

## THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT

### *“THE WHARF”*

THIS THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “**Agreement**”), dated effective as of the \_\_\_\_ day of March, 2019 (the “**Effective Date**”), is entered into by and between WHARF RETAIL PROPERTIES, LLC, a Louisiana limited liability company (“**Wharf Retail**”), and the CITY OF ORANGE BEACH, ALABAMA, a municipality organized and existing under the laws of the State of Alabama (the “**City**”). Wharf Entertainment Properties, LLC, a Louisiana limited liability company (“**Wharf Entertainment**”) executes this Agreement as an additional signatory to express its consent to the provisions of Section 2.1 (to the extent that the Semi-Public Facilities lie within its portion of the Development), Section 2.4 and Article V (to the extent that closing deliverables are required of Wharf Entertainment).

### RECITALS

WHEREAS, the City and AIG Baker Development, L.L.C., a Delaware limited liability company (“**Baker**”) entered into that certain Development Agreement dated July, 2004 (the “**Original Development Agreement**”), with respect to The Wharf, a mixed-use commercial development within the municipal city limits of Orange Beach, Baldwin County, Alabama (the “**Development**”), which sits on approximately 221.6 acres of land located south of the Intracoastal Waterway and north of Highway No. 180, in Baldwin County, Alabama, which land is shown on the map attached hereto as **Exhibit A** (the “**Land**”); and

WHEREAS, the transactions described in the Original Development Agreement were validated by the Circuit Court of Baldwin County on December 13, 2004 as binding obligations on the City; and

WHEREAS, Baker, AIG Baker Orange Beach Wharf, L.L.C., a Delaware liability company (“**Original Developer**”) and the City subsequently entered into that certain First Amendment to Development Agreement dated as of July 1, 2009, pursuant to which, amongst other things, the rights and obligations of Baker were assigned to and assumed by Original Developer; and

WHEREAS, Original Developer and the City subsequently entered into that certain Second Amendment to Development Agreement dated as of September 29, 2009, that certain Third Amendment to Development Agreement dated as of December 29, 2009, and that certain Fourth Amendment to Development Agreement dated as of March 16, 2010 (the Original Development Agreement, as theretofore amended and assigned, as described above, collectively the “**Amended Original Development Agreement**”); and

WHEREAS, pursuant to the Amended Original Development Agreement, the City agreed to issue to Original Developer the City’s Limited Obligation Warrant in the face amount of up to Twenty-five Million Dollars (\$25,000,000) under the terms and conditions described therein; and

WHEREAS, conditioned on the City's agreement to issue said Limited Obligation Warrant pursuant to the Amended Original Development Agreement, Original Developer constructed Phase I of the Development, consisting of retail space, condominium units, a marina, a conference center and an amphitheater, amongst other things, together with various non-commercial improvements which were deemed necessary or helpful to support the operation and use of the Development, consisting of, amongst other things, certain Streets, Parking Areas, Waterway Improvements and Utilities (as such terms are defined herein); and

WHEREAS, subsequent to the negotiation of the Original Development Agreement, Amendment No. 750 to the Constitution of Alabama 1901 ("**Amendment 750**") was duly adopted and ratified; and

WHEREAS, the Original Developer and the City entered into that certain Amended and Restated Development Agreement dated effective April 20, 2010 (the "**Amended and Restated Development Agreement**"), which amended and restated the Amended Original Development Agreement in its entirety; and

WHEREAS, notice regarding the Amended and Restated Development Agreement was duly published in accordance with the requirements of Amendment 750; and

WHEREAS, the transactions described in the Amended and Restated Development Agreement were validated by the Circuit Court of Baldwin County on July 1, 2010 as binding obligations on the City; and

WHEREAS, based on the occurrence of certain events subsequent to the execution of the Amended and Restated Development Agreement, the Original Developer and the City entered into that certain Second Amended and Restated Development Agreement dated effective December 16, 2010 (the "**Second Amended and Restated Development Agreement**"), which amended and restated the Amended and Restated Development Agreement in its entirety; and

WHEREAS, notice regarding the Second Amended and Restated Development Agreement was duly published in accordance with the requirements of Amendment 750; and

WHEREAS, pursuant to the Second Amended and Restated Development Agreement, the City issued to Original Developer the City's Limited Obligation Warrant Series 2010A in the face amount of Twenty-Five Million Dollars (\$25,000,000) (the "**Original Warrant**") on the terms and conditions contained in the Second Amended and Restated Development Agreement; and

WHEREAS, Wharf Retail, together with Wharf Entertainment, has acquired substantially all of the Development, and in connection therewith, Original Developer assigned to Wharf Retail all rights and obligations under the Second Amended and Restated Development Agreement, and Wharf Retail assumed all of the obligations thereunder, pursuant to that certain Assignment and Assumption--Development Agreement dated November 29, 2011; and

WHEREAS, Wharf Retail is the holder of the Original Warrant; and

WHEREAS, Intracoastal Hotel Properties, L.L.C., a Louisiana limited liability company (“**Intracoastal Hotel**”) has constructed and owns a 132 room Springhill Suites Hotel (the “**Hotel**”) as part of the Development; and

WHEREAS, Wharf Retail, Wharf Entertainment and Intracoastal Hotel are each wholly owned by Arthur Emmette Favre, III (“**Principal**”), which entities have revived, renovated, maintained and continued to develop the Development by investment of substantial funds for improvements to the retail facilities, the marina, and the entertainment facilities, and for the construction and operation of the Hotel; and

WHEREAS, the development of retail, lodging and other facilities within the Development has taken longer than initially anticipated with the Original Developer, but has progressed substantially through Wharf Retail, Wharf Entertainment and Intracoastal Hotel; and

WHEREAS, Wharf Retail, together with Wharf Entertainment, 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; and

WHEREAS, the Development has resulted and will continue to result in significantly increased tax revenues to the City, has boosted and will continue to boost property values in the vicinity of the Development, has led and will lead to additional economic activity in the area of the City surrounding the Development, has increased and bolstered and will continue to increase and bolster the tourism industry in the vicinity of the Development; and

WHEREAS, as a result of the Development, substantial additional annual property taxes have accrued and will continue to accrue to the City and many new jobs have been and could continue to be generated for full or part-time employees of the Development; and

WHEREAS, the City has determined that the Development has advanced and will continue to advance the economic base of the City, as well as the prosperity and welfare of its citizens, and is a direct benefit to the City and its residents; and

WHEREAS, in consideration of the public benefits which the City and its residents have received and will continue to receive from the Development, subject to the provisions herein stated, the City has agreed to grant public funds and things of value in aid of Developer (as hereinafter defined) for the purpose of promoting the economic development of the City by, amongst other things, (i) extending the time periods for certain tax revenue sharing, (ii) eliminating the annual cap on the tax revenue sharing, (iii) including sales taxes associated with construction activities within the tax revenues which are subject to being shared, and (iv) establishing a new principal amount payable on the Original Warrant; and

WHEREAS, to evidence the limited obligation of the City to pay certain tax revenues to the Developer (as hereinafter defined) arising from the Development, as modified in the manner contemplated herein, the City and Wharf Retail desire that the City issue its Amended and

Restated Limited Obligation Warrant Series 2010A in the face amount of \$21,479,520, on the terms and conditions stated herein; and

WHEREAS, the parties hereto are desirous of having such inducements set forth in a valid, binding and enforceable agreement to set forth the framework for the relationship between the City and Developer with regard to the sharing of tax revenues from the Development; and

WHEREAS, the City and Wharf Retail desire to grant each other various interests in real properties that they respectively own or control, as more particularly stated herein; and

WHEREAS, notice of the primary terms of this Agreement was duly published by the City in accordance with the requirements of Amendment 750 and a public meeting was conducted by the City Council of the City on March 12, 2019 in accordance with Amendment 750; and

WHEREAS, in furtherance thereof, the parties desire to amend, restate, replace and supersede in its entirety the Second Amended and Restated Development Agreement and the Original Warrant.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged by the parties, the parties hereby covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

As used in this Agreement, all defined terms set forth above shall have the meanings so ascribed to them, and, in addition, the following terms shall have the following meanings:

**“Access Easement Area”** has the meaning ascribed to such term in the Declaration of Easement.

**“Agreement”** has the meaning ascribed to such term in the initial paragraph of this Agreement.

**“Amended and Restated Development Agreement”** has the meaning ascribed to such term in the Recitals.

**“Amended and Restated Sign Agreement”** has the meaning ascribed to such term in Article V(j) hereof.

**“Amended Original Development Agreement”** has the meaning ascribed to such term in the Recitals.

**“Amendment 750”** has the meaning ascribed to such term in the Recitals.

**“Ancillary Agreements”** means, collectively, (i) the Fire Station Option Agreement, (ii) the Declaration of Easement, (iii) the Amended and Restated Sign Agreement, (iv) the Conference Center ROFR Agreement, (v) the Declaration of Covenants Regarding Staging Areas, and (vi) the Investment Letter.

**“Annual City Retainage Amount”** means the first Twenty Thousand Dollars (\$20,000) of Applicable Development Tax Revenues received by the City during each Collection Period.

**“Applicable Development Tax Revenues”** means fifty percent (50%) of the Sales Tax Revenues and fifty percent (50%) of the Lodging Tax Revenues received by the City, during each Collection Period.

**“Applicable Environmental Laws”** means any applicable laws, rules or regulations pertaining to health or the environment, or petroleum products, or radon radiation, or oil or hazardous substances, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“**CERCLA**”), as codified at 42 U.S.C. § 9601 et seq., as amended, the Resource Conservation and Recovery Act of 1976, as amended (“**RCRA**”) and the Federal Emergency Planning and Community Right-To-Know Act of 1986, as amended.

**“Authorizing Resolution”** means that certain resolution adopted by the City Council of the City on March 12, 2019, approving the transactions contemplated by this Agreement.

**“Baker”** has the meaning ascribed to such term in the Recitals.

**“Bank”** means the bank established by the City from time to time to be the depository bank for the Warrant Fund.

**“City”** has the meaning ascribed to such term in the initial paragraph of this Agreement.

**“Closing”** means the closing which marks the issuance and delivery of the Warrant, and the execution and delivery of the other closing deliverables described in Articles V and VI hereof.

**“Collection Period”** means, with respect to a calendar year within the Funding Period, the period of time commencing on December 1 of the previous calendar year and continuing until November 30 of such calendar year. By way of example, the Collection Period corresponding to the 2019 calendar year is that period of time commencing on December 1, 2018 and ending on November 30, 2019.

**“Conference Center Property”** means the property more particularly described on **Exhibit B** attached hereto.

**“Conference Center ROFR Agreement”** has the meaning ascribed to such term in Article V(f) hereof.

**“Declaration of Covenants Regarding Staging Areas”** has the meaning ascribed to such term in Article V(m) hereof.

**“Declaration of Easement”** means the Declaration of Easement in the form and substance attached as an Exhibit to the Fire Station Option Agreement.

**“Developer”** means Wharf Retail and any permitted assignee of Wharf Retail under this Agreement pursuant to Section 10.1.

**“Development”** has the meaning ascribed to such term in the Recitals.

**“Effective Date”** has the meaning ascribed to such term in the initial paragraph of this Agreement.

**“Encumbrance(s)”** means any lien, encroachment, defect of title, easement, license, covenant, lease, claim of a third party, security interest, mortgage, hypothecation, deed of trust, pledge, charge, adverse claim of ownership or use, restriction on transfer (such as a right of first refusal or other similar right), judgment, right of way, burden, servitude, option, matters a survey or inspection would show, or other encumbrance of any kind or character.

**“Favre Entity”** means any Organization in which:

(i) the Principal or his family members have the right and power to direct or cause the direction of the management and policies of such Organization; and

(ii) the Principal or his family members own at least fifty percent (50%) of the Ownership Interests in such Organization.

**“Favre Exit”** has the meaning ascribed to such term in Section 10.1(b)(ii).

**“Fire Station Option Agreement”** has the meaning ascribed to such term in Article V(c) hereof.

**“Funding Period”** means the period of time commencing as of the Effective Date and continuing until the earlier to occur of (i) the Warrant being Paid in Full, or (ii) November 30, 2035.

**“Impact Fee Exception”** has the meaning ascribed to such term under Section 2.6 hereof.

**“Intracoastal Hotel”** has the meaning ascribed to such term in the Recitals.

**“Intracoastal Hotel Acquisition Deed”** means the Exchange Deed by Wharf Entertainment in favor of Intracoastal Hotel executed on March 30, 2015 and filed and recorded on April 14, 2015 as Instrument No. 1508071 in Baldwin County, Alabama real estate records,

as amended by Amended Exchange Deed executed on July 30, 2015 and filed and recorded on July 31, 2015 as Instrument No. 1527681 in the Baldwin County, Alabama real estate records.

**“Investment Letter”** has the meaning ascribed to such term under Article V(l) hereof.

**“Land”** has the meaning ascribed to such term in the Recitals.

**“Lodging Tax Revenues”** means the net revenues, after deduction for Tax Collection Costs attributable to such revenues, received by the City from the levy and collection of the City’s lodging tax, which are generated from renting or furnishing any rooms, lodging or accommodations within the Development, less any refunds, credits or amounts required by applicable law to be held in escrow. Lodging Tax Revenues shall not include any taxes earmarked for the Gulf Coast Convention and Visitors’ Bureau.

**“Master Declaration”** means that certain Master Declaration of Easements, Restrictions, and Covenant to Share Costs for the Wharf recorded on November 7, 2005 as Instrument No. 934696 in the Baldwin County, Alabama real estate records, the Supplemental Declaration to the Master Declaration of Easements, Restrictions and Covenant to Share Costs for The Wharf (Additional Site Plan Designation) recorded May 29, 2007 as Instrument No. 1052770 in the Baldwin County, Alabama real estate records, the Supplemental Declaration to the Master Declaration of Easements, Restrictions and Covenant to Share Costs for The Wharf (Designation of Residential Parking Area) recorded May 29, 2007 as Instrument No. 1052771 in the Baldwin County, Alabama real estate records, as the same may hereafter be further amended from time to time.

**“Nancy Lane Lot”** means that certain parcel more particularly described on **Exhibit C** attached hereto.

**“New Fire Station Pad”** means that certain parcel shown on the survey attached hereto as **Exhibit D**.

**“Oasis Resort Club Property”** means the property more particularly described on **Exhibit E** attached hereto.

**“Old Fire Station Pad”** means Lot 1, according to the plat of The Wharf East Side Subdivision Phase I, recorded at Slide 0002442-F in the Baldwin County Probate Records, consisting of approximately one (1) acre.

**“Orange Beach Impact Fee Ordinance”** has the meaning ascribed to such term in Section 2.6 hereof.

**“Original Developer”** has the meaning ascribed to such term in the Recitals.

**“Original Development Agreement”** has the meaning ascribed to such term in the Recitals.

**“Organization”** means a general partnership, limited partnership, limited liability company, registered limited liability partnership, corporation, professional corporation, professional association, trustee, personal representative, fiduciary, trust, business trust, estate, custodianship and any other association, firm, entity or organization.

**“Ownership Interests”** means the issued and outstanding equity interests, membership interests, units, shares or similar indicia of legal or beneficial ownership in an Organization, including any interests into which any of the foregoing are converted, merged or consolidated.

**“Paid in Full”** means, with respect to the Warrant, that the City shall have made payments in the aggregate under the Warrant on or after the Effective Date equal to the stated principal amount thereof.

**“Parking Areas”** means all parking decks, parking lots and parking places located within the Development, except for the third/upper level of both the east and west parking decks located behind the retail buildings constructed along Main Street and Wharf Parkway, which are gated and dedicated for the exclusive use of the Levin's Bend Condominium Owner's Association, the associated parking ramps between the second and third levels, and the upper level of the pedestrian bridges, as more specifically detailed on the Supplemental Declaration to the Master Declaration of Easements, Restrictions and Covenant to Share Costs for The Wharf (Designation of Residential Parking Area) recorded May 29, 2007 at Instrument No. 1052771 in the Baldwin County, Alabama real estate records.

**“Permitted Encumbrance(s)”** means, in connection with any conveyance of real estate (or interests therein) contemplated herein (or other description of real estate), (i) liens for ad valorem taxes and general and special assessments not yet due and payable, (ii) utility, access, drainage and other easements and rights of way, mineral rights, restrictions and exceptions none of the foregoing of which, individually or in the aggregate, materially interfere with or impair the use of any land, building, equipment, lease, license or other rights with respect to any portion of the land being conveyed for the purpose for which the applicable property is proposed to be acquired, (iii) such other minor defects, irregularities, encumbrances, easements, rights of way and clouds on title (including zoning and other similar restrictions and regulations) as customarily exist with respect to properties similar in character to the property being conveyed, and would not in the aggregate materially impair the title or interest of the grantee in acquiring the land in question for the purpose for which it is proposed to be acquired; and (iv) such other exceptions as may be approved by the applicable grantee.

**“Pledged Tax Revenues”** means, for each Collection Period, the Applicable Development Tax Revenues received by the City during such Collection Period which are in excess of the Annual City Retainage Amount.

**“Principal”** has the meaning ascribed to such term in the Recitals.

**“Sales Tax Revenues”** means the net revenues, after deduction for Tax Collection Costs attributable to such revenues, received by the City from the levy and collection of the City's sales tax, which are (i) generated from business operations conducted within the Development,



or (ii) attributable to construction of new facilities within the Development; and, in either case, less any refunds, credits or amounts required by applicable law to be held in escrow; provided, however, with respect to such sales tax revenues which are derived from construction activities, Developer shall be responsible for demonstrating to the City, to the City's reasonable satisfaction, that any particular sales tax revenues were attributable to construction of new facilities within the Development.

**“Sanitary Sewer Easement Area”** has the meaning ascribed to such term in the Declaration of Easement.

**“Second Amended and Restated Development Agreement”** has the meaning ascribed to such term in the Recitals.

**“Semi-Public Facilities”** means the Streets, Waterway Improvements, Parking Areas, Utilities, conservation areas, sidewalks, walkways, parks, public restrooms and any other facilities, improvements or common areas generally open to patrons of the Development from time to time without a fee or membership requirement for participation.

**“Stormwater Sewer Easement Area”** has the meaning ascribed to such term in the Declaration of Easement.

**“Streets”** means the Wharf Parkway, Main Street, Wharf Lane, and such other roadways and bridges now or hereafter constructed within the Development from time to time, but excluding the Foley Beach Express.

**“Substantial Owner”** means a subsequent owner of more than fifteen (15) acres of developed or developable property within the Development.

**“Tax Collection Costs”** means with respect to the collection of any applicable tax revenues, the sum of (i) an amount equal to one and one-half percent (1.5%) of the applicable revenues collected (which amount shall be retained by the City as an administrative fee to cover its overhead attributable to its in-house tax administration and collection efforts); and (ii) any out-of-pocket tax collection costs, such as attorneys' fees, filing fees, auditing fees and litigation expenses.

**“Termination of Declaration”** has the meaning ascribed to such term in Article V(i) hereof.

**“Termination of Release of Obligations”** has the meaning ascribed to such term in Article V(h) hereof.

**“Termination of ROFR”** has the meaning ascribed to such term in Article V(g) hereof.

**“Utilities”** means all utilities, lines and systems located within the Development, including all water lines and systems, telephone lines and systems, cable television lines and systems, gas lines and systems, sanitary sewer lines and systems, electrical lines and systems,

storm sewers and systems, drainage lines and systems, chiller and boiler (pump) system lines and any other utility lines or systems.

**“Warrant”** means the City’s Amended and Restated Limited Obligation Warrant, Series 2010A, in substantially the form attached as **Exhibit F** hereto and made a part hereof.

**“Warrant Fund”** has the meaning ascribed to such term in Section 7.2 hereof.

**“Waterway Improvements”** means the boardwalk within the Development constructed along the Intracoastal Waterway, together with the boat parking slips, marina, catwalks, docks, piers, walkways and similar improvements along the boardwalk.

**“Wharf Entertainment”** has the meaning ascribed to such term in the initial paragraph of this Agreement.

**“Wharf Entertainment Properties Acquisition Deed”** means the Statutory Warranty Deed by Oarlock Asset Management One, LLC in favor of Wharf Entertainment executed on December 20, 2011 and filed and recorded on December 20, 2011 as Instrument No. 1317234 in the Baldwin County, Alabama real estate records.

**“Wharf PUD”** has the meaning ascribed to such term in Section 2.6 hereof.

**“Wharf Retail”** has the meaning ascribed to such term in the initial paragraph of this Agreement.

**“Wharf Retail Properties Acquisition Deed”** means the Statutory Warranty Deed by Gregory T. Maloney (“Grantor”), solely in his capacity as Receiver for certain real property owned by Original Developer, as more specifically described in that certain Consent Order Appointing Receiver dated April 11, 2011 entered in the case styled JPMorgan Chase Bank, N.A. vs. AIG Baker Orange Beach Wharf, L.L.C., in the United States District Court for the Southern District of Alabama, Southern Division, bearing Civil Action No. 11-00126-CG in favor of Wharf Retail executed on November 20, 2011 and filed and recorded on November 29, 2011 as Instrument No. 1313623 in the Baldwin County, Alabama real estate records.

## **ARTICLE II THE DEVELOPMENT**

2.1 **Ownership of Semi-Public Facilities.** All of the Semi-Public Facilities, including the Public Land and the Public Waterway Improvements (as such terms are defined in the Amended Original Development Agreement), shall continue to be owned by the Developer and Wharf Entertainment, or their permitted successors and/or assigns, as the case may be, and will not be public property; however, the public will have rights to use the same in the ordinary course of business as patrons of the Development and in accordance with Developer’s rules or regulations, applicable restrictive covenants and applicable law. If the City requests, Developer agrees to erect barriers temporarily to avoid the possibility of dedicating those Semi-Public Facilities for public use or creating prescriptive rights therein.

2.2 **Maintenance of Semi-Public Facilities.** Consistent with Developer's continued practices as the primary owner (together with Wharf Entertainment) of the Development, Developer shall continue to, at its sole cost and expense (which may be reimbursed to Developer by tenants of the Development pursuant to tenant leases and/or third party transferees (as permitted by Section 10.1 hereinbelow): (a) maintain all of the Semi-Public Facilities located on the Land in good repair, reasonable wear and tear excluded; (b) keep the Semi-Public Facilities at all times in a safe, sightly, good and functional condition, reasonable wear and tear excepted; (c) keep the Semi-Public Facilities free from refuse and rubbish in accordance with customary procedures for similar properties; (d) mow and otherwise maintain all landscaped areas within the Semi-Public Facilities; (e) repair holes or breaks in the Parking Areas and Streets; (f) re-pave, re-stripe and replace markings on the surface of the Parking Areas and Streets from time to time as and when necessary so as to provide for the orderly flow and parking of automobiles; (g) maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of the Development; (h) maintain all lighting for the Semi-Public Facilities; (i) service, maintain, repair and replace, and pay the costs of any fees or charges in connection with, all Utilities; (j) manage and monitor all Semi-Public Facilities and enforce the proper and lawful use thereof by the public and patrons of the Development; and (k) otherwise cause the Semi-Public Facilities to comply with all applicable requirements of law and governmental regulation. Developer may enter into one or more "sub"-management agreements appointing a third party to perform all or portions of the maintenance and repair described above; however, Developer shall remain the responsible party for maintenance of the same. It is the responsibility of the Developer from time to time to ensure that it has proper rights of access to the Semi-Public Facilities, and no inability to secure such access shall relieve Developer of its obligations hereunder.

2.3 **Indemnification.** Developer shall defend, protect, indemnify, and hold harmless the City, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of, relating to or resulting from any of the following, provided, however, that the foregoing indemnity shall not extend to the negligent acts or willful misconduct of the City, its agents, representatives, contractors, subcontractors, employees, and members of its governing body:

(a) in the event the New Fire Station Pad is determined to be in violation of any Applicable Environmental Law at any time prior to the conveyance thereof to the City;

(b) in the event the Nancy Lane Lot is determined to be in violation of any Applicable Environmental Law at any time prior to the conveyance thereof to the City;

(c) in the event that any property the subject of the Access Easement Area, the Stormwater Sewer Easement Area or the Sanitary Sewer Easement Area is determined to be in violation of any Applicable Environmental Law;

(d) the Master Declaration;

(e) any failure any of the representations and warranties contained in Section 8.1 hereof to be true and accurate;

(f) any impairment (legal or physical) in the right of any Owner or Mortgagee (as such terms are defined in the Declaration of Easement) with respect to the drainage of storm and surface water from the New Fire Station Pad;

(g) any impairment (legal or physical) in the right of any Owner or Mortgagee (as such terms are defined in the Declaration of Easement) with respect to the discharge of sanitary sewage from the New Fire Station Pad; and

(h) any breach or violation of any obligation hereunder or under any of the Ancillary Agreements on the part of Developer.

2.4 **PUD Cooperation.** Developer agrees to cooperate with the City in connection with any PUD modification which may be requested by the City in order to address any subdivision in connection with the foreclosure (or deed-in-lieu) by any mortgage lender on the Development, or any subsequent sale of property foreclosed (or taken by deed-in-lieu), provided that such cooperation efforts shall impose no monetary obligation on the Developer.

2.5 **Acknowledgment of Conveyances and Benefits of Warrant.** The City acknowledges (i) the acquisitions by Wharf Retail, Wharf Entertainment and Intracoastal Hotel of the Development under the Wharf Retail Deed, the Wharf Entertainment Deed and the Intracoastal Hotel Deed for the continued development of the Development by Principal as the sole owner of Wharf Retail, Wharf Entertainment and Intracoastal Hotel, and (ii) Developer's entitlement to the benefits of the Warrant with respect to all property which is part of the Development (except as otherwise provided by Section 10.1(b)), including the Old Fire Station Pad to be conveyed by the City to the Developer under the terms hereof.

2.6 **Impact Fee Exception.** The City acknowledges and agrees that the property within the Development, whether owned by Wharf Retail, Wharf Entertainment, Intracoastal Hotel or other parties (including subsequent transferees as permitted by Section 10.1 (b)) is excepted from impact fees under the Orange Beach Code of Ordinances, Ordinance No.2006-986, 9-25-2006, Section 42-502, et. seq. (the "**Orange Beach Impact Fee Ordinance**"), particularly under Section 42-507(g) (the "**Impact Fee Exception**"). In connection with the Impact Fee Exception, the City acknowledges (a) approval of The Wharf Planned Unit Development Master Plan on November 2, 2004 (the "**Wharf PUD**"), prior to adoption of the Orange Beach Impact Fee Ordinance, (b) that the approval of the Wharf PUD was conditioned on the Original Developer's construction of (i) the Commercial Development (as defined in the Original Development Agreement) and (ii) certain public improvements, including the Public Waterway Improvements, consisting of, among other things, a boardwalk along a portion of the Intracoastal Waterway, together with boat parking along a portion or portions of the boardwalk, public parking facilities and public park areas and conservation areas, roads, sanitary sewer, and storm sewer, all as defined in the Original Development Agreement, (c) the Original Developer's fulfillment and completion of those conditions of approval of the Wharf PUD, (d) certain other public benefits, and (e) that pursuant to the terms of the Amended and Restated Development

Agreement, the City was relieved of its obligation under the Original Development Agreement (as amended by the Amended Original Development Agreement) to accept title to the Public Land (as defined in the Original Development Agreement, as amended by the Amended Original Development Agreement) and the Public Waterway Improvements and all of the Semi-Public Facilities (as defined in the Amended and Restated Development Agreement), together with all maintenance and repair obligations associated therewith due to, among other things, the projected cost of maintenance with respect thereto and the potential liability associated therewith, as further set forth in the Second Amended and Restated Development Agreement. The City further expressly agrees that the Impact Fee Exception will continue to apply to the Development, including with respect to any subsequent amendments to the Wharf PUD, notwithstanding the provisions of Section 42-507(h) of the Orange Beach Impact Fee Ordinance.

### **ARTICLE III CITY'S ACKNOWLEDGMENT REGARDING BRIDGE AGREEMENT**

The City does hereby acknowledge that all obligations and provisions under Second Amended and Restated Development Agreement pertaining to the Bridge Agreement, the Bridge Security Amount, the related Traffic Fee Shortfall, and Traffic Fees related to the Bridge, as all such terms are defined in, and as further addressed in Article VI of the Second Amended and Restated Development Agreement, are, solely as between the Developer and the City, fully satisfied, extinguished and are no longer relevant, and that Developer is relieved and released of any and all obligations with respect thereto. This shall not be deemed to modify or affect the rights or obligations of the parties to the Bridge Agreement, only to clarify that the provisions of the Second Amended and Restated Development Agreement relating thereto are no longer applicable to the Developer.

### **ARTICLE IV REAL ESTATE CONVEYANCES**

4.1 **Option to Purchase and Right of First Refusal on New Fire Station Pad.** Developer agrees to cause Wharf Entertainment to (i) grant the City an option to purchase the New Fire Station Pad for a period of five (5) years from the Effective Date of this Agreement at the appraised value, (ii) to agree to refrain from developing the New Fire Station Pad during such five (5) year period, and (iii) grant the City a right of first refusal in the event of a bona fide offer to purchase the New Fire Station Pad from a third party, commencing after such five (5) year period, until the earlier of the Warrant being Paid in Full or Wharf Entertainment constructing vertical improvements thereon for commercial or retail development, all as more particularly described in the Fire Station Option Agreement. The conveyance to the City will be free and clear of Encumbrances, except for Permitted Encumbrances; provided, however, that such conveyance shall include (i) a use restriction that the property shall be used only for City use (unless it is sold to a third party, in which case, such restriction shall cease, but shall be subject to the provision of the Master Declaration, particularly Article 4 entitled "Use Restrictions" and Section 7.5(a) and (b) thereof entitled "Use in Accordance with Site Plan"), and (ii) a right of first offer in favor of the Developer in the event that the City desires to market the Fire Station Pad for sale and a right of first refusal in favor of the Developer in the event that the City receives a bona fide offer to purchase the Fire Station Pad from a third party and desires to proceed thereon (in a situation where it is not marketing the Fire Station Pad for sale following

the procedure of the right of first offer). The Developer will additionally grant such easements for ingress, egress, drainage and utilities for the benefit of the New Fire Station Pad, all as shall be more particularly described in the Declaration of Easement.

4.2 **Conveyance of Nancy Lane Lot.** Developer agrees to cause Intracoastal, L.L.C. to convey the Nancy Lane Lot to Developer and Developer shall convey the Nancy Lane Lot to the City in fee simple on the Effective Date, free and clear of Encumbrances, except for Permitted Encumbrances. Ad Valorem taxes will be prorated as of the Effective Date.

4.3 **Conveyance of Old Fire Station Pad.** The City agrees to convey the Old Fire Station Pad to the Developer in fee simple on the Effective Date, free and clear of Encumbrances, except for Permitted Encumbrances. Ad Valorem taxes will be prorated as of the Effective Date.

4.4 **Termination of Declaration of Easement.** The parties agree to terminate that certain Declaration of Easement dated December 16, 2010 executed by Original Developer and recorded as Instrument No. 1267040 in the Office of the Baldwin County Probate Judge, on the Effective Date, pursuant to the terms and conditions of the Termination of Declaration.

4.5 **Termination of Right of First Refusal on Old Fire Station Pad.** The parties agree to terminate that certain Agreement of Right of First Refusal dated December 16, 2010 between Original Developer and the City, and recorded as Instrument 1267043 in the Office of the Baldwin County Probate Judge, on the Effective Date, pursuant to the terms and conditions of the Termination of ROFR.

4.6 **Grant of Right of First Offer and Right of First Refusal on Conference Center Property.** The City agrees to grant a right of first offer in favor of the Developer in the event that the City desires to market the Conference Center Property for sale and a right of first refusal in favor of the Developer in the event that the City receives a bona fide offer to purchase the Conference Center Property from a third party and desires to proceed thereon (in a situation where it is not marketing the Conference Center Property for sale following the procedure of the right of first offer), on the Effective Date, pursuant to the terms and conditions of the Conference Center ROFR Agreement.

4.7 **Termination of Release of Obligations for Exempted Owners Under Master Declaration.** The parties agree to terminate that certain Release of Obligations for Exempted Owners Under Master Declaration given by Original Developer, dated December 16, 2010, and recorded as Instrument No. 1267041 in the Office of the Baldwin County Judge of Probate, on the Effective Date, pursuant to the terms and conditions of the Termination of Release of Obligations.

4.8 **Payment of Purchase Price.** The City agrees to pay \$250,000 to Developer for the real estate transactions described hereinabove. Such payment will be made on the Effective Date in immediately available funds by wire transfer.

4.9 **Reader Board Sign Agreement.** The City and the Developer agree to amend and restate that certain Agreement with Respect to Reader Board Sign dated effective April 20,

2010, by and between the City and Original Developer, which will provide for the conveyance of the Reader Board Sign by the City to the Developer. The City agrees to make a one-time payment in the amount of \$70,203.66 to Developer, which represents 30% of the sign renovation cost. Such payment will be made on the Effective Date in immediately available funds by wire transfer.

4.10 **Declaration of Covenants Regarding Staging Areas.** Until December 31, 2035 or until the Warrant is Paid in Full, whichever first occurs, Developer will, as it has done in the past, continue to work with the City regarding requests for use of undeveloped portions of the Development for staging areas for festivals and other publicly sponsored events, subject to the terms and conditions set forth in the Declaration of Covenants Regarding Staging Areas. The City acknowledges that the property described by the Intracoastal Hotel Deed is not available as a staging area.

## **ARTICLE V DEVELOPER'S CLOSING DELIVERABLES**

At or prior to the Closing (as applicable), the Developer shall, at its sole cost and expense, provide the following to the City, to the reasonable satisfaction of the City, which shall be conditions to the City's obligation to issue the Warrant:

- (a) mortgage releases from any mortgagee of the Nancy Lane Lot;
- (b) a statutory warranty deed to the Developer, in the form attached as **Exhibit G** hereto, duly executed by Intracoastal, L.L.C., conveying fee simple title in the Nancy Lane Lot, free and clear of any Encumbrances other than Permitted Encumbrances; and a statutory warranty deed to the City, also in the form attached as **Exhibit G** hereto, duly executed by Developer, conveying fee simple title in the Nancy Lane Lot, free and clear of any Encumbrances other than Permitted Encumbrances;
- (c) the Fire Station Option Agreement in the form attached hereto as **Exhibit H** (the "**Fire Station Option Agreement**"), duly executed by Wharf Entertainment;
- (d) Developer's lien waiver, bankruptcy, judgment and tax lien affidavits, using the standard forms customarily employed by title companies in Alabama, together with an affidavit under Section 1445 of the Internal Revenue Code and such documentation as may be reasonably necessary or appropriate to convey title to the Nancy Lane Lot to the City in accordance with the tenor of this Agreement;
- (e) written resolutions of the members and managers of Wharf Retail and Wharf Entertainment authorizing the execution, delivery and performance of this Agreement, each of the Ancillary Agreements and each of the other instruments and agreements referenced herein to which such entity is a party;

(f) an Agreement of Right of First Offer and Right of First Refusal in the form attached hereto as **Exhibit I** (the “**Conference Center ROFR Agreement**”), duly executed by Developer;

(g) a Termination of Agreement of Right of First Refusal in the form attached hereto as **Exhibit J** (the “**Termination of ROFR**”), duly executed by Developer;

(h) a Termination of Release of Obligations for Exempted Owners Under Master Declaration in the form attached hereto as **Exhibit K** (the “**Termination of Release of Obligations**”), duly executed by Developer;

(i) a Termination of Declaration of Easement in the form attached hereto as **Exhibit L** (the “**Termination of Declaration**”), duly executed by Developer;

(j) an Amended and Restated Agreement with Respect to Reader Board Sign in the form attached hereto as **Exhibit M** (the “**Amended and Restated Sign Agreement**”), duly executed by Developer;

(k) the Original Warrant;

(l) an investment letter, in the form attached hereto as **Exhibit N** (the “**Investment Letter**”), duly executed by Wharf Retail; and

(m) the Declaration of Covenants Regarding Staging Areas in the form attached hereto as **Exhibit P** (the “**Declaration of Covenants Regarding Staging Areas**”), duly executed by Wharf Entertainment and Wharf Retail.

## **ARTICLE VI THE CITY’S CLOSING DELIVERABLES**

At the Closing, the City shall, at its sole cost and expense, provide the following to the Developer, against delivery of and conditioned upon the Developer’s delivery of the items described in Article V hereof:

(a) the Fire Station Option Agreement, duly executed by the City;

(b) a statutory warranty deed to the Developer, in the form attached as **Exhibit G** hereto, duly executed by the City, conveying fee simple title in the Old Fire Station Pad, free and clear of any Encumbrances other than Permitted Encumbrances or those items shown as exceptions in that certain owner’s title insurance policy number 5011400-109546 dated December 30, 2010, issued by First American Title Insurance Company;

(c) the City’s lien waiver, bankruptcy, judgment and tax lien affidavits, using the standard forms customarily employed by title companies in Alabama, together with an affidavit under Section 1445 of the Internal Revenue Code and such documentation as may be



reasonably necessary or appropriate to convey the title to the Old Fire Station Pad to the Developer in accordance with the tenor of this Agreement;

- (d) the Conference Center ROFR Agreement, duly executed by the City;
- (e) the Termination of ROFR, duly executed by the City;
- (f) a Termination of Release of Obligations, duly executed by the City;
- (g) the Termination of Declaration, duly executed by the City;
- (h) the Amended and Restated Sign Agreement, duly executed by the City;
- (i) the Warrant, duly executed by the City;
- (j) \$250,000 pursuant to Section 4.8;
- (k) \$70,203.66 pursuant to Section 4.9; and
- (l) mortgage releases from any mortgagee of the Old Fire Station Pad.

## **ARTICLE VII THE WARRANT**

7.1 **The Warrant.** Developer agrees to deliver to the City on the Effective Date, the Original Warrant (the sealed original), to be marked for cancellation and re-issuance. Against receipt of the Original Warrant, the City agrees to re-issue to Developer on the Effective Date, and Developer agrees to accept from the City on the Effective Date, the Warrant, in the principal amount of \$21,479,520, which shall amend, restate, replace and supersede in its entirety the Original Warrant. The Warrant shall bear no interest, and shall be payable in quarterly installments, all as is more particularly specified hereinafter and in the Warrant. The form of the Warrant is attached hereto as Exhibit F.

7.2 **Establishment of Warrant Fund.** The City will establish a bank account with the Bank in the name of the City (the “**Warrant Fund**”), into which account the applicable Pledged Tax Revenues pursuant to Section 7.3 hereof shall be deposited. The Bank shall be and remain the depository for the Warrant Fund. Any amounts contained in the “Warrant Fund” created under the Second Amended and Restated Development Agreement, or which should properly have been so contained, shall be transferred to and/or become the Warrant Fund hereunder as of the Effective Date.

7.3 **Funding Obligations of City.** Subject to the terms and conditions hereof, and provided Developer is not in breach of its obligations hereunder or under the Ancillary Agreements, and subject to any and all notice and cure periods as may be provided by the terms of this Agreement, for each month during the Funding Period until the Warrant is Paid in Full, the City shall pay into the Warrant Fund, not later than the twentieth (20<sup>th</sup>) day of the month, all

Pledged Tax Revenues received by the City during the preceding month. It is understood that the Annual City Retainage Amount with respect to each Collection Period shall be retained by the City and is not required to be remitted to the Warrant Fund or to otherwise satisfy the Warrant.

7.4 **Payment Terms.** Subject to the terms and conditions hereof, and provided Developer is not in breach of its obligations hereunder or under the Ancillary Agreements, and subject to any and all notice and cure periods as may be provided by the terms of this Agreement, on or before the last day of each calendar quarter (i.e., the last day of each March, June, September and December) commencing on the Effective Date and continuing until the earlier of (i) December 31, 2035, or (ii) the Warrant being Paid in Full, the City will pay (or cause to be paid) all amounts properly contained in the Warrant Fund as of the twentieth (20<sup>th</sup>) day of such month (which is the last month of the quarter). At the City's option, the City may retain, at City's expense, a "paying agent" to make all payments on the Warrant.

7.5 **Discharge of Indebtedness.** On the earliest to occur of (a) the date that the Warrant is Paid in Full, or (b) December 31, 2035 (after taking into account the payment due on or before December 31, 2035), the entire outstanding balance of the Warrant shall be deemed paid, satisfied and discharged in full; and, all obligations of the City to make payments from the Warrant Fund shall cease. If the Warrant is Paid in Full, any remaining amounts contained in the Warrant Fund as of such time shall be returned to the City to be used for any lawful purpose.

7.6 **Non-recourse.** The sole source of payment of the Warrant shall be from the applicable Pledged Tax Revenues for which the City is required to pay into the Warrant Fund as described above, and nothing herein or in the Warrant shall constitute a charge against the general funds of the City.

7.7 **Limited Obligation of City.** The City's obligation hereunder is subject (i) to the law-imposed requirement that, if necessary, there must first be paid from the Pledged Tax Revenues the necessary and legitimate governmental expenses of operating the City, and (ii) the required payments to all warrant holders of the City, both existing and future. Notwithstanding the foregoing, to the extent that there are sufficient Pledged Tax Revenues available to make payments under the Warrant (which includes payments to the Warrant Fund) in any calendar year, but the same is not paid in whole or in part due to the fact that such Pledged Tax Revenues are used for the purposes of paying the necessary and legitimate governmental expenses of operating the City or any required payments to any other warrant holders of the City, then, in such event only, such amounts of Pledged Tax Revenues not paid under the Warrant (i.e., not paid to the Warrant Fund) shall be carried forward to subsequent calendar years and shall be paid to the extent that there are sufficient Pledged Tax Revenues available for payment in such subsequent calendar years. To the extent that such circumstances exist as of December 31, 2035, then this obligation of the City shall extend beyond December 31, 2035 until the earlier to occur of such carried forward amounts being paid or the Warrant is Paid in Full.

7.8 **Taxable Warrant.** The City makes no representation with respect to the tax implications of the Warrant.

7.9 **Redemption.** The City shall have the right to redeem the Warrant in whole or in part at any time, upon payment to the holder thereof of the outstanding principal balance, without premium or penalty.

7.10 **Setoff.** The City shall be entitled to set off against the Warrant: (i) any and all payments or sums owing from Developer to the City under this Agreement or any of the Ancillary Agreements, (ii) the value of any obligations to be undertaken by Developer under this Agreement or any of the Ancillary Agreements, and/or (iii) any damages suffered or incurred by the City on account of any breach by Developer under this Agreement or any of the Ancillary Agreements. Such right of set off shall be separate and apart from any and all other rights and remedies that the City may have against the Developer.

## **ARTICLE VIII REPRESENTATIONS AND WARRANTIES**

8.1 **Representations and Warranties of Wharf Retail.** To induce the City to enter into this Agreement and to issue the Warrant to Wharf Retail, Wharf Retail does hereby make the following representations and warranties to the City, which representations and warranties shall be deemed made by Wharf Retail to the City as of the Effective Date and shall not be merged into the documents executed at the Closing:

(a) Each of Wharf Retail, Wharf Entertainment, and Intracoastal Hotel is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Louisiana, is duly qualified to do business in and is in good standing with the State of Alabama, and is wholly owned by Principal, an individual resident of the State of Louisiana.

(b) Wharf Retail (and Wharf Entertainment for the limited purposes stated in the first paragraph hereof) has full power and authority to enter into this Agreement and to incur the obligations set forth herein, each of which have been authorized by all necessary limited liability company action of Wharf Retail (and Wharf Entertainment).

(c) This Agreement constitutes a legal, validly binding obligation of Wharf Retail (and Wharf Entertainment for the limited purposes stated in the first paragraph hereof), enforceable in accordance with its terms.

(d) Wharf Retail and Wharf Entertainment presently own (or lease) all of the property identified on **Exhibit O** attached hereto, which generally consists of the entire Development **less and except:** (i) Levin's Bend Condominiums, (ii) the Conference Center Property, (iii) the Oasis Resort Club Property, and (iv) the Hotel.

(e) The Master Declaration of Easements, Restrictions, and Covenant to Share Costs for the Wharf recorded on November 7, 2005 as Instrument No. 934696 in the Baldwin County real estate records has not been amended except by Supplemental Declaration recorded as Instrument No. 1052770 and Supplemental Declaration recorded as Instrument No. 1052771.

(f) There are no Encumbrances against the New Fire Station Pad or the Nancy Lane Lot other than Permitted Encumbrances.

(g) Developer spent at least \$234,012.20 (exclusive of any costs particular to the “Wharf” logo) renovating the Reader Board Sign within the period from approximately December 2015 to February 2016.

8.2 **Representations of City.** To induce Wharf Retail to enter into this Agreement and to accept the Warrant from the City, the City does hereby make the following representations and warranties to Wharf Retail, which representations and warranties shall be deemed made by the City to Wharf Retail as of the Effective Date and shall not be merged into the documents executed at the Closing:

(a) The City has the full right and authority to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated herein, including the issuance of the Warrant.

(b) This Agreement has been properly authorized and properly executed by the City.

(c) This Agreement constitutes the valid and binding obligation of the City, and the subsequent administrations of the City, enforceable in accordance with its terms.

(d) The City has determined that there are sufficient public purposes served by this Agreement for it to enter into this Agreement and to perform its obligations hereunder.

(e) Based upon the current businesses operating within the City limits, the City anticipates having sufficient tax revenues to pay (i) all of its issued warrants, (ii) all necessary and legitimate governmental expenses of operating the City, and (iii) the payments due under the Warrant.

(f) There are no Encumbrances against the Old Fire Station Pad other than Permitted Encumbrances.

(g) This Agreement was duly adopted by the Authorizing Resolution.

## **ARTICLE IX CLOSING**

9.1 **Effective Date.** The Closing will occur concurrently with the execution and delivery of this Agreement.

9.2 **Expenses.** With the exception of the items listed below, for which each Party will bear its own expense, Developer shall be responsible for other incidental closing expenses associated with the transactions. Each Party shall be responsible for payment of their own respective attorneys fees, provided, however, that the Developer agrees to reimburse the City the

amount of up to \$85,000 for the attorneys' fees and costs incurred by the City in connection with the transactions described herein, the preparation and negotiation of this Agreement, the other instruments and agreements contemplated hereby, the publication of the Amendment 750 notice, and attending meetings with City officials and council meetings, which were incurred during the time period from January 1, 2016 to the Effective Date hereof; provided, however, that the City will pay its own legal fees associated with the acquisition of the Nancy Lane Lot (including deed preparation costs, preparation and review of closing affidavits, and review of title, survey and environmental reports associated with the Nancy Lane Lot). The payment of the foregoing fees may be deducted by the City as a credit against the amounts payable under Article VI (j) and (k).

9.3 **Closing Costs.** Each party will be responsible for procuring and paying for any due diligence associated with the property that it is acquiring (including any survey, title commitment and title policy), and paying the recording costs associated with any instruments that such party desires to record. The parties agree to split the cost of the title company in connection with handling the closings and any escrow fees (excluding the premium of title policies and search and examination fees).

## **ARTICLE X MISCELLANEOUS**

### **10.1 Assignment.**

(a) The City shall have no right to assign its rights and duties under this Agreement to any party, except with respect to its rights as to the New Fire Station Pad; subject, however to all of the terms and conditions of the Fire Station Option Agreement.

(b) Developer (and Wharf Entertainment) in their sole discretion may assign, transfer, lease, joint venture, grant a mortgage or security interest for financing or re-financing, or sell all, substantially all, or any portion of, the Development (developed or undeveloped alike). In any such case, Developer shall be entitled to retain the Warrant and all proceeds and benefits derived therefrom, subject to the following three (3) exceptions:

(i) **Anti Speculation.** Within five (5) years of closing a conveyance of title to any undeveloped property within the Development, if the acquirer thereof has not commenced construction thereon, or the Developer (or Wharf Entertainment) has not re-acquired such property, then any sales tax revenues or lodging tax revenues thereafter generated on such property shall be excluded from the definition of Sales Tax Revenues and Lodging Tax Revenues, accordingly; it being the intent, that in such event, the holder of the Warrant shall cease to be entitled to the benefits of the Warrant for the subject parcel. This provision shall not apply to any conveyance of title to undeveloped property if the acquirer thereof is and remains a Favre Entity.

(ii) **Favre Exit.** If through one or more transactions, Wharf Retail and Wharf Entertainment would each become divested of all or substantially all of their respective property within the Development, or, with respect to the Wharf Retail and Wharf Entertainment, would each cease to be a Favre Entity (in either such case, a "**Favre**

**Exit**”), Developer shall require as part of said transaction (or series of transactions which amounts to such a divestiture) that a Substantial Owner assume all of Developer’s obligations hereunder, in which case, this Agreement and the Warrant shall be assigned to such Substantial Owner. In such case, Developer shall provide written notice of said transaction to the City. In looking at whether such divestiture has occurred, the retainage of undevelopable property (such as wetlands, lakes and streams) shall not be considered. Upon any such assignment and assumption in full of this Agreement and the Warrant, so long as Developer is not in material default hereunder, Developer will be relieved of its obligations hereunder first arising on and after the date of such assignment. In connection with any such transaction, the City agrees to provide an estoppel certificate that to its knowledge, there is no default hereunder, if that be the case; and if not the case, setting forth any matters of which it has knowledge of default. This paragraph shall not apply to any conveyance or other transaction if the acquirer thereof is and remains a Favre Entity.

(iii) **Subsequent Assignment.** Subsequent to a Favre Exit transaction, this Agreement may only be further assigned to a Substantial Owner to whom the Warrant is simultaneously assigned, and who agrees to assume all of the obligations of Developer hereunder. In such case, the then-present Developer shall provide written notice of said transaction to the City. Upon any such assignment and assumption in full of this Agreement and the Warrant, so long as the then-current Developer is not in material default hereunder, such then-current Developer will be relieved of its obligations hereunder first arising on and after the date of such assignment. In connection with any such transaction, the City agrees to provide an estoppel certificate that to its knowledge, there is no default hereunder, if that be the case; and if not the case, setting forth any matters of which it has knowledge of default.

(c) Developer may assign or grant a security interest in the Warrant as collateral security for a loan or loans to any bona fide third party lender with a first mortgage on any property within the Development owned by Developer for the development, financing and re-financing of any property within the Development, provided written notice of said transaction is provided to the City by the Developer.

(d) Developer shall not assign, convey or transfer (or in any way attempt to monetize) the Warrant, other than in connection with an assignment of this Agreement as contemplated by paragraph (b)(ii) or (iii) above.

(e) Developer shall not assign its rights or obligations under this Agreement except (i) in connection with a conveyance or other transaction as contemplated by paragraph (b)(ii) or (iii) above, (ii) to Wharf Entertainment (so long as it is and remains a Substantial Owner), or (iii) as provided by paragraphs (f) or (g) below.

(f) In the event that Developer or Wharf Entertainment convey their interest in any of the Semi-Public Facilities, Developer shall notify the City thereof in writing, and require the acquirer thereof to assume the obligations contained in Section 2.1 hereof.

(g) Developer shall be permitted to assign its obligations under Sections 2.2, 2.3 and 2.4 hereof to any Substantial Owner, so long as Developer notifies the City thereof in writing, and requires such assignee to assume such obligations; provided, however, notice to the City shall not be required for Developer to enter into sub-management agreements as provided in Section 2.2.

(h) No assignment contemplated by paragraphs (f) or (g) shall relieve Developer of its obligations hereunder; provided, however, that if Developer is not in default hereunder, and the assignee is acceptable to the City in the City's sole discretion (including the financial condition of such assignee), the City may agree to relieve Developer of its obligations hereunder first arising on and after the date of such assignment (as to the obligations assigned and assumed), except with respect to provisions hereof which apply to the Developer by reason real estate owned by Developer (or Wharf Entertainment). In connection with any such transaction, the City agrees to provide an estoppel certificate that to its knowledge, there is no default hereunder, if that be the case; and if not the case, setting forth any matters of which it has knowledge of default.

(i) In connection with any assignment of this Agreement permitted hereunder, it is the responsibility of the then-current Developer from time to time to ensure that it has proper rights of access to the Semi-Public Facilities, and no inability to secure such access shall relieve such then-current Developer of its obligations hereunder.

(j) No release of Developer as provided hereunder shall affect the City's right of offset under the Warrant under Section 7.10 above.

**10.2 Real Estate Commissions.** Developer and the City warrant and represent to the other, that there are and shall be no brokerage fees, commissions, or other remuneration of any kind arising from the execution of this Agreement or the Closing (or any of the conveyances described herein). Developer and the City shall forever indemnify and hold the other harmless against and in respect of any and all claims, losses, liabilities and expenses, including reasonable attorney's fees and court costs, which the City or Developer may incur on account of any claim by any broker or agent or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Developer or the City, as the case may be, in respect to the transactions herein contemplated.

**10.3 Notices.** Any notice required or permitted to be delivered hereunder shall, except as otherwise expressly provided herein, be deemed to have been given upon the earlier to occur of (i) actual receipt by the addressee thereof including via facsimile transmission or personal delivery; (ii) the third (3rd) day after the deposit of such notice in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Developer or the City, as the case may be, as set forth below; or (iii) the first (1st) day after such notice has been deposited with a nationally recognized overnight courier (i.e. Federal Express); in either case, such notices to be addressed as follows:

To Wharf Retail:      Wharf Retail Properties, LLC  
P.O. Box 83380

Baton Rouge, LA 70884  
Attention: Arthur Emmette Favre, III  
Facsimile: (225) 215-8290

With a copy to: Breazeale, Sachse & Wilson, L.L.P.  
P.O. Box 3197  
Baton Rouge, LA 70821-3197  
Attn: Michael R. Hubbell, Esq.  
Facsimile: (225) 381-8029

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To Wharf Entertainment:

Wharf Entertainment Properties, LLC  
P.O. Box 83380  
Baton Rouge, LA 70884  
Attention: Arthur Emmette Favre, III  
Facsimile: (225) 215-8290

With a copy to: Breazeale, Sachse & Wilson, L.L.P.  
P.O. Box 3197  
Baton Rouge, LA 70821-3197  
Attn: Michael R. Hubbell, Esq.  
Facsimile: (225) 381-8029

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To City: City of Orange Beach  
P.O. Box 458  
Orange Beach, AL 36561  
Attn: Mayor's Office  
(251) 981-6979 (phone)  
(251) 981-6981 (fax)

With a copy to: Paul O. Woodall, Jr.  
Jones Walker, LLP  
420 20<sup>th</sup> Street North  
Suite 1100  
Birmingham, AL 35203  
(205) 244-5276 (phone)  
(205) 244-5476 (fax)

10.4 **Entire Agreement.** This Agreement, together with the other agreements and exhibits referenced herein and the Ancillary Agreements contains the entire agreement of the Parties and there are no other representations, oral or written, relating to the transactions described herein which have not been incorporated herein or therein. Any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement in whole or in part unless such agreement is in writing and is signed by the Party against whom enforcement of any change, modification, or discharge is sought. Upon execution and delivery of each of the Ancillary Agreements, all covenants, agreements, burdens, obligations, representations,



warranties, indemnities, rights, benefits and other terms and conditions contained therein are fully incorporated herein by reference and made a part hereof.

10.5 **Attorneys' Fees.** Any Party to this Agreement who is the prevailing Party in any legal proceedings against any other Party brought under or with relation to this Agreement or the transactions described herein shall be additionally entitled to recover court costs, cost of litigation or discovery and reasonable attorneys fees and reasonable accountants fees incurred solely in connection with such litigation, from the non-prevailing Party.

10.6 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered to be an original document.

10.7 **Successors and Assigns.** This Agreement shall be inure to the benefit of and bind the Parties hereto, their respective successors and/or permitted assigns.

10.8 **City's Liabilities.** Notwithstanding any provision hereof to the contrary, the Parties agree and acknowledge that the obligations of the City as set forth herein are limited by the limitations imposed on municipalities by the Constitution of the State of Alabama and laws affecting municipal corporations and the use and maintenance of public property.

10.9 **Survival of Covenants.** The covenants, representations, warranties and indemnities in this Agreement shall not terminate until they have been fully performed or have expired by their terms. In furtherance thereof, the rights and obligations in this Agreement shall survive Closing (and any real estate closing described herein), shall remain in full force and effect thereafter, and shall not be merged into the documents executed on the Effective Date (or on the Effective Date with respect to any real estate transaction described herein).

10.10 **Severability.** If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not effect the validity of the remainder of this Agreement.

10.11 **Governing Law.** This Agreement shall be governed by the laws of the State of Alabama without regard to its principles of conflict of laws which would result in the application of the laws of any other jurisdiction.

10.12 **No Waiver.** No consent or waiver, express or implied, by either Party hereto or to any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of either Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

10.13 **Remedies.** Whenever either Party hereto shall default in the performance of any of its obligations under this Agreement, the other Party hereto may take whatever legal proceeding (including actions for damages or for specific performance to the extent provided by law) as shall be necessary or desirable to enforce any agreement or condition contained herein or any other obligation of the defaulting Party imposed by law.

10.14 **No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between the City and Developer and their respective successors and permitted assigns.

10.15 **Headings.** The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

10.16 **No Third-Party Beneficiaries.** Except as set forth herein, this Agreement is intended only for the benefit of the City, Wharf Retail and Wharf Entertainment and Intracoastal Hotel, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party.

10.17 **Effect of Amendment.** This Agreement amends, replaces, supersedes and restates the Second Amended and Restated Development Agreement in its entirety; provided, however, the amendments provided for herein shall be without prejudice to any rights, or diminution of obligations or liabilities under Section 2.4 of the Second Amended and Restated Development Agreement, that may have accrued at any time while such Second Amended Original Development Agreement was in force and effect.

10.18 **Construction.** The Recitals and Exhibits are hereby incorporated by reference and made a part hereof. The term “including” when used throughout shall mean “including without limitation.” Use of the terms "herein", "hereof", and "hereunder" shall be deemed to be references to this Agreement in its entirety unless otherwise specifically provided.

10.19 **No Public Dedication.** This Agreement is not intended, and shall not be construed, to dedicate any easements to the general public or to grant to the general public any rights whatsoever.

10.20 **Public Purpose.** Pursuant to Amendment 750, the City does hereby ascertain, determine, declare and find that the expenditure of public funds for the purposes described herein is in the best interest of the City and will serve a valid and sufficient public purpose notwithstanding any incidental benefit accruing to Developer or any other private entity or entities. The public benefits sought to be achieved by the actions described herein are: (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.

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IN WITNESS WHEREOF, the undersigned have caused this Third Amended and Restated Development Agreement to be executed by their duly authorized officers and/or representatives, to be effective the day and year first above written.

**WHARF RETAIL:**

WHARF RETAIL PROPERTIES, LLC

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By: Arthur Emmette Favre, III  
Its: Manager

**CITY:**

CITY OF ORANGE BEACH, ALABAMA

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By: Tony Kennon  
Its: Mayor

ATTEST: \_\_\_\_\_  
City Clerk

For the limited purposes set forth in the initial paragraph hereof:

WHARF ENTERTAINMENT PROPERTIES, LLC

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By: Arthur Emmette Favre, III  
Its: Manager

**EXHIBIT A**  
**THE LAND**

**EXHIBIT B**  
**CONFERENCE CENTER PROPERTY**

**EXHIBIT C**  
**NANCY LANE LOT**

**EXHIBIT D**  
**NEW FIRE STATION PAD**



**EXHIBIT E**  
**OASIS RESORT CLUB PROPERTY**

**EXHIBIT F**  
**FORM OF WARRANT**

**EXHIBIT G**  
**FORM OF STATUTORY WARRANTY DEED**

**EXHIBIT H**  
**FORM OF FIRE STATION OPTION AGREEMENT**

**EXHIBIT I**  
**FORM OF CONFERENCE CENTER ROFR AGREEMENT**

**EXHIBIT J**  
**FORM OF TERMINATION OF AGREEMENT OF RIGHT OF FIRST REFUSAL**

**EXHIBIT K**  
**FORM OF TERMINATION OF RELEASE OF OBLIGATIONS**

**EXHIBIT L**  
**FORM OF TERMINATION OF DECLARATION**



**EXHIBIT M**  
**FORM OF AMENDED AND RESTATED SIGN AGREEMENT**

**EXHIBIT N**  
**FORM OF INVESTMENT LETTER**

**EXHIBIT O**  
**DEVELOPER PROPERTY**

**EXHIBIT P**  
**FORM OF DECLARATION OF COVENANTS REGARDING STAGING AREAS**