

THIS WARRANT HAS NOT BEEN REGISTERED (i) UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (ii) UNDER ANY STATE SECURITIES LAW AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION EXCEPT PURSUANT TO AN EXEMPTION THEREFROM. ADDITIONALLY, THIS WARRANT IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AS CONTAINED IN SECTION 10.1 OF THE DEVELOPMENT AGREEMENT (AS HEREINAFTER DEFINED).

**UNITED STATES OF AMERICA
STATE OF ALABAMA
CITY OF ORANGE BEACH, ALABAMA
AMENDED AND RESTATED
LIMITED OBLIGATION
WARRANT SERIES 2010A**

The City Treasurer of the **CITY OF ORANGE BEACH, ALABAMA**, a municipal corporation under the laws of the State of Alabama (the "City"), is hereby ordered to pay to **WHARF RETAIL PROPERTIES, LLC**, a Louisiana limited liability company ("Wharf Retail") (Wharf Retail or any subsequent registered assignee hereof, the "Holder"), the principal sum of TWENTY-ONE MILLION FOUR HUNDRED SEVENTY-NINE THOUSAND FIVE HUNDRED TWENTY AND NO/100 DOLLARS (\$21,479,520.00), or such lesser amount as may be payable as hereinafter provided, at the times and in the manner set forth below. This Warrant is issued as a single fully registered warrant payable to the Holder. This Warrant shall not bear interest, and shall be payable in accordance with the provisions set forth below.

This Warrant is issued pursuant to and in accordance with the Authorizing Resolution. This Warrant is further issued pursuant to and in connection with that certain Third Amended and Restated Development Agreement dated effective _____, 2019 between the City and the Wharf Retail (the "Development Agreement;" *all defined terms used in this Warrant without definition shall have the meaning set forth in the Development Agreement*).

This Warrant is intended to amend, restate, replace and supersede in its entirety the City's Limited Obligation Warrant Series 2010A in the face amount of Twenty-Five Million Dollars (\$25,000,000), originally issued to AIG-Baker Orange Beach Wharf, L.L.C., a Delaware limited liability company ("Original Developer"), which has been assigned to Wharf Retail.

THIS WARRANT HAS BEEN EXECUTED AND DELIVERED PURSUANT TO AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT. THIS WARRANT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT, WHICH ARE, BY THIS REFERENCE, INCORPORATED HEREIN AND MADE A PART HEREOF.

1. Establishment of Warrant Fund. Pursuant to the Development Agreement, the City is authorized to and shall establish the Warrant Fund with the Bank, which shall be a special

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fund into which the applicable Pledged Tax Revenues pursuant to Section 2 hereof shall be deposited, and from which the applicable payments of debt service on this Warrant shall be made. Any amounts contained in the "Warrant Fund" created under the Second Amended and Restated Development Agreement December 16, 2010 between the City and Original Developer, or which should properly have been so contained, shall be transferred to and/or become the Warrant Fund hereunder as of the effective date hereof.

2. Funding Obligations of City. Subject to the terms and conditions hereof, and provided Developer is not in breach of its obligations under the Development Agreement or under the Ancillary Agreements, and subject to any and all notice and cure periods as may be provided by the terms of the Development 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 (20th) 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 this Warrant.

3. Payment Terms. Subject to the terms and conditions hereof, and provided Developer is not in breach of its obligations under the Development Agreement or under the Ancillary Agreements, and subject to any and all notice and cure periods as may be provided by the terms of the Development 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 hereof and continuing until the earlier of (i) December 31, 2035, or (ii) this 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 (20th) 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 this Warrant.

4. 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.

5. 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 Development Agreement shall constitute a charge against the general funds of the City.

6. 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

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

8. **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.

9. **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 the Development Agreement or any of the Ancillary Agreements, (ii) the value of any obligations to be undertaken by Developer under the Development 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 the Development 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.

10. **Registered Holder.** The principal payable under this Warrant will be paid to the person in whose name this Warrant is registered at the close of business on the last Business Day prior to such payment date. "Business Day" shall mean any day other than (a) a Saturday, a Sunday or (b) a day on which the payment system of the Federal Reserve System is not operational, or (c) a day on which banking institutions are required or authorized to remain closed in the City of Orange Beach, Alabama.

11. **Method of Payments.** Payment on this Warrant due on each payment date shall be made by check or draft mailed by the City (or the paying agent) to the person entitled thereto at its address appearing in the warrant register maintained with respect to this Warrant. Such payments shall be deemed timely made if so mailed on the payment date or, if such payment date is not a Business Day, on the next Business Day following such payment date. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

12. **Negotiability.** This Warrant is transferable only by a an instrument of transfer duly executed by the person in whose name this Warrant is registered on the registry books of the Treasurer of the City. Each Holder hereof, by receiving or accepting this Warrant, shall take subject to all terms, conditions and offsets hereof, and all payments made in respect hereof,

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whether or not in accordance with the express terms hereof, and shall consent and agree and shall be estopped to deny that this Warrant may be transferred only in accordance with the provisions of Section 10.1 of the Development Agreement and all applicable state and federal securities laws.

13. Certifications. It is hereby certified and recited that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description except as specifically set forth herein or in the Development Agreement; that this Warrant has been registered in the manner provided by law; that all conditions, actions, and things required by the Constitution and laws of the State of Alabama to exist, be performed or happen precedent to the issuance of this Warrant exist, have been performed and have happened; and that the indebtedness evidenced and ordered paid by this Warrant, together with all other indebtedness incurred by the City, was at the time the same was created and is now within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

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IN WITNESS WHEREOF, the City has caused this Warrant to be executed in its behalf by its Mayor and by the City Clerk and has caused the seal of the City to be impressed hereon, and has caused this Warrant to be dated effective as of _____, 2019.

CITY OF ORANGE BEACH, ALABAMA

(SEAL)

Attest:

By: _____
Anthony Kennon, Mayor

City Clerk

REGISTRATION CERTIFICATE

I hereby certify that this Warrant has been duly registered by me as a limited claim against City of Orange Beach, in the State of Alabama, and the Warrant Fund referred to herein, and I have registered such Warrant in the records of the City.

Finance Director/Treasurer of the City of
Orange Beach, Alabama