
GROUND LEASE FOR FUNDY QUAY

BETWEEN:

THE CITY OF SAINT JOHN, a body corporate maintaining its City Hall on the 8th Floor, City Hall Building, 15 Market Square, P.O. Box 1971, Saint John, NB, E2L 4L1,

-and-

FUNDY QUAY DEVELOPMENTS INC., a body corporate maintaining its registered office at 37 Rothesay Park Road, Rothesay, NB, E2E 5T7,

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS	2
1.1 Definitions	2
ARTICLE 2 - DEMISE AND TERM	5
2.1 Demise.....	5
2.2 Term	5
2.3 Overholding.....	5
2.4 Lessor’s Representations and Warranties.....	5
2.5 Lessee’s Acknowledgements of Site Conditions	6
2.6 Lessee’s Obligation to Purchase	6
2.7 Easements in Favour of Lessor.....	7
ARTICLE 3 - RENT	7
3.1 Covenant to Pay, Net Lease	7
3.2 Rental Taxes	7
3.3 Payment Method	7
3.4 Rent Past Due.....	8
ARTICLE 4 - GROUND RENT	8
4.1 Ground Rent	8
ARTICLE 5 - ADDITIONAL RENT	8
5.1 Additional Rent.....	8
5.2 Realty Taxes	8
5.3 Contesting Realty Taxes	9
5.4 Business and Other Taxes	9
5.5 Utilities and Services.....	9
5.6 Contribution to Infrastructure Maintenance Fund.....	10
5.7 Performance Based, Forgivable Payments	10
ARTICLE 6 - OWNER’S WORK AND CONSTRUCTION OF IMPROVEMENTS	11
6.1 Harbour Passage Extension.....	11
6.2 Loyalist Plaza	11
6.3 Outdoor Amenity Space	11
6.4 Other Strategic Infrastructure.....	11
6.5 Commencement of Construction of Improvements	11
6.6 Duties of Lessee in Construction.....	12
6.7 Fire and Liability Insurance During Construction	13
6.8 Lessee Failure to Build.....	14
ARTICLE 7 - OWNERSHIP, MAINTENANCE AND REPAIR	14

7.1	Ownership of Improvements and Fixtures	14
7.2	Maintenance and Repair of Site and Improvements	15
7.3	Inspection by Lessor	15
7.4	Repairs, Alterations, Improvements	16
7.5	Waste, Nuisance	16
7.6	Services	16
7.7	Lien Claims	17
ARTICLE 8 - USE, COMPLIANCE WITH LAWS		17
8.1	Use	17
8.2	Compliance with Laws	17
8.3	Compliance with Environmental Laws	18
ARTICLE 9 - INSURANCE AND INDEMNITY		19
9.1	Lessee's Indemnity	19
9.2	Lessee's Insurance	19
9.3	Insurance Trustee	20
9.4	Insurers	22
9.5	Lessor's Right to Insure	22
9.6	Evidence of Insurance	22
ARTICLE 10 - ASSIGNMENT, MORTGAGING AND SUBLETTING		22
10.1	Assignment by Lessee	22
10.2	Subletting by Lessee	22
10.3	Status of Lessee after Assignment or Subletting	22
10.4	Non-Disturbance of Sublessees	23
10.5	Lessee Financing	23
10.6	Lessor's Sale	24
10.7	Status Certificates	25
ARTICLE 11 - QUIET ENJOYMENT		25
11.1	Quiet Enjoyment	25
ARTICLE 12 - DAMAGE AND DESTRUCTION		25
12.1	Damage or Destruction of Improvements	25
12.2	Restoration of Improvements	25
12.3	Damage or Destruction at End of Term	26
12.4	Expropriation	26
ARTICLE 13 - DEFAULT		26
13.1	Default and Right to Re-enter	26
13.2	Default and Remedies	27
13.3	Security for Lessee's Obligations	29
13.4	Distress	30
13.5	Costs	30

13.6	Remedies Cumulative	30
ARTICLE 14 - SETTLEMENT OF DISPUTES		30
14.1	Referral to Senior Management	30
14.2	Mediation	31
14.3	Arbitration.....	32
14.4	Retention of Rights.....	33
ARTICLE 15 - GENERAL		33
15.1	Force Majeure	33
15.2	Effect of Waiver or Forbearance	33
15.3	Obligations as Covenants and Survival of Obligations	33
15.4	Notices.....	33
15.5	Registration.....	34
15.6	Number, Gender, Effect of Headings	34
15.7	Severability.....	34
15.8	Entire Agreement	34
15.9	Successors and Assigns	35

THIS LEASE made the ____ day of _____, 20__,

BETWEEN:

THE CITY OF SAINT JOHN, a body corporate maintaining its City Hall on the 8th Floor, City Hall Building, 15 Market Square, P.O. Box 1971, Saint John, NB, E2L 4L1,

(hereinafter referred to as the “Lessor”)

-and-

FUNDY QUAY DEVELOPMENTS INC., a body corporate maintaining its registered office at 37 Rothesay Park Road, Rothesay, NB, E2E 5T7,

(hereinafter referred to as the “Lessee”)

WHEREAS:

- A. The Lessor is the owner of the lands and premises known as “Fundy Quay” located off of Water Street in the City of Saint John, New Brunswick and more particularly identified in Schedule “A” attached hereto (the “Site”);
- B. The Lessor envisions that the Site will be developed to accommodate a mix of uses such as retail and commercial space and services, specialty shops and boutiques, residential condominiums and apartments, hospitality, entertainment, cultural and educational uses, green spaces, cafes, and transportation systems that will make the Site a vibrant catalyst for future waterfront activity;
- C. The Lessee carries on the business of residential and commercial real estate development, and has agreed to lease the Site from the Lessor for the purposes of its redevelopment as envisioned by the Lessor and described in recital B, in accordance with the terms and conditions herein.

WITNESSETH THAT THE PARTIES AGREE AS FOLLOWS:

Article 1 - Definitions

1.1 Definitions

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following terms have the following respective meanings:

- (a) "Additional Rent" means all sums of money or charges required to be paid by the Lessee under this Lease (except Ground Rent and Rental Taxes) either to the Lessor or otherwise including, without limitation, payment of Realty Taxes and charges for water, gas, electricity, and other utilities and other charges which may give rise to a lien upon the interest of the Lessor in the Site, whether or not the same are designated as "Additional Rent";
- (b) "Building Permit Application" means collectively, an application or applications by the Lessee for one or more building permits in relation to any Phase of the Development;
- (c) "Business Day" means a day other than a Saturday, Sunday or other day which is a statutory holiday in the Province of New Brunswick;
- (d) "Changes" has the meaning set out in Section 7.4;
- (e) "City Manager" means the City Manager of the Owner, or such person as the City Manager may designate from time to time;
- (f) "Commence Construction" or "Commenced Construction" means the *bona fide* completion of the foundation of a building and thereafter proceeding diligently to complete such building;
- (g) "Commencement Date" means •;
- (h) "CPI" means the All-items consumer price index for the City of Saint John as published by Statistics Canada (or its successor government department or agency) from time to time, or failing such publication, such other index as the parties may agree and, failing such agreement, as determined in accordance with Article 14 – Settlement of Disputes;
- (i) "Development" means the Lessee's planned mixed-use development of the Site as contemplated by the Lessor in recital B hereof;
- (j) "Environmental Laws" means any law, by-law, order, ordinance, ruling, regulation, certificate, approval, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any court of competent jurisdiction:
 - (i) relating to pollution or the protection of human health or the environment (including workplace health and safety);

- (ii) dealing with filings, registrations, emissions, discharges, spills, releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances; and/or
- (iii) regulating the import, storage, distribution, labelling, sale, use, handling, transport or disposal of a Hazardous Substance;
- (k) “Event of Default” has the meaning set out in Section 13.1;
- (l) “Financing Agreements” means all of the agreements or instruments entered into or to be entered into by the Lessee or any of its affiliates relating to the financing of the Development, including without limitation credit agreements and security documents;
- (m) “Ground Rent” means the Ground Rent payable by the Lessee pursuant to Article 4;
- (n) “Hazardous Substance” means any substance capable of posing a risk or damage to health, safety, property or the environment including, without limitation, any contaminant (as defined in the *Clean Environment Act* (New Brunswick)), pollutant, dangerous or potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable or explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, polychlorinated biphenyl waste, polychlorinated biphenyl related waste, and any other substance or material now or hereafter declared, defined or deemed to be regulated or controlled under any Environmental Law;
- (o) “Improvements” means all buildings, fixed improvements, structures and other installations located on, in or under any portion of the Site at any time throughout the Term, including chattels, equipment and machinery owned by the Lessee and including any additions, substitutions, alterations or replacements thereto or thereof;
- (p) “Infrastructure Maintenance Fund” has the meaning set out in Section 5.6;
- (q) “Lease” means this lease, as amended from time to time;
- (r) “Leasehold Mortgage” means any mortgage or other security against the Improvements and/or the Lessee’s interest in this Lease, from time to time;
- (s) “Leasehold Mortgagee” means the holder of any Leasehold Mortgage from time to time;
- (t) “Lessee Representative” means the representative appointed by the Lessee from time to time to;
- (u) “Lessee’s Architect” means ● of ●, the architect responsible for supervising the construction of the Improvements as hereinafter defined, or from time to time any other architect as the Lessee may appoint in substitution, who shall be an

architect duly qualified in the Province of New Brunswick and a member in good standing of the provincial association of architects;

- (v) "Lessor's Site Work" means the work completed by the Lessor to repair and vertically extend the Seawall, the remediation of contaminated soil at the Site, and the regrading and elevation of the Site to accommodate for possible future rises in sea level;
- (w) "Letter of Credit" has the meaning set out in Section 13.3;
- (x) "Performance Payment" has the meaning set out in Section 5.7(1);
- (y) "Permitted Encumbrances" has the meaning set out in Section 2.4;
- (z) "Phase" means a distinct portion, phase or stage of the Development, and in the event the Development will be fully completed in one single phase or stage, shall mean such single phase or stage;
- (aa) "Purchase Notice" shall have the meaning set out in Schedule "B";
- (bb) "Purchase Price" shall have the meaning set out in Schedule "B";
- (cc) "Purchase Obligation Closing Date" shall have the meaning set out in Schedule "B";
- (dd) "Put Exercise Notice" shall have the meaning set out in Section 13.1(2);
- (ee) "Put Option" shall have the meaning set out in Section 13.1(2);
- (ff) "Put Option Closing Date" shall have the meaning set out in Schedule "B";
- (gg) "Realty Taxes" means all real property taxes, rates, duties and assessments (including local improvement rates), impost charges or levies, whether general or special, that are levied, charged or assessed from time to time by any lawful authority, whether federal, provincial, municipal, school or otherwise, and any taxes payable by the Lessor which are imposed in lieu of, or in addition to, any such real property taxes, whether of the foregoing character or not, and whether or not in existence at the date hereof, and any such real property taxes levied or assessed against the Lessor on account of its ownership of the Site or its interest therein, but specifically excluding any taxes assessed upon the income of the Lessor;
- (hh) "Recognition Agreement" has the meaning set out in Section 10.4(2);
- (ii) "Rent" means all Ground Rent and Additional Rent;
- (jj) "Rental Taxes" means any and all taxes or duties imposed upon the Lessor or the Lessee, measured by or based in whole or in part upon the Rent payable under the Lease, whether existing at the date of this Lease or hereinafter imposed by any governmental authority, including, without limitation, goods and services tax, harmonized sales tax, value added tax, business transfer tax, retail

sales tax, federal sales tax, excise taxes or duties, or any tax similar to any of the foregoing;

- (kk) "Seawall" means the seawall running along the perimeter of the Site;
- (ll) "Site" means the lands identified in Schedule "A" attached hereto;
- (mm) "Term" means the period of twenty-five (25) years commencing on the Commencement Date; and
- (nn) "Trustee" has the meaning set out in Section 9.3.

Article 2 - Demise and Term

2.1 Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor demises and leases to the Lessee, and the Lessee rents from the Lessor, the Site.

2.2 Term

The Term shall be 25 years commencing on the Commencement Date and ending on [●], unless terminated earlier pursuant to the provisions of this Lease.

2.3 Overholding

If, at the expiration of the Term, the Lessee shall continue to occupy the Site without further written agreement, there shall be no tacit renewal of this Lease, and the tenancy of the Lessee thereafter shall be from month to month only, and may be terminated by either party on one (1) months' notice. Rent shall be payable in advance on the first day of each month equal to the sum of one hundred and fifty percent (150%) of the monthly installment of Ground Rent payable during the last year of the Term and one-twelfth (1/12) of all Additional Rent charges provided for herein, determined in the same manner as if this Lease had been renewed, and all terms and conditions of this Lease shall, so far as applicable, apply to such monthly tenancy.

2.4 Lessor's Representations and Warranties

The Lessor represents and warrants that, as of the start of the Term, it has good title in fee simple to the Site, free from all encumbrances, save and except the following permitted encumbrances: registered restrictive covenants, rights-of-way, servitudes, rights in the nature of servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility (including, without in any way limiting the generality of the foregoing, servitudes, and rights in the nature of servitudes for sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone and telegraph conduits poles wires and cables), provided same do not materially affect the Lessee's use and enjoyment of the Site (collectively, "Permitted Encumbrances").

2.5 Lessee's Acknowledgements of Site Conditions

(1) Subject to any other provision of this Lease, the Lessee acknowledges and agrees that:

- (a) the Lessee undertook examinations or subsurface investigations, or both, of the Site, including the Lessor's Site Work, and is satisfied as to the conditions at the Site for the purposes of the Development, including environmental matters, subsurface conditions, bearing pressure, settlement characteristics and nature and consistency of soil and sediments, groundwater and surface water and the impact these could have on any or all of the Development;
- (b) the Lessee accepts the Site, including the Lessor's Site Work, on an "as is" basis as at the Commencement Date, subject only to the work which this Lease provides is to be undertaken by the Lessor subsequent to the Commencement Date;
- (c) the Lessor shall not in any way be responsible or liable for any conditions at the Site which are actually encountered, including environmental matters, subsurface conditions, bearing pressure, settlement characteristics and nature and consistency of soil and sediments, groundwater, surface water and the Lessee has made its own determinations of such conditions and their effect, if any, on the Development; and
- (d) the Lessee is not entitled to any abatement of Rent or reimbursement of costs incurred or to any other remuneration or damages whatsoever, in any way connected with existing conditions at the Site, including environmental matters, subsurface conditions, bearing pressure, settlement characteristics and nature and consistency of soil and sediments, groundwater, surface water, whether or not the same would have been apparent to a contractor experienced in projects similar to the Development upon review of the Site.

(2) The Lessee represents and warrants to the Lessor that the Site including the Lessor's Site Work, is suitable in all respects for the Development, and the Lessee shall have no claim, nor make any claim, whether at law or in equity, in the event that the Site or the Lessor's Site Work, or any part thereof, are not at any time and from time to time suitable for the Development; and the Lessee hereby releases and discharges the Lessor from any and all claims which may now or hereafter exist in law or in equity in the event the Site or the Lessor's Site Work, or any part thereof, are not suitable for the Development, or are in any manner or way inadequate for the aforesaid purposes.

(3) The covenants, representations, and warranties of, and releases by, the Lessee contained in this Article shall survive indefinitely the expiration or earlier termination of this Lease notwithstanding anything herein contained to the contrary.

2.6 Lessee's Obligation to Purchase

(1) Subject to Section 2.6(2), the Lessee covenants and agrees to purchase the Site on or before the expiration of the Term of the Lease, and the Lessor agrees to sell the Site to the Lessee in accordance with Schedule "B" attached hereto, provided the Lessee is not in

default under this Lease, and on condition that the Seawall and lands known as Harbour Passage shall be subdivided from the Site and shall remain the property of the Lessor.

(2) The Lessee may only notify the Lessor that it is ready to purchase the Site during the last six months of any given lease year of the Term.

2.7 Easements in Favour of Lessor

During the Term of the Lease, the Lessee covenants and agrees with the Lessor to grant such easements over the Site as may be reasonably required by the Lessor for access to and from Harbour Passage Extension and the Seawall, and for the installation and maintenance of public utilities, provided that such easements do not materially interfere with the siting and construction of any buildings or above-ground Improvements.

Article 3 - Rent

3.1 Covenant to Pay, Net Lease

The Lessee covenants to pay Rent as provided in this Lease. It is the intention of the parties that this is a net and carefree lease and that the Rent shall be net to the Lessor and clear of all taxes, costs and charges arising from or relating to the Site, and that the Lessee shall pay as Additional Rent all charges, impositions and expenses of every nature and kind relating to the Site as if it were an owner thereof (except as otherwise specifically provided for herein) in the manner hereinafter provided, and the Lessee hereby covenants with the Lessor accordingly.

3.2 Rental Taxes

- (1) The Lessee shall pay to the Lessor the Rental Taxes assessed upon:
 - (a) the Rent;
 - (b) the Lessor; and/or
 - (c) the Lessee, pursuant to the laws, rules and regulations governing the administration of the Rental Taxes by the authority having jurisdiction, and as such may be amended from time to time during the Term of this Lease.

(2) The Rental Taxes shall not be deemed to be Additional Rent under this Lease, but may be recovered by the Lessor as though they were Additional Rent.

3.3 Payment Method

(1) The Lessor may, at any time and from time to time, require the Lessee to provide to the Lessor authorization and documentation required to automatically debit the Lessee's bank account for Rent owing.

(2) In the event of any change in the estimates of Additional Rent, the Lessor may require new documentation to automatically debit the Lessee's bank account for Rent owing.

3.4 Rent Past Due

If the Lessee shall fail to pay any Rent when the same is due and payable, such unpaid amount shall bear interest at the rate of eighteen percent (18%) per annum (calculated monthly at the rate of one and one-half percent (1.5%)), such interest to be calculated from the time such Rent becomes due until paid by the Lessee.

Article 4 - Ground Rent

4.1 Ground Rent

The Lessee covenants and agrees to pay, from and after the Commencement Date, to the Lessor, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement or set-off whatsoever, as annual Ground Rent, the sum of One Hundred and Seventy-Five Thousand Dollars (\$175,000.00) in advance, on the first day of each and every year of the Term.

Article 5 - Additional Rent

5.1 Additional Rent

(1) In addition to the Ground Rent reserved in favour of the Lessor, the Lessee shall, throughout the Term when same become due and payable, pay to the Lessor or as otherwise provided in this Lease, in lawful money of Canada, without any deduction, abatement or set-off whatsoever, as Additional Rent, the following costs incurred and attributable to the Site and Improvements:

- (a) all Realty Taxes levied, rated, charged or assessed on or in relation to the Site;
- (b) all charges, costs, accounts and any other sums payable by reason of the supply of the utilities and services to the Site; and
- (c) all other sums, amounts, costs, cost escalations and charges specified in this Lease to be payable by the Lessee.

(2) All of the payments set out in this Lease (other than Rental Taxes) shall constitute Ground Rent or Additional Rent, and shall be deemed to be and shall be paid as rent, whether or not any payment is payable to the Lessor or otherwise, and whether or not as compensation to the Lessor for expenses to which it has been put. The Lessor has all the rights against the Lessee for default in payment of Additional Rent that it has against the Lessee for default in payment of Ground Rent.

5.2 Realty Taxes

The Lessee covenants to pay to the lawful taxing authorities, on or before the due date therefor, as Additional Rent, all Realty Taxes. The obligation of the Lessee to pay Realty Taxes shall commence at the Commencement Date, and shall be apportioned for the current taxation year between the Lessor and Lessee as at such date on a *per diem* basis. Upon the expiry or termination of this Lease, Realty Taxes during the taxation year of termination shall be similarly apportioned between the parties as at the termination date. If the Lessee fails to pay any Realty Taxes when due to the appropriate taxing authorities in situations where the Lessee (or persons

on its behalf) is not contesting Realty Taxes in accordance with the provisions of Section 5.3, then the Lessor may itself, after notice to the Lessee as required herein, pay the Realty Taxes, and the amount paid by the Lessor on account of Realty Taxes shall be immediately repaid by the Lessee to the Lessor as Additional Rent under this Lease.

5.3 Contesting Realty Taxes

The Lessee shall have the right, in the name of the Lessor or otherwise, at the Lessee's expense, by appropriate proceedings conducted diligently and in good faith, to contest or apply for the reduction of the amount, legality or mode of payment of any Realty Taxes in respect of the Site or any portion thereof or any assessments or valuations with respect thereto. The Lessor shall provide any consents, authorizations and other assurances as may be required in order for such Realty Taxes to be contested or such applications to be made and proceeded with. During the period of any *bona fide* contesting or application, the Lessee may defer the payment of Realty Taxes to the extent permitted under applicable legislation, and no default shall be deemed to have occurred in the Lessee's obligations to pay Realty Taxes by reason of such deferral. The Lessee shall be entitled to any rebate of any Realty Taxes unless such Realty Taxes have been paid by the Lessor in accordance with Section 5.2 and the Lessee has not reimbursed the Lessor.

5.4 Business and Other Taxes

In each and every year during the Term, the Lessee shall pay as Additional Rent, within fifteen (15) days after they become due, and indemnify the Lessor from and against payment of, and any interest or penalty in respect of, the following:

- (a) every tax, licence fee, rate, duty and assessment of every kind with respect to any business carried on by the Lessee on the Site or by any sublessee, licensee, concessionaire or franchisee or anyone else, or in respect of the use or occupancy of the Site by the Lessee, its sublessees, licensees, concessionaires or franchisees, or anyone else (other than such taxes as income, profits or similar taxes assessed upon the income of the Lessor); and
- (b) all Realty Taxes in respect of the Lessee's fixtures, Improvements, equipment or facilities on or about the Site, and any Realty Taxes occurring as a result of any reason peculiar to the Lessee.

5.5 Utilities and Services

(1) The Lessee shall be solely responsible for and shall promptly pay to the appropriate utility suppliers, as Additional Rent, all charges for water, gas, electricity, telephone telecommunications and other utilities and services used or consumed in, and any other charges levied or assessed on or in respect of or services supplied to, the Site and Improvements.

(2) In no event shall the Lessor be liable for, nor shall the Lessor have any obligation with respect to, an interruption or cessation of or a failure in the supply of any utilities, services or systems, including water services, in, to or serving the Site or Improvements.

5.6 Contribution to Infrastructure Maintenance Fund

- (1) Subject to Section 5.6(4),
 - (a) beginning on the first day of the sixth (6th) year of the Term and throughout the remainder of the Term, the Lessee shall pay to the Lessor as Additional Rent, in lawful money of Canada, without any deduction, abatement or set-off whatsoever, the sum of \$25,000.00 annually, which amount will be allocated by the Lessor to a joint infrastructure maintenance fund (the "Infrastructure Maintenance Fund"); and
 - (b) during the subsequent ownership of the Site by the Lessee following its purchase thereof in accordance with Section 2.6, the Lessee shall continue to pay to the Lessee the sum of \$25,000.00 annually towards the Infrastructure Maintenance Fund for a period ending 50 years following the Commencement Date of the Lease. In the event the Lessee purchases the Site prior to the first day of the sixth (6th) year of the Term, the Lessee's annual obligation to pay into the Infrastructure Maintenance Fund shall only commence on the day which is 6 years following the Commencement Date of the Lease. The Lessee covenants and agrees to execute and deliver to the Lessor all such further documents as the Lessor may require for the purpose of giving effect to this continuing obligation at the time of closing of the Lessee's purchase of the Site.
- (2) The Lessor will contribute an equal amount annually to the Infrastructure Maintenance Fund. The Infrastructure Maintenance Fund shall be for purposes of maintaining and repairing public spaces and infrastructure along the perimeter of the Site, including the Seawall, Harbour Passage, and Loyalist Plaza.
- (3) Use of the Infrastructure Maintenance Fund for the purposes set out herein shall be determined solely by the Lessor, however the Lessor will invite input from the Lessee.
- (4) The annual amount payable to the Infrastructure Maintenance Fund will be increased commencing on the first day of the eleventh (11th) year following the Commencement Date and every ten (10) years thereafter (whether during the Term of the Lease or subsequent ownership of the Site by the Lessee) to account for inflation. The increase will be proportionate to the total percentage increase in the CPI over the preceding ten (10) years.
- (5) The Owner shall be responsible for establishing and administering the Infrastructure Maintenance Fund.

5.7 Performance Based, Forgivable Payments

- (1) Beginning on the first day of the Term and throughout the remainder of the Term, the Lessee shall pay to the Lessor, in lawful money of Canada, without any deduction, abatement or set-off whatsoever, as Additional Rent, the sum of \$75,000.00 annually, subject to reduction in accordance with Section 5.7(2) (the "Performance Payment").
- (2) The Performance Payment may be reduced annually following the completion of new buildings in the Development, and shall be determined based on the following formula:

$$\text{Performance Payment} = \$75,000 \times [1 - \text{Construction Value of Completed Buildings}]$$

\$100,000,000.00

(3) For the purposes herein, "Construction Value of Completed Buildings" means the value of building(s) for which:

- (a) a valid building permit(s) has been issued;
- (b) construction of the foundation(s) has been completed or is actively in progress; and
- (c) a cost to construct budget has been provided to the Lessor certified by a professional architect, engineer, or professional accountant independent of the Lessee, and which budget confirms the cost of construction of the building(s) on completion.

Article 6 - Owner's Work and Construction of Improvements

6.1 Harbour Passage Extension

After the Commencement Date, the Lessor may complete the extension of Harbour Passage along the perimeter of the Site. The timing for completion of this work shall be determined by the Lessor in its sole discretion.

6.2 Loyalist Plaza

After the Commencement Date, the Lessor may redesign and redevelop Loyalist Plaza in collaboration with the Lessee as the Development progresses.

6.3 Outdoor Amenity Space

With the exception of Harbour Passage and the Seawall, all outdoor public amenity space within the Site shall be the sole responsibility of the Lessee to construct and maintain at its own expense, including all above-ground and below-ground infrastructure associated therewith.

6.4 Other Strategic Infrastructure

The Lessor and the Lessee will work collaboratively to explore the feasibility and funding opportunities for a pedway connection from the Site to Market Square, a district energy system, sub-watertable parking, and any other supportive infrastructure for the Development, provided however that the failure on the part of either party to do so shall not constitute a breach or default hereunder notwithstanding any other provisions herein.

6.5 Commencement of Construction of Improvements

Before commencing excavation or any work on the Site for the construction of the Improvements, the Lessee shall have:

- (a) provided to the Lessor proof of the insurance required by Section 6.7;
- (b) obtained all necessary building permits; and

- (c) obtained from the contractor(s) the indemnity, insurance and performance bonds required by the contract(s).

6.6 Duties of Lessee in Construction

The Lessee shall perform and comply with the following covenants and requirements in the construction of the Improvements:

- (a) all laws and legal requirements pertaining to the conduct of the work shall be complied with;
- (b) the construction work shall be conducted expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this Lease;
- (c) the Lessee, through the Lessee's Architect, shall properly supervise the work;
- (d) any contractor engaged on the work shall be required to observe all provisions of its contract, and to furnish and maintain all security, indemnity, insurance and performance bonds required by the contract, and upon request by the Lessor, the Lessee shall provide the Lessor with copies of such contracts, security, indemnity, insurance and performance bonds;
- (e) Upon 72 hours notice, the Lessor and its agents and consultants shall at all times have the right to inspect the work and to notify the Lessee or the Lessee's Architect of any default or non-compliance with any construction contract or this Lease, and the Lessee shall forthwith deal with and remedy any default or non-compliance;
- (f) the Lessor may require the Lessee, at the Lessee's own expense, to submit at reasonable intervals certificates of the Lessee's Architect as to the status of the work, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained by the Lessee on any contract, and the Lessee shall also, whenever requested by the Lessor, furnish copies of certificates furnished to it by contractors or by the Lessee's Architect in connection with construction;
- (g) the Lessee shall deliver to the Lessor, from time to time as they become available and at the Lessor's request, copies of the following in respect of the Site and the Improvements:
 - (i) soil tests;
 - (ii) architects' and development plans and drawings;
 - (iii) consultants' reports;
 - (iv) applications to amend by-laws;
 - (v) site plan applications and approvals;

- (vi) building permit applications;
 - (vii) building permits issued; and
 - (viii) all other documents or information pertaining to the Site and development of the Improvements in the possession or control of the Lessee; and
- (h) the Lessee shall promptly pay when due all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of the Improvements, but this shall not prevent the Lessee from retaining any amounts claimed due which the Lessee's Architect has not certified to be due, or which are properly and reasonably retained to secure the performance of any work or the correction of any defect or which, in the opinion of the Lessee's Architect, are reasonably retained in anticipation of damages arising from any contractor's default, or which are required to be retained under the provisions of the *Mechanics' Lien Act* (New Brunswick).

6.7 Fire and Liability Insurance During Construction

(1) The Lessee shall obtain or shall cause its contractor or contractors to obtain prior to beginning construction of the Improvements, and shall maintain and keep in force until the insurance required under Article 9 has been obtained, insurance naming the Lessor and the Lessee as named insureds and:

- (a) protecting both the Lessee and the Lessor (without any rights of cross claim or subrogation against the Lessor) against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Site and from any cause, including the risks occasioned by the construction of the Improvements, and to an amount of not less than eight million dollars (\$8,000,000) for any personal injury, death, property or other claims in respect of any one accident or occurrence; and
- (b) protecting both the Lessee and the Lessor from loss or damage (without any rights of cross claim or subrogation against the Lessor) to the Improvements and all fixtures, equipment, improvements and building materials on the Site from time to time, both during and after construction (but which may be by policies obtained from time to time covering the risk during different phases of construction) against fire and extended perils under a standard extended form of fire insurance policy in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar project during construction to the full insurable value thereof at all times (to be computed upon a replacement cost basis with deduction only of the cost of excavation and foundations and of the value of building materials from time to time on the site but not incorporated in the Improvements, and in any event in an amount sufficient to prevent the Lessor being deemed a co-insurer).

(2) The proceeds of insurance which may become payable under any policy of insurance obtained pursuant to Section 6.7(1)(b) shall be payable to the Trustee in accordance with Section 9.3.

(3) All the provisions of Article 9 respecting insurance which are of general application apply to the insurance during construction of the Improvements required by this Section 6.7.

6.8 Lessee Failure to Build

(1) In the event the Lessee fails to Commence Construction of a building having a minimum floor area of 50,000 square feet within two years of the Commencement Date, such failure shall constitute an Event of Default under the Lease, and the Lessor shall have the right to terminate the Lease in addition to all the remedies available to it as set out in Article 13. Provided however: (i) the Lessor will provide the Lessee with notice of a six (6) month cure period in order to Commence Construction of a building having a minimum floor area of 50,000 square feet prior to exercising such right to terminate the Lease; and (ii) no such cure period shall relieve the Lessee of any other obligation hereunder or to pay Rent when same becomes due and payable.

(2) In the event the Lessor elects to terminate the Lease solely due to the Lessee's failure to Commence Construction of a building having a minimum floor area of 50,000 square feet within two years of the Commencement Date, the Lessor shall pay the Lessee a termination payment of \$250,000.00, subject to set-off for any amounts owing by the Lessee to the Lessor hereunder.

Article 7 - Ownership, Maintenance and Repair

7.1 Ownership of Improvements and Fixtures

(1) The Improvements are intended to be and shall become the absolute property of the Lessor upon the expiration or termination of the Lease, but shall be deemed, as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor, subject to and governed by all the provisions of this Lease applicable thereto. The Lessor's absolute right of property in the Improvements which will arise upon the expiration or termination of this Lease takes priority over any other interest in the Improvements which may now or hereafter be created by the Lessee, provided that all dealings by the Lessee with the Improvements which in any way affect title thereto shall be made expressly subject to this right of the Lessor, and the Lessee shall not assign, encumber or otherwise deal with the Improvements separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person who does not at the same time hold a like interest in the Improvements shall hold or enjoy any interest in this Lease acquired from the Lessee.

(2) The provisions of Section 7.1(1) shall not be construed to prevent the Lessee from conferring on lessees or occupants of the Improvements the right of property in, or the right to remove, fixtures or improvements which are of the nature of usual tenants' trade fixtures and normally removable by tenants, and which are not part of the structure or any essential part of the Improvements or any building services. The Lessee shall make good, or shall cause the lessees to make good, all damage to the Improvements or building services caused by any removal of the Lessee's fixtures.

(3) The Lessee shall at its own expense, at or immediately before the expiration of the Term, remove its furniture, chattels and other usual tenants' trade fixtures not forming any part of the structure of the Improvements or any building services and, provided the Lessee is not in default, the Lessee may from time to time remove such trade fixtures in the ordinary

course of its business or in the event of any Changes made pursuant to this Lease, provided that the Lessee shall, except upon the expiration of the Term, cause the tenants' trade fixtures to be replaced with fixtures having a value and utility at least equal to that of the fixtures so removed, considering the need to replace obsolete or defective fixtures and to substitute improved fixtures, and the consequences of any reconstruction, changes and alterations to the Improvements.

(4) The Lessor may within 90 days after the expiry or sooner termination of this Lease give notice requiring the Lessee to demolish all Improvements on the Site and return the Site to a vacant state, whereupon the Lessee shall be obligated to do so diligently and expeditiously at its own expense. The foregoing covenant of the Lessee shall survive the expiration or earlier termination of this Lease notwithstanding anything herein contained to the contrary.

(5) Any requirement on the part of the Lessee to remove property or demolish Improvements shall not apply in the event the Lessee has provided the Lessor notice of its intention to purchase the Site in accordance with Section 2.6, and completes the purchase within 6 months of having issued such notice.

7.2 Maintenance and Repair of Site and Improvements

The Lessee shall, at its own cost and expense, during the entire Term, keep in good order and condition the Site and Improvements, and the appurtenances and equipment thereof, both inside and outside, including, but not limited to, fixtures, walls, foundations, roofs, vaults, elevators and similar devices, heating and air-conditioning equipment, sidewalks on the property, yards and area ways, water and sewer infrastructure within the Site and connections, water, gas, electric and telecommunications facilities and conduits, and all other fixtures in and appurtenances to the Site and Improvements and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and shall make any and all necessary repairs, replacements, substitutions, improvements and additions, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, subject to reasonable wear and tear, having regard to the size, age, location and character of the Site and Improvements and force majeure as set out in Section 15.1. Such repairs shall be completed in a good and workmanlike manner and in all respects consistent in quality and workmanship appropriate for a similar project in the vicinity, and shall meet the requirements of municipal and governmental regulations and the fire insurance underwriters.

7.3 Inspection by Lessor

The Lessor, its servants, agents and contractors shall be entitled to enter upon the Site and Improvements at any time during normal business hours, on 72 hours' prior notice, for the purpose of inspecting the Site and Improvements. The Lessor shall not be liable for and the Lessee shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. The Lessor shall use reasonable commercial efforts to schedule such inspections so as not to unreasonably interfere with the operation of any sublessee's business and to minimize interference with the Lessee's use and enjoyment of the Site and Improvements.

7.4 Repairs, Alterations, Improvements

(1) The Lessee may make any repairs, additions, alterations, replacements or improvements ("Changes") to or of any part of the Improvements or any other portions of the Site provided that:

- (a) the Changes shall comply with all applicable laws and other governmental requirements and the requirements of the Lessee's fire insurance underwriters;
- (b) the Changes shall not weaken or endanger the structure of the Improvements; and
- (c) the Changes shall not materially adversely affect the value of the Site and Improvements.

(2) The Changes shall be constructed by the Lessee, without cost to the Lessor, in a good and workmanlike manner, using first-class materials.

7.5 Waste, Nuisance

The Lessee shall not commit or suffer any waste or injury to the Site and Improvements or any part thereof save and except any demolition and alteration respecting the Improvements on the Site as herein permitted, and shall not use or occupy or permit to be used or occupied the Site and Improvements or any part thereof so as to constitute a nuisance or for any illegal or unlawful purpose, nor in any manner which may contravene any lawful restrictions of the use thereof by any municipal or governmental authorities. The Lessee shall at all times, at its own expense, keep the sidewalks, curbs and passageways within the Site and Improvements clean from rubbish, ice and snow and shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any manner. The Lessee shall not injure or damage the Site and Improvements or permit the same to be injured or damaged in any way save and except as herein permitted.

7.6 Services

The Lessee shall install or cause to be installed all municipal services required to be constructed and installed in connection with any development of the Site, and shall pay all levies, imposts, deposits and charges required by the municipality or any public utility or other authority having jurisdiction for such services. The Lessee shall indemnify and save harmless the Lessor from all claims and demands relating to such services, it being the intention of the parties that the Lessor shall not be required at any time to pay any levies, imposts, deposits or other charges whatever in connection with the servicing or preparation of the Site from time to time for building, use or occupancy. Without limiting the generality of the foregoing, the Lessee shall, at its own expense, install or cause to be installed paved roadways, sanitary sewers, storm sewers, sidewalks, curbs, street lighting, water pipes and underground hydro facilities as may be required by the municipality or other relevant authorities. The Lessee further covenants that it shall construct, renew and repair all services with respect to the Site and Improvements as the municipality, utilities or other relevant authorities shall require from time to time without expense to or contribution from the Lessor.

7.7 Lien Claims

(1) The Lessee shall not permit any lien to be registered against the Site for any labour or materials furnished to, or with the consent of, the Lessee, its agents or contractors, in connection with any work performed or claimed to have been performed on the Site or Improvements by or at the direction or permission of the Lessee, and the Lessee shall cause any lien to be vacated within ninety (90) Business Days of its registration against the Site.

(2) In the event the Lessee fails to cause any lien to be vacated within ninety (90) Business Days of its registration against the Site:

- (a) such failure shall constitute an Event of Default hereunder and shall entitle the Lessor, without notice to the Lessee, to exercise all of its remedies provided for in Article 13, including without limitation the right to terminate the Lease; and
- (b) the Lessor may, without notice to the Lessee, demand payment pursuant to the terms of the Letter of Credit referred to in Section 13.3 and pay the proceeds into Court in order to vacate any lien filed or registered against the Site. If the Lessee notifies the Lessor in writing that the Lessee disputes the Lessor's right to draw on the Letter of Credit and pay the proceeds into Court in order to vacate any such lien filed or registered, the Lessor shall nonetheless be entitled to draw on the Letter of Credit and make the payment into Court without any liability to the Lessee.

Article 8 - Use, Compliance with Laws

8.1 Use

The Lessee covenants that at all times the use made of the Site and Improvements shall be solely for a mix of uses such as retail and commercial space and services, specialty shops and boutiques, residential condominiums and apartments, hospitality, entertainment, cultural and educational uses, green spaces, cafes, and transportation systems, and for no other purpose.

8.2 Compliance with Laws

The Lessee covenants that at all times the use made of the Site and Improvements shall be in conformity with all of the requirements of the zoning by-laws and any other municipal and governmental regulations which may affect the Site. The Lessee shall comply with all or recommendations and requirements made by its fire insurance underwriters, and observe and obey all municipal and governmental regulations governing the conduct of any businesses carried out on the Site and Improvements or with respect to the use of the Site and Improvements. The Lessee shall indemnify and save the Lessor harmless against any and all liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses (including pure economic losses), costs (both direct and indirect) and expenses whatsoever (including, without limitation, counsel and solicitor's fees on a substantial indemnity basis, reasonable costs of professional advisors, consultants and experts) arising out of non-compliance with or violation of any of the said laws and regulations or from any liability for costs for damage or injury to any person or property resulting therefrom on and after the Commencement Date.

8.3 Compliance with Environmental Laws

(1) Without limiting any other obligation of the Lessee in this Lease, the Lessee covenants and agrees that it shall, at its sole cost and expense, observe and otherwise comply with, and cause its sublessees, invitees and all other occupants of the Site to observe and comply with all Environmental Laws. Without limiting the generality of the foregoing, the Lessee covenants and agrees that:

- (a) it shall not cause or permit any Hazardous Substance to be brought into, stored, kept or used in or about the Site or any part thereof, other than any Hazardous Substance that is used in the ordinary course of the permitted use being carried on at the Site and which is stored, kept and used in strict compliance with all Environmental Laws pertaining thereto;
- (b) it shall not permit any emissions, discharges or releases of Hazardous Substances or materials containing Hazardous Substances from the Site, other than where such occurs in the ordinary course of the permitted use being carried on at the Site in strict compliance with all Environmental Laws pertaining thereto;
- (c) it shall not construct or install any underground storage tank in the Site; and
- (d) on the expiration or earlier termination of this Lease, it shall cause each and every Hazardous Substance which became located on the Site subsequent to the Commencement Date to be removed from the Site in compliance with all Environmental Laws pertaining thereto.

(2) The Lessee shall immediately provide the Lessor with written notice of any order, direction, notice of default or notice of legal action received by the Lessee pursuant to any Environmental Laws and relating to the Site, the use and occupation of the Site or the business carried on at the Site.

(3) Upon the request of the Lessor, given to the Lessee within six (6) months preceding the calendar month in which the Term expires, the Lessee shall provide to the Lessor, at the sole cost of the Lessee, an independent audit or assessment report, in form and substance and from a qualified consultant approved by the Lessor, acting reasonably, regarding Hazardous Substances in, on or under the Site (the "Exit Report"). Should the Exit Report reveal that the presence of any Hazardous Substances beyond those permitted by Environmental Laws were found in, on or under the Site that were released, discharged, emitted or otherwise produced by the Lessee or its employees, agents, invitees or contractors, the Lessee shall complete all remediation required on or before the end of the Term to the standards required by all Environmental Laws at that time. If for reasons beyond the control of the Lessee such remediation cannot be completed by the end of the Term the Lessee shall be entitled, by notice to the Lessor given within ten (10) days of the delivery of the Exit Report to the Lessor, to an additional two (2) months to complete such remediation. All terms and conditions shall continue during such two (2) month period including all of the Lessee's obligations in respect of Rent.

(4) If any governmental authority shall require the clean-up of any Hazardous Substance held, released, spilled, abandoned or placed on the Site or released into the environment by the Lessee, its sublessees or anyone permitted on the Site by the Lessee, or as a result of the use or occupancy of the Site by the Lessee or its sublessees, invitees or other

occupants, the Lessee shall, at its own expense: (a) prepare all necessary studies, plans and proposals required as a result thereof; (b) obtain all necessary approvals of such authorities required to complete the remediation to the standards required by all Environmental Laws together with any other work required; (c) provide all bonds and other security required by such authorities; and (d) carry out and complete the remediation to the standards required by all Environmental Laws together with any other work required. The Lessee shall also provide the Lessor with copies of the plans and proposals and keep the Lessor advised from time to time as to the status of its remediation and other work.

(5) The Lessee agrees to indemnify and save harmless the Lessor and its agents, servants, employees and others for whom Lessor is in law responsible, against any and all liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses (including pure economic losses), costs (both direct and indirect) and expenses whatsoever (including, without limitation, reasonable costs of professional advisors, consultants and experts in respect of any investigation, and all costs all remediation and other clean-up costs and expenses) arising in any manner whatsoever out of:

- (a) any breach by the Lessee of any provisions of this Article, or any noncompliance by the Lessee, its sublessees, invitees and other occupants, with any Environmental Laws;
- (b) any generating, manufacture, refinement, treatment, transportation, storage, handling, disposal, transfer, production or processing of any Hazardous Substance by the Lessee, its sublessees, invitees and other occupants; and
- (c) any illness, injury or death of persons, or any loss or damage to property, on or about the Site.

The covenants and agreements of, and indemnification by, the Lessee contained in this Article shall survive the expiration or earlier termination of this Lease notwithstanding anything herein contained to the contrary.

Article 9 - Insurance and Indemnity

9.1 Lessee's Indemnity

Throughout the Term the Lessee shall indemnify and save the Lessor harmless against any and all liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses (including pure economic losses), costs (direct and indirect) and expenses whatsoever (including, without limitation, counsel and solicitor's fees on a substantial indemnity basis, reasonable costs of professional advisors, consultants and experts) arising from injury to property or injury to any person, firm, partnership or corporation, caused by the use, occupancy or presence of the Lessee or any other person, firm, partnership or corporation at, in, on or upon the Site or Improvements, except those damages costs and expenses caused by the Lessor's omissions or negligence.

9.2 Lessee's Insurance

(1) The Lessee shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:

- (a) fire and extended perils under a standard extended form of fire insurance policy with standard extended coverage endorsements, in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar project, having regard to the size, age and location of the project on the Site, and such insurance shall add the Lessor as an additional insured, with coverage to the full insurable value thereof at all times (to be computed upon a replacement cost basis with deduction only of the cost of excavation and foundations);
- (b) general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to the Site, written on a comprehensive basis with inclusive limits of at least eight million dollars (\$8,000,000) for each occurrence, or such higher limit as the Lessor, acting reasonably, requires from time to time;
- (c) broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis, with limits for each accident in an amount not less than the full replacement costs of the property, with respect to any boilers and machinery upon the Site or relating to or serving the Site, and such insurance shall add the Lessor as an additional insured;
- (d) insurance against loss of rental income due to loss or damage to the Improvements by way of the perils which the Lessee is to insure against in Section 9.2(1)(a) to the value of all rents from the Development with an indemnity period of 24 months from the date of loss; and
- (e) any other form of insurance with whatever limits the Lessor, acting as a prudent owner, reasonably requires from time to time, in such form and amounts and for risks against which a prudent lessee under similar circumstances would insure.

(2) All public liability insurance shall contain a provision for cross liability or severability of interest as between the Lessor and the Lessee. All the foregoing property policies shall contain a waiver of any right of subrogation or recourse by the Lessee's insurers against the Lessor or its contractors, agents and employees, whether or not any loss is caused by the act, omission or negligence of the Lessor, its contractors, agents or employees. The Lessee shall obtain, from the insurers under the building coverage, undertakings to notify the Lessor in writing at least thirty (30) days prior to any cancellation thereof. The Lessee shall furnish to the Lessor, upon written request, certificates of all such policies. The Lessee agrees that if the Lessee fails to take out or to keep in force such insurance or provide a certificate of every policy and evidence of continuation of coverage as herein provided, the Lessor shall have the right to take out such insurance and to pay the premium thereof and, in such event, the Lessee shall pay to the Lessor the amount paid as premium plus fifteen percent (15%), which payment shall be deemed to be Additional Rent payable on the first day of the next month following the said payment by the Lessor.

9.3 Insurance Trustee

Where a partial or complete destruction occurs and the Lessee rebuilds, the following procedures shall apply:

- (a) the insurance proceeds shall be paid to a trustee (the "Trustee") named by the Lessor and subject to approval by the Lessee. The Trustee shall be expressly instructed to act on behalf of both the Lessor and the Lessee according to their interests. The Trustee shall be instructed to invest the insurance proceeds, insofar as possible, with a bank or trust company so as to earn interest pending their distribution as contemplated by this Section 9.3. Work-in-progress shall be paid for in installments as progress payments out of the insurance proceeds, and provision shall be made to ensure that no increase in the cost over the amount of the original estimate shall be the responsibility of the Lessor or the Trustee, so that the Trustee at all times retains in its hands sufficient insurance proceeds to pay for the estimated cost of repair outstanding at the date it makes any progress payment;
- (b) before any contract having a value in excess of \$100,000 is entered into by the Lessee for the carrying out of any repair work, copies of the estimates for any work and the contracts for the completion of the work shall be submitted to the Trustee, and it shall distribute such copies to the Lessor and the Lessee. Such contracts shall be deemed to be approved unless notice to the contrary is delivered to the Trustee within fourteen (14) business days of receipt of the contract from the Trustee;
- (c) any progress payments to be made under this Section 9.3 by the Trustee shall not be made without the submission of a statement, certified by the architect or engineer of the party to whom the payments are to be made, stating the estimated amount required to complete the work or repair at the date of the certificate, the amount owing on work already done, and the amount of any payments made at that date for work already done, and verifying the standard and quality of the work already done, and the Trustee shall be required to retain in its hands, at the date of any payment, an amount sufficient to pay the estimated outstanding cost of completion, even if that has the effect that the payment made becomes less than the amount certified to be due;
- (d) in making any payment under this Section 9.3, the Trustee shall have regard to the *Mechanics' Lien Act* (New Brunswick) and shall retain within its control for the period specified in such legislation the amount of any hold-back required;
- (e) the fees and expenses of the Trustee shall be borne by the Lessee and shall be paid, to the extent available, out of the moneys held by the Trustee;
- (f) in the case of any dispute as to the terms of any contract or the amount of any estimate or any matter relating to the actual work or repair, such dispute shall be resolved in accordance with the dispute resolution provisions in Article 14; and
- (g) should the insurance moneys, if any, be insufficient to pay the entire cost of the work of restoring and repairing the buildings, the Lessee agrees to pay the deficiency. Upon the completion of such work and payment in full therefor by the Lessee, the Lessor shall, upon receipt of proof that such work has been paid for in full and that there is no outstanding lien claim, release to the Lessee any insurance moneys then remaining and in the possession or control of the Trustee and shall so authorize the Trustee.

9.4 Insurers

All contracts of insurance required to be maintained pursuant to this Lease shall be with a reputable company or companies licensed to do business within the Province of New Brunswick and ordinarily engaged in the business of insuring against the risks herein described.

9.5 Lessor's Right to Insure

If the Lessee fails to obtain the policies of insurance required hereunder, the Lessor may itself, after not less than twenty-four (24) hours' notice to the Lessee, obtain such policies and shall give the Lessee a notice setting out the amount and dates of payment of all costs and expenses incurred by the Lessor in connection therewith to the date of such notice; the Lessee shall, with the next installment of rent which becomes due, pay the same to the Lessor with interest, calculated on the various amounts from the respective dates of payment thereof by the Lessor. Any sum so expended by the Lessor, together with such interest as aforesaid, shall constitute rent hereunder and be collectable as such rent payable on demand.

9.6 Evidence of Insurance

The Lessee shall furnish the Lessor with certificates or other acceptable evidence of all required insurance promptly at the Commencement Date and yearly during the Term. Such insurance shall show the Lessor as a named insured and all property insurance shall provide for a waiver of subrogation among insureds, and liability insurance shall provide for severability of interests and cross liability among insureds. All proceeds of any insurance shall first be used by the Lessee for the costs of repairing, reconstructing or replacing, as the case may be, the damaged or destroyed portions of the Improvements to the standard set out herein, except as otherwise provided for in this Lease.

Article 10 - Assignment, Mortgaging and Subletting

10.1 Assignment by Lessee

Save and except as set out in this Article 10, the Lessee shall not assign this Lease or sublet all or substantially all of the Site and/or Improvements without first obtaining the written consent of the Lessor, which consent shall not be unreasonably withheld or delayed. Any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription, of any part or all of the corporate shares of the Lessee or any other corporation which would result in any change in the effective direct or indirect control of the Lessee, shall be deemed to be an assignment.

10.2 Subletting by Lessee

The Lessee may, without the consent of the Lessor, sublet portions of the Site and Improvements (not constituting all or substantially all of the Site and Improvements), provided the term and all renewals of each sublease do not extend beyond the Term and all exercised renewal terms at such time.

10.3 Status of Lessee after Assignment or Subletting

No assignment or sublease shall release the Lessee from its obligations and covenants under this Lease.

10.4 Non-Disturbance of Sublessees

- (1) The Lessor agrees that so long as the Lessee is not in default hereunder and:
 - (a) any particular sublessee is not in default under the terms of its sublease;
 - (b) the sublease has been entered into by the Lessee in good faith and at arm's length with the sublessee; and
 - (c) the sublessee has agreed that in the event of termination of the Lease, upon the request of the Lessor, it shall attorn to the Lessor as sublessor under the sublease,

then, upon the request of the Lessee, the Lessor shall permit that sublessee to remain in quiet and peaceful possession of its premises pursuant to the terms of its sublease, notwithstanding any exercise by the Lessor of its rights to terminate this Lease or otherwise re-enter the Site, provided that the Lessor shall not be required to give effect to any prepaid rental periods in excess of one (1) month.

(2) In order to give effect to the provisions of Section 10.4(1), upon the request of the Lessee, the Lessor shall execute a non-disturbance or sublease recognition agreement (a "Recognition Agreement"), provided that the form of Recognition Agreement shall be as the sublessee requires, acting reasonably, and provided the Lessor incurs no financial obligation thereunder.

10.5 Lessee Financing

(1) The Lessee covenants and agrees with the Lessor that it shall obtain its financing for the entirety of the Development from a regulated financial institution in Canada.

(2) The Lessee covenants and agrees with the Lessor that it shall not terminate, amend or otherwise modify any of the Financing Agreements, or waive or exercise any of its rights under the Financing Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect the Lessee's ability to carry out the Development.

(3) The Lessee may, from time to time during the Term, without the consent of the Lessor, make one or more Leasehold Mortgages, provided such Leasehold Mortgage is by way of a sublease or assignment to a regulated financial institution in Canada.

(4) If any Leasehold Mortgagee shall give to the Lessor a notice specifying the name and address of such Leasehold Mortgagee, the Lessor shall give to the Leasehold Mortgagee a copy of each notice of default by the Lessee at the same time as and whenever any such notice of default shall thereafter be given by the Lessor to the Lessee, addressed to the Leasehold Mortgagee at the address last furnished to the Lessor. No such notice of default by the Lessor shall be deemed to have been given to the Lessee unless and until a copy thereof shall have been so given to the Leasehold Mortgagee. Save and except as to default in payment of moneys reserved hereunder, such Leasehold Mortgagee shall thereupon have a period of seven (7) days more, after service of such notice upon it, to remedy the default or cause the same to be remedied, than is given to the Lessee after service of such notice upon it. Such Leasehold Mortgagee shall, within the period and otherwise as herein provided, have the right to remedy such default or cause the same to be remedied. The Lessor shall accept

performance by the Leasehold Mortgagee of any covenant, condition or agreement on the Lessee's part to be performed hereunder, with the same force and effect as though performed by the Lessee. The time of the Leasehold Mortgagee to cure any default by the Lessee which reasonably requires that the said Leasehold Mortgagee be in possession of the Site to do so shall be deemed extended to include the period of time required by the said Leasehold Mortgagee to obtain such possession with due diligence, provided, however, that during such period all of the other obligations of the Lessee under this Lease including, without limiting the generality of the foregoing, the payment of moneys reserved hereunder, are being duly performed.

(5) From and after receiving the Leasehold Mortgagee's notice, the Lessor and Lessee shall not cancel, surrender, modify or amend this Lease in any respect without the prior written consent of the Leasehold Mortgagee, such consent not to be unreasonably withheld.

(6) No Leasehold Mortgagee shall become liable under the provisions of this Lease, unless and until such time as it becomes, and then only for as long as it remains, in possession of the Site or the owner of the leasehold estate.

(7) No Leasehold Mortgage shall be made by the Lessee unless the Leasehold Mortgagee shall covenant with the Lessor:

- (a) to be bound by all the covenants and obligations of the Lessee hereunder as soon as it enters into possession of the Lessee's interest or otherwise takes steps to enforce its security which have the effect of depriving the Lessee of the ability to perform fully those covenants and obligations, and such covenant shall continue to bind the Leasehold Mortgagee so long as it continues in possession or continues to enforce its security with the effect as aforesaid; and
- (b) to obtain, upon any exercise of any power of sale (which sale under power of sale shall be subject to the consent of the Lessor as set out in Section 10.1), a covenant from the assignee in favour of the Lessor to perform all of the Lessee's obligations under this Lease, but as soon as the assignee becomes bound by the Lessee's obligations, the Leasehold Mortgagee shall be relieved from its covenant.

(8) Notwithstanding the execution of this Lease, the Lessor agrees that, in the event that any Leasehold Mortgagee reasonably requires any change in any of the terms, covenants and provisions of the Lease, the Lessor shall execute and deliver such written modifications of the Lease in order to comply with the reasonable requirements of any such Leasehold Mortgagee, provided that there is no reduction in Rent or other payments to be made under the Lease, no variation in the Term, and such changes do not place material burdens upon the Lessor or do not involve material or major alterations in the covenants and agreements contained in the Lease which materially and adversely affect the Lessor or relieve the Lessee of any material obligation or duty previously imposed upon it in the Lease.

10.6 Lessor's Sale

In the event of the sale, transfer or other disposition by the Lessor of its interest in the Site or any part thereof, or the assignment by the Lessor of this Lease or any interest of the Lessor hereunder, the Lessor shall cause the purchaser, transferee or assignee thereof to directly assume the covenants and obligations of the Lessor hereunder and, thereupon, the

Lessor shall, without further agreement, be freed and relieved of all liability with respect to such covenants and obligations under this Lease relating to matters arising from and after such assignment.

10.7 Status Certificates

Each party shall, on twenty (20) days' notice from the other, execute and deliver to the other and/or any actual or proposed Leasehold Mortgagee and/or any actual or proposed purchaser or assignee of a party (as applicable), a statement as prepared by the other in writing certifying the following:

- (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the modifications and that the same is in full force and effect as modified;
- (b) the amount of the Ground Rent then being paid;
- (c) the dates to which Ground Rent, by installments or otherwise, and Additional Rent and charges hereunder have been paid;
- (d) whether or not there is any existing default on the part of the other party of which the party giving the certificate has notice; and
- (e) such other matters as may be reasonably required by the requesting party.

Article 11 - Quiet Enjoyment

11.1 Quiet Enjoyment

(1) Subject to Subsection 11.1(2), the Lessee, upon paying the Rent hereby reserved and performing and observing the covenants and provisions herein required to be performed and observed on its part, shall peaceably enjoy the Site for the Term.

(2) Until such time as the Lessee has started construction of the foundation of a building on the Site, the Lessor may continue to have the Saint John Parking Commission or other designee operate the existing parking lot on the Site without any compensation payable to the Lessee.

Article 12 - Damage and Destruction

12.1 Damage or Destruction of Improvements

The complete or partial destruction or damage, by fire or other casualty, of the Improvements shall not, except as provided herein, terminate this Lease or entitle the Lessee to surrender possession of the Site or to have or to demand any abatement or reduction of the Rent or other charges payable under this Lease.

12.2 Restoration of Improvements

The Lessee covenants and agrees that, following the damage or destruction of any of the Improvements, it shall repair, reconstruct or replace such damaged or destroyed Improvements. All insurance moneys shall be made available to the Lessee pursuant to the

terms of this Lease to pay for the cost of such restoration, reconstruction and repair and, should the insurance moneys be insufficient to pay the entire cost, the Lessee agrees to pay the deficiency.

12.3 Damage or Destruction at End of Term

Notwithstanding Section 12.2, in the event of damage or destruction to the Improvements in the last 5 years of the Term, to the extent that the Lessee's Architect determines that the cost to repair the Improvements would exceed 50% of the replacement cost thereof, the Lessee may elect to terminate this Lease by notice to the Lessor within 90 days following the damage or destruction, and the Lessee shall restore the Site to the condition it was in immediately prior to construction of the Improvements, the Lessor shall be paid the remaining insurance proceeds in respect of the Improvements, and this Lease shall be deemed to have been terminated as of the date of such damage or destruction.

12.4 Expropriation

If, at any time during the Term, any public body or paramount authority shall take or expropriate the whole or a portion of the Site and Improvements, then the following provisions shall apply:

- (a) the Lessor, the Lessee, and any Leasehold Mortgagee may exercise fully all the rights, remedies and claims for compensation which each may have under the applicable legislation. The Lessor and the Lessee shall inform each other fully of the claims for compensation made by each of them in the event of any expropriation, shall not claim compensation on any basis inconsistent with this Lease, and shall afford reasonable co-operation to each other in the prosecution of any proper separate claims. The Lessor and the Lessee shall co-operate with each other regarding any expropriation of the Site or any part thereof so that each receives the maximum award to which it is entitled at law; and
- (b) if such expropriation or compulsory taking does materially affect the Lessee's use or enjoyment of the Site, then the Lessee may elect to terminate this Lease by notice to the Lessor within thirty (30) days of the notice of the expropriation and the Term shall terminate on the date upon which the expropriating or taking authority requires possession of the lands so expropriated or taken. In such case, the Lessor shall be entitled to receive the entire compensation awarded or settlement, whether fixed by agreement or otherwise, save and except for the portion thereof that is specifically awarded or allocated to the Lessee in respect of the right of the Lessee to occupy and use the Improvements for the balance of the Term.

Article 13 - Default

13.1 Default and Right to Re-enter

- (1) Any of the following constitutes an Event of Default under this Lease:
 - (a) the Lessee fails to pay any Rent on the day or dates appointed for the payment thereof;

- (b) the Lessee fails to cause any lien to be vacated within ninety (90) Business Days of being required to do so under subsection 7.7(1);
- (c) the Lessee becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Lessee's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Lessee;
- (e) the Lessee makes a sale in bulk of all or a substantial portion of its assets, other than in conjunction with a transfer made pursuant to this Lease;
- (f) this Lease or any of the Lessee's assets are taken under a writ of execution and such writ is not stayed or vacated within fifteen (15) days after the date of such taking;
- (g) the Lessee makes an assignment or sublease or other transfer other than in compliance with the provisions of this Lease; or
- (h) the Lessee abandons the Site and Improvements.

(2) In the event the Lessee fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Lessee and, if such breach is not otherwise listed in Section 13.1(1), after notice in writing from the Lessor to the Lessee:

- (a) the Lessee fails to remedy such breach within fifteen (15) days; or
- (b) if such breach cannot reasonably be remedied within fifteen (15) days, the Lessee fails to commence, or show why it cannot reasonably commence to remedy such breach within fifteen (15) days of such breach, or thereafter fails to proceed diligently to remedy such breach,

the Lessor shall then have the right, but not the obligation, to cause the Lessee to purchase the Site in accordance with the provisions of Schedule "B" (the "Put Option") by delivering to the Lessee a written notice (the "Put Exercise Notice") exercising the Put Option. The Lessee's failure to complete the purchase of the Site on the Put Option Closing Date shall constitute an Event of Default hereunder.

13.2 Default and Remedies

If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, the Lessor shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Lessee or to re-enter the Site and Improvements and repossess them and, in either case, enjoy them as of its former estate, and to remove all persons and property from the Site and

Improvements and store such property at the expense and risk of the Lessee or sell or dispose of such property in such manner as the Lessor sees fit without notice to the Lessee. If the Lessor enters the Site and Improvements without notice to the Lessee as to whether it is terminating this Lease under this Section 13.2(a) or proceeding under Section 13.2(b) or any other provision of this Lease, the Lessor shall be deemed to be proceeding under Section 13.2(b), and the Lease shall not be terminated, nor shall there be any surrender by operation of law, but the Lease shall remain in full force and effect until the Lessor notifies the Lessee that it has elected to terminate this Lease. No entry by the Lessor shall have the effect of terminating this Lease without notice to that effect to the Lessee;

- (b) to enter the Site and Improvements as agent of the Lessee to do any or all of the following:
 - (i) relet the Site and Improvements for whatever length of time and on such terms as the Lessor, in its discretion, may determine, and to receive the Rent therefor;
 - (ii) take possession of any property of the Lessee on the Site and Improvements, store such property at the expense and risk of the Lessee, or sell or otherwise dispose of such property in such manner as the Lessor sees fit without notice to the Lessee;
 - (iii) make alterations to the Site and Improvements to facilitate their reletting; and
 - (iv) apply the proceeds of any such sale or reletting, first, to the payment of any expenses incurred by the Lessor with respect to any such reletting or sale, second, to the payment of any indebtedness of the Lessee to the Lessor other than Rent, and, third, to the payment of Rent in arrears, with the residue to be held by the Lessor and applied to payment of future Rent as it becomes due and payable, provided that the Lessee shall remain liable for any deficiency to the Lessor;
- (c) to remedy or attempt to remedy any default of the Lessee under this Lease for the account of the Lessee and to enter upon the Site for such purposes. No notice of the Lessor's intention to remedy or attempt to remedy such default need be given to the Lessee unless expressly required by this Lease, and the Lessor shall not be liable to the Lessee for any loss, injury or damages caused by acts of the Lessor in remedying or attempting to remedy such default. The Lessee shall pay to the Lessor all expenses incurred by the Lessor in connection therewith;
- (d) to recover from the Lessee all damages, costs and expenses incurred by the Lessor as a result of any default by the Lessee including, if the Lessor terminates this Lease, any deficiency between those amounts which would have been payable by the Lessee for the portion of the Term following such termination and the net amounts actually received by the Lessor during such period of time with respect to the Site; and

- (e) to recover from the Lessee the full amount of the current month's Rent together with the next three months' installments of Rent, all of which shall immediately become due and payable as accelerated rent.

13.3 Security for Lessee's Obligations

(1) Prior to submitting a Building Permit Application for the construction of each Phase:

- (a) the Lessee shall submit to the Lessor the details of the Developer's financing package for that Phase, including the details of any security to be granted by the Developer in connection therewith and full copies of all of the Lessee's Financing Agreements;
- (b) the Lessee shall provide an irrevocable standby letter of credit in favour of the Lessor in an amount of 5%, or less, as determined by the City pursuant to section 13.3(5), of the total construction cost for each such Phase and in the form attached hereto as Schedule "C" to secure the Lessee's obligations under this Lease (the "Letter of Credit"); and
- (c) the Lessee shall provide the Lessor with supporting documentation setting out the details of the total estimated cost of construction of each Phase.

(2) The Lessee shall maintain the Letter of Credit in place for the entire duration of construction for each Phase of the Development and for a period which exceeds by five Business Days the maximum time period permitted for the filing of a claim for lien under the *Mechanics' Lien Act* (New Brunswick) following substantial completion of each Phase, at which time the Letter of Credit may be cancelled provided that the Developer is not in default hereunder and no construction liens are registered against the Site.

(3) Subject to Section 13.3(4), the Lessor will cover the full financing and administrative costs of the Letter of Credit, which costs will be reimbursed to the Lessee in the form of a grant, paid to the Lessee only after a building permit has been obtained and in no case later than 60 days following receipt of proof of payment of the financing and administrative costs of the Letter of Credit.

(4) For the first Phase of the Development, the Lessee shall pay the financing and administrative costs of the Letter of Credit in an amount equal to 1% of the total value of the Letter of Credit, to a maximum of \$20,000 per year for up to a maximum of 3 years.

(5) The Lessor shall have the sole and absolute discretion at any time to reduce the amount of the Letter of Credit required for a given Phase under Section 13.3(1) or to waive this requirement in its entirety, and without prejudice to its right to require a full Letter of Credit during a subsequent Phase.

(6) Upon the occurrence of an Event of Default, the Lessor may, at its sole option, demand payment pursuant to the terms of the Letter of Credit and retain and apply the proceeds thereof as liquidated damages and/or exercise any of its other rights or remedies provided for hereunder.

(7) The Lessor shall not be required to give any prior notice to the Lessee of its intention to draw on the Letter of Credit. If the Lessee notifies the Lessor in writing that the Lessee disputes the Lessor's right to draw on the Letter of Credit and to retain the proceeds as liquidated damages, then the Lessor shall nonetheless be entitled to draw on the Letter of Credit, but will remain liable to repay all or a portion of the amount drawn, together with interest charges at the rate prescribed on that amount, which exceeds the amount of actual liquidated damages to which the Lessor is entitled in the event such dispute has been finally resolved in favour of the Lessee.

(8) In no event shall the Lessor be liable to repay any amount drawn on the Letter of Credit, nor interest thereon, in the event the Lessor pays such amount into Court in accordance with Section 7.7(2).

13.4 Distress

Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Lessee on the Site at any time shall be exempt from levy by distress for Rent in arrears, and the Lessee waives any such exemption. If the Lessor makes any claim against the goods and chattels of the Lessee by way of distress, this provision may be pleaded as an estoppel against the Lessee in any action brought to contest the right of the Lessor to levy such distress.

13.5 Costs

The Lessee shall pay to the Lessor all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Lessor in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Lessee under this Lease, or in respect of which the Lessee has agreed to insure or to indemnify the Lessor.

13.6 Remedies Cumulative

Notwithstanding any other provision of this Lease, the Lessor may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Lessee, either by any provision of this Lease, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Lessor by statute or common law.

Article 14 - Settlement of Disputes

14.1 Referral to Senior Management

(1) All disputes arising out of, or in connection with, this Lease, or in respect of any legal relationship associated with or derived from this Lease shall within two (2) Business Days be referred for resolution to the City Manager and the Lessee Representative.

(2) If the City Manager and Lessee Representative are not able to resolve the dispute referred to them under this Section 14.1 within seven (7) Business Days following such

referral, the matter shall be referred for resolution by way of mediation upon the willingness of the parties.

14.2 Mediation

(1) Despite an agreement to mediate, a party may apply to a court of competent jurisdiction or other competent authority for interim measures of protection at any time.

(2) If the parties resolve to mediate the dispute referred to them under subsection 14.1(2), the parties shall invoke the following mediation process:

(a) Either party shall immediately declare an impasse and provide written notice to the other within seven (7) Business Days thereof (or such other period as the parties mutually prescribe) declaring that such party wishes to proceed to mediation and setting out in reasonable detail the issue(s) to be resolved, the proposed time and a list of at least three (3) and not more than five (5) proposed mediators. Each of the proposed mediators shall be an individual:

- (i) with at least three (3) years' experience working in an executive capacity or representing clients in the area of public disputes, and
- (ii) unless otherwise agreed by the parties, with no prior connection, affiliation or other formal relationship with either party.

(b) Upon receipt of such notice, the notified party shall have two (2) Business Days to select one (1) of the proposed mediators as the mediator, failing which the party providing notice shall select one (1) of its proposed mediators as the mediator. Within seven (7) Business Days following selection of the mediator the matter shall be heard by the mediator.

(3) The mediator shall be entitled to establish his or her own practices and procedures. Each party shall co-operate fully with the mediator and shall present its case to the mediator orally and/or in writing within (10) Business Days following the mediator's appointment. The mediation shall not be in the nature of arbitration as contemplated by the *Arbitration Act* (New Brunswick) and the mediator's decision shall not be binding upon the parties, but shall be considered as a *bona fide* attempt by the mediator to judiciously resolve the dispute. The decision of the mediator shall be rendered in a written report, not to exceed two (2) pages in length, delivered to the parties within (10) Business Days following the last of such presentations. The fees of the mediator shall be shared equally by the parties.

(4) The mediation shall be terminated:

- (a) By the execution of a settlement agreement by the parties; or
- (b) By a written declaration of one or more parties that the mediation is terminated; or
- (c) By a written declaration by the mediator that further efforts at mediation would not be useful.

(5) The place of mediation shall be the City of Saint John and Province of New Brunswick.

14.3 Arbitration

(1) In the event that the parties are unwilling to mediate their dispute or that the dispute between the parties remains unresolved after mediation has been attempted in good faith, then either the City Manager or the Lessee Representative, upon written notice to the other, may refer the dispute for determination to a board of arbitration ("Board of Arbitration") consisting of three (3) persons, one (1) chosen by and on behalf of the City Manager, one (1) chosen by and on behalf of the Lessee Representative and the third chosen by these two.

(2) In case of failure of the two arbitrators appointed by the parties hereto to agree upon a third arbitrator, such third arbitrator shall be appointed by a Judge of The Court of Queen's Bench of New Brunswick.

(3) No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

(4) Notwithstanding the provisions of the Arbitration Act (New Brunswick), the Board of Arbitration, upon such terms and conditions as are deemed by it to be appropriate, may allow a party to amend or supplement its claim, defence or reply at any time prior to the date at which the parties have been notified of the arbitration hearing date, unless the Board of Arbitration considers the delay in amending or supplementing such statements to be prejudicial to a party. The Board of Arbitration will not permit a party to amend or supplement its claim, defence or reply once the arbitration hearing has been scheduled.

(5) The Board of Arbitration may encourage settlement of the dispute and, with the written agreement of the parties, may order that mediation, conciliation or other procedures be used by the parties at any time during the arbitration proceedings to encourage settlement.

(6) If, during the arbitration proceedings, the parties settle the dispute, the Board of Arbitration shall, upon receiving confirmation of the settlement or determining that there is settlement, terminate the proceedings and, if requested by the parties, record the settlement in the form of an arbitration award on agreed terms.

(7) Subject to subsection 14.3(8), any determination made by the Board of Arbitration shall be final and binding upon the parties and the cost of such determination shall be apportioned as the Board of Arbitration may decide.

(8) Either party may appeal an arbitration decision to The Court of Queen's Bench of New Brunswick: (i) on a question of law; or (ii) on a question of fact; or (iii) on a question of mixed fact and law.

(9) The place of arbitration shall be the City of Saint John and Province of New Brunswick and the provisions of the Arbitration Act (New Brunswick), shall apply to the arbitration.

14.4 Retention of Rights

It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses provided the party has given the notices required under this Article 14 and has carried out the instructions as provided in subsection 14.1.

Article 15 - General

15.1 Force Majeure

Notwithstanding any other provision contained herein, in the event that either the Lessor or the Lessee should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section 15.1 shall not under any circumstances operate to excuse the Lessee from prompt payment of Rent and/or any other charges payable under this Lease.

15.2 Effect of Waiver or Forbearance

No waiver by any party hereto of any breach by any other party of any of its covenants, agreements or obligations contained in this Lease shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor shall any forbearance by any party hereto to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by the Lessor shall not be deemed a waiver of any preceding breach by the Lessee of any term, covenant or condition regardless of the Lessor's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Lessee to the Lessor hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Lessee hereby waives the benefit of any statutory or other right in respect of abatement or set off in its favour at the time hereof or at any future time.

15.3 Obligations as Covenants and Survival of Obligations

(1) Each obligation or agreement of the Lessee expressed in this Lease, even though not expressed as a covenant, is for all purposes considered to be a covenant.

(2) All obligations of the Lessee shall expressly or by their nature survive termination or expiration of this Lease and shall continue in full force and effect subsequent to and notwithstanding such termination or expiration until and unless they are satisfied or by their nature expire.

15.4 Notices

(1) Any notice required hereunder shall be in writing and any such notice and any delivery, payment or tender of money or document(s) to the parties hereunder may be delivered personally or sent by prepaid registered or certified mail or prepaid courier to the address for such party as set out herein, and any such notice, delivery or payment so delivered or sent shall be deemed to have been given or made and received upon delivery of same or on the third

(3rd) business day following the mailing of same, as the case may be. Each party may, by notice in writing to the others from time to time, designate an alternative address in Canada to which notices given more than ten (10) days thereafter shall be addressed.

(2) Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of Canada Post shall be deemed to have been received only if delivered personally or sent by prepaid courier.

15.5 Registration

(1) Neither the Lessee nor anyone on the Lessee's behalf or claiming under the Lessee (including any assignee, sublessee or other occupant) shall register in full this Lease or any assignment, sublease or other instrument relating to this Lease against the Site. The Lessee may register a notice or caveat of this Lease provided that:

- (a) a copy of the Lease is not attached; and
- (b) the Lessor gives its prior written approval of the notice or caveat.

(2) Upon the expiration or earlier termination of the Term, the Lessee shall immediately discharge or otherwise vacate any such notice or caveat.

15.6 Number, Gender, Effect of Headings

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and *vice versa*. The division of this Lease into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Lease.

15.7 Severability

Should any Article or Section or part or parts of an Article or Section in this Lease be illegal or unenforceable, it or they shall be considered separate and severable from the Lease and the remaining provisions of this Lease shall remain in full force and effect and shall be binding upon the Lessor and the Lessee as though such Article or Section or part or parts thereof had never been included in this Lease.

15.8 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein, and this Lease constitutes the entire agreement duly executed by the parties hereto, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties hereto.

15.9 Successors and Assigns

The rights and liabilities of the parties shall enure to the benefit of their respective heirs, executors, administrators, successors and permitted assigns, subject to any requirement for consent by the Lessor hereunder.

[signatures on following page]

DRAFT

IN WITNESS WHEREOF the parties hereto have duly executed this Lease.

Lessor: THE CITY OF SAINT JOHN

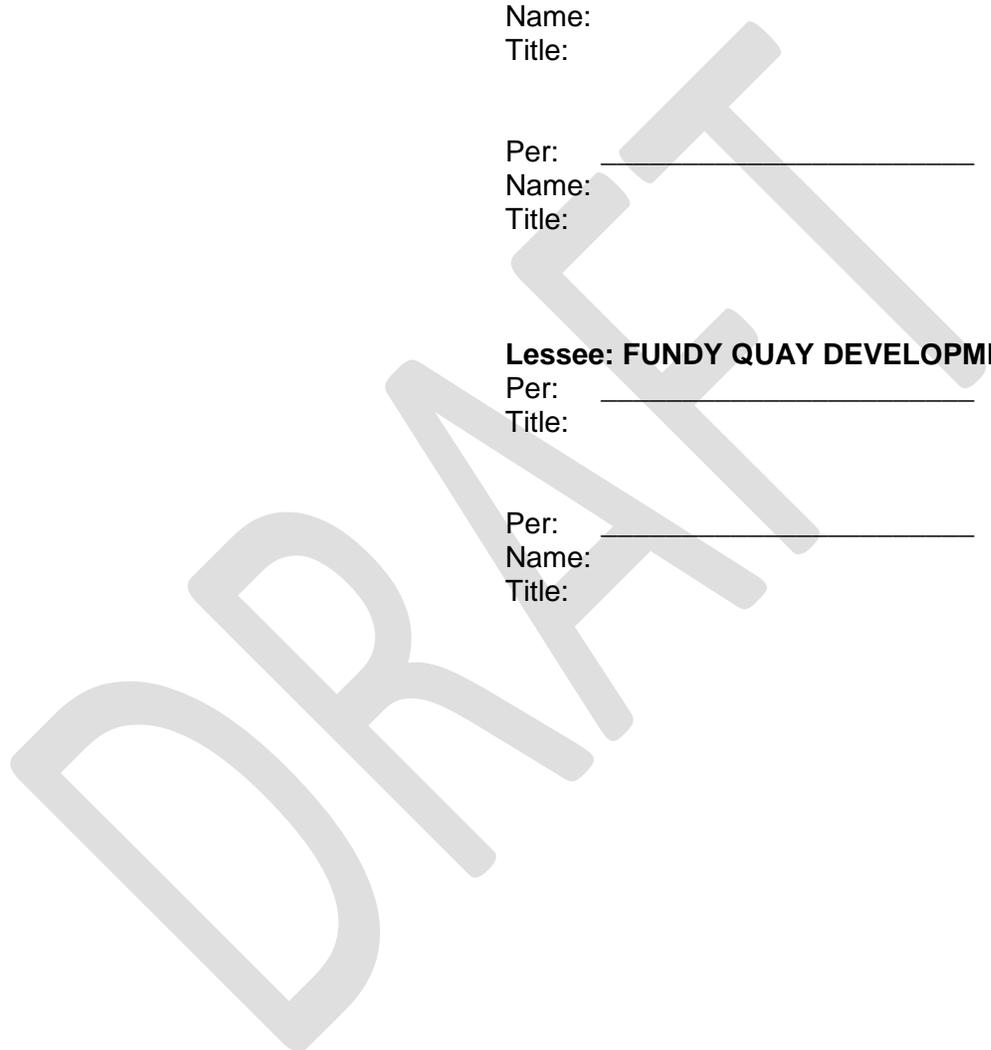
Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

Lessee: FUNDY QUAY DEVELOPMENTS INC.

Per: _____
Title: _____

Per: _____
Name: _____
Title: _____



Schedule "A"**Site****PID 55235113**

Place Name: Saint John
Parish/County: City of/Ville de Saint John/Saint John
Designation of Parcel on Plan: Lot 18-2
Title of Plan: City of Saint John Subdivision
Registration County: Saint John
Registration Number of Plan: 38429529
Registration Date of Plan: 2018-09-27

PID 55221881

Place Name: Saint John
Parish/County: City of Saint John/Saint John
Label of Parcel on Plan: portion of South Market Wharf a Public Street/partie de la quai sud Market, une rue Publique
Registration Number of Plan: 33263436
Registration County: Saint John
Registration Date of Plan: October 30, 2013
Title of Plan: Plan of Survey Showing Ward Street, Peters Wharf and South Market Wharf, Montrant Rue Ward, quai Peters, et quai sud Market

Schedule "B"

Provisions Applicable to Lessee's Purchase Obligation

The Lessee shall notify the Lessor prior to the end of the Term (the "Purchase Notice") that it is ready to purchase the Site in accordance with its obligation to do so under Section 2.6 (the "Purchase Obligation"), provided however that the Lessee may only provide the Purchase Notice during the last six months of any given lease year of the Term.

The Purchase Notice from the Lessee shall constitute a binding agreement of purchase and sale, provided that the Lessee is not then in default under the Lease unless waived by the Lessor.

The closing of the Purchase Obligation shall be on the ninetieth day following the Purchase Notice from the Lessee, unless such date is not a Business Day, in which case the closing shall be on the next Business Day (the "Purchase Obligation Closing Date").

Prior to the closing of the Purchase Obligation, the Lessee acknowledges and agrees that the Seawall and Harbour Passage shall be subdivided from the Site and shall remain the property of the Lessor.

The terms of the Lessor's standard form of agreement of purchase and sale in effect at the time that the Purchase Notice is provided shall apply to the Purchase Obligation, to the extent applicable and where not inconsistent with the terms hereof.

Provisions Applicable to Lessor's Put Option

The Put Exercise Notice from the Lessor shall constitute a binding agreement of purchase and sale.

The closing of the Put Option shall be on the ninetieth day following the Put Exercise Notice from the Lessor, unless such date is not a Business Day, in which case the closing shall be on the next Business Day (the "Put Option Closing Date").

Prior to the closing of the Put Option, the Lessee acknowledges and agrees that the Seawall and Harbour Passage shall be subdivided from the Site and shall remain the property of the Lessor.

Provisions Applicable to Lessee's Purchase Obligation and to Lessor's Put Option

The terms of the Lessor's standard form of agreement of purchase and sale in effect at the time that the Purchase Notice or the Put Exercise Notice, as applicable, is provided shall apply to the Purchase Obligation or the Put Option, as the case may be, to the extent applicable and where not inconsistent with the terms hereof.

Such agreement of purchase and sale shall include an option on the part of the Lessor to repurchase the Site, free and clear of all encumbrances other than Permitted Encumbrances, in the event the Lessee fails to Commence Construction of a building having a minimum floor area of 50,000 square feet within 2 years of the Purchase Obligation Closing Date or the Put Option Closing Date, as applicable (in the event no such building has been previously constructed by the Lessee). The purchase price on such repurchase option shall be the original Purchase Price (as hereafter defined) paid by the Lessee, less the sum of \$250,000.00. Provided however, the Lessor will provide the Lessee with notice of a six (6) month cure period in order

to Commence Construction of a building having a minimum floor area of 50,000 square feet prior to exercising such option to repurchase. The parties agree that this deduction to the original Purchase Price represents a genuine pre-estimate of the damages incurred by the Lessor as a result of the Lessee's failure to Commence Construction within the time period agreed to herein.

The agreement of purchase and sale shall include a provision that the Lessee shall execute and deliver to the Lessor on closing all such further documents as the Lessor may require for the purpose of giving effect to the Lessee's obligation to continue to contribute to the Infrastructure Maintenance Fund in accordance with Section 5.6 subsequent the closing of the Purchase Obligation or the Put Option, as applicable.

The purchase price ("Purchase Price"), plus all applicable taxes, for the Site shall be based upon the following formula which takes into consideration the municipal revenue (being Ground Rent, Performance Payments, and property taxes collected by the Lessor pursuant to the Lease) and property taxes generated by the Site over the 25 year Term of the Lease, including the adjacent PID 55235105 owned by the Department of Transportation and Infrastructure if the Development extends thereto (collectively, "Municipal Revenue"). In the event the Purchase Notice or the Put Exercise Notice, as applicable, is given prior to the end of the Term before the actual 25-year Municipal Revenue figures are known, the parties, acting reasonably, will extrapolate the known figures to determine the estimated 25-year Municipal Revenue figures.

[see chart on following page]

Purchase Price Formula

		Purchase Price By Leasing Year												
		A 1 Year	B 2 Years	C 3 Years	D 4 Years	E 5 Years	F 6 Years	G 7 Years	H 8 Years	I 9 Years	J 10 Years	K 11 Years	L 12 Years	M 13 Years
1	\$0 - \$10,000,000	\$6,200,000	\$5,887,500	\$5,575,000	\$5,262,500	\$4,950,000	\$5,060,000	\$4,970,000	\$4,880,000	\$4,790,000	\$4,700,000	\$4,680,000	\$4,660,000	\$4,640,000
2	\$10,000,000 - \$20,000,000	\$5,000,000	\$4,775,000	\$4,550,000	\$4,325,000	\$4,100,000	\$4,050,000	\$4,000,000	\$3,950,000	\$3,900,000	\$3,850,000	\$3,800,000	\$3,750,000	\$3,700,000
3	\$20,000,000 - \$30,000,000	\$3,800,000	\$3,687,500	\$3,575,000	\$3,462,500	\$3,350,000	\$3,280,000	\$3,210,000	\$3,140,000	\$3,070,000	\$3,000,000	\$2,910,000	\$2,820,000	\$2,730,000
4	\$30,000,000+	\$3,350,000	\$3,162,500	\$2,975,000	\$2,787,500	\$2,600,000	\$2,500,000	\$2,400,000	\$2,300,000	\$2,200,000	\$2,100,000	\$1,990,000	\$1,880,000	\$1,770,000

		Purchase Price By Leasing Year (continued)												
		N 14 Years	O 15 Years	P 16 Years	Q 17 Years	R 18 Years	S 19 Years	T 20 Years	U 21 Years	V 22 Years	W 23 Years	X 24 Years	Y 25 Years	
1	\$0 - \$10,000,000	\$4,620,000	\$4,600,000	\$4,580,000	\$4,560,000	\$4,540,000	\$4,520,000	\$4,500,000	\$4,470,000	\$4,440,000	\$4,410,000	\$4,380,000	\$4,350,000	
2	\$10,000,000 - \$20,000,000	\$3,650,000	\$3,600,000	\$3,530,000	\$3,460,000	\$3,390,000	\$3,320,000	\$3,250,000	\$3,180,000	\$3,110,000	\$3,040,000	\$2,970,000	\$2,900,000	
3	\$20,000,000 - \$30,000,000	\$2,640,000	\$2,550,000	\$2,450,000	\$2,350,000	\$2,250,000	\$2,150,000	\$2,050,000	\$1,930,000	\$1,810,000	\$1,690,000	\$1,570,000	\$1,450,000	
4	\$30,000,000+	\$1,660,000	\$1,550,000	\$1,410,000	\$1,270,000	\$1,130,000	\$990,000	\$850,000	\$690,000	\$530,000	\$370,000	\$210,000	\$50,000	

Additional Purchase Price Reductions (Does not apply for Quadrants 1A through 1Y)

Where the actual or projected Municipal Revenue falls within the midrange between two revenue targets, the Purchase Price will be adjusted to proportionally decline between the two revenue thresholds. The following formula will determine the additional reduction in the Purchase Price.

Additional Purchase Price Reduction =

$$(\text{Quadrant Price} - \text{Higher Quadrant Price}) * \left[\frac{\text{Actual or Projected Revenue} - \text{Lower Revenue Threshold}}{\text{Upper Revenue Threshold} - \text{Lower Revenue Threshold}} \right]$$

An example of the application of a possible additional Purchase Price reduction is as follows:

The following is an example to illustrate the application of the Additional Purchase Price Reduction Formula:

If the Lessee elects to complete its Purchase Obligation during the 20th year of the Term and has completed enough of the Development to generate \$25 Million in Municipal Revenue over the 25 years of the Term, the following formula shall apply:

Key values for the Formula:

Quadrant Price = Quadrant 3T, \$2,050,000
 Higher Quadrant Price = Quadrant 4T, \$850,000
 Actual or Projected Revenue = \$25,000,000
 Lower Revenue Threshold = \$20,000,000
 Upper Revenue Threshold = \$30,000,000

Additional Purchase Price Reduction =

$$(\$2,050,000 - \$850,000) * \left[\frac{\$25,000,000 - \$20,000,000}{\$30,000,000 - \$20,000,000} \right]$$

Additional Purchase Price Reduction = (\$1,200,000) * (0.5)

Additional Purchase Price Reduction = \$600,000

Therefore, based on the price adjustment above, the final Purchase Price for the Purchase Obligation would be:

Purchase Price = Quadrant Price (3T) – Additional Purchase Price Reduction

Purchase Price = \$2,050,000 - \$600,000

Purchase Price = \$1,450,000

Schedule "C"**Letter of Credit**

[Lessee's Financial Institution's Letterhead]

Date of Issue:

Irrevocable Standby Letter of Credit

No.:

Financial Institution Branch No.:

Amount: Not exceeding CAD \$●

Date of Expiry:

Applicant: Fundy Quay Development Inc.

Lease: Lease dated the ● day of ●, between The City of Saint John, as lessor, and the Applicant, as lessee.

To: The City of Saint John (hereinafter called the "Beneficiary")

Pursuant to the request of [name of Lessee] (hereinafter called "the Applicant"), we, [name of bank/financial institution], hereby establish and give to you an irrevocable standby letter of credit no. ● in your favour in the total amount of \$● (Canadian dollars) which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you which demand we shall honour without enquiring whether you have a right as between yourself and the said Applicant to make such demand, and without recognizing any claim of the said Applicant for objection by it to payment by us.

Your drawing by written demand for payment must bear reference to this letter of credit no. ● and be accompanied by:

- (a) a certificate signed by two officers of the Beneficiary certifying that the Applicant is in default of its contractual obligations under the Lease and that you are entitled to draw on this irrevocable standby letter of credit and that an amount of up to \$● (Canadian dollars) be paid; and
- (b) presentation of the original of this letter of credit.

Partial and multiple drawings are permitted under this letter of credit. All banking charges are for the account of the Applicant.

This irrevocable standby letter of credit no. ● shall expire on the day of subject to the following:

This letter of credit shall be deemed to be automatically extended, without amendment for successive one year periods from the present day or any future expiration date, unless cancelled upon receipt of this original letter of credit accompanied by your written authorization to us to cancel same;

The drawings under this irrevocable standby letter of credit are to state that they are drawn under [insert name of financial institution] irrevocable standby letter of credit no. ● .

The rights of the Beneficiary hereunder in respect of this irrevocable standby letter of credit shall continue in full force and effect and shall not be waived, released, discharged, impaired or affected by reason of the release or discharge of the Applicant in any receivership, bankruptcy, insolvency, winding up or other creditor's proceedings, including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), or the surrender, disclaimer, repudiation or termination of the Lease.

Yours very truly,

Authorization/Signature of Financial Institution

Authorization/Signature of Financial Institution