

**AMENDMENT No. 4**  
**To**  
**“FUNDY QUAY” OPTION TO LEASE AGREEMENT**

THIS AGREEMENT made in duplicate this \_\_\_\_ day of January, 2021;

**BETWEEN:**

**THE CITY OF SAINT JOHN**, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, maintaining its City Hall at 15 Market Square, Saint John, NB E2L 4L1 (the "**City**")

-and-

**FUNDY QUAY DEVELOPMENTS INC.**, a body corporate duly registered under the laws of the Province of New Brunswick, maintaining its registered office at 37 Rothesay Park Rd., Rothesay, NB, E2E 5T7 ("**Developer**")

**PREAMBLE:**

- A. The Parties entered into an Option to Lease the lands and premises known as “Fundy Quay” in the City of Saint John dated December 19, 2019, with a view to enable the Developer to develop Fundy Quay to accommodate a mix of uses (the “**Option**”).
- B. On March 30, 2020, the Parties executed Amending Agreement No. 1 to the Option which amends section 2.2(b) of the Option to extend the timeline for the Parties to settle the final form of the Lease to “on or before May 29, 2020”.
- C. On June 9, 2020, the Parties executed Amending Agreement No. 2 to the Option which amends section 2.2(b) of the Option to extend the timeline for the Parties to settle the final form of the Lease to “on or before August 7, 2020”.
- D. On December 14, 2020, the Parties executed Amending Agreement No. 3 to the Option which amends sections 2.2(b), 2.3(a), 2.3(b), 2.6(a), and 3.2 of the Option to effect several changes agreed to by the Parties.

E. The Parties now wish to further amend the Option in the manner set out herein.

F. The Parties therefore agree as follows:

### **Interpretation**

1. Capitalized terms used but not defined in this Agreement shall have the respective meanings given to them in the Option.

### **Amendments**

1. The Parties agree to amend section 2.2(a) of the Option by deleting paragraph (ii) and replacing it with the following:

“(ii) The Parties also agree that in the event the Owner receives the funding referenced at s. 4.2 and undertakes the work contemplated at s. 4.1(b) and (c) but does not complete the entirety of it before the expiry of the Option Period, then in such an event, the rent provisions of the Lease will be revised to reflect a temporary reduction to the Rent for each month the entirety of the said work is not substantially complete.”

2. The Parties agree to amend section 2.2(a) of the Option by adding the following paragraph (iii) immediately following paragraph 2.2(a)(ii):

“(iii) The Parties also agree that in the event that the Owner completes the infrastructure work over the area of the Site described at paragraph 2.4(c)(i) but does not complete the infrastructure work for the remainder of the Site, and the Developer elects to exercise its Option, the rent provisions of the Lease will be revised to reflect a temporary reduction to the Rent for each year that the infrastructure work on the remainder of the Site is not substantially complete. Such temporary Rent reduction shall be a proportional reduction based on the actual square footage of the Site upon which the infrastructure work has been completed, and to which the Developer has full and unencumbered access to commence construction, as compared to the total square footage of the Site.

3. The Parties agree to amend section 2.2(b) of the Option by deleting the words “on or before January 31, 2021” and replacing them with “on or before February 26, 2021.”
4. The Parties agree to amend section 2.3(a) of the Option by deleting the words “on January 30, 2021” and replacing them with “on February 26, 2021.”
5. The Parties agree to amend section 2.3(b) of the Option by deleting the words “commencing on January 31, 2021” and replacing them with “commencing on February 26, 2021.” Furthermore, the Parties agree to amend section 2.3(b) of the

Option by deleting the words “payable on or before January 31, 2021” and replacing them with “payable on or before February 26, 2021.”

6. The Parties agree to delete section 2.4(c) of the Option and to replace it with the following:

“c) In the event that the owner does not complete the public infrastructure construction contemplated at section 4.1 over the area of the Site described in paragraph i. below before the expiry of the Initial Option Period, upon service of the Extension Notice, the Owner shall grant the Extension Period;

- i. An area beginning in the south-east corner of PID 55235113 adjacent to Water Street and extending west along the seawall to the south-western corner of PID 55235113, the width of which is measured 55 meters north of the south-western corner of PID 55235113 and extends perpendicular to Water Street, as depicted in orange on the map attached hereto as Schedule “A”.

7. The Parties agree to amend section 2.6(a) of the Option by deleting the words “on January 31, 2021” and replacing them with “on February 26, 2021.”

### **General Provisions**

8. Except as expressly amended, modified and supplemented hereby, the provisions of the Option are and remain in full force and effect and shall be read with this Agreement mutatis mutandis.
9. This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax or electronic transmission shall constitute good delivery.
10. This Amending Agreement is for the benefit of and binds the Parties and their successors and permitted assigns.

*[signature page to follow]*

IN WITNESS WHEREOF the Parties have executed this Agreement.

**THE CITY OF SAINT JOHN**

\_\_\_\_\_

Mayor

\_\_\_\_\_

Common Clerk

Common Council Resolution Date: January  
25, 2021

**FUNDY QUAY DEVELOPMENTS INC.**

By\_\_\_\_\_

Name: Chris Elias

Title: VP – Operations

# Schedule "A"

Map of the area described at section 2.4 c) i.

