

**TERMS OF INSTRUMENT – PART 2****STATUTORY RIGHT OF WAY and SECTION 219 COVENANT**

THIS AGREEMENT, dated for reference the 19<sup>th</sup> day of March, 2018, is

BETWEEN:

**PARK ROYAL SHOPPING CENTRE HOLDINGS LTD.**

3rd Floor  
100 Park Royal  
West Vancouver, BC V7T 1A2

(the "Grantor")

AND:

**DISTRICT OF WEST VANCOUVER**

750 17th Street  
West Vancouver, BC V8V 3T3

(the "District")

GIVEN THAT:

- A. The Grantor is the registered owner in fee simple of certain lands and premises located in the District and more particularly described as:

<b><i>Address:</i></b>	<b><i>PID:</i></b>	<b><i>Legal Description:</i></b>
<i>752 MARINE DRIVE</i>	<i>009-122-494</i>	<i>BLOCK F DISTRICT LOT 1040 PLAN 11252</i>
<i>756 MARINE DRIVE</i>	<i>011-062-525</i>	<i>LOT C (SEE 585835L) BLOCK 6 DISTRICT LOT 1040 PLAN 5848</i>
<i>764 MARINE DRIVE</i>	<i>011-062-096</i>	<i>LOT B EXCEPT: PART ON HIGHWAY PLAN 30; BLOCK 6 DISTRICT LOT 1040 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 5848</i>

(the "Land");

- B. The Grantor intends to construct a development on the Land, comprising a mix of residential and commercial uses, associated public areas, and a restroom for public use;
- C. The Grantor has agreed to grant to the District a statutory right of way for the operation and use of the restroom as an area open to the public in perpetuity, and this statutory

right of way is necessary on the Land for the operation and maintenance of the District's undertaking;

- D. The Grantor, as part of and in connection with the proposed development on the Land, has agreed to construct and install the restroom on the Land, and maintain it in perpetuity;
- E. Section 219 of the *Land Title Act* authorizes the registration of a covenant, whether of a negative or positive nature, in respect of the use of land, in favour of a municipality, as a charge against the title to that land, which covenant is enforceable against the owner and its successors in title, even if the covenant is not annexed to land owned by a municipality;

THIS AGREEMENT is evidence that, pursuant to ss. 218 and 219 of the *Land Title Act*, and in consideration of ONE DOLLAR (\$1.00) paid by the District to the Grantor and other good and valuable consideration (the receipt and sufficiency of which the Grantor hereby acknowledges), the Grantor grants to and covenants with the District as follows:

1. **Statutory Right of Way** – The Grantor hereby grants, conveys and confirms to the District in perpetuity the full, free and uninterrupted right, liberty, easement and statutory right of way (the “Statutory Right of Way”) on, over and across the areas of the Land shown outlined in heavy black and marked “Restroom” on the plan attached to this Agreement as Schedule A (the “Right of Way Area”) at all times hereafter for the following purposes:
  - (a) to permit all members of the public, at their will and pleasure, 24 hours a day, 7 days a week, to use the Right of Way Area and the Works (as defined below) as a restroom but not for any other purpose;
  - (b) to permit the District and the District's elected and appointed officials, officers, employees, and contractors (“District Personnel”), to enter and inspect the Right of Way Area and the Works and take steps necessary to ensure their safe use and enjoyment; and
  - (c) to do all other things on the Right of Way Area as may be necessary, desirable or incidental to its ongoing use, operation, and enjoyment.
2. **Section 219 Covenant to Construct and Maintain** – Notwithstanding the grant to the District of the rights enumerated in section 1, the Grantor further covenants and agrees as follows:
  - (a) the Grantor will, at its own cost and in perpetuity, keep clean, repair, and maintain the Right of Way Area including all fixtures installed therein (which are collectively referred to as the “Works” herein) in good, safe and sufficient repair and working condition, to the satisfaction of the District; and
  - (b) if the Grantor fails to keep, repair, and maintain the Works in good, safe and sufficient repair to the satisfaction of the District's Director of Planning, the

District shall be entitled to do such work after giving 30 days' prior written notice to the Grantor (except in the case of an emergency, in which case no notice is required, and except if the Grantor has commenced such work within such 30 day period and is diligently prosecuting the same to completion), in which case the Grantor shall pay the District's cost forthwith upon receipt of an invoice from the District for the work.

3. **Grantor's Obligations** – The Grantor must:

- (a) not do or permit to be done anything in the Right of Way Area which in the opinion of the District, acting reasonably, may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Right of Way Area or the rights granted under this Agreement;
- (b) permit the District to peaceably hold and enjoy the rights hereby granted;
- (c) permit the District to do all other things in the Right of Way Area which in the opinion of the District are reasonably necessary for the safe use and preservation of the Right of Way Area for the purposes of the Works and the Statutory Right of Way;
- (d) not deposit or place garbage, debris or other material in the Right of Way Area; and
- (e) at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring to the District the rights, liberties, and the Statutory Right of Way hereby granted.

4. **District's Obligations** – The District must do all things hereby authorized to be done by it over, through, and upon the Right of Way Area in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Land, or the Right of Way Area or to any improvements thereon.

5. **District's Rights** – The District:

- (a) is entitled to peaceably hold and enjoy the rights, liberties and Statutory Right of Way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
- (b) may remove anything placed on the Right of Way Area by the Grantor which may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Works or the rights granted by the Statutory Right of Way; and

(c) on default by the Grantor of any of its obligations under this Agreement, may, but is not obliged to, rectify the default, provided that, except in the case of an emergency (in which case no notice is required), the District must first give 30 days' prior notice to the Grantor specifying the default and requiring it to be remedied and the Grantor must have failed to carry out such work within such 30 day period, or if the work requires longer than 30 days to carry out, the Grantor must have failed to commence carrying out the work and to diligently proceed with the work thereafter. The Grantor shall, forthwith upon receiving an invoice from the District, reimburse District for its reasonable, out of pocket expenses incurred in remedying such a default.

6. **Release** – The Grantor will not make any claims against the District or District Personnel and the Grantor hereby releases and discharges the District and District Personnel from and against all damages, losses, costs, actions, causes of action, claims, demands, judgements, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays) and injuries (including personal injury and death) (collectively, "Losses") which may, at any time, arise or accrue to the Grantor, in connection with this Agreement including, without limitation:

- (a) by reason of the District or District Personnel:
  - (i) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Works;
  - (ii) inspecting the Works;
  - (iii) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement;
  - (iv) exercising any of its rights under the Statutory Right of Way; or
  - (v) withholding any permits pursuant to this Agreement; or
- (b) that arise out of, or would not have been incurred but for:
  - (i) the design, construction or installation (including any defective materials or faulty workmanship) of the Works;
  - (ii) this Agreement;

except to the extent such Losses are the result of the negligent acts or omissions on the part of the District or District Personnel. The release set out in this Section 6 will survive the expiration or earlier termination of this Agreement.

## 7. Indemnity –

- (a) The Grantor hereby covenants and agrees with the District to indemnify and save harmless and reimburse the District and District Personnel from and against all Losses (excluding economic or consequential loss) which may arise or accrue to the Grantor or any person, firm or corporation against the District or District Personnel or which the District or District Personnel may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained but for any of the following:
- (i) the construction, installation, existence, maintenance, repair, replacement, removal, use or occupation of the Works or the Right of Way Area;
  - (ii) this Agreement, including the withholding of any permits by the District pursuant to this Agreement;
  - (iii) any personal injury, property damage or death occurring in or upon the Right of Way Area in whole or part from the exercise of the Statutory Right of Way in this Agreement by any party; or
  - (iv) the release by the District of any or all of the District's rights under this Agreement or the loss of any rights purported to be granted hereby;
  - (v) the District or District Personnel:
    - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Works;
    - (B) inspecting the Works;
    - (C) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement; or
    - (D) exercising any of its rights under any the Statutory Right of Way; or
  - (vi) any and all Losses (excluding economic or consequential loss) which may arise or accrue to any person, firm or corporation including a member of the public against the District or any District Personnel or which the District or any District Personnel may, incur, sustain or be put to, by reason of:
    - (A) any negligent act or omission or wilful misconduct of the Grantor or any of its contractors, subcontractors, employees, agents, licensees, invitees and permittees in connection with the exercise

of the obligations or responsibilities of the Grantor under this Agreement; or

- (B) any default in the due observance and performance of the obligations or responsibilities of the Grantor under this Agreement,

except to the extent such Losses are the result of the negligent acts or omissions on the part of the District or District Personnel. This indemnity is both a personal covenant of the Grantor and an integral part of this Section 219 Covenant and will survive the expiration or earlier termination of this Agreement.

8. **No Waiver** – No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.
9. **Discretion** – Wherever in this Agreement the approval of the District is required, some act or thing is to be done to the District’s satisfaction, the District is entitled to form an opinion, or the District is given a sole discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the District’s Director of Planning or any other person duly authorized by the Council of the District of West Vancouver to perform the functions of the Director of Planning; and
  - (b) the approval, opinion or satisfaction is in the discretion of the Director of Planning acting reasonably in accordance with municipal engineering practice.
10. **No Effect on Powers** – This Agreement does not:
- (a) affect or limit the discretion, rights, duties or powers of the District under the common law or any statute, bylaw, or other enactment;
  - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Lands; or
  - (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.
11. **Notice** – Any notice to be given pursuant to this Agreement must be in writing and must be delivered personally. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. Notice may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed to have been given when delivered. Any party may at any time give notice in writing to the other of any

change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.

12. **Severance** – If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement, the parties hereby agreeing that they would have entered into the Agreement without the severed provision.
13. **Entire Agreement** – No amendment of this Agreement is valid or binding unless in writing and executed by the parties.
14. **Assumption by Strata Corporation** – If, as and when the Grantor subdivides the Land or any building on the Land by a strata plan under the *Strata Property Act* (British Columbia), the Grantor will forthwith, and in any event before the first conveyance of any strata lot, cause the strata corporation then created (the “Strata Corporation”) to assume the Grantor’s obligations hereunder to the same extent as if the Strata Corporation had been an original party to this Agreement by executing and delivering to the District an assumption agreement in the form attached as Schedule C, whereupon the Grantor will be automatically released from all its obligations hereunder. If the Grantor fails to comply with this Section 14, the Grantor will remain liable for the performance of the obligations hereunder notwithstanding the strata subdivision of the Land or any building on the Land and notwithstanding the transfer of any portion of the Land or any building on the Land, including any strata lot, to a third party.
15. **Joint and Several** - if there is more than one owner of the Land then those owners are jointly and severally responsible for performance of the obligations in this Agreement.
16. **Interest In Land and Enurement** – This Agreement runs with the Land and each and every part into which the Land may be subdivided or consolidated by any means (including subdivision plan, reference or explanatory plan, strata plan, bare land strata plan or lease), but no part of the fee of the Land passes to or is vested in the District under or by this Agreement and the Grantor may fully use the Right of Way Area and Land subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement. This Agreement enures to the benefit of and is binding on the parties notwithstanding any rule of law or equity to the contrary.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C and D to which this Agreement is attached and which forms part of this Agreement.

**CONSENT AND PRIORITY AGREEMENT**

WHEREAS \_\_\_\_\_ (the "Chargeholder") is the holder of \_\_\_\_\_ (the "Charge") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Victoria Land Title Office under numbers \_\_\_\_\_ respectively.

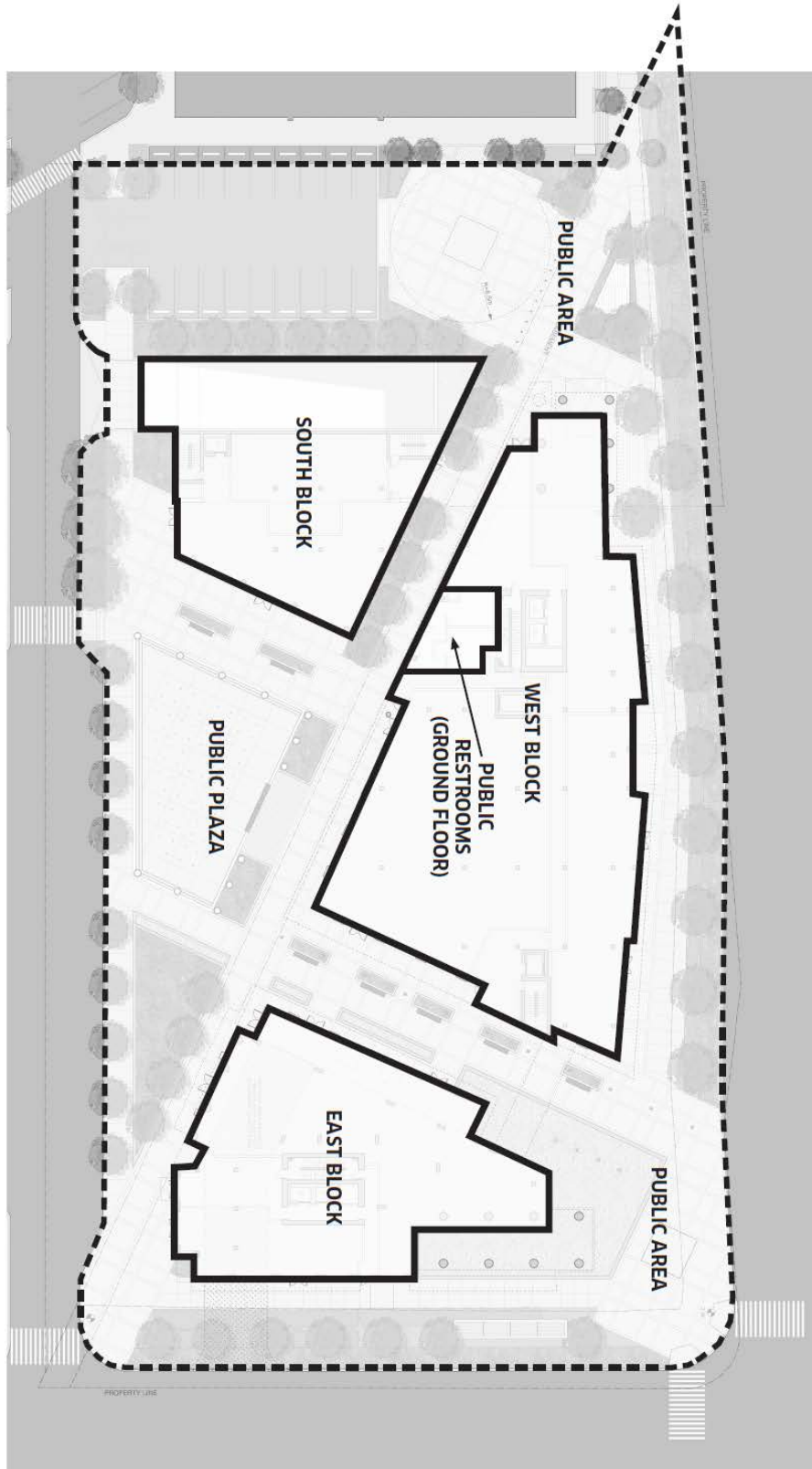
THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Statutory Right of Way attached hereto (the "Covenant and SRW") and the Chargeholder hereby agrees that the Covenant and SRW shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant and SRW over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant and SRW as if the Covenant and SRW had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.



SCHEDULE A Showing Right of Way Area



**SCHEDULE B**

**ASSUMPTION AGREEMENT**

THIS AGREEMENT is dated for reference \_\_\_\_\_

BETWEEN:

**THE OWNERS, STRATA PLAN \_\_\_\_\_**

(the "Strata Corporation")

AND:

**DISTRICT OF WEST VANCOUVER**

(the "District")

AND:

**PARK ROYAL SHOPPING CENTRE HOLDINGS LTD.**

(the "Owner")

WHEREAS:

- A. On the date that application was made to the New Westminister Land Title Office for deposit of Strata Plan \_\_\_\_, the Owner was the registered owner of the freehold estate in the land shown on such strata plan (the "Lands");
- B. The Owner has such granted to the District a Statutory Right of Way and Section 219 Covenant for construction and maintenance of certain works, which agreement is registered in the New Westminister Land Title Office under numbers \_\_\_\_\_ and \_\_\_\_\_ (the "Charges"); and
- C. It is a condition of the Charges that the Strata Corporation enter into this Assumption Agreement in respect of the Charges,

NOW THEREFORE IN CONSIDERATION of the premises and the sum of \$10.00 paid by each of the Owner and the District to the Strata Corporation and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Strata Corporation), the Strata Corporation hereby covenants and agrees as follows:

- 1. The Strata Corporation covenants and agrees that the Strata Corporation will be bound by and will observe and perform all of the covenants, restrictions and agreements contained in the Charges, including without limitation the covenant to indemnify the District and the covenant to construct and maintain the Works (as defined in the Charges).

2. The Strata Corporation agrees that the District is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Strata Corporation of the Charges. The Strata Corporation agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of access from breaches of the Charges.
3. This Agreement will enure to the benefit of and will be binding upon the parties hereto and their heirs, executors, administrators, successor and assigns.
4. To evidence its agreement, the Strata Corporation has executed this Assumption Agreement as of the date set out above.

THE OWNERS, STRATA PLAN \_\_\_\_ by its )  
authorized signatory: )  
 )  
 ) C/S  
 )  
\_\_\_\_\_)  
Authorized Signatory )  
 )