book 30624, Page 17 (“25 India Street”); and

WHEREAS, East India proposes to undertake a development project at 25 India Street which may include offices, a residential component, a retail component, open space, site amenities and/or other lawful uses; and

WHEREAS, Ocean Gateway, and East India desire to enter into this Agreement, to declare certain covenants with respect to mitigation of construction impacts as between the Parcels (hereinafter defined);

NOW THEREFORE, in consideration of the foregoing, the promises and premises set forth below and for other consideration, the nature and sufficiency of which are hereby acknowledged, the parties hereto agree and declare for the benefit of one another as follows:

DEFINITIONS

A. DEFINITIONS.

As used from time to time in this Agreement:

“Alleyway Structures” shall mean the subsurface foundation footings and/or pilings along the southwesterly edge of the India Street Alleyway permitted to be installed on the land of Ocean Gateway Garage as permitted in this Agreement on the terms specified in Article III below, provided (i) such installation does not interfere with any existing utility lines or the existing transformer or generator, or any replacements thereof, in the India Street Alleyway; (ii) that the footings do not encroach more than 24” onto the India Street Alleyway; and (iii) that the footings are all beneath the surface of the India Street Alleyway.

“Baseline Conditions” shall have the meaning specified in Article II.C below.

“Business Day” shall mean any day other than a Saturday, Sunday, official Federal holiday or legal holiday in the State of Maine.

“Condominium Association” shall mean the organization of Condominium unit owners of a Parcel and used by them to manage and regulate a Condominium from time to time pursuant to the Maine Condominium Act, 33 M.R.S.A. §§ 1601-101, *et seq.*, as amended from time to time.

“Deed” shall mean that deed of land at 25 India Street, of near or even date with this Agreement, from Ocean Gateway to East India.

“Exhaust Ducts” shall mean any ducts which vent to the ambient air from building HVAC equipment, Co-Generation Units, kitchen equipment, or parking areas.

“including”, “any” and “all” shall each mean “including but not limited to.”

“East India” shall mean, as of the date hereof, East India Land Company, LLC, and hereafter shall mean collectively the person(s) or the entity or entities and their successors and assigns who is or are the record fee owner(s) or ground lessee(s) of 25 India Street or any subdivided and/or ground leased portion thereof from time to time; provided, however, that upon the establishment of record of any Condominium and for as long thereafter as the Condominium shall continue in existence under applicable law, East India shall mean the Condominium Association acting on behalf of such Condominium.

“East India Alleyway” shall mean that certain land, real estate and all structures located thereon (including a transformer and a generator) owned by Ocean Gateway Garage LLC approximately eleven feet in width running along the entire easterly sideline of the 25 India Street Parcel, which land and real estate is also shown as an “11’ Easement Benefits 25 India LLC” on the Plan.

“East India Project” shall mean the 25 India Street Parcel and any buildings, garages, common areas and other improvements thereon, commonly known as 25 India Street, as the same may be altered, expanded, reduced or otherwise changed by East India from time to time.

“Ocean Gateway” shall mean, as of the date hereof, Ocean Gateway Garage LLC, and hereafter shall mean collectively the person(s) or the entity or entities who is or are the record fee owner(s) or ground lessee(s) of 167 Fore Street or any subdivided and/or ground leased portion thereof from time to time; provided, however, that upon the establishment of record of any Condominium and for as long thereafter as the Condominium shall continue in existence under applicable law, Ocean Gateway shall mean the Condominium Association acting on behalf of such Condominium Unit Owners.

“Ocean Gateway Garage” shall mean the existing garage facility containing approximately 720 parking spaces located at 167 Fore Street, as it may be expanded, repaired, maintained, renovated or replaced from time to time comprised of, among other characteristics, the parking garage, its access ways and easements, , fixtures, equipment, supporting utilities, site amenities and office administration facilities.

“Ocean Gateway Project” shall mean the Ocean Gateway Garage and the buildings, garages, common areas and other improvements thereon, commonly known as 167 Fore Street, as the same may be altered, expanded, reduced or otherwise changed by Ocean Gateway from time to time.

“Legal Requirements” shall mean all laws, ordinances, rules, regulations, statutes, by-laws, building codes, court decisions, orders and requirements of all public authorities.

“Mechanical Equipment” shall mean any externally mounted or vented mechanical equipment, including transformers, generators, chillers, air conditioners, mechanical/ventilation systems, HVAC equipment, co-generation units, vents or similar devices.

“Owner” shall mean the owner of any Parcel.

“Parcel” as sometimes used herein shall mean the land included within any or all of 167 Fore Street or 25 India Street or any subdivided and/or ground leased portion thereof, as the context may require.

“Pedestrian Ramp” shall mean an elevated, enclosed walkway extending from a building at 25 India Street to a corresponding level of the Ocean Gateway Garage, above and across the East India Alleyway.

“Plan” shall mean the plan entitled “Subdivision/Recording Plat on India Street and Fore Street, Portland, Maine, made for Riverwalk, LLC, 25 India Street LLC, Hancock & Middle LLC and Ocean Gateway Garage LLC by Owen Haskell, Inc., dated March 22, 2006, as last revised April 13, 2006” and recorded in Cumberland County Registry of Deeds in Plan Book 207, Page 54.

“Preliminary Plans” shall mean architectural and engineering plans of the proposed Alleyway Structures which shall include the engineering specifications, dimensions and design features of the subsurface foundation footings and/or pilings along the southwesterly edge of the India Street Alleyway permitted to be installed on the land of Ocean Gateway Garage as permitted in this Agreement on the terms specified in Article IV below.

“Registry of Deeds” shall mean the Cumberland County Registry of Deeds.

“Residential Area” shall mean any areas of the East India Project comprised of residential condominium units and all associated common areas.

“Residential Unit,” singly, and “Residential Units,” collectively, shall mean each unit and all of the units, respectively, of a Condominium created within a Residential Area.

“Residential Unit Owner,” singly, and “Residential Unit Owners,” collectively, shall mean each owner of record title to any Residential Unit and all owners of record title to the Residential Units, respectively, from time to time.

I. EAST INDIA PROJECT DESIGN

A. Location of Mechanical Equipment and Vents

No mechanical equipment shall be attached to or mounted on the structure comprising the Ocean Gateway Garage, by East India as part of its development the 25 India Property. Nothing herein shall prevent the placement by East India of Mechanical Equipment on the roof of any building constructed at 25 India or from the venting of such equipment in any or all directions, so long as such equipment does not direct, by mechanical means, a steady concentrated stream of exhaust air into the Ocean Gateway Garage.

B. Mechanical Equipment Exhaust

Mechanical Equipment with exhaust vents may be vented to the East India Alleyway between the Ocean Gateway Garage and 25 India Street but shall be baffled if necessary, to prevent any direct steady concentrated stream of exhaust air from being blown by the mechanical equipment directly into the Ocean Gateway Garage. Any such baffle, if necessary, may be mounted on the building at 25 India Street but, in no case, shall extend into the airspace above the East India Alleyway.

C. Breach of Conditions - Remedies

Each party agrees, without limiting its respective right to defend any action on the merits, that the other party shall have a right of specific performance hereunder with respect to the obligations of any party under Articles I A and B above.

II. STRUCTURAL, GEOTECHNICAL AND CONSTRUCTION IMPACT MITIGATION

A. Structural and Geotechnical Mitigation. Due to the proximity of the Ocean Gateway Project to the East India Project, the parties to this Agreement shall work cooperatively together to implement commercially reasonable construction means and methods in a manner which will minimize any materially adverse soil, structural, or geotechnical impacts to either the Ocean Gateway Garage, or the East India Project from the construction activities of the other.

B. Review of Engineering and Design Criteria. The parties to this Agreement and their respective consultants will meet, as appropriate, and shall provide each other and their respective consultants with all engineering drawings and specifications once available and requested by either of them for those portions of any pending Project which may be expected in good faith business judgment to be relevant to the fulfillment of the obligations under the preceding Paragraph A.

C. Baseline Conditions. Prior to any ledge blasting or other ledge removal or pile driving, the parties undertaking the activity shall obtain a pre-blasting or ledge removal or pile driving survey documenting the conditions of the foundation and other structural elements of any existing built structure on the other Party's adjacent property. The contents of that survey (hereafter the "Baseline Conditions") shall be admissible as evidence in any dispute regarding alleged damage caused by such ledge removal or pile driving.

D. Excess Cleaning Expenses. With respect to the East India Project, East India shall take appropriate measures, including installation and maintenance of temporary partitions, drop cloths, tarpaulins or other means to limit dust or dirt from its pre-construction and construction activities from blowing or drifting into the Garage. If despite these efforts, Ocean Gateway incurs out-of-pocket excess cleaning expenses because of the construction activities at 25 India Street then East India shall reimburse Ocean Gateway for the out-of-pocket excess cleaning expenses provided they are reasonable and well documented.

III. DESIGN, INSTALLATION AND MAINTENANCE OF ALLEYWAY STRUCTURES

By deed of even date East India has acquired the right to install the Alleyway Structures in the East India Alleyway. This Article III outlines the procedure for design, approval, construction and maintenance of the Alleyway Structures and related matters.

A. Design and Submission of Plans

If East India intends, as part of its development of 25 India Street Parcel to install the Alleyway Structures, then East India shall provide that its architects and/or engineers shall submit to Ocean Gateway Preliminary Plans showing the proposed design, specifications for and location of the Alleyway Structures. The plans shall: (1) show the location and dimensions of the Alleyway Structures and provide such engineering and load bearing detail as Ocean Gateway shall require to confirm to its reasonable satisfaction that the proposed design and installation of the Alleyway Structures will not have an adverse effect on the structural integrity or efficient operation of the Ocean Gateway Garage; (2) provide detailed drawings of the location of any utilities serving the Ocean Gateway Garage located in the East India Alleyway and appropriate construction renderings to eliminate any interference during or after construction of the Alleyway Structures with such utilities; (3) be designed so that to the extent possible the Alleyway Structures shall not interfere with all presently existing structures and equipment (including the existing transformer and generator depicted on the Plan) located on or encroaching into the East India Alleyway and serving the Ocean Gateway Garage.

B. Review and Approval Process

The Preliminary Plans submissions required by Article III (A) above, shall be subject to review and approval by Ocean Gateway or its design professionals and/or engineers, which approval shall not be unreasonably withheld, conditioned, or delayed. Sixty days after receipt of the Preliminary Plans, Ocean Gateway shall provide either an approval, or approval with conditions, or a request for further modifications or more detailed submissions. Approval of the Preliminary Plans shall mean that installation of the Alleyway Structures conforming in all material respects to the design and specifications provided in the Preliminary Plans is acceptable. In the event that as part of the building design refinement for 25 India Street or as part of the governmental approvals for 25 India Street, changes become necessary to the Preliminary Plans, then those changes will be submitted to Ocean Gateway for approval in the same manner as outlined above.

C. Construction

The Alleyway Structures shall be installed in a good and workmanlike manner in substantial compliance with all plan approvals and in a manner which minimizes disruption of the parking at the Ocean Gateway Garage and which complies fully with City of Portland permitting requirements. East India shall provide Ocean Gateway with "as built" plans showing the Alleyway Structures and all ancillary structures and systems. The "as built" plans must be accompanied by a licensed architect's or engineer's certification to Ocean Gateway that the Alleyway Structures and all ancillary structures and systems materially conform to the terms of the Preliminary Plans and specifications previously approved by Ocean Gateway and comply in all respects with City of Portland permitting requirements.

D. Maintenance and Repair

East India shall maintain the Alleyway Structures and the associated improvements in good condition and repair. East India shall be solely responsible for the continuous good repair, maintenance and safe use of the Alleyway Structures. East India shall defend and indemnify Ocean Gateway of and from any and all claims, demands, actions, causes of action, suits at law and/or in equity arising from any personal injuries (including death) and property damage allegedly sustained by persons within the Alleyway Structures.

E. [Intentionally Left Blank].

F. Removal of Alleyway Structures

If at any point in the future East India removes the Alleyway Structures then East India shall promptly restore the East India Alleyway to the condition which existed prior to the placement of the Alleyway Structures.

G. Reimbursement of Expenses of Ocean Gateway Garage

East India also agrees to reimburse Ocean Gateway for the reasonable costs of Ocean Gateway Garage's consultants for the plan reviews and approval process outlined above and for any periodic inspections during the construction process when the Alleyway Structures are being installed. East India shall pay all costs and reimbursements due under this Abutters Agreement to Ocean Gateway within fifteen (15) business days of the date such items are invoiced to East India.

H. Access to the Garage for Construction and Maintenance

East India and its contractors have the right upon 24 hours prior notice to Ocean Gateway Garage to enter into the garage for any of the foregoing purposes including without limitation installation, maintenance, replacement, and repair of the Alleyway Structures and any related facilities.

IV. DESIGN, INSTALLATION AND MAINTENANCE OF PEDESTRIAN RAMPS

By deed of even date East India has acquired the right to extend up to two above-ground enclosed Pedestrian Ramps from the building to be constructed at 25 India Street to corresponding levels of the Ocean Gateway Garage. This Article IV outlines the procedure for design, approval, construction and maintenance of the Pedestrian Ramps and related matters.

A. Design and Submission of Plans

If East India intends, as part of its development of 25 India Street Parcel to extend Pedestrian Ramps from the building at 25 India Street over the Hancock Street Passageway between the 25 India Street property and the Ocean Gateway Garage as now constructed, on land of Ocean Gateway, then East India shall provide that its architects and/or engineers shall submit to Ocean Gateway Preliminary Plans showing the proposed design, specifications for and location of the Pedestrian Ramps, which in addition to having a steel superstructure shall be enclosed in the manner similar to that used with other Pedestrian Ramps over streets in Portland, Maine with doors at the garage end. The plans shall: (1) show proposed alterations to the garage metal screen siding and guardrails to allow for Pedestrian Ramp installation; (2) provide detail drawings as to how the garage metal screen siding and guardrails is proposed to be secured on either side of the ramp entrance at the garage end; (3) be designed so that to the extent possible each Pedestrian Ramp placement shall impact not more than one parking space; and (4) provide design and specifications for an attractive and structurally-sound ramp, the design and appearance of which will in Ocean Gateway's commercially reasonable judgment integrate well with the design and appearance of the Ocean Gateway Garage and be sufficient to achieve the purposes for which it is intended. Ocean Gateway agrees in order to facilitate the preparation of the Preliminary Plans, at the request of East India, to either provide copies of the structural design plans for the Ocean Gateway Garage or provide authority for East India to obtain a copy from the engineering firm which prepared the plans.

B. Review and Approval Process

The Preliminary Plans submissions required by Article IV above shall be subject to review and approval by Ocean Gateway or its design professionals and/or engineers, which approval shall not be unreasonably withheld, conditioned, or delayed. Sixty days after receipt of the Preliminary Plans Ocean Gateway shall provide either an approval, or approval with conditions, or a request for further modifications or more detailed submissions. Approval of the Preliminary Plans shall mean that installation of the Pedestrian Ramps conforming in all material respects to the design and specifications provided in the Preliminary Plans is acceptable. In the event that as part of the building design refinement for 25 India Street or as part of the governmental approvals for 25 India Street, changes become necessary to the Preliminary Plans, then those changes will be submitted to Ocean Gateway for approval in the same manner as outlined above.

C. Construction

The Pedestrian Ramps shall be installed in a good and workmanlike manner in substantial compliance with all plan approvals and in a manner which minimizes disruption of the parking at the Ocean Gateway Garage and which complies fully with City of Portland permitting requirements. To the extent any installation and operation of a Pedestrian Ramp occupies parking spaces which would otherwise be available for rental, the monthly market rental rate shall be paid to Ocean Gateway Garage for each month or partial month a space is not available for general garage parking because of the installation of the Pedestrian Ramp and the parking spaces so occupied will count toward and serve to reduce the number of "Parking Spaces" that East India will be entitled to draw down in accordance with all of the terms and conditions of the Parking Lease between the parties of even date. East India shall provide Ocean Gateway with

“as built” plans showing the Pedestrian Ramps and all ancillary structures and systems. The “as built” plans must be accompanied by a licensed architect’s or engineer’s certification to Ocean Gateway that the Pedestrian Ramps and all ancillary structures and systems materially conform to the terms of the Preliminary Plans previously approved by Ocean Gateway and comply in all respects with City of Portland permitting requirements.

D. Maintenance and Repair

East India shall maintain the Pedestrian Ramps and the associated HVAC equipment, lighting and any security cameras in good condition and repair. The Pedestrian Ramps shall either be equipped with continuous lighting for all non-daylight hours or motion-sensored lighting so that any time the Pedestrian Ramp is in non-daylight use by pedestrians, the ramp and entrance into the garage space is lit. East India shall be solely responsible for the continuous good repair, maintenance and safe use of the Pedestrian Ramps by pedestrians gaining access, ingress and egress to the Ocean Gateway Garage. East India shall defend and indemnify Ocean Gateway of and from any and all claims, demands, actions, causes of action, suits at law and/or in equity arising from any personal injuries (including death) and property damage allegedly sustained by pedestrians within the Pedestrian Ramps.

E. Payment to Ocean Gateway for Loss of Parking Revenue

It is acknowledged that attachment of the Pedestrian Ramps at up to two locations will likely involve the loss of parking spaces at each location. The parking spaces lost because of the installation of the Pedestrian Ramps shall be deemed to be spaces rented under the Parking Lease at the monthly rates provided therein and reduce correspondingly the number of spaces for which access cards (etc.) shall be issued under the Parking Lease. By way of example if the Parking Lease is for 96 spaces and the Pedestrian Ramps installation and operations result in a loss of 2 parking spaces then East India will have right to actually park only 94 vehicles. To the extent possible given permitting, code and engineering requirements, the Pedestrian Ramps shall be designed, installed and operated so as not to involve the loss of more than one parking space for each ramp.

F. Removal of Pedestrian Ramps

If at any point in the future East India removes the Pedestrian Ramps, then East India shall promptly restore the garage screen panels and associated railings and floor to the condition which existed prior to the placement of the Pedestrian Ramps.

G. Reimbursement of Expenses of Ocean Gateway Garage

In addition to any reimbursements for lost parking spaces outlined above, East India also agrees to reimburse Ocean Gateway for the reasonable costs of Ocean Gateway Garage’s consultants for the plan reviews and approval process outlined above and for any periodic inspections during the construction process when the Pedestrian Ramps are being installed. East India shall pay all costs and reimbursements due under this Abutters Agreement to Ocean Gateway within fifteen (15) business days of the date such items are invoiced to East India.

H. Access to the Garage for Construction and Maintenance

East India and its contractors have the right upon 24 hours prior notice to Ocean Gateway Garage to enter into the garage for any of the foregoing purposes including without limitation installation, maintenance, replacement, and repair of the Pedestrian Ramps and any related facilities.

V. INDEMNIFICATION

To the maximum extent permitted by law, East India, with respect to the East India Project, shall be liable to Ocean Gateway, its managers, officers, directors, trustees, shareholders, representatives, agents, employees, and anyone else acting for or on behalf thereof (herein individually called "Ocean Gateway Indemnitee" and collectively called "Ocean Gateway Indemnitees") for claims, suits, costs, damages, losses, expenses and judgments against or incurred by the Indemnitees, with respect to personal injury or property damage from any construction activity relating to the East India Project, whether undertaken either of such indemnitors, their contractors, licensees, invitees, agents, servants, independent contractors or employees. If the Ocean Gateway Project is damaged by any construction activity of or on behalf of such indemnitors, or their respective contractors, licensees, invitees, agents, servants, independent contractors or employees, then the full reasonable cost and expense of restoring Ocean Gateway's Project to its original condition shall be borne the relevant indemnitor, while all such repairs shall be made by such Ocean Gateway Indemnitee, Ocean Gateway or its designee.

VI. BREACH OF CONDITION.

In the event that either party breaches the Agreement then, to the extent damages are not susceptible of accurate measurement and therefore do not provide an adequate remedy at law, the other party may seek specific performance as a remedy and it is agreed that the arbitrator shall have the right to order specific performance and to lodge such order with a court of competent jurisdiction.

VII. DISPUTE RESOLUTION.

A. Dispute Resolution Procedures.

1. Mediation. The parties to this Agreement shall cooperate with each other in good faith to assure that all disputes and controversies which arise in connection with the parties' respective rights and obligations pursuant to this Agreement are resolved as expeditiously as possible. If the parties are unable to resolve any dispute arising hereunder the matter shall be submitted to non-binding mediation as follows. Within ten (10) Business Days after any party has given written notice to another party that a dispute has arisen under the Agreement which the parties cannot after good faith efforts resolve and which the party giving such notice wants to submit to mediation pursuant to this Article, which notice shall propose an independent mediator with ten (10) years of experience in complex real estate disputes in the City of Portland (the "Mediator"). If the parties do not agree to use the proposed Mediator or another mutually acceptable Mediator within seven (7) Business Days of the notice of intent to

mediate, each party shall select an independent mediator with at least ten years of experience in complex real estate disputes in the City of Portland within the following five (5) Business Days. Within five (5) Business Days thereafter, the mediators selected by the parties shall select a third, neutral mediator who shall mediate the dispute in question.

2. Authority and Fees and Costs of Mediator. The Mediator selected through the procedures outlined above shall have the authority to retain such experts as the Mediator(s) deem necessary or desirable to assist in the mediation. The fees and costs of the Mediator (and experts, as applicable) shall be borne equally by the parties involved in such mediation.
3. Rights of Owners during Pendency of Mediation. During the pendency of any of the foregoing dispute resolution procedures, the parties shall continue to perform their respective obligations and may continue to exercise their respective rights pursuant to this Agreement (except for the exercise of remedies which are to be forborne pending the outcome of the mediation process).
4. Schedule for Mediation and Agreement for Arbitration. If the Mediator does not commence the mediation within seven (7) Business Days of his or her appointment, or if the dispute is not resolved after two (2) Business Days of mediation, any party may thereafter submit such matter to binding expedited arbitration in accordance with the following Article.
5. Further Remedies - Expedited Arbitration.

In the event a dispute arising from this Agreement is not resolved in mediation as provided above, either party may then demand arbitration, which shall be on an expedited basis ("Expedited Arbitration") with respect to disputes hereunder. The arbitration shall be held in Portland, Maine. The Expedited Arbitration shall be conducted under the Expedited Procedures provisions (currently, Rules 56 through 60) of the Arbitration Rules of the Real Estate Industry of the AAA (the "Expedited Rules"). Notwithstanding the foregoing, in the event of a conflict between the provisions of the Expedited Rules and the provisions of this Article, the terms and conditions of this Article shall govern and control; provided, however, in the event of a conflict between the time periods contained in the Expedited Rules and the time periods contained in this Article, the time periods providing the more expedited procedure shall govern and control.

- (a) The parties recognize and acknowledge that it is of utmost importance to have disputes set forth in subdivision (A) hereof resolved within thirty-five (35) days of the date of commencement of the Expedited Arbitration, which Expedited Arbitration is deemed commenced on the date of service upon the opposing party ("Respondent") and filing with the AAA, of a written notice to the Respondent of its intention to

arbitrate ("Demand"), as provided in the Expedited Rules. Respondent's answering statement to the Demand, if any, shall be served upon the party initiating the arbitration ("Claimant") and filed with the AAA within five (5) business days of its receipt of the Demand from Claimant.

- (b) The Expedited Arbitration shall be presided over by a single arbitrator who shall be appointed by the AAA, in accordance with the Expedited Rules, within five (5) business days of the date the Expedited Arbitration is commenced. Any objection to the appointed arbitrator shall be made in accordance with Rule 57 of the Expedited Rules, except such objection must be made within five (5) business days after the parties are notified of such appointment.
- (c) The arbitrator shall, within five (5) business days after designation, conduct such hearings and investigations as he/she deems appropriate, and shall make his/her determination, in writing giving notice to the parties of this determination as soon as practicable, but no later than five (5) business days after the conclusion of the hearings and investigations; the determination of the sole arbitrator shall be conclusive and binding upon the parties. In rendering his/her decision, the arbitrator shall be bound by the provisions of the Agreement as amended by this Amendment, and shall not add to, subtract from or otherwise modify the provisions thereof.
- (d) The fees and expenses of the arbitrator, and all other reasonable, out-of-pocket expenses of the Expedited Arbitration shall be borne by the non-prevailing party. Judgment upon any award rendered in any arbitration held pursuant to this Article shall be final, non-appealable and binding upon the parties, whether or not a judgment is entered in any court.
- (e) The arbitrator shall expressly have the power to order specific performance (provided the legal and equitable requirements therefor under Maine Law are met) as a remedy and to lodge any final judgment and order in a court of competent jurisdiction in Portland, Maine.

6. Consent to Jurisdiction. The Parties hereto agree that any arbitration hereunder shall be prosecuted in by arbitration in Portland, Maine. Service of Process may be affected by any means permitted by the Maine Rules of Civil Procedure and applicable Maine statues.

VIII. NOTICE

Notices given pursuant to this Agreement shall be in writing, and shall be deemed given when (a) deposited with U.S. Express Mail or recognized overnight courier service (next day delivery), or (b) when delivered in hand with receipt acknowledged in writing, addressed as

follows:

If to East India Land Company: East India Land Company, LLC
c/o Shipyard Brewing Company
86 Newbury Street
Portland, ME 04101

With copies to: George J. Marcus, Esq.
Marcus, Clegg & Mistretta, P.A.
One Canal Plaza, Suite 600
Portland, ME 04101

Nathan H. Smith, Esq.
Bernstein Shur
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

If to Ocean Gateway: Peter Palandjian, Chairman
Intercontinental Real Estate Corporation
1270 Soldiers Field Road
Boston, MA 02135-1003

With Copies to: Stephen H. Oleskey, Esq.
Hiscock & Barclay, LLP
One International Place, 16th Floor
Boston, MA 02110

James M. Bradley, Esq.
Bradley & Associates
1270 Soldiers Field Road
Boston, MA 02135-1003

Katharine E. Bachman, Esq.
WilmerHale LLP
60 State Street
Boston, MA 02109

Paul J. Nasser, CFO/COO
Intercontinental Real Estate Corp.
1270 Soldiers Field Road
Boston, MA 01235

and

Paul F. Driscoll, Esq.
Norman, Hanson & DeTroy, LLC
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600

Either party, however, may designate a different address or person by serving written notice of change of address on the other party, in the manner provided above.

IX. MISCELLANEOUS

A. Covenants Running With the Land

1 All of the covenants, agreements and other conditions set forth in this Agreement are intended to be and shall be construed as covenants running with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Owners hereto and all subsequent owners of the respective parcels. In the event of a transfer of title in a Parcel, the prior Owner of such Parcel shall thereafter be relieved from the performance of all obligations hereunder arising after such transfer.

2. It is understood and acknowledged that the Ocean Gateway Garage and the 25 India Street, or either of them, may be subdivided, ground leased or converted into a condominium or cooperative structure which may be conveyed into separate ownership and that each Project may be subdivided, ground leased or converted into a condominium or cooperative structure which may be conveyed into separate ownership. In any such event, the Owner of each such parcel, condominium or cooperative and the lessee of each such ground leased premises shall be bound, and each such parcel, ground leased premises, condominium or cooperative shall be burdened, only by those obligations, rights and easements affecting and running with such parcel, ground leased premises, condominium or cooperative, and the other Owners, ground lessees, parcels and ground leased premises shall be released and relieved of and from such obligations, rights and easements upon such conveyance. Further, with respect to the obligations of each party under this Agreement from and after the establishment of record of a condominium of all or any party of the Ocean Gateway Garage or the 25 India Street, or either of them (as well as the obligations of the Owner of any other Parcel from and after the establishment of a condominium including such Parcel), it is expressly acknowledged and agreed that such obligations shall be subject to the provisions of the Maine Condominium Act, 33 M.R.S.A. §§ 1601-101, *et seq.*, as amended from time to time.

B. Releases.

An Owner who has assigned or transferred its interest in the Parcel (or any subdivided, ground leased or condominium or cooperatively owned portion thereof) to a successor Owner, shall be released from its obligations and shall have no further rights or obligations under this Declaration.

C. Covenants: Irrevocable and Perpetual.

Except as otherwise provided herein, all covenants, restrictions and rights granted herein

shall be irrevocable and in perpetuity. The Owners intend that the provisions of this Agreement shall not be subject to any rule of law with respect to restriction on the alienation of property, and each of the Owners hereby agrees that such Owner will not make any contrary assertion or seek the benefit of such rule of law, in any dispute arising under this Agreement.

D. Partners

Nothing contained in this Agreement shall be construed to create between the Owners the relationship of partners or joint venturers, or any other association between the Owners, or to render any Owner liable for the debts or obligations of the other.

E. Governing Law; Severability.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine, including its conflict of laws provisions. If any provision of this Agreement, or portions thereof, or the application thereof to any person or circumstance shall to any extent, be deemed invalid or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any other person or circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

F. Waivers.

Failure on the part of any Owner to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by such Owner of any of the rights hereunder. Further, no waiver at any time of any of the provisions hereof by an Owner shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

G. Payments.

No payment by either Owner, or acceptance by either Owner, of a lesser amount than shall be due from one Owner to the other Owner hereunder shall be treated otherwise than as a payment on account. The acceptance by an Owner of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and an Owner may accept such check without prejudice to any other rights or remedies which such Owner may have against the other Owner.

H. Clauses and Headings.

The whereas clauses mentioned herein are hereby incorporated herein by reference and made a part hereof, as fully as if set forth in full herein. The captions of the articles of this Agreement are for convenience only, and shall not be considered or referenced in resolving questions of interpretation and construction.

I. Counterparts and Originals.

This Agreement may be executed in several counterparts, each of which shall be deemed

an original and all such counterparts shall constitute one and the same instrument. Several copies of this Agreement shall be executed, and each shall be deemed an original.

J. Amendments.

This Agreement may be amended or otherwise modified only by an instrument in writing executed by each of the Owners hereto and the holders of all mortgages encumbering the Parcels:

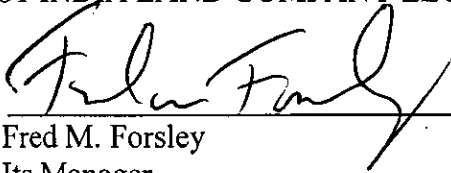
K. Cumulative Remedies.

Except as expressly provided in this Agreement and by separate agreement between the parties hereto, the specific remedies to which the Owners may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress which they may be lawfully entitled to seek in case of any breach or threatened breach of any provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date and year first above written.

[Signatures Continued on Following Pages]

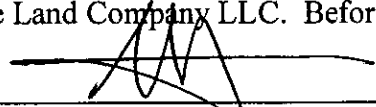
EAST INDIA LAND COMPANY LLC

By: 
Fred M. Forsley
Its Manager

May 6^{HH}, 2013

STATE OF MAINE
COUNTY OF Cumberland

Personally appeared the above-named Fred M. Forsley, Manager of Eight Middle Land Company LLC, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said Eight Middle Land Company LLC. Before me,


Notary Public/Attorney at Law
Nathan H. Smith

[Signatures Continued on Following Page]

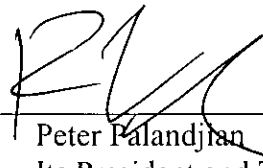
OCEAN GATEWAY GARAGE, LLC, a Maine limited liability company

By: RIVERWALK VENTURE, LLC a Maine limited liability company, Its Manager

By: Intercontinental Fund IV Ocean Gateway, LLC, Its Manager

By: Intercontinental Real Estate Investment Fund IV, LLC, Its Manager

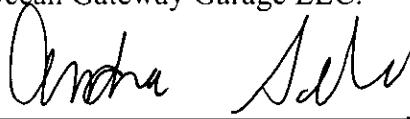
By: Intercontinental Real Estate Corporation Its Manager

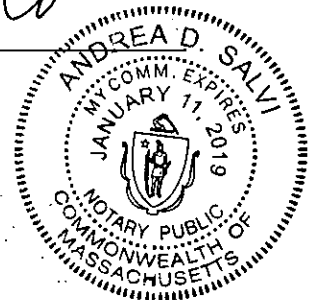
By: 
Peter Palandjian
Its President and Treasurer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 3rd day of May, 2013, before me, the undersigned notary public, personally appeared Peter Palandjian, President and Treasurer of Intercontinental Real Estate Corporation, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the foregoing instrument, and acknowledged to me that he signed it voluntarily for its stated purpose and as the free act and deed of said Intercontinental Real Estate Corporation and in its stated capacities for each of Intercontinental Real Estate Investment Fund IV, LLC, Intercontinental Fund IV Ocean Gateway, LLC, Riverwalk Venture LLC, Riverwalk, LLC and Ocean Gateway Garage LLC.


Notary Public



Received
Recorded Register of Deeds
May 07, 2013 03:52:46P
Cumberland County
Pamela E. Lovley