

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, CONSENTING TO BOARDWALK ASSOCIATES' ASSIGNMENT OF ITS INTEREST AND OBLIGATIONS IN A RIGHT-OF-WAY USE AGREEMENT WITH THE CITY AND A MAINTENANCE AGREEMENT WITH THE CITY TO DKS BOARDWALK, LLC, AND CONSENTING TO DKS BOARDWALK, LLC'S COLLATERAL ASSIGNMENT OF THE RIGHT-OF-WAY USE AGREEMENT AND MAINTENANCE AGREEMENT TO WASHINGTON BUSINESS BANK.

WHEREAS, Boardwalk Associates Co-Tenancy Investors ("Boardwalk Associates") has a Right-of-Way Use Agreement with the City, by which Boardwalk Associates is permitted to maintain a structure and related appurtenances within a certain portion of the Columbia Street right-of-way, southerly of Corky Avenue and northerly of Olympia Avenue; this structure currently houses Budd Bay Cafe; and

WHEREAS, this Right-of-Way Use Agreement was executed by Boardwalk Associates and the City in 2020 (this 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, the Right-of-Way Use Agreement provides that the Right-of-Way Use 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 is obligated to advise the City of such change or assignment and secure the City'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.

WHEREAS, Boardwalk Associates and the City have a separate Maintenance Agreement, executed in 2020, which governs the parties' cooperation in, and sharing in the costs of, maintaining and repairing certain common, shared elements of the Percival Landing facility; and

WHEREAS, Boardwalk Associates has notified the City that it intends to sell its fee interest in the structure and appurtenances subject to the Right-of-Way Use Agreement to DKS Boardwalk, LLC (who will be a purchaser for value of the structure and appurtenances) and has notified the City of its intent to assign its interests and obligations in the Right-of-Way Use Agreement and the Maintenance Agreement to DKS Boardwalk, LLC, and has requested that the City give its consent to these assignments; and

WHEREAS, in order to finance its purchase from Boardwalk Associates, it is necessary for DKS Boardwalk, LLC to collaterally assign the interest it will acquire in the Right-of-Way Use Agreement and the Maintenance Agreement to its lender, Washington Business Bank, which will establish a security interest in DKS Boardwalk, LLC's interest in those agreements; under this arrangement, should DKS Boardwalk, LLC default in its obligations to Washington Business Bank, the Bank will be permitted to foreclose on DKS Boardwalk, LLC's interest in the agreements, and eventually transfer that interest, subject to City approval; and

WHEREAS, the City's consent to both the primary assignments and the collateral assignments will facilitate the sale of the building housing Budd Bay Café, in furtherance of 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 assignments.

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

1. The City of Olympia consents to Boardwalk Associates' assignment of its interests and obligations under the Right-of-Way Use Agreement and Maintenance Agreement to DKS Boardwalk, LLC.
2. The City of Olympia consents to DKS Boardwalk, LLC's collateral assignment to Washington Business Bank of the interest it will acquire from Boardwalk Associates in the Right-of-Way Use Agreement and the Maintenance Agreement.
3. The City of Olympia fully releases Boardwalk Associates from any further obligation or liability under the Right-of-Way Use Agreement and the Maintenance Agreement as of the Effective Date of the assignment of these two agreements.
4. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Assignment of Right-of-Way Use Agreement and Assignment of Maintenance Agreement Assignment and any other documents necessary to effectuate such assignments, and to make any minor modifications as may be required and are consistent with the consent to assignment, or to correct any scrivener's errors.
5. 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, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY