

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, CONSENTING TO DKS BOARDWALK LLC'S COLLATERAL ASSIGNMENT OF ITS INTEREST AND OBLIGATIONS IN A RIGHT-OF-WAY USE AGREEMENT WITH THE CITY, AND A MAINTENANCE AGREEMENT WITH THE CITY, TO OLYMPIA FEDERAL SAVINGS AND LOAN ASSOCIATION, AND APPROVING A "COLLATERAL ASSIGNMENT OF AGREEMENTS AND SUBORDINATION" AGREEMENT.

WHEREAS, DKS Boardwalk, LLC (DKS Boardwalk) has a Right-of-Way Use Agreement with the City of Olympia, by which DKS Boardwalk is permitted to maintain a structure and related appurtenances within a certain part of the Columbia Street right-of-way, southerly of Corky Avenue and northerly of Olympia Avenue; this structure and appurtenances are located at 525 Columbia Street NW and currently houses Budd Bay Café (the 525 Columbia Street Building); and

WHEREAS, this Right-of-Way Use Agreement was executed by DKS Boardwalk's predecessor in interest, Boardwalk Associates Co-Tenancy Investors (Boardwalk Associates), and the City in 2020. The Right-of-Way Use Agreement replaced a previous right-of-way use agreement that had been entered into by Boardwalk Associates and the City in 1987; and

WHEREAS, in 2021, Boardwalk Associates sold its fee interest in the 525 Columbia Street Building to DKS Boardwalk and as part of that sale, the City consented to Boardwalk Associates' transfer of its interest and obligations in the Right-of-Way Use Agreement to DKS Boardwalk (*see* Resolution No. M-2260 and *see* Assignment of Right-of-Way Use Agreement and Maintenance Agreement dated October 22, 2021);

WHEREAS, DKS Boardwalk and the City have a separate Maintenance Agreement, which governs the parties' cooperation in, and sharing in the costs of, maintaining and repairing certain common, shared elements of the Percival Landing facility, adjacent to the 525 Columbia Street Building; and

WHEREAS, this Maintenance Agreement was (like the Right-of-Way Use Agreement) executed by DKS Boardwalk's predecessor in interest, Boardwalk Associates, and the City in 2020; Boardwalk Associates later transferred its interest and obligations in the Maintenance Agreement to DKS Boardwalk as part of the sale of the 525 Columbia Street Building noted above, and the City consented to that transfer (*see* Resolution No. M-2260 and *see* Assignment of Right-of-Way Use Agreement and Maintenance Agreement dated October 22, 2021); and

WHEREAS, in order to finance the purchase of the 525 Columbia Street Building from Boardwalk Associates in 2021, it was necessary for DKS Boardwalk to collaterally assign the interest and obligations it acquired in the Right-of-Way Use Agreement and the Maintenance Agreement (via the Assignment of Right-of-Way Use Agreement and Maintenance Agreement dated October 22, 2021) to its lender, Washington Business Bank; the City consented to that collateral assignment (*see* Resolution No. M-2260 and *see* Collateral Assignment of Agreements and Subordination dated October 22, 2021); and

WHEREAS, DKS Boardwalk now wants to refinance the loan that facilitated its purchase of the 525 Columbia Street Building with a new lender, Olympia Federal Savings and Loan Association (Olympia Federal); as part of that refinance, it is necessary for DKS Boardwalk to collaterally assign its interest and obligations in the Right-of-Way Use Agreement and the Maintenance Agreement to Olympia Federal. This assignment will establish a security interest in DKS Boardwalk's interest in those agreements; under this arrangement, should DKS Boardwalk default in its obligations to Olympia Federal, Olympia Federal

will be permitted to foreclose on DKS Boardwalk's interest and obligations in the agreements, and eventually transfer those interests and obligations to another party, subject to City approval; and

WHEREAS, before DKS Boardwalk can collaterally assign its interest and obligations in the Right-of-Way Use Agreement and the Maintenance Agreement to Olympia Federal, the City must consent to this assignment and must consent to subordinate its interests in those agreements to Olympia Federal; and

WHEREAS, to facilitate the collateral assignment of its interest and obligations in the Right-of-Way Use Agreement and the Maintenance Agreement, and the subordination, DKS Boardwalk has proposed a Collateral Assignment of Agreements and Subordination; and

WHEREAS, the City's consent to the collateral assignments will facilitate DKS Boardwalk's refinance of the structure and appurtenances, which, as noted, includes Budd Bay Café, and will further the operation of the restaurant, which is a thriving, locally owned business, a community institution, and an employer of dozens of local residents; and

WHEREAS, there is no apparent reason why the City should withhold consent to these collateral assignments.

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The City of Olympia consents to DKS Boardwalk's collateral assignment to Olympia Federal of its interest and obligations in the Right-of-Way Use Agreement and the Maintenance Agreement and consents to subordination of the City's interest in the agreements vis-à-vis Olympia Federal.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Collateral Assignment of Agreements and Subordination and any other documents necessary to effectuate such collateral assignments, and to make any minor modifications as may be required and are consistent with the consent to collateral assignment, and/or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2026.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

SENIOR DEPUTY CITY ATTORNEY