

**RIGHT-OF-WAY USE AGREEMENT  
BETWEEN THE CITY OF OLYMPIA  
AND BOARDWALK ASSOCIATES**

THIS AGREEMENT is made and entered into as of the date of the last signature affixed hereto, by and between the City of Olympia, a Washington municipal corporation (“Olympia”) and Boardwalk Associates, a Washington general partnership (“Boardwalk Associates”) (jointly “the Parties”). This Agreement is intended to provide the terms by which Boardwalk Associates may use certain City right-of-way for its structure and attached appurtenances.

**RECITALS**

1. There exists within the City of Olympia a platted right-of-way known as Columbia Street, southerly of Corky Avenue and northerly of Olympia Avenue.
2. In June 1987, Olympia and Boardwalk Associates entered into a Right-Of-Way Use Agreement that allowed Boardwalk Associates to place a structure and appurtenances within a certain portion of the Columbia Street right-of-way. The term of that agreement was for 30 years and expired on February 28, 2017.
3. Boardwalk Associates is interested in a new Right-Of-Way Use Agreement that would allow continued placement of its existing structure and attached appurtenances within the Columbia Street right-of-way.
4. Olympia has determined the right-of-way use area for the existing structure and attached appurtenances is approximately 20 feet by 140 feet, or a total of 2,820 square feet.
5. Olympia has determined that continued use of the structure and attached appurtenances within the Columbia Street right-of-way is acceptable subject to the conditions within this Agreement.
6. Boardwalk Associates holds a sublease for certain Department of Natural Resources (DNR) aquatic lands; Wedell A. Berg, Jr. is the lessee of those DNR aquatic lands and subleases them to Boardwalk Associates. In August 1987, Boardwalk Associates granted the City of Olympia an easement over part of their subleased aquatic lands for a pedestrian boardwalk adjacent to its building. This boardwalk is part of the broader Percival Landing. The term of the easement was for 30 years and expired in 2017.

7. Rather than continuing with an easement from Boardwalk Associates for the Percival Landing boardwalk, Olympia is entering into a sublease directly with Berg for use of that portion of Berg's leased aquatic lands utilized by the City for the Percival Landing Boardwalk.
8. Olympia and Boardwalk Associates have a mutual interest in Percival Landing being maintained for public access and use.

### **AGREEMENT**

1. Olympia hereby grants to Boardwalk Associates the right to temporarily use the Columbia Street right-of-way, as described in Exhibit 1, for use of an existing structure and attached appurtenances.
2. The term of this Agreement is for 30 years from the date of this Agreement.
3. In consideration therefor, Boardwalk Associates shall annually pay to Olympia, on or before November 1 of each year, the amount of Four Thousand Eight Hundred Eighty Seven Dollars and Six Cents (\$4,887.06), plus Washington State Leasehold Tax, if any. Said amount will be proportionately discounted or reimbursed if this Agreement is terminated within any year prior to November 1. At Boardwalk Associates' option, the above amount may be paid in two installments, to wit, Two Thousand Four Hundred Forty Three Dollars and Fifty Three Cents (\$2,443.53) on November 1 and May 1 of each year. The payment will be adjusted with a 4% annual escalation on November 1.
4. Boardwalk Associates shall maintain the existing structure and attached appurtenances (as defined in Exhibit 1) at its own expense and shall maintain said facilities in good repair. Olympia is not liable for any costs or expense of construction, maintenance, or otherwise for the existing structure and attached appurtenances by reason of this Agreement. Olympia and Boardwalk Associates may by separate agreement agree to coordinate and share in the costs of maintenance of shared elements of Boardwalk Associates' structure and Olympia's boardwalk.
5. Olympia does not warrant that the portion of the structure within the Columbia Street right-of-way will be available in the event of sea level rise and associated potential flooding. This Agreement creates no obligation for Olympia to take any remedial action to allow for on-going use of the structure and attached appurtenances. Boardwalk Associates is solely responsible for and shall bear any loss of use of the structure or attached appurtenances.
6. Olympia may construct underground utilities through the entire length and breadth of the Columbia Street right-of-way, but shall, upon completion of any such

construction during the term of this Agreement, restore the site to the condition created by Boardwalk Associates.

7. Boardwalk Associates shall not object to Olympia's direct negotiations of a lease with Berg for the portion of Percival Landing adjacent to Boardwalk Associates' structure, utilized by Olympia for a portion of the Percival Landing boardwalk (shown as "Boardwalk Area" in Exhibit 1).
8. Boardwalk Associates shall maintain its outdoor seating area in a manner that complies with Olympia's agreement with the state Recreation and Conservation Office for the construction of Percival Landing (RCO Agreement 84-002D including amendments).
9. Boardwalk Associates, and its successors or assigns, shall defend, indemnify, and hold Olympia harmless from any claim, suit, action, damages, liability, or expense incurred by reason of Boardwalk Associates' design, construction, use, repair, or maintenance of the structure and appurtenances. The intent of this paragraph is that Boardwalk Associates, and its successors or assigns, will have full, complete, and exclusive care, maintenance, and responsibility for the premises, the structure and appurtenances, and its design, construction and use; therefore, ensuring that Olympia will incur no expense or liability by reason of Boardwalk Associates' use of the Columbia Street right-of-way which is the subject of this Agreement. Boardwalk Associates shall maintain insurance in sufficient amounts to ensure liability coverage in an amount not less than \$1,000,000 per occurrence.
10. This Agreement may be assigned by Boardwalk Associates to any successor in interest taking fee ownership of Boardwalk Associates' structure and appurtenances. To secure a release from liability under this Agreement, Boardwalk Associates shall advise Olympia of such change or assignment and secure Olympia's consent in writing to the assignment of this Agreement. Such consent may not be unreasonably withheld if the assignee is a purchaser for value of the structure and appurtenances.
11. This Agreement is in all respects, governed by the laws of the State of Washington. If it is necessary to enforce any of the terms of this Agreement, any action must be brought in Thurston County Superior Court for the State of Washington.
12. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit is entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.
13. This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their

entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm, corporation, or entity other than the Parties.

- 14. This Agreement may not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.
- 15. If any term or provision of this Agreement or the application thereof to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, is not affected thereby; and each such term and provision of this Agreement is valid and must be enforced to the fullest extent permitted by law.
- 16. The Recitals set forth above are incorporated by this reference into this Agreement and are made a part hereof.

**CITY OF OLYMPIA**

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right-of-Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

\_\_\_\_\_  
Steven J. Burney  
City Manager

\_\_\_\_\_  
Date

Approved as to form:

*Michael M. Young*  
\_\_\_\_\_  
Deputy City Attorney

**BOARDWALK ASSOCIATES**

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right-of-Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

*Patrick Rants*  
\_\_\_\_\_  
Patrick Rants, Boardwalk Associates

09/25/2020  
\_\_\_\_\_  
Date

EXHIBIT 1

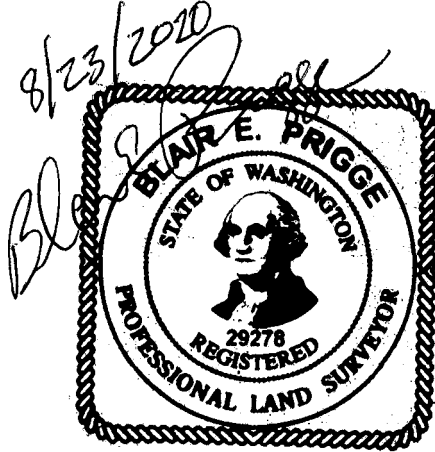
BOARDWALK ASSOCIATES  
RIGHT-OF-WAY USE AGREEMENT DESCRIPTION

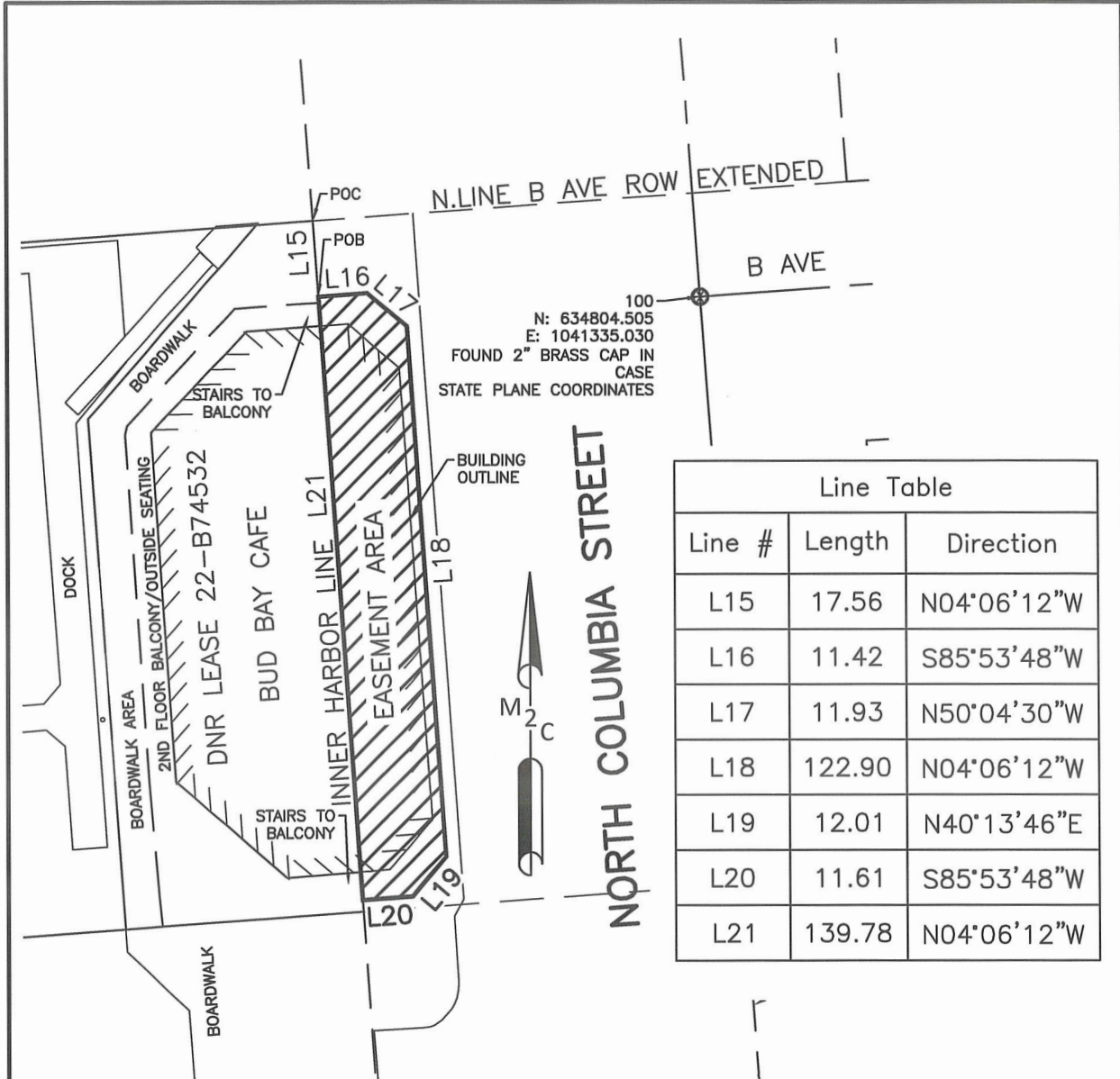
THAT PORTION OF NORTH COLUMBIA STREET ABUTTING THE OLYMPIA HARBOR AREA, FRONTING LOTS 1 AND 2 OF BLOCK 2 AND B AVENUE WEST, AS SHOWN ON THE OFFICIAL MAPS OF THE OLYMPIA TIDE LANDS ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AT OLYMPIA, WASHINGTON, **COMMENCING** AT A POINT ON THE INNER HARBOR LINE AT THE INTERSECTION OF THE EXTENDED NORTH LINE OF SAID B AVENUE WEST; THENCE ALONG THE INNER HARBOR LINE, SOUTH 04°06'12" EAST, 17.56 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 85°53'48" EAST, 11.42 FEET; THENCE SOUTH 50°04'30" EAST, 11.93 FEET; THENCE SOUTH 04°06'12" EAST, 122.90 FEET; THENCE SOUTH 40°13'46" WEST, 12.01 FEET; THENCE SOUTH 85°53'48" WEST, 11.61 FEET TO SAID INNER HARBOR LINE; THENCE ALONG SAID INNER HARBOR LINE NORTH 04°06'12" WEST, 139.78 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 2,724 SQUARE FEET, MORE OR LESS;

SITUATE IN THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON.

Prepared by: Blair E. Prigge, PLS  
MTN2COAST, LLC  
360.688.1949  
8/23/2020  
20-296





100  
 N: 634804.505  
 E: 1041335.030  
 FOUND 2" BRASS CAP IN  
 CASE  
 STATE PLANE COORDINATES

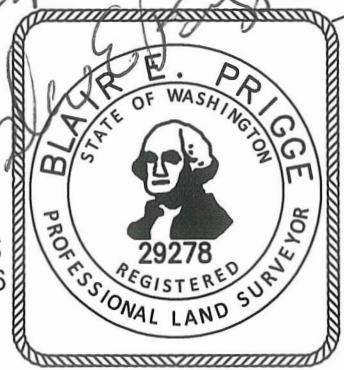
Line Table		
Line #	Length	Direction
L15	17.56	N04°06'12"W
L16	11.42	S85°53'48"W
L17	11.93	N50°04'30"W
L18	122.90	N04°06'12"W
L19	12.01	N40°13'46"E
L20	11.61	S85°53'48"W
L21	139.78	N04°06'12"W

SEE ROS AFN 4701732 FOR COMPLETE ROW AND DNR LEASE INFORMATION

*8/23/2020*  
*Blair E. Prigge*



PROFESSIONAL LAND SURVEYORS  
 2320 MOTTMAN RD SW, STE 106  
 TUMWATER, WA 98512  
 360.688.1949



BOARDWALK ASSOCIATES  
 EASEMENT EXHIBIT  
 CLIENT: PAT RANTS  
 DATE: 08/23/2020  
 SCALE: 1"=40'  
 M2C PROJECT NO.: 20-296  
 SHEET NO. 1 OF 1