



## City Council

### **Approval of a Resolution Consenting to Boardwalk Associates' Assignment of its Interest and Obligations in a Right-of-Way Use Agreement and Maintenance Agreement 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**

**Agenda Date:** 10/12/2021  
**Agenda Item Number:** 4.C  
**File Number:**21-0923

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**Type:** resolution **Version:** 1 **Status:** Passed

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#### **Title**

Approval of a Resolution Consenting to Boardwalk Associates' Assignment of its Interest and Obligations in a Right-of-Way Use Agreement and Maintenance Agreement 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

#### **Recommended Action**

##### **Committee Recommendation:**

Not referred to a committee.

##### **City Manager Recommendation:**

Move to approve a Resolution consenting to Boardwalk Associates' assignment of a Right-of-Way Use Agreement and Maintenance Agreement to DKS Boardwalk, LLC, and approving DKS Boardwalk, LLC's collateral assignment of the Right-of-Way Use Agreement and Maintenance Agreement to Washington Business Bank.

#### **Report**

##### **Issue:**

Whether to approve Boardwalk Associates' assignment of the Right-of-Way Use and Maintenance Agreements to DKS Boardwalk, LLC, and DKS Boardwalk, LLC's collateral assignment of those agreements to Washington Business Bank.

##### **Staff Contact:**

Rich Hoey, P.E., Public Works Director, 360.753.8495  
Laura Keehan, Parks Planning and Design Manager, Parks Arts and Recreation Department, 360.570.5855

**Presenter(s):**

None - Consent Calendar Item.

**Background and Analysis:**

Boardwalk Associates, Inc., has a Right-of-Way Use Agreement with the City, by which Boardwalk Associates is permitted to maintain a structure and related appurtenances within the Columbia Street right-of-way. The structure, located at 525 Columbia Street NW, currently contains the Budd Bay Café Restaurant.

The City Council authorized the current Right-of-Way Use Agreement in 2020. This replaced a prior agreement dating back to 1987.

The Boardwalk Associates and the City have a separate Maintenance Agreement, also executed in 2020, which governs the parties' cooperation in, and the sharing of costs for common, shared elements of the Percival Landing facility.

Boardwalk Associates has notified the City that it intends to sell its fee interest in the structure and appurtenances to DKS Boardwalk, LLC. Dannielle Knutson, owner of the Budd Bay Café, is the sole member of DKS Boardwalk, LLC. Consistent with the sale of property, Boardwalk Associates intends to assign its interests and obligations under the Right-of-Way Use and Maintenance Agreements to DKS Boardwalk, LLC. Such assignment requires the City's consent.

In addition, DKS Boardwalk, LLC intends to collaterally assign the interests it will obtain in the Right-of-Way Use Agreement and the Maintenance Agreement to Washington Business Bank in order to secure financing for its purchase of the building. By DKS Boardwalk, LLC collaterally assigning its interests in the agreements, Washington Business Bank 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. This collateral assignment also requires the City's consent.

**Neighborhood/Community Interests (if known):**

The ROW Use Agreement provides value back to the citizens of Olympia for use of public right-of-way. The Maintenance Agreement also provides for cooperation and sharing of costs for maintenance of Percival Landing. However, it is not expected that approval of the assignment or collateral assignment as requested will have any impact on the City's receipt of this value.

**Options:**

1. Approve a Resolution authorizing the City Manager to sign the Assignment Agreement and Collateral Assignment Agreement. These assignments allow the sale of the property to proceed as planned.
2. Modify either or both agreements to address Council concerns.
3. Do not approve the Assignment Agreements. According to the Right-of-Way Use Agreement, "consent may not be unreasonably withheld if the assignee is a purchaser for value of the structure and appurtenances."

**Financial Impact:**

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The City will continue to receive \$4,887.06 annually for the use of City Right-of-Way, with a 4% annual inflation factor. The Maintenance Agreement also provides for some sharing of costs related to maintenance of Percival Landing.

**Attachments:**

Resolution

Assignment Agreement

Collateral Assignment Agreement