

**RESOLUTION NO. 19-xxx**

**A RESOLUTION AUTHORIZING  
TRANSACTIONS RELATING TO THE WHARF DEVELOPMENT**

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**FINDINGS:**

1. The City of Orange Beach, Alabama (the “City”) and AIG Baker Orange Beach Wharf, L.L.C. (“AIG-Baker”) entered into that certain Second Amended and Restated Development Agreement dated December 16, 2010 (the “Original Development Agreement”) relating to The Wharf, a mixed-use commercial, retail and residential development located between Highway 180 and the Intracoastal Waterway within the municipal city limits of Orange Beach, Baldwin County, Alabama (the “Development”).
2. Pursuant to the Original Development Agreement, the City issued to AIG-Baker the City’s Limited Obligation Warrant Series 2010A in the face amount of \$25,000,000 (the “Original Warrant”), payable solely out of certain sales and lodging tax revenues generated from businesses within the Development.
3. Wharf Retail Properties, LLC, a Louisiana limited liability company (“Developer”), together with its affiliated entities of Wharf Entertainment Properties, LLC and Intracoastal Hotel Properties, L.L.C., each Louisiana limited liability companies, have acquired by purchase and lease, substantially all of the Development.
4. In connection with such acquisition, (i) the rights and obligations under the Original Development Agreement were assigned to, and assumed by, Developer, and (ii) the Original Warrant was assigned to Developer.
5. The development of retail, lodging and other facilities within the Development has taken longer than initially anticipated with AIG-Baker.
6. Developer, together with Wharf Entertainment Properties, LLC, has indicated that it is prepared to continue to develop the Development, which is anticipated to produce increased sales, use and lodging tax revenues to the City and to provide the opportunity for additional new, full and part time jobs within the City.
7. In consideration of the public benefits which the City and its residents have received and will continue to receive from the Development and the consideration of the covenants contained in the Development Agreement (as such term is defined below), the City desires to grant public funds and things of value in aid of the Developer for the purpose of promoting the economic development of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. **Approval of Lending of Credit, Expenditure of Public Funds and Giving of Things of Value.**

The City, at its public meeting on March 12, 2019 and in accordance with Alabama Constitutional Amendment No. 750, hereby finds and determines that the proposed lending of its credit, expenditure of public funds and giving of things of value for the purposes described in the proposed form of Third Amended and Restated Development Agreement (the “Development Agreement”) by and between the City and Developer, will serve a valid and sufficient public purpose, notwithstanding any incidental benefits accruing to Developer or any other private party.

The Development Agreement contemplates the following actions, amongst others (as more particularly set forth therein):

- (a) Land Swap. The Developer would cause to be conveyed to the City lots 19-22 of Callaway Land Subdivision located on Nancy Lane (collectively, the "Nancy Lane Lot"), presently owned by Intracoastal, L.L.C. The City would convey to the Developer Lot 1 according to the plat of The Wharf East Side Subdivision Phase I on Main Street, presently owned by the City, and the parties would terminate certain related documents of record relating thereto. The City would pay the Developer \$250,000.
- (b) Event Center. The City would grant to the Developer a right of first offer and a right of first refusal on the City's Event Center located at 4671 Wharf Parkway (including the parking lot associated therewith).
- (c) Reader Board Sign. The City would pay the Developer approximately \$70,000, representing 30% of the renovation cost to the reader board sign located within the Development.
- (d) Construction Related Sales Tax Revenues. The Original Warrant would be amended to begin crediting sales tax revenues derived from construction activities within the Development (in addition to retail sales).
- (e) Restructuring of Original Warrant. The term of the Original Warrant would be extended by 10 years (to December 31, 2035), the annual cap on payments thereunder would be eliminated, interest accrual thereunder would be eliminated, and the principal amount thereunder would be set at an amount equal to \$21,479,520.
- (f) New Fire Station Site. The Developer would cause to be granted to the City an option to purchase and a right of first refusal on a 1.94 acre site on the eastern side of the Development for use by the City for municipal purposes, which would include use as a fire station. In the event that the City acquires such site, the Developer would be afforded certain rights to repurchase said site in the event that the City were to consider selling it.
- (g) Impact Fee. The City's impact fee exception would continue to apply to the Development.
- (h) Semi-Public Facilities. The streets, waterway improvements, parking areas, utilities, conservation areas, sidewalks, walkways, parks, public restrooms and other facilities, improvements or common areas within the Development would generally remain open to patrons of the Development from time to time without a fee or membership requirement for participation, and the Developer would be required to continue to maintain them in good repair.
- (i) Staging Areas. The City would continue to have the right, subject to certain conditions and prior scheduling, to be able to utilize certain undeveloped portions of the Development as a staging area for events.
- (j) Reader Board Sign Agreement. The City and the Developer would amend and restate that certain Agreement with Respect to Reader Board Sign dated effective April 20, 2010, by and between the City and AIG-Baker, to provide for the conveyance of the reader board sign located within the Development to be conveyed by the City to the Developer (as contemplated by, and to carry out the intentions of the original said agreement)

2. **Approval of Third Amended and Restated Development Agreement.**

The City hereby authorizes, adopts and approves the Development Agreement in substantially the form and of substantially the content as the form of the Development Agreement presented to and considered at this meeting (a copy of which has been ordered filed in the permanent records of the City in the custody of the City Clerk) with such changes and additions thereto and deletions therefrom as the Mayor shall approve, which approval shall be evidenced by his executing the

Development Agreement, and the Mayor is hereby authorized and directed, in the name and on behalf of the City, to execute, acknowledge and deliver said Development Agreement (and the closing deliverables and exhibits contemplated thereunder), and the City Clerk is hereby authorized and directed to affix to the Development Agreement (and the closing deliverables and exhibits contemplated thereunder) the seal of the City and to attest the same.

3. **Approval of Amended and Restated Series 2010A Warrant.**

The City hereby authorizes, adopts and approves the City's Amended and Restated Limited Obligation Warrant, Series 2010A in the principal amount of \$21,479,520 (the "Warrant") in substantially the form and of substantially the content as the form of the Warrant presented to and considered at this meeting (a copy of which is attached as an exhibit to the Development Agreement and has been ordered filed in the permanent records of the City in the custody of the City Clerk) with such changes and additions thereto and deletions therefrom as the Mayor shall approve, which approval shall be evidenced by his executing the Warrant, and the Mayor is hereby authorized and directed, in the name and on behalf of the City, to execute, acknowledge and deliver said Warrant, and the City Clerk is hereby authorized and directed to affix to the Warrant the seal of the City and to attest the same.

4. **Authorization of Related Documents and Action.**

The Mayor and City Clerk are hereby authorized and directed to execute, deliver, seal and attest such other agreements, instruments, deeds, undertakings, documents, affidavits and certificates related thereto, and to take such other actions on behalf of the City as may be necessary or desirable to carry out the transactions contemplated by this resolution, including, without limitation, obtaining a survey, title commitment, title policy and such other due diligence items as may be desirable with respect to the property interests to be acquired by the City.

5. **Public Benefits Sought to be Achieved.**

The public benefits sought to be achieved by the City's adoption of the Development Agreement and issuance of the Warrant are expected to include, without limitation, (i) acquiring the Nancy Lane Lot will facilitate public access to the waterfront from the City's adjacent coastal arts center, (ii) affording the City the right to acquire a site for future municipal uses within the Development, (iii) promoting local economic development and stimulating the local economy, (iv) increasing employment opportunities in the City, (v) increasing the City's tax base, which will result in additional tax revenues for the City, (vi) promoting the expansion and retention of business enterprise in the City and (vii) promoting the development of infrastructure within the Development.

6. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 12<sup>th</sup> DAY OF MARCH, 2019.

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Renee Eberly  
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 19-xxx, which was duly and legally adopted at a regular meeting of the City Council on March 12, 2019.

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City Clerk