

## **AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** is made the \_\_\_ day of January 2019.

### **BETWEEN:**

**TOWN OF AMHERST**, a municipal corporation in the Province of Nova Scotia,  
(hereinafter called the "Town")

-and-

**VIA RAIL CANADA INC**, a corporation incorporated under the laws of Canada with  
Head Office in the City of Montreal in the Province of Quebec,  
(hereinafter called the "VIA")

**WHEREAS** VIA has determined to convey certain real property within the boundaries of  
the Town of Amherst to the Town, subject to certain terms and conditions as set out herein;

### **THIS AGREEMENT WITNESSETH AS FOLLOWS:**

1. In the Agreement, the parties agree to the following terms and conditions:
  - a. "Common Area Lands" means the Parking Lots;
  - b. "Lands" mean the lands owned by VIA except the rail passenger platform in the Town of Amherst as shown on Schedule "A" hereto and being:
    - i. PIDs 25503152 [lot 18-1 & PID 25503178 [lot 18-3] -the Parking Lots
    - ii. PID 25503160 [lot 18-2] the Station Property; and
    - iii. PID 25503194 [lot 18-5] Station Street;all of which are shown on the plan attached hereto as Schedule "A";
  - c. "Station Property" mean PID 25503160 together with the VIA railway station located thereon; and
  - d. "VIA's Terms and Conditions" means the terms required by VIA for the future use of the Station Property as attached hereto as Schedule "B".
2. In consideration of the terms, conditions, covenants and provisions herein contained and the payments to be made as herein specified, VIA agrees to convey to the Town the Lands on the terms and conditions as provided in this agreement. For greater certainty, the parties confirm that VIA is retaining ownership of PID 25503186, being the rail passenger platform.
3. Transfer of title of the Lands will be by deed, drawn at the expense of the Town and the title and use of the Common Area Lands and the Station Property shall be subject to VIA's Terms and Conditions as set out in Schedules "B" hereto and as affirmed in the Lease annexed hereto as Schedule "C" hereto and the Access and Use Agreement annexed hereto as Schedule "D" .

4. The Lands and all improvements are being transferred to the Town "*as is, where is*" with no warranty or guarantee of any nature. Notwithstanding the foregoing, the Town has received an environmental assessment report on the condition of the railway station building at this time, the whole for information purposes only and without any liability whatsoever.
5. VIA shall pay to the Town one payment for \$90,000 payable on the Closing Date. For greater certainty, this amount will not be payable if there is no closing.
6. On the Closing Date, the Town and VIA shall enter into the following agreements:
  - a. A lease of a portion of the Station Property in the form attached hereto as Schedule "C"; and
  - b. An agreement in relation to VIA's continued use of the Common Area Lands in the form attached hereto as Schedule "D".
7. The Town may transfer the Station Property to a party approved in writing by VIA and the following rules shall apply:
  - a. The approved transferee shall assume responsibility for assuming the terms of the lease in the form attached hereto as Schedule "C"; and
  - b. The Town shall be deemed to be released from responsibility for fulfilling the terms of the lease VIA's Terms and Conditions in the lease in the form attached hereto as Schedule "C".
8. VIA confirms that it has approved the eventual transfer of title to and immediate occupation of the Station Property by J. E. Bembridge Enterprises Limited ("Bembridge") for its development of the Station Property as a restaurant or restaurants; provided however that Bembridge shall assume all responsibility for Station Lease attached hereto as Schedule "C"). For greater certainty, the Town acknowledges that Bembridge will not occupy the Station Property prior to closing.
9. The transfer of the Station Property has been approved by Parks Canada in accordance with the Canadian Heritage Railway Station Protection Act subject to following conditions which the Town undertakes to comply with:
  - 1) The Town will respect, protect and not impair or adversely affect the heritage character, as set out in the Heritage Character Statement prepared by the Parks Canada Agency for the Historic Sites and Monuments Board of Canada, dated March 1993, of the station.
  - 2) At the time of transfer of ownership, the Town designates the station pursuant to the relevant provincial or municipal legal authorities to ensure the continuing protection of the heritage character of the station within provincial jurisdiction.

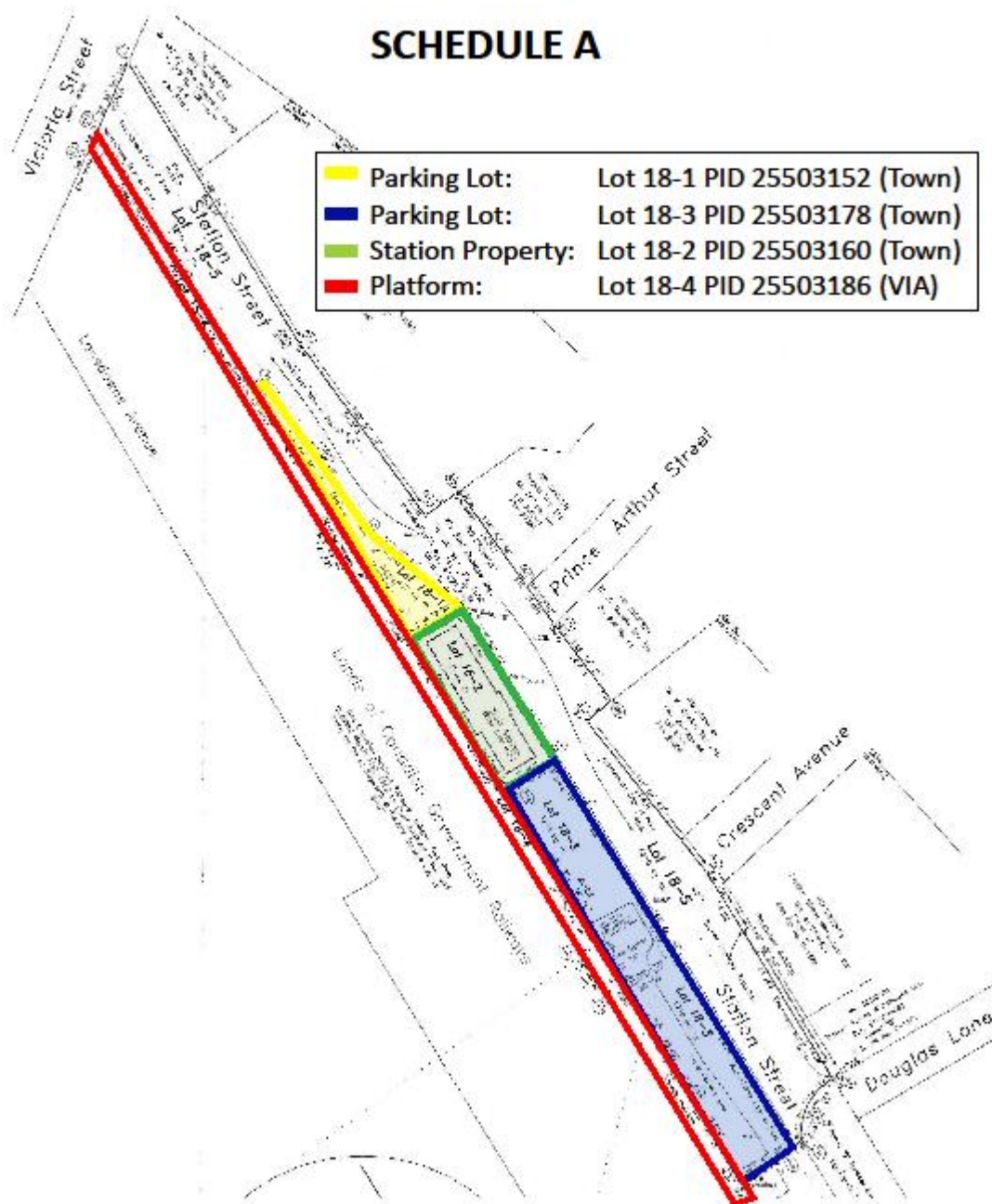
- The above terms and conditions recognize the importance of this station, designated, as heritage railway station for the purposes of the *Heritage Railway Stations Protection Act*, for the reasons set out in the Heritage Character Statement referred to in section 1 above.

- [illegible]

Name and Title:

**SCHEDULE A  
PLAN OF LANDS**

**SCHEDULE A**



**SCHEDULE B**  
**VIA TERMS AND CONDITIONS**

1. The Town may use the Station Property for any purposes but will ensure that the Station Property remains a railway station and will designate a portion of the Station Property to be used by VIA in the manner specified herein and that the Town's use of the Station Property shall not cause an adverse effect upon VIA's operations.
2. VIA shall retain ownership and full use of the rail passenger platform adjacent to the CNR tracks and the Town will provide snow removal services for the rail passenger platform.
3. VIA shall have access to sufficient parking spaces for its customers, free of rent, maintenance, operating or capital costs. The Town shall comply with CNR's conditions.
4. VIA shall have use of a heated/lighted waiting area for its customers and to host technology inside the building either in a separate space used by the business occupying the space or incorporated in the space being used by this business. Space shall be provided free of rent, maintenance, operating or capital costs.
5. VIA shall retain the right to maintain its corporate and business signage, free of any charges.
6. VIA shall retain a right of first refusal, should the Town decide to divest of the Station Property or any parts thereof, as more fully described in the Station Lease, provided however that VIA shall waive such right of first refusal if the Town decide to divest the Property to an entity, including J. E. Bembridge Enterprises Ltd., which undertakes to be bound by all the terms and conditions of the Agreement between VIA and the Town, including this right of first refusal;
7. The Town shall indemnify VIA and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Station Property caused by the Town's breach of its obligations towards VIA or by the negligence of the Town or its representatives.
8. Without limiting the generality of Section 6:
  - a. The Town shall maintain Commercial General Liability Insurance covering the liability of the Town and its representatives for bodily injury, including death, for a minimum coverage of \$5,000,000 per occurrence. The insurance shall contain no exclusion related to services or work in proximity to the railway

tracks. The insurance shall include VIA as an additional insured but only with respect to the Town's obligations towards VIA and shall include coverage for:

- i. Personal injury;
- ii. Bodily injury;
- iii. Property damage, including loss of use of property;
- iv. Contingent employer's liability;
- v. Contractual liability;
- vi. Cross liability and/or severability of interest; and
- vii. Non-owned automobile liability

and shall not provide for any exclusion in relation to railway activity.

- b. The Owner shall maintain the All Risks Insurance upon the building on the Station Property for the full replacement cost of the building.
- c. A Standard Owners Form Automobile Liability Insurance in respect of licensed vehicles covering owned and leased vehicles or vehicles operated for the Town and its representatives for limits for a minimum amount of \$2,000,000 per occurrence for bodily injury, death and damage to property with no pollution exclusion. The Town shall supply the same coverage for its own vehicles, subcontractors, agents and distributors.

The policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

9. Prior to the commencement of the Agreement, the Town shall provide VIA with certificates of insurance issued in the name of VIA, dated and signed by an authorized representative of the Town's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to VIA within thirty (30) days after renewal should such renewal occur during the Agreement. The above insurance policies shall include an endorsement whereby VIA shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.
10. The acquisition and maintenance in force of the above insurance provided for in this Section of the Agreement by the Town shall in no manner be construed as to restrict or waive the liabilities, responsibilities or obligations of the Town and its representatives under the Agreement.
11. As of the effective date of the transfer of ownership of the Station, VIA shall remove the Station from its insurance, as the case may be, whether VIA has received a certificate of insurance from the Town or not.

The above terms and conditions shall be confirmed in a formal lease from the Town to VIA containing VIA's standard terms and conditions, for a term of 20 years commencing on March 1, 2019 with a renewal option for an additional term of 20 years. This formal lease shall be mutually agreed upon by the parties no later than March 1, 2019.

**SCHEDULE C  
STATION LEASE**

**VIA Contract No:**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT is

**BETWEEN:**

**TOWN OF AMHERST**

98 East Victoria Street  
Amherst, Nova Scotia  
B4H 1X6

(hereinafter referred to as the "**Landlord**")

OF THE FIRST PART

**AND:**

**VIA RAIL CANADA INC.**

3 Place Ville Marie  
Montreal, Quebec  
H3B 2C9

(hereinafter referred to as the "**Tenant**")

OF THE SECOND PART

**WHEREAS** concurrently with the signature of this Lease Agreement, the parties shall enter into an Access and Use Agreement whereby the Town of Amherst agrees to provide irrevocable access to VIA Rail Canada Inc. to the parking lots and rail passenger platform of the Station Property;

**WHEREAS** in consideration of the rents, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

**1.0 LEASE**

- 1.1 Subject to the terms and conditions herein the Landlord agrees to lease to the Tenant and the Tenant agrees to lease from the Landlord (the "**Premises**"):

1. for exclusive use, sufficient, adequate and suitable space at the Amherst Station at 27 Station Street, Amherst, NS and being PID 25503160 (the “**Station Property**”) for the Tenant’s technology and operational requirements as shown on and described in **Schedule “A”**. In any event, the location and square footage of the space provided by the Landlord for the Premises shall be sufficient for the Tenant’s requirements as identified in Schedule A attached, provided that the Landlord may relocate the Premises in the future upon sixty (60) days’ prior written notice and upon paying the costs of relocating all of the Tenant’s equipment into the relocated premises with similar leasehold improvements as existed before the relocation, subject to the Tenant’s prior written approval which approval may not be unreasonably withheld.
  2. for use in common with others, of the common areas of the Station Property, waiting room, public washrooms (including handicap accessible washrooms) along with the Station Property lands i.e. the lands within the boundaries of PID 25503160 and outside the Station Property.
- 1.2 The parties agree that the Premises shall be in the Location marked as VIA Designated Waiting Area and approximately 50 square feet of a room for VIA technology as shown in Schedule “A”.
  - 1.3 The Premises shall be used by the Tenant only for the operation of rail passenger services and related activities in the Station Property similar to the use currently operated by the Tenant in the Station Property.
  - 1.4 For greater certainty, the Landlord acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Station Property. The Landlord acknowledges that such Emissions, at any time of day or night, are necessarily incidental to the Tenant’s railway operations. The Landlord has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. The Tenant shall not be responsible to the Landlord for any damage to property or persons located on the Station Property as a result of its railway operations. In addition to its other obligations under this Lease, the Landlord agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the Tenant or any governmental authority.
  - 1.5 The Landlord recognises that the Tenant is a major tenant and shall provide facilities and services accordingly and shall seek the approval in writing of the Tenant for any substantive changes to the operation of the Premises, such approval not to be unreasonably withheld. The Landlord may use the Station Property for any purposes but will ensure that the Station Property remains a railway station and will designate a portion of the Station Property to be used by the Tenant in the manner specified herein and that the Landlord’s use of the Station Property shall not cause an adverse effect upon the Tenant’s operations.



## 2.0 **TERM**

- 2.1 This Lease shall be for a term of Twenty (20) years commencing on the 1<sup>st</sup> day of March 2019 being the date the Tenant shall transfer to the Landlord Station Street, the Station Property, and its other land in Amherst, Nova Scotia and being PIDs 25503152, 25503160, 25503178, and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").
- 2.2 It understood that the Tenant will not have access for itself or its customers to the waiting area and washrooms in the Premises in the Station Property building until the initial renovations are completed on the building by the Landlord or the occupier J.E. Bembridge Enterprises Limited. Such renovations shall commence by May 1<sup>st</sup>, 2019 and completed no later than the 31<sup>st</sup> day of December 2019. Such renovations shall take into consideration that the Tenant's technology shall be accommodated.

## 3.0 **RENT**

- 3.1 The Tenant shall pay the Landlord a rent of one-dollar (\$1.00) (the "**Rent**") payable on or before the Commencement Date.
- 3.2 Rent is inclusive of operating and capital costs, insurance and taxes.

## 4.0 **RENEWAL**

- 4.1 The Tenant may, without restriction and so long as it is not in default, renew the Lease for one (1) additional term of Twenty (20) years each by giving a sixty (60) day notice to the Landlord prior to the end date of the Lease, on the same terms and conditions as are applicable to the initial Lease, except with regard to rent.

## 5.0 **OPERATING COSTS**

- 5.1 For the initial Term and subsequent renewal term the Rent shall be inclusive of all property costs whatsoever namely costs for gas, electricity, water/sewer, maintenance, property taxes, snow removal, and common areas, which operating costs shall be borne solely by the Landlord. CN Flagging costs will be borne by the Tenant.

## 6.0 **REPAIRS, MAINTENANCE AND OPERATION**

- 6.1 The Landlord shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Station Property building and Premises, building services systems, improvements, fixtures and equipment, and any addition or alteration thereto, now or thereafter located thereon and, at its own expense, operate, maintain and keep the same in good order, repair and condition throughout, both exterior and interior, and promptly make all needed repairs and replacements, structural or otherwise, (of a quality and class at least

equal to the original) including the roof, foundations and appurtenances, water, sewer and gas connections, pipes and mains, electrical, heating, and ventilating equipment, and all other fixtures, machinery, facilities and equipment belonging to or connected with the Station Property building and Premises, subject to reasonable wear and tear, damage by the Tenant, and obligations of the Tenant to repair or pay cost thereof.

6.2 The Landlord shall pay all charges for the utilities and covenants at its sole cost and expense to:

- (a) Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation;
- (b) Provide all utility services to the Station Property including water, sewer, electrical, natural gas/oil and garbage removal;
- (c) Keep the lands appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (d) Remove snow and ice from the land appurtenant to the Station Property building and Premises;
- (e) Provide janitorial services and shall maintain the Premises in a good and reasonable state of cleanliness as outlined in Schedule B; and
- (f) To provide all other services set out in Schedule B.

## **7.0 REPAIR OR REPLACEMENT IN THE EVENT OF DAMAGE OR CONSTRUCTION AND ENTRY, CONSTRUCTION AND DEVELOPMENT**

7.1 If the Premises are damaged by fire or any other hazard such that the Premises are rendered unusable or such that convenient access is prevented, then the Landlord shall, within thirty (30) days of the occurrence of the damage, initiate that repair or replacement of the Premises and forthwith allow an abatement of the Rent which recognizes the nature and extent of the damage, or inconvenience, until such time as the Premises have been rebuilt or access restored. If the Landlord does not initiate the restoration of the Premises or access within the said thirty (30) days, or having commenced the restoration, does not proceed to complete it with reasonable dispatch, then the Tenant may give the Landlord fourteen (14) days' notice and thereafter may undertake the restoration itself and the Landlord shall be responsible for all costs associated with such restoration. For greater clarity, initiate the repair or replacement shall mean any of inspection, design, applying for permits, repair, or replacement or other acts to prepare for or complete the work undertaken. Notwithstanding the foregoing in Section 7.1, the Tenant shall be responsible and pay for any damage or destruction caused by it or those for whom it is in law responsible. The Landlord may undertake work provided the Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate facilities required to maintain the Tenant's operation and Services.

7.2 The Landlord may undertake work provided:

1. The Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain the Tenant's operation and Services.
2. Access for emergency vehicles and maintenance vehicles to the Station and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to the Tenant, acting reasonably, being made.
4. During any period when the Station Property or the railway platform is inaccessible or when accessibility is substantially reduced, the Landlord shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of the Tenant's Services including necessary access to rail passenger platforms, Station Property, security, access to the temporary accommodation from the street and parking, parking for passengers within reasonable distance of the Lands, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Lands, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
5. Such alternate lands and facilities shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Lands and have a reasonable access to the rail passenger platform.
6. Any such alternative arrangements shall be at the Landlord's sole expense and shall be subject to the approval of both parties, acting reasonably.
7. If the Landlord does not provide acceptable alternate accommodations prior to the Premises or Lands becoming unusable then the Tenant may immediately undertake the provision of the reasonable alternate accommodations itself and the Landlord shall be responsible for all reasonable costs associated with such work or the Tenant may take whatever action under law is required to maintain its operation and Services.
8. The parties acknowledge that the Station Property does not have Lands for the provision of temporary facilities in the event of major damage to the Station Property Building. The parties agree that if temporary facilities are required outside the Building, these temporary facilities shall be within a moveable building or trailer to be moved by the Landlord unto the adjacent parking lot on PID 25503178 [Lot 18-3].

- 7.3 Any work in the vicinity of the platform, tracks or capable of falling into the railway corridor shall be approved by the Tenant and CN in writing and be protected by a flagman at the Tenant's cost.

## **8.0 ENVIRONMENTAL MATTERS**

- 8.1 The Landlord shall be responsible for any environmental contamination caused by the Landlord, those for whom the Landlord is in law responsible and, subject to the Tenant's responsibilities in this Section 8.1, any third parties, and the Tenant shall be responsible for any environmental contamination caused by the Tenant or those for whom the Tenant is in law responsible or by the Tenant's customers.

## **9.0 NOTIFICATION OF DEFECT**

The Tenant shall promptly give the Landlord notice in writing of any accident, defect or damage within the Premises, systems or services for which the Landlord has an obligation under this Lease and which have come to the Tenant's attention. Subject to Section 7.0, if the Landlord fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts the Tenant's use of the Premises, then the Tenant may undertake any necessary repairs and the Landlord will compensate the Tenant for all costs incurred.

## **10.0 ACCESS AND USE**

- 10.1 The Landlord shall permit the public access to and use of the Premises for the purpose of embarking and disembarking from passenger trains and use of the Premises facilities including in particular without limiting the generality hereof, access to and use of waiting areas and washrooms.
- 10.2 The Landlord will ensure the Premises are open and such access and use shall be allowed during all periods when the Tenant's scheduled arrival time of the train services. In the event that the Tenant makes any change in the scheduled arrival times of the train services, Tenant shall make best efforts to provide sixty (60) days advance written notice to the Landlord and such changes shall be accommodated by the Landlord. It is expected that the Landlord will identify, in consultation with the Tenant, other means or alternative arrangements to accommodate VIA customers if train schedule is outside of the normal operating hours of the restaurant.
- 10.3 The Landlord shall allow the Tenant to install various equipment and signs needed for the operation and advertising of its services including but not limited to: electronic ticket machines; train information display monitors with either local or remote access; poster displays; remote access PA, the location of which shall be subject to the prior written approval of the Landlord which approval may not be unreasonably withheld. The Tenant shall retain the right to maintain its corporate and business signage, free of any charges.

- 10.4 The Landlord shall permit the Tenant, its employees, agents or servants to enter the Premises at any reasonable time as may be required by the Tenant. VIA'S employees shall be provided access to VIA's Technology space all times from the exterior door "C" as shown on Schedule "A".

#### **11.0 QUIET ENJOYMENT**

- 11.1 The Landlord hereby covenants with the Tenant for quiet enjoyment, subject to the terms of this Lease Agreement.

#### **12.0 COMPLIANCE WITH LAWS**

- 12.1 The Tenant and Landlord shall each comply with and observe all federal, provincial and local government laws, bylaws, rules, regulations, orders, permits and licenses in force with respect to the Premises and any alterations to the Premises with respect to each of their respective obligations under this Lease Agreement.

#### **13.0 ASSIGNMENT**

- 13.1 Subject to the Tenant's right of first refusal herein, the Station may be sold and this Lease may be concurrently assigned by the Landlord to the Landlord's successor in title without the Tenant's consent provided that the landlord's successor in title undertakes in writing to the Tenant to be bound by all the terms and conditions of the Lease and agreement between the Landlord and the Tenant. Upon sale of the Station Property and assignment of this Lease by the Landlord, the Landlord shall be released from the covenants of the Lease and the Landlord shall have no further obligation to the Tenant.
- 13.2 This Lease shall not be assigned or transferred by the Tenant without the prior written consent of the Landlord except to a successor corporation providing passenger railway service.
- 13.3 The Tenant shall retain a right of first refusal whereby the Landlord shall offer the Tenant the right to purchase the Station Property before the Landlord offers it to third parties (i.e. the Tenant shall be the first to make an offer to purchase rather than having to match an offer received by the Landlord from a third party) and the right to match an offer made by a third party if the Tenant does not initially made an offer itself, should the Landlord decide to divest of the Station Property, provided however that the Tenant shall waive such right of first refusal if the Landlord decide to divest the Station Property to an entity, including J. E. Bembridge Enterprises Ltd., which undertakes to be bound by all the terms and conditions of the Lease between the Tenant and the Landlord, including this right of first refusal. The Tenant specifically confirms that it has approved the sale of the Station Property to J. E. Bembridge Enterprises Ltd.

**14.0 DIRECTION AS TO EMERGENCY AND PAYMENTS**

- 14.1 The Landlord may from time to time direct the Tenant to use a telephone number designated by the Landlord for notifying the Landlord of any emergency situation.
- 14.2 Until further notice the Tenant shall pay Rent and any other amount payable under this Lease at the office of the Landlord set forth in Section 20.0.

**15.0 INSURANCE**

- 15.1 The Landlord undertakes to obtain and maintain, at its own expense, for the duration of this Lease, the following insurance coverage with insurers carrying a financial rating of "A" or better:
- a) Commercial general liability covering the liability of the Landlord and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include the Tenant as an additional insured and shall provide for the following coverage:
    - Personal injury
    - Bodily injury
    - Unlicensed vehicles / motorized equipment
    - Property damage, including loss of use of property
    - Contingent Employer's Liability
    - Contractual Liability assumed under this contract
    - Cross Liability and/or Severability of interests
    - Non-owned automobile liability
  - b) The Landlord shall maintain the All Risks Insurance upon the building on the Station Property for the full replacement cost of the building.
  - c) Automobile liability insurance covering the liability of the Landlord for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Landlord for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of the Lease, the Landlord shall provide the Tenant with certificates of insurance issued in the name of the Tenant, dated and signed by an authorized representative of the Landlord's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to the Tenant within thirty (30) days after renewal should such renewal occur during the Lease. The above insurance policies shall include an endorsement whereby the Tenant shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.

The acquisition and maintenance of insurance by the Landlord as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Landlord and its representatives under this Lease.

The Tenant confirms that it is self-insured and may provide a letter of confirmation upon request from the Landlord on or after the effective lease start date.

## **16.0 NO WASTE OR NUISANCE**

### **16.1 The Tenant shall not:**

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Premises; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

## **17.0 INDEMNITY**

The Landlord shall indemnify the Tenant and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Station caused by the Landlord's breach of its obligations towards the Tenant or by the negligence of the Landlord or its representatives.

Neither party shall be liable to the other party in connection with this Lease, whether based on contract, tort (including negligence and strict liability), under warranty or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town's emergency call center for immediate response. If such material default is not remedied within the reasonable period indicated in VIA's notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Town's (or its successors) costs.

**18.0 YIELDING UP**

- 18.1 The Tenant shall surrender the Premises at the expiration or earlier termination, of the Term in good repair (together with chattels as the Tenant may elect to leave, if any) to the Landlord, excepting only reasonable wear and tear, damage from fire, storm, tempest and other casualty, and removal of tenant's chattels and the Tenant shall not be liable to pay compensation or to make any other payment to the Landlord in respect of restoration or repair of the Premises.

**19.0 TERMINATION**

The Tenant shall have the right to terminate this Lease by giving a notice in writing to the Landlord sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

**20.0 NOTICE**

- 20.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Landlord:

**TOWN OF AMHERST**  
98 East Victoria Street  
Amherst, NS  
B4H 1X6  
Attention: Greg Herrett CAO

if to the Tenant:

**VIA RAIL CANADA INC.**  
3 Place Ville-Marie, Suite 500  
Montréal, QC  
H3B 2C9  
Attention: Senior Manager, Real Estate

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by



strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

**21.0 LAW TO THE CONTRARY**

21.1 This Lease shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

**22.0 SEVERANCE**

22.1 If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Lease.

**23.0 GOVERNING LAW**

23.1 This Lease shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

**24.0 WAIVER**

24.1 Waiver by the Landlord of any default by the Tenant shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

**25.0 REFERENCES**

25.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

**26.0 AMENDMENT**

26.1 This Lease may not be modified or amended except by an instrument in writing signed by the Landlord and the Tenant.

**27.0 REMEDIES NOT EXCLUSIVE**

- 27.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

**28.0 CHARGES ON TITLE**

- 28.1 The Tenant shall abide by and observe all requirements and restrictions on the title to the Premises registered prior to the Commencement Date.

**29.0 CAPTIONS**

- 29.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

**30.0 INTERPRETATION**

- 30.1 Wherever the singular or masculine or neuter is used in this Lease, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

**31.0 ENTIRE LEASE**

- 31.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Lease along with the Access and Use Agreement upon their execution.

**32.0 TIME OF ESSENCE**

- 32.1 Time is of the essence of this Lease.

**33.0 FURTHER ASSURANCES**

- 33.1 The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Lease.

**34.0 COVENANTS AND CONDITIONS**

- 34.1 All of the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

### 35.0 CONFIDENTIALITY

- 35.1 This Lease and the information contained herein are confidential, subject to the provisions of any acts, notably the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

### 36.0 ACKNOWLEDGMENT

The parties acknowledge that:

- (1) this Lease is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Lease. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Lease from a legal advisor of their choice; and
- (2) the parties negotiated this Lease jointly and this Lease shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

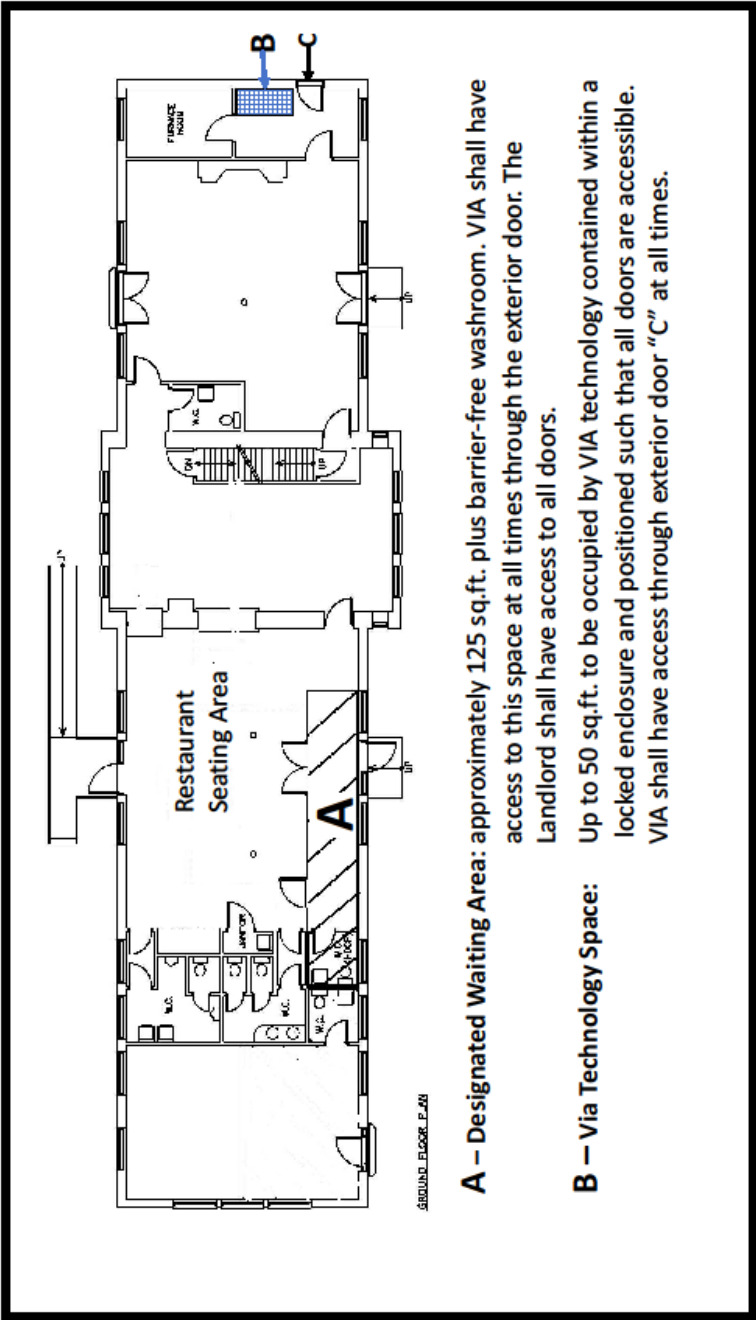
We have understood, consented to and signed two original copies of this Lease on the day and year below written.

VIA RAIL CANADA INC.		TOWN OF AMHERST		TOWN OF AMHERST	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

**SCHEDULE "A"**

**DESCRIPTION OF PREMISES & PLANS**

**SCHEDULE A**



## **SCHEDULE "B"**

### **LANDLORD'S SERVICES**

The Landlord covenants to supply the following specified services:

1. **ELECTRICAL, MECHANICAL & PLUMBING INSTALLATIONS**

Provide all utilities and male, female and handicapped washrooms appropriate to the Premises and its use and the regular and proper maintenance of all electrical (including lamp fixture ballasts), mechanical and plumbing installations in the Premises and necessary for their adequate operation. Provide cleaning and maintenance of all lighting fixtures and installation of such new tubes and bulbs as may be required.

2. **HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS**

Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation.

3. **HOT AND COLD WATER**

Provide an adequate hot and cold water supply to the Premises.

4. **REDECORATION & REFURBISHMENT**

Undertake a regular program of repair of all public and common areas of the Premises to maintain them in a suitable condition for passenger use.

5. **REFUSE DISPOSAL**

Provide proper sanitary storage and weekly (or more often) disposal of all refuse as needed to ensure a clean and odour free facility to the extent reasonably possible.

6. **EMERGENCY FACILITIES AND SECURITY**

Provide regular and proper maintenance and testing of all emergency and security installations, including the maintenance of fire alarms, sprinklers, fire extinguishers, clear exit corridors and stairs, closure of fire doors, development of an Emergency Response Plan and the monitoring of intrusion alarms and hold-up alarms.

7. **PROVISION OF PAY PHONE AND SEATING**

To permit a pay phone and seating for Tenant passengers within the main waiting area of the Premises at the expense of VIA or the public utility or telecommunication providing the pay phone.

8. **PEST CONTROL**

Provide a regular service to ensure that no infestations of pests occur or that they are dealt with in a reasonable manner.

9. **JANITORIAL**

The regular and effective cleaning of the exterior of the Premises and its windows, the interior common areas and lobbies and washrooms in joint use with any other occupants together with the maintenance of proper and adequate supplies for those washrooms, plus the provision of janitorial services within the Premises, including but limited to:

- Daily cleaning of all porcelain surfaces, including toilets and sinks;
- Maintain the required amounts of toilet paper, towels, soap and deodorizers;
- Daily cleaning of all dispensers for toilet paper, towels and soap;
- Daily dusting, sweeping, and spot cleaning of all surfaces including windows as well as sweeping, vacuuming, washing and polishing of floors;
- Daily removal of litter and refuse from interior and exterior.

**SCHEDULE D  
ACCESS AND USE AGREEMENT**

**VIA Contract No:**

**ACCESS AND USE AGREEMENT**

**THIS ACCESS AND USE AGREEMENT is**

**BETWEEN:**

**TOWN OF AMHERST**

98 East Victoria Street

Amherst, NS

B4H 1X6

(hereinafter referred to as the "**Town**")

OF THE FIRST PART

**AND:**

**VIA RAIL CANADA INC.**

3 Place Ville Marie

Montreal, Québec

H3B 2C9

(hereinafter referred to as the "**VIA**")

OF THE SECOND PART

**WHEREAS** concurrently with the signature of this Access and Use Agreement, the parties shall enter into a Lease Agreement whereby the Town of Amherst agrees to lease to VIA Rail Canada Inc. the Station Property;

**WHEREAS** in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

**1.0 ACCESS AND USE**

- 1.1. Subject to the terms and conditions herein **the Town agrees to provide** irrevocable access to VIA to the parking lots adjacent to the Amherst Station located at 27 Station Street, Amherst, NS and being PID 25503160 (the "Station Property") for use in common with

others, which parking lots are Lot 18-1 and 18-3 as shown on the subdivision survey record in the Cumberland County Land Registration Office as document no. 112135141, which lots are respectively PIDs 25503152 and 25503178 for vehicle pick up and drop off area, vehicular crossings, walkways, parking areas including handicap parking, and any other Station Property lands and which parcels are referenced herein as the “Common Area Lands” and for which copy of drawings of all referenced lands and parcels are contained in Schedule “A”. For greater certainty, the Town agrees VIA shall have rights with respect to the **Common Area Lands** for:

- (a) access and use of the Common Area Lands in common with others;
- (b) access to the Station Property from Station Street and from the rail passenger platform;
- (c) access to the rail passenger platform from Station Street and from the Station Property; and
- (d) use of the said rail passenger platform, being PID 25503186 and Lot 18-4 on the subdivision survey of VIA’s land and as shown on Schedule A attached;

which rights shall be similar to the current rights of VIA on the Common Area Lands, notably with respect to use and operation of VIA’s Services, and are more specifically described as follows (collectively called the “**Access and Use Rights**”) for the Common Area Lands: the Town grants to VIA its employees, licensees, contractors and customers the right to enter the Common Area Lands at all times as pedestrians or with vehicles and equipment, for the operation of rail passenger services and related activities in the Station Property. The Town shall maintain clear and sufficient access to meet VIA’s operational requirements throughout the term of this Access and Use Agreement and shall not unreasonably block or impede the passage over the Common Area Lands.

- 1.2. The Town acknowledges that VIA is a major tenant and that the Common Area Lands shall be used by VIA only for the operation of rail passenger services and related activities around the Station Property. VIA shall have full access to the passenger platform adjacent to the CNR tracks and access to sufficient parking spaces for its customers, free of rent, maintenance, operating or capital costs. The Town shall comply with CNR’s conditions. For greater certainty, the Town acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Common Area Lands. The Town acknowledges that such Emissions, at any time of day or night, are necessarily incidental to VIA’s railway operations. The Town has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. VIA shall not be responsible to the Town for any damage to property or persons located on the Common Area Lands as a result of its railway operations. In addition to its other obligations under this Lease, the Town agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the VIA or any governmental authority.



## 2.0 **TERM**

- 2.1 This Access and Use Agreement shall be for a term of Twenty (20) years commencing on the 1<sup>st</sup> day of March, 2019 and being the date that VIA shall transfer to the Town Station Street, the Station Property and the Common Area Lands, and being PIDs 25503152, 25503160, 25503178 and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

## 3.0 **RENT**

- 3.1 VIA shall pay the Town a rent of one dollar (\$1.00) (the "**Rent**") for the access to and use of the Common Area Lands, the sufficiency of which use payable on or before the Commencement Date.
- 3.2 Rent is inclusive of all costs.

## 4.0 **RENEWAL**

- 4.1 VIA may, without restriction and so long as it is not in default, renew this Access and Use Agreement for one (1) additional term of Twenty (20) years provided it renews its Lease for the Station Property dated even date herewith by giving a sixty (60) day notice to the Town prior to the end date of this Access and Use Agreement, on the same terms and conditions as are applicable to the initial term of this Access and Use Agreement, except with regard to rent.

## 5.0 **OPERATING COSTS**

- 5.1 For the initial Term and subsequent renewal term, the Rent shall be inclusive of all property costs whatsoever namely maintenance (sweeping, lighting, painting, etc.), property taxes and snow removal, which operating costs shall be borne solely by the Town. CN Flagging costs will be borne by VIA.
- 5.2 The Town shall also remove snow from the rail passenger platform adjacent to the Common Areas and the Station Property.

## 6.0 **REPAIRS, MAINTENANCE AND OPERATION**

- 6.1 The Town shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Common Area Lands and parking lots subject to reasonable wear and tear, damage by the VIA, and obligations of the VIA to repair or pay cost thereof.

6.2 The Town shall at its sole cost and expense to:

- (a) Keep each and every sidewalk, motor vehicle parking area, and passageway adjoining, contiguous or appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (b) Remove snow and ice from the Common Area Lands and including the platform and common walkways as indicate.

6.3 The Town may undertake work on the Common Area Lands provided:

- 1. VIA has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain VIA's operation and Services.
- 2. Access for emergency vehicles and maintenance vehicles to the Station Property and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
- 3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to VIA, acting reasonably, being made.
- 4. During any period when the Station or the railway platform is inaccessible or when accessibility is substantially reduced, the Town shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of VIA's Services including necessary access to rail passenger platform, street and parking, parking for passengers within reasonable distance of the Station Property, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Station Property, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
- 5. Such alternate lands shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Common Area Lands and have a reasonable access to the rail passenger platform.
- 6. Any such alternative arrangements shall be at the Town sole expense and shall be subject to the approval of both parties, acting reasonably.
- 7. If the Town does not provide acceptable alternate access prior to the Common Area Lands becoming unusable, then VIA may immediately undertake the provision of the reasonable alternate parking and access and the Town shall be responsible for all reasonable costs associated with such work or the VIA may take whatever action under law is required to maintain its operation and Services.

- 6.4 Any work in the vicinity of the railway platform or tracks or capable of falling in the railway corridor shall be approved by the VIA and CN in writing and be protected by a flagman at the Town's costs.

## **7.0 ENVIRONMENTAL MATTERS**

- 7.1 The Town shall be responsible for any environmental contamination caused by the Town, those for whom the Town is in law responsible and VIA shall be responsible for any environmental contamination caused by the VIA or those for whom the VIA is in law responsible or by the VIA's customers.

## **8.0 NOTIFICATION OF DEFECT**

- 8.1 The Town shall promptly give VIA notice in writing of any accident, defect or damage within the Common Area Lands, systems or services for which the Town has an obligation under this Access and Use Agreement and which have come to VIAs attention. Subject to Section 6.0, if the Town fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts VIA's use of the Common Area Lands, then VIA may undertake any necessary repairs and the Town will compensate VIA for all costs incurred.

## **9.0 ACCESS AND USE**

- 9.1 The Town shall permit the public access to and use of the Common Area Lands for the purpose of embarking and disembarking from passenger trains and use of all passenger related facilities including in particular and without limiting the generality hereof, access to and use of the rail passenger platform, parking, vehicle pick up and drop off area.

The Town shall permit VIA, its employees, agents or servants to enter the Station Property from the Common Area Lands at any time as may be required by VIA.

## **10.0 QUIET ENJOYMENT**

- 10.1 The Town hereby covenants with VIA for quiet enjoyment of the Common Area Lands in common with others.

## **11.0 ASSIGNMENT**

- 11.1 This Access and Use Agreement shall not be assigned or transferred by the Town.
- 11.2 This Access and Use Agreement shall not be assigned or transferred by VIA without the prior written consent of the Town except to a successor corporation.

## **12.0 DIRECTION AS TO EMERGENCY**

- 12.1 The Town may from time to time direct VIA to use a telephone number designated by the Town for notifying the Town of any emergency situation.

## **13.0 INSURANCE**

- 13.1 The Town undertakes to obtain and maintain, at its own expense, for the duration of this Access and Use Agreement, the following insurance coverage with insurers carrying a financial rating of “A” or better:

- a) Commercial general liability covering the liability of the Town and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include VIA as an additional insured and shall provide for the following coverage:
  - Personal injury
  - Bodily injury
  - Unlicensed vehicles / motorized equipment
  - Property damage, including loss of use of property
  - Contingent Employer's Liability
  - Contractual Liability assumed under this contract
  - Cross Liability and/or Severability of interests
  - Non-owned automobile liability
- b) Automobile liability insurance covering the liability of the Town for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Town for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of this Access and Use Agreement, the Town shall provide the VIA with certificates of insurance issued in the name of VIA, dated and signed by an authorized representative of the Town's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to VIA within thirty (30) days after renewal should such renewal occur during the term of the Access and Use Agreement. The above insurance policies shall include an endorsement whereby VIA shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.

The acquisition and maintenance of insurance by the Town as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Town and its representatives under this Access and Use Agreement.

VIA confirms that it is self-insured and may provide a letter of confirmation upon request from the Town on or after the effective Access and Use Agreement start date.

#### **14.0 NO WASTE OR NUISANCE**

##### **14.1 VIA shall not:**

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Common Area Lands; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

#### **15.0 INDEMNITY AND REPOSSESSION**

The Town shall indemnify VIA and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Common Area Lands caused by the Town's breach of its obligations towards VIA or by the negligence of the Town or its representatives.

Neither party shall be liable to the other party in connection with this Access and Use Agreement, whether based on contract, tort (including negligence and strict liability), under warranty or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town's emergency call center for immediate response. If such material default is not remedied within the reasonable period indicated in VIA's notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Town's (or its successors) costs.

## 16.0 TERMINATION

VIA shall have the right to terminate this Access and Use Agreement by giving a notice in writing to the Town sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

## 17.0 NOTICE

17.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Town:

**TOWN OF AMHERST**  
98 East Victoria Street  
Amherst, NS  
B4H 1X6

Attention:

if to VIA:

**VIA RAIL CANADA INC.**  
3 Place Ville-Marie  
Suite 500  
Montréal, QC  
H3B 2C9

Attention: Senior Manager, Real Estate

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

**18.0 LAW TO THE CONTRARY**

18.1 This Access and Use Agreement shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

**19.0 SEVERANCE**

19.1 If any portion of this Access and Use Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Access and Use Agreement.

**20.0 GOVERNING LAW**

20.1 This Access and Use Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

**21.0 WAIVER**

21.1 Waiver by the Town of any default by VIA shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

**22.0 REFERENCES**

22.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

**23.0 AMENDMENT**

23.1 This Access and Use Agreement may not be modified or amended except by an instrument in writing signed by the Town and VIA.

**24.0 REMEDIES NOT EXCLUSIVE**

24.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

**25.0 CHARGES ON TITLE**

25.1 There shall be no charges on title of the Common Area Lands.

**26.0 CAPTIONS**

26.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

**27.0 INTERPRETATION**

27.1 Wherever the singular or masculine or neuter is used in this Access and Use Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

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28.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Access and Use Agreement along with the Lease upon their execution.

**29.0 TIME OF ESSENCE**

29.1 Time is of the essence of this Lease.

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The parties acknowledge that:

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- (4) the parties negotiated this Access and Use Agreement jointly and this Access and Use Agreement shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

We have understood, consented to and signed two original copies of this Lease on the day and year below written.

VIA RAIL CANADA INC.		TOWN OF AMHERST		TOWN OF AMHERST	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

## SCHEDULE A – DRAWINGS LANDS AND PARCELS

### SCHEDULE A

