

**RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF OLYMPIA  
AND OYSTER BOYS, LLC (D.B.A. KING SOLOMON’S REEF)**

This RIGHT-OF-WAY USE AGREEMENT (“ROW use agreement”) is entered into by and between the CITY OF OLYMPIA, a Washington municipal corporation (“City”), and OYSTER BOYS, LLC, a Washington limited liability company, (hereafter referred to as “Oyster Boys”), and jointly referred to as “the Parties.” This agreement sets forth the terms and conditions by which Oyster Boys is permitted to use certain unopened City right-of-way for specific purposes set forth herein.

**Recitals**

There exists within the City of Olympia an alley right-of-way running between 4th Avenue E and State Avenue NE and lying between Washington Street NE and Franklin Street NE, running parallel to those streets, between a building at 210 4th Ave E. and a building at 212 4th Ave E. This alley right-of-way is more particularly described as set forth below.

Oyster Boys is a Washington limited liability company doing business as King Solomon's Reef restaurant. Oyster Boys leases premises pursuant to a premises lease agreement ("premises lease") between Oyster Boys as tenant, and Ravlesias Artesia LLC, as landlord. The premises leased under the premises lease are located at 210 4th Avenue East, and a building at 212 4<sup>th</sup> Avenue E, Olympia, Washington and legally described as: lot 6 west 30ft.blk 23, Sylvester addition of Olympia tax, assessor number: 78502300600 (leased premises).

Oyster Boys seeks Olympia's permission to use alley right-of-way for outdoor restaurant/bar purposes and other related business uses. The premises are located at 212 4th Avenue East, Olympia, Washington and legally described as: lot 6 west 30ft.blk 23, Sylvester addition of Olympia tax, assessor number: 78502300600 (leased premises).

The City has determined that use of the right-of-way for outdoor restaurant/bar purposes and other related business uses is consistent with proper permitted use of said right-of-way.

The signatories to this ROW use agreement are authorized to execute this ROW use agreement and associated documents, to correct legal descriptions, if need be, and to correct scrivener’s errors and other errors or omissions that are otherwise in substantial conformance with this ROW use agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this ROW use agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Oyster Boys agree as follows:

**Agreement**

1. **Grant of temporary use.** City hereby grants to Oyster Boys the right to temporarily use the right-of-way, as more particularly shown on Exhibit A (“right-of-way use area”), for outdoor restaurant/bar purposes and other related business purposes, on the terms set forth in this ROW use agreement. The right-of-way use area is legally describe as follows:

The Northerly 62.00 feet of the 10.00 foot wide alley, running Northerly and Southerly, adjacent to Lot 6 and Lot 7 of Block 23, Sylvester's Plat of Olympia as recorded in Volume 1 of Plats, Page 14, Record of Thurston County, Washington. Situated in Section 14, Township 18 North, Range 2 West, Willamette Meridian. The right-of-way use are consists of 620 square feet, more or less.

2. **Term.** This ROW use agreement is effective the date of last signature below ("effective date"). The term of this ROW use agreement is four years from the effective date unless it is terminated or terminates earlier pursuant to this paragraph. The City may terminate this ROW use agreement for any reason, at its sole discretion, by providing 120 days' written notice of termination to Oyster Boys as provided in Section 9, below.

3. **Consideration.** Oyster Boys shall every year pay to City the annual rent identified in this paragraph, plus leasehold excise tax, if applicable. The parties intend that the entire amount of rent owing will be offset by a Clean Alley Credit. For the first year, the value of the annual rent is Two-Thousand, Two Hundred and Sixty-Nine Dollars and twenty/100 (\$2,269.20). This annual rent is offset by Clean Alley Credit valued at \$2,269.20. In each subsequent year, the value of the annual rent, and the value of the Clean Alley Credit increases by four percent.

Oyster Boys is receiving a Clean Alley Credit in exchange for accepting the obligation to maintain the alley in a clean condition as follows: Oyster Boys shall maintain the alley to a level of cleanliness at least that of how it maintains its own premises, free of litter and debris, with all surfaces free of graffiti, stickers, and signs, except those posted by Oyster Boys in the course of its business. Oyster Boys shall address any deviance from this standard within one business day. Oyster Boys is solely responsible for any and all costs of meeting this obligation to maintain the cleanliness of the alley.

4. **Use of Right-of-Way.** Oyster Boys may, at its own expense, construct and maintain outdoor seating and related facilities ("seating facilities") on the right-of-way use area and shall, at its own expense, maintain any and all seating facilities in good repair. The City is not liable for any of Oyster Boys costs or expenses of construction, maintenance, or otherwise of the seating facilities by reason of this ROW use agreement. Oyster Boys may impose restrictions on the use of the seating facilities, including limiting the public use to be made of the seating facilities, subject to Section 5 below. Upon termination of the ROW use agreement, Oyster Boys shall remove any and all seating facilities installed in the right-of-way use area and restore the right-of-way use area to the condition it was in as of the effective date, including taking all necessary action to ensure that the right-of-way use area is fully open for City and public use. This obligation to remove any and all seating facilities installed in the right-of-way use area and restore the right-of-way use area survives termination of this ROW use agreement.

5. **Nondiscrimination.**

A. In exercising its rights under this ROW use agreement, Oyster Boys and King Solomon's Reef owners, employees, or agents shall not discriminate against any person because of status protected from discrimination by law, including but not limited to sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, veteran status, sexual orientation, or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability does not apply

if the particular disability prevents the performance of the essential functions required of the position. This requirement applies to, but is not limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Oyster Boys shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision is grounds for termination of this agreement by City and, in the case of Oyster Boys breach, may result in ineligibility for further City agreements. Oyster Boys may be declared ineligible for further contracts with City. Oyster Boys, will, however, be given a reasonable time in which to correct this noncompliance.

B. To assist City in determining compliance with the above nondiscrimination requirements, Oyster Boys must complete and return the Statement of Compliance with Non-Discrimination attached as Exhibit "B."

6. **Utilities.** The City may construct underground utilities through the entire length and breadth of the right-of-way use area, but shall, upon completion of any such construction that may occur during the term of this ROW use agreement, restore the site to the condition created by Oyster Boys without cost to Oyster Boys.

7. **Assignment.** Oyster Boys may not assign this ROW use agreement without the prior written consent of the City.

8. **Hold Harmless, Indemnification, and Insurance.** Oyster Boys shall defend, indemnify, and hold City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with activities or operations performed by Oyster Boys or on King Solomon's Reefs behalf as a result of this ROW use agreement, except for injuries and damages caused by the sole negligence of City.

Should a court of competent jurisdiction determine that RCW 4.24.115 applies to this ROW use agreement, then Oyster Boys agrees to defend, indemnify, and hold City, its officers, officials, employees, and volunteers harmless to the maximum extent permitted thereunder. It is further specifically and expressly understood that the indemnification provided herein constitutes Oyster Boys waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. **This waiver has been mutually negotiated by the parties.** The provisions of this section shall survive the expiration or termination of this ROW use agreement.

A. **Insurance Term.** Oyster Boys shall procure and maintain for the duration of this ROW use agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on Oyster Boys behalf in connection with this ROW use agreement.

B. **No Limitation.** Oyster Boys maintenance of insurance as required by this ROW use agreement may not be construed to limit the liability of Oyster Boys to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

C. **Minimum Scope of Insurance.** Oyster Boys shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance must be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and must cover liability arising from operations, products-completed operations, and stop-gap liability. There may be no exclusion for liability arising from explosion, collapse, or underground property damage. City must be named as an additional insured under Oyster Boys Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 13 or a substitute endorsement providing at least as broad coverage.
2. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage must be at least as broad as Insurance Services Office (ISO) form CA 00 01.
3. Liquor Liability.

D. **Minimum Amounts of Insurance.** Oyster Boys shall maintain the following insurance limits:

1. Commercial General Liability insurance must be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
3. Liquor Liability insurance in the amount of not less than \$1,000,000 per occurrence if the Oyster Boys is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages. The City is to be named as an additional insured on the Liquor Liability insurance.

E. **Other Insurance Provision.** Oyster Boys Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they are primary insurance as respects City. Any insurance, self-insurance, or self-insured pool coverage maintained by City must be excess of Oyster Boys insurance and may not contribute with it.

F. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. **Verification of Coverage.** Oyster Boys shall furnish City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing

the insurance requirements of Oyster Boys before entering into this ROW use agreement. The certificate(s) of insurance must list the City as: "City of Olympia is added as additionally insured" and must include an additional insured endorsement form ISO CG 2012 or at least as broad as equivalent.

H. **Notice of Cancellation.** Oyster Boys shall provide City with written notice of any policy cancellation, within two business days of its receipt of such notice.

I. **Failure to Maintain Insurance.** Failure on the part of Oyster Boys to maintain the insurance as required is a material breach of this ROW use agreement, upon which City may, after giving five business days' notice to Oyster Boys to correct the breach, immediately terminate this ROW use agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to City on demand.

J. **Public Entity Full Availability of Permittee Limits.** If Oyster Boys maintains higher insurance limits than the minimums shown above, City is insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by Oyster Boys, irrespective of whether such limits maintained by Oyster Boys are greater than those required by this ROW use agreement or whether any certificate of insurance furnished to City evidences limits of liability lower than those maintained by Oyster Boys .

9. **Notices.** Unless applicable law requires a different method of giving notice, any and all notices, demands, or other communications required or desired to be given under this ROW use agreement by a party (collectively "Notices") must be in writing and must be validly given or made to another party if delivered either personally or by Federal Express (FedEx), UPS, USPS, or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it must be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express (FedEx) or other overnight delivery service of recognized standing, it must be deemed given 24 hours after the deposit thereof with such delivery service. If such Notice is mailed, such must be deemed given 48 hours after the deposit thereof in the United States mail. Each such Notice must be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To: Oyster Boys

Ryan Perkins  
Oyster Boys LLC Member  
8624 Libby Rd NE  
Olympia WA 98506  
Email: [ryan.p@perkinsfamilyfarms.com](mailto:ryan.p@perkinsfamilyfarms.com)

To City of Olympia:

Steven J. Burney  
Olympia City Manager  
601 4<sup>th</sup> Avenue East  
PO Box 1967  
Olympia, WA 98507-1967  
Email: [jburney@ci.olympia.wa.us](mailto:jburney@ci.olympia.wa.us)

With a copy to:

Olympia City Attorney  
601 4<sup>th</sup> Avenue East  
PO Box 1967  
Olympia, WA 98507-1967  
Email: [mbarber@ci.olympia.wa.us](mailto:mbarber@ci.olympia.wa.us)

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner above to the other party hereto.

10. **Event of Default.** In the event of a default under this ROW use agreement by Oyster Boys, City may, in addition to all other remedies, seek monetary damages and specific performance of Oyster Boys obligations under this ROW use agreement.

11. **Applicable Law.** This ROW use agreement is governed by the laws of the State of Washington.

12. **Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations under this ROW use agreement to carry out the intent of the parties.

13. **Modification or Amendment or Waivers.** No amendment, change, or modification of this ROW use agreement is valid, unless in writing and signed by both of the parties. No waiver of any breach or covenant or provision in this ROW use agreement is a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this ROW use agreement. No extension of time for performance of any obligation or act may be deemed an extension of the time for performance of any other obligation or act.

14. **Entire Agreement.** This ROW use 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 ROW use agreement to any person, firm, or corporation other than the Parties executing this ROW use agreement.

15. **Construction.** Captions are solely for the convenience of the Parties and are not a part of this ROW use agreement. This ROW use 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.

16. **Attorneys' Fees and Costs.** Should either Party bring suit to enforce this ROW use 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.

17. **Partial Invalidity.** If any term or provision of this ROW use agreement or the application thereof to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this ROW use agreement, or the application of such term or provision to persons or circumstances other

than those held invalid or unenforceable, are not affected thereby; and each such term and provision of this ROW use agreement is valid and may be enforced to the fullest extent permitted by law.

18. **Time.** Time is of the essence of every provision of this ROW use agreement.

**City of Olympia**, a Washington municipal corporation

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

Date: \_\_\_\_\_

Approved as to form:

Michael M. Young  
Deputy City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2024 before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven J. Burney, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

OYSTER BOYS, LLC

By: \_\_\_\_\_  
Ryan Perkins  
Member

Date: \_\_\_\_\_

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF THURSTON    )

On the \_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared \_\_\_\_\_, to me known to be a \_\_\_\_\_, a \_\_\_\_\_, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned and on oath states he/she is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_



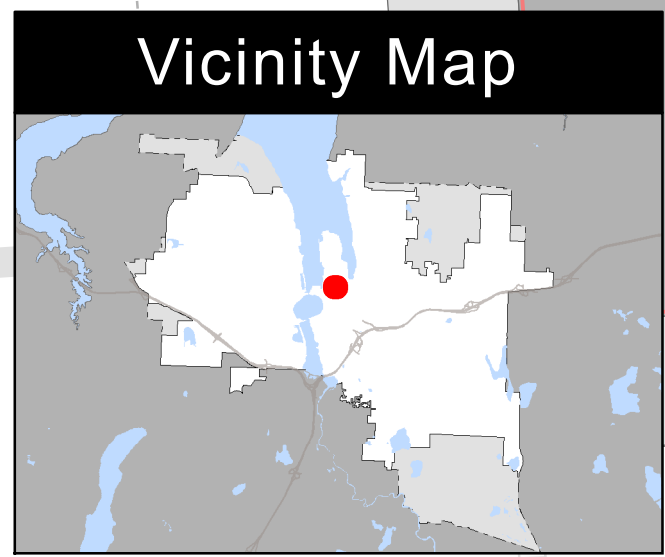


# King Solomon's Reef

ROW Lease Site Plan

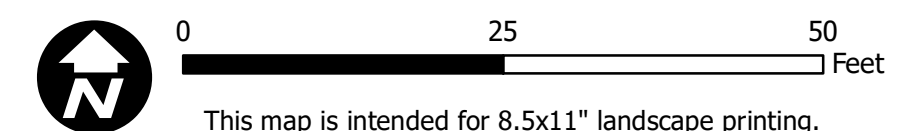
Produced: 1/24/2024

EXHIBIT A



**Legend**

 Lease Area	 Sidewalk
 Assessors Parcels	 Roadway/Alley
 Buildings	



This map is intended for 8.5x11" landscape printing.

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

**Exhibit "B"**

**STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT**

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement or contract for services contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Unlawful discrimination includes transphobic discrimination or harassment, including transgender exclusion policies or practices in health benefits.

Listed below are methods to ensure that this policy is communicated to your employees, if applicable.

- Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).
- Nondiscrimination provisions are posted on applications for service.
- Nondiscrimination provisions are posted on the agency's web site.
- Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.
- Nondiscrimination provisions are shared during meetings.

**Failure to implement at least two of the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.**

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance by the use of at least two of the measures specified above.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Print Name of Person Signing

**Alternative Section for Sole Proprietor:** I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status.

\_\_\_\_\_  
(Sole Proprietor Signature)

\_\_\_\_\_  
(Date)