

**SUPPLEMENT AND FIRST AMENDMENT TO
THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

“THE WHARF”

THIS SUPPLEMENT AND FIRST AMENDMENT TO THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Agreement”), dated effective as of the ___ day of May, 2023 (the “Effective Date”), is made and 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 for the limited purpose stated in the first paragraph of the Development Agreement (defined below). THE WHARF LANDING, LLC, a Louisiana limited liability company (“Wharf Landing”) executes this Agreement for the limited purpose of acknowledgment of its obligations with respect to conveyance of the Proposed City Parcel (defined below) to the City under Section 1 of this Agreement, and demolition of the vertical improvements on the Northside Property (defined below) under the terms of Section 2 of this Agreement.

WHEREAS, the City, Wharf Retail and Wharf Entertainment are parties to that certain Third Amended and Restated Development Agreement dated December 13, 2019 (the “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 State Route 180, in Baldwin County, Alabama; and

WHEREAS, pursuant to the Development Agreement, and to evidence the limited obligation of the City to pay certain tax revenues to Wharf Retail generated from the Development, the City issued to Wharf Retail an Amended and Restated Limited Obligation Warrant Series 2010A in the face amount of \$21,072,954 dated December 13, 2019 (the “2019 Warrant”); and

WHEREAS, Wharf Retail, Wharf Entertainment and Wharf Landing (collectively, the “Wharf Parties” or the “Wharf Entities”) are all wholly-owned by Arthur Emmette Favre, III; and

WHEREAS, Wharf Landing has acquired certain real property situated on the north side of the Intracoastal Waterway across from the Development, which property is depicted on Exhibit A attached hereto and made a part hereof (the “Northside Property”), including the land on the north and south sides of Portage Creek; and

WHEREAS, a part of the Northside Property was the site of the former Bama Bayou development, originally planned as a mixed-use development, which development was partially constructed, but never fully completed or opened to the public, and which has remained in a state of abandonment and disrepair for years; and

WHEREAS, the blighted structures on the Northside Property have become an eyesore, erode surrounding property values, pose safety hazards, and impede accretion in sales, use, lodging and property tax revenues to the City; and

WHEREAS, the City is desirous of having the blighted structures on the Northside Property demolished and removed therefrom, so that such Northside Property can be restored to a state where it can be re-purposed and re-developed; and

WHEREAS, a part of the Northside Property is subject to a right of redemption (the “Right of Redemption”) by reason of that certain mortgage foreclosure on July 29, 2022, as evidenced by that certain Foreclosure Deed recorded as Instrument 2014788 in the Probate Office of Baldwin County, Alabama; and

WHEREAS, the City is desirous of acquiring from Wharf Landing a certain tract of land within the Northside Property located in the northwest area thereof, consisting of approximately 24.7 acres, shown as “Parcel 1” on Exhibit B attached hereto and made a part hereof (the “Proposed City Parcel”); and

WHEREAS, the Proposed City Parcel is within the portion of the Northside Property that is subject to the Right of Redemption; and

WHEREAS, the City owns Lots 1 and 4 (the “Express Village Lots”) of Resub of Express Village Subdivision (the “Subdivision”), as recorded on Slide No. 2182-C, 2182-D and 2182-E in the Office of the Judge of Probate, Baldwin County, Alabama, a copy of the plat of which is attached hereto as Exhibit C and made a part hereof (the “Plat”); and

WHEREAS, The Baldwin County Bridge Company, L.L.C (“BCBC”) owns Lot 5 of the Subdivision, as shown on the Plat (“Lot 5”); and

WHEREAS, the Express Village Lots lie immediately south of the southwesterly portion of the Proposed City Parcel, and are adjacent to, and lie east of, Lot 5; and

WHEREAS, Lot 5 contains a paved street commonly known as Brown Lane (“Brown Lane”), which feeds into the northbound lanes of the Foley Beach Express going northerly, and feeds into Baldwin County Road Number 4 (Extension) (the “County Road”) going southerly; and

WHEREAS, Lot 5 also contains the northerly span of a toll bridge over the Intracoastal Waterway (the “Bridge”), and a toll plaza/facility at the northern base of the Bridge; and

WHEREAS, in order to provide for the City’s beneficial use of the Proposed City Parcel, the City needs vehicular access to and from Lot 5, so that vehicular traffic can go to and from the Express Village Lots and the Proposed City Parcel, on the one hand, and Lot 5, the Foley Beach Express, the Bridge and the County Road, on the other hand; and

WHEREAS, Wharf Landing is willing to (i) convey to the City the Proposed City Parcel, and (ii) demolish and remove certain of the blighted structures on the Northside Property, in exchange for the City's agreement to (x) increase the amount of the 2019 Warrant by \$6,000,000, (y) increase the percentage of sharing of sales and lodging tax revenues generated from the Development from 50% to 75%, until such time as an additional \$24,000,000 of gross sales and lodging tax revenues are generated at the Development beginning as of January 1, 2023, subject to potential reduction if the Right of Redemption is exercised or if the City does not acquire the Proposed City Parcel, and (z) plant a tree buffer on the Proposed City Parcel in the event that the City constructs a roadway and parking lot thereon; and

WHEREAS, in consideration of the public benefits which the City and its residents will receive through the acquisition of the Proposed City Parcel and the demolition and removal of the blighted structures on the Northside Property, subject to the provisions herein stated, the City has agreed to lend its credit and/or grant public funds and things of value in aid of the Wharf Retail by, amongst other things, (i) increasing the amount of the 2019 Warrant by \$6,000,000, (ii) increasing the percentage of sharing of sales and lodging tax revenues generated from the Development from 50% to 75%, until such time as an additional \$24,000,000 of gross sales and lodging tax revenues are generated at the Development beginning as of January 1, 2023, both subject to potential reduction if the Right of Redemption is exercised or if the City does not acquire the Proposed City Parcel, and (iii) planting a tree buffer on the Proposed City Parcel in the event that the City constructs a roadway and parking lot thereon; and

WHEREAS, to evidence the limited obligation of the City to pay certain tax revenues to Wharf Retail generated from the Development, the City and Wharf Retail desire that the City issue its Second Amended and Restated Limited Obligation Warrant Series 2010A to Wharf Retail in the face amount of the outstanding balance of the 2019 Warrant as of the Effective Date plus \$6,000,000 (the "2023 Warrant"), on the terms and conditions stated herein, in order to amend, restate and replace in its entirety the 2019 Warrant; and

WHEREAS, notice of the primary terms of this Agreement was duly published by the City in accordance with the requirements of Amendment 750 of the Recompiled Alabama Constitution of 1901, as amended ("Amendment 750"), and a public meeting was conducted by the City Council of the City on May 16, 2023 in accordance with Amendment 750; and

WHEREAS, in furtherance of the foregoing, the parties hereto desire to supplement and amend the Development Agreement as provided herein and to provide for the issuance by the City of the 2023 Warrant.

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:

1. CONVEYANCE OF PROPOSED CITY PARCEL.

1.1 Agreement to Sell and Purchase. Wharf Landing hereby agrees to sell and convey to the City the Proposed City Parcel, including all structures, buildings, improvements and

fixtures located thereon, if any, together with all rights, privileges, minerals, easements and appurtenances pertaining thereto (all the foregoing, collectively, the “Subject Property”), and the City hereby agrees to purchase and accept the Subject Property from Wharf Landing, under the terms and conditions of this Agreement. The legal description for the Proposed City Parcel will be established by title work and survey, but will be based generally on the depiction on Exhibit B attached hereto.

1.2 Due Diligence. The period commencing as of the Effective Date and expiring thirty (30) days after the Effective Date, is referred to herein as the “Due Diligence Period”. Wharf Landing hereby grants to the City and its agents and contractors a license from the Effective Date through the earlier of the termination of this Agreement or Closing (as hereinafter defined) to fully inspect the Subject Property and make such inspections, tests, reports and investigations of the Subject Property (including, without limitation, Phase I and Phase II Environmental Assessments, an appraisal, a survey, a wood infestation report, a wetlands delineation and an engineering report) and conduct such physical inspections and soil borings and other tests and examinations as the City may deem appropriate or desirable.

1.3 Right to Terminate. If, within the Due Diligence Period,

(a) the City identifies a condition with respect to the Subject Property which was not readily apparent as of the Effective Date, or would materially impair the City’s ability to utilize the Subject Property in substantial conformity with its intended use as a cultural/educational center (including any item or matter relating to title, survey, wetlands or environmental condition), or

(b) the City is unable to secure from BCBC all necessary written approvals and easements in order to provide for direct vehicular access between the Express Village Lots and Brown Lane, including (x) an access point from and to Lot 5, in substantially the area depicted as “Access to BEX” on Exhibit D attached hereto and made a part hereof (the “Access Point”), on Brown Lane, (y) a non-exclusive permanent easement to provide for the right of vehicular (motorized or non-motorized) passage and use over, across, through and upon Lot 5 for the purpose of ingress to and egress from the Express Village Lots and the Proposed City Parcel, such that the grantees of such easement can traverse to and from the Express Village Lots and the Proposed City Parcel, on the one hand, and Lot 5, the Foley Beach Express, the Bridge and the County Road, on the other hand, and (z) the right to construct, install, repair and maintain from time to time a harmonized roadway connection from the Express Village Lots to and from Lot 5, at the Access Point, including, without limitation, any grading or curb cuts which may be beneficial or necessary,

then, the City shall have the right to terminate the provisions described in this Section 1 (pertaining to the City’s acquisition of the Subject Property), in which case, the 2023 Warrant shall be reduced *ab initio* as of the Effective Date, as provided in Section 5.2 below.

1.4 Subdivision. The City agrees to engage a licensed surveyor to prepare a subdivision plat establishing a new subdivision for the Proposed City Parcel vis-à-vis the

remainder of the Northside Property. Wharf Landing agrees to cooperate with the subdivision process and to execute (and to cause any mortgagee to execute) a commercially reasonable preliminary and final plat, as the owner and mortgagee thereof. The City and Wharf Landing shall split equally the costs incurred in connection with such platting and subdivision.

1.5 Affirmative Covenants of Wharf Landing. Wharf Landing hereby agrees with the City to comply with the following covenants until Closing:

(a) Physical Condition. Wharf Landing will maintain the Subject Property in the same physical condition as presently exists as of the Effective Date. Wharf Landing will not make any alterations, modifications or improvements to the Subject Property.

(b) Contracts. Wharf Landing will not enter into or modify any leases, contracts or agreements affecting the Subject Property.

(c) Wharf Landing's Cooperation. Wharf Landing agrees to cooperate with and support in all respects the City's efforts to obtain any and all approvals, consents, permits, subdivision, variances, re-zonings and waivers from governmental authorities, utility providers and other landowners, or otherwise, as the City may determine to be necessary or appropriate for the City's acquisition, use and development of the Subject Property.

(d) Material Change. Wharf Landing will not apply for, consent to, or enter into any change in zoning, de-annexation, annexation, variance, or other contracts or agreements which affect the Subject Property, unless requested by the City.

1.6 Representations and Warranties. As a material inducement to the City's execution and performance of this Agreement, Wharf Landing makes the following representations and warranties, all of which are true and complete in all material respects as of the date of this Agreement, and shall survive the Closing and delivery of the Deed:

(a) Judicial Actions. Neither Wharf Landing nor the Subject Property is the subject of any suits, judgments, bankruptcies, actions or proceedings pending, or to Wharf Landing's knowledge, threatened or contemplated, affecting any portion of the Subject Property or its present use and operation.

(b) Notice of Violation. Wharf Landing has not received any notice that of any violation of any ordinance, regulation, law or statute of any governmental body or agency pertaining to the Subject Property or any part thereof.

(c) Public Proceedings. Wharf Landing has no notice of any actions or proceedings pending for the condemnation of any part of the Subject Property, or for any acquisition in lieu thereof or of any pending public improvements or assessments relating to the Subject Property.

(d) Leases. There are no parties in possession of, or with any right of possession to, the Subject Property.

(e) Contracts. There are no contracts or agreements affecting the Subject Property which are not terminable at-will by Wharf Landing (including, without limitation, any management, leasing, timber, service, supply and maintenance contracts relating to the Subject Property).

(f) No Changes. No improvements have been added or removed to the Subject Property within the past six (6) months, and no action has been taken which would affect the boundary line of the Subject Property.

(g) Environmental. Wharf Landing has not received notice from any governmental authority alleging a violation of any environmental laws that are applicable to the Subject Property, and, to the best of Wharf Landing's knowledge, there are no "hazardous materials" (as that term is defined in applicable environmental laws) on, in or under the Subject Property.

(h) Other Matters. Wharf Landing has no actual knowledge of any latent defect, sinkhole or other adverse circumstance or condition applicable to the Subject Property which is not reasonably discoverable within the Due Diligence Period.

(i) Title. Wharf Landing owns fee simple title to the Subject Property, and has the full right, power and authority to enter into this Agreement and to convey the Subject Property on the terms and conditions hereof. No other party (other than Wharf Landing) has any interest in the Subject Property; subject, however, to the Right of Redemption.

(j) Taxes. The Subject Property is not taxed on a "current use" valuation, and is not subject to any "rollback" taxes.

(k) Corporate Status. Wharf Landing 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.

(l) Ownership. Each of the Wharf Entities is wholly-owned by Arthur Emmette Favre, III.

(m) Enforceability. This Agreement constitutes a legal, validly binding obligation of Wharf Landing, enforceable in accordance with its terms.

1.7 Additional Conditions. In addition to the conditions stated elsewhere in this Agreement, the City's obligations under this Agreement are contingent upon the following:

(a) Performance by Wharf Parties. The Wharf Parties shall have performed in all material respects all of the covenants, agreements and conditions required to be performed, observed and complied with by the Wharf Parties under this Agreement prior to or as of the Closing.

(b) Wharf Landing's Representations. All representations and warranties of Wharf Landing shall be true, correct and complete in all material respects as of the Effective Date and as of the Closing.

(c) Claims and Proceedings. There shall be no pending, threatened, or contemplated claims, suits, judgments, actions or proceedings as of the Closing affecting any portion of the Subject Property or its use and development as contemplated under this Agreement.

(d) Material Changes. Neither the City nor Wharf Landing shall have received notice or otherwise become aware of any actual, proposed or threatened material change in any condition of or affecting the Subject Property.

1.8 Closing. Closing of the acquisition of the Subject Property (the “Closing”) shall occur within fifteen (15) days after the later of the expiration of the termination period described in Section 1.3 above or the completion of the subdivision process described in Section 1.4 above, on such date as may be specified by the City, subject to the reasonable approval by Wharf Landing. The Closing shall take place in escrow at the offices of the title company of the City’s choosing. Wharf Landing shall deliver such resolutions, certificates and affidavits as may be reasonably required by the title company or the City, including any such affidavits necessary to delete the “standard exceptions” from the title policy, but without any indemnity. Either party shall be entitled to close on the Subject Property by mail or overnight carrier and need not be physically present at closing.

1.9 Deed. The City’s attorney will prepare a statutory warranty deed, which deed shall be in substantially the form attached hereto as Exhibit E and made a part hereof (the “Deed”).

1.10 Closing Costs. Wharf Landing and the City shall share equally the costs of (i) the settlement agent, (ii) the cost of the title policy insuring fee simple title in the Proposed City Parcel in favor of the City, and (iii) the recording tax and fees on the Deed.

1.11 Conveyance and Delivery. At the Closing, Wharf Landing shall cause good and marketable title to the Subject Property to be conveyed to the City, by the Deed, free and clear of any liens or encumbrances, except for Permitted Encumbrances (as such term is defined in the Development Agreement) and the Right of Redemption, and in substantially the same physical condition as exists as of the Effective Date. Wharf Landing shall deliver to the City possession of the Subject Property at Closing, free from any claims of possession whatsoever.

1.12 Prorations. Ad valorem taxes will be prorated as of 12:01 a.m. of the Closing Date with respect to the Subject Property. If the taxes are not then ascertainable, the proration thereof shall be on the basis of the most recent ascertainable data, and later adjusted when it is ascertained, which obligation shall survive the Closing. Because there won’t be a cash payment to Wharf Landing at Closing, Wharf Landing agrees to pay the City the portion of the property taxes attributable to the part of the tax year up to the date of Closing (being October 1, 2022 to the date immediately prior to Closing).

1.13 Specific Performance. If Wharf Landing fails or refuses to convey the Subject Property to the City at Closing under the terms and conditions herein contained, the City will have the right to pursue a remedy for specific performance against Wharf Landing, in addition to any other rights and remedies to which it may be entitled.

2. DEMOLITION. Within three (3) months of the Effective Date, Wharf Landing shall, at its cost and expense, commence demolition of the vertical improvements on the Northside Property and have the same removed and legally disposed of, other than, potentially, the metal building barn (the “Barn”), under the conditions described below. Such demolition shall be completed within six (6) months of the Effective Date. For the avoidance of doubt, the main concrete structure and former aquarium structure shall be demolished and removed. Wharf Landing shall not be required to demolish and dispose of the Barn if (i) within six (6) months from the Effective Date, Wharf Landing certifies to the City in writing that it has a bona fide intent to use the Barn in its development on the Northside Property, (ii) the Barn is incorporated into Wharf Landing’s written development plans for the Northside Property submitted to the City for municipal approval within eighteen (18) months from the Effective Date, (iii) such plans call for the Barn to be made structurally sound and finished in an aesthetically pleasing manner consistent with the development of the Northside Property, (iv) construction on the Northside Property in and around the Barn consistent with those plans is commenced within two (2) years from the Effective Date and completed within three and one-half (3.5) years from the Effective Date, and (v) reasonable efforts are employed to keep the Barn secure from trespassers from and after the Effective Date. If any of the foregoing conditions is not satisfied within the applicable time period set forth above, then, at the request of the City, Wharf Landing shall then be required to promptly demolish and remove the Barn. All such demolition and disposal described in this Section shall be done in accordance with all applicable laws and building codes, in a good and workmanlike manner.

3. TREE BUFFER. The City tentatively plans to construct a parking lot and roadway on the Proposed City Parcel in the area depicted on Exhibit B attached hereto. The City shall be under no obligation, however, to do so. In the event that the City constructs a parking lot and roadway, as aforesaid, the City agrees to plant and maintain a tree buffer around the new proposed roadway and parking lot (along the west and east side of the new proposed roadway and on the south side of the new proposed parking lot) on the Proposed City Parcel. Such tree buffer shall be planted within six (6) months from the date of the completion of construction of such roadway and parking lot. The spacing between trees and type of trees shall be established by the City.

4. AMENDMENTS TO DEVELOPMENT AGREEMENT.

4.1 Warrant Adjustment. The Development Agreement is hereby amended as follows:

Commencing effective as of the Warrant Adjustment Date, the references to “fifty percent (50%)” in the definition of “Applicable Development Tax Revenues” in the Development Agreement and, by reference, the 2023 Warrant, are hereby increased to “seventy-five percent (75%)”, until such time as the Gross Sales Tax Revenues and Gross Lodging Tax Revenues received by the City on or after the Warrant Adjustment Date equal \$24,000,000, at which time, the references to “fifty percent (50%)” shall be reinstated in the definition of “Applicable Development Tax Revenues.”

4.2 Additional Definitions. The Development Agreement is hereby amended by adding the following defined terms to Article I thereof:

“Gross Lodging Tax Revenues” means the gross 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. Gross Lodging Tax Revenues shall not include any taxes earmarked for the Gulf Coast Convention and Visitors’ Bureau.

“Gross Sales Tax Revenues” means the gross 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.

“Warrant Adjustment Date” means January 1, 2023.

5. 2023 WARRANT.

5.1 Issuance of 2023 Warrant. Wharf Retail agrees to deliver to the City on the Effective Date the 2019 Warrant (the sealed original), to be marked for cancellation and re-issuance, together with an investment letter, duly executed by Wharf Retail, in the form attached hereto as Exhibit F and made a part hereof (the “2023 Investment Letter”). Against receipt of the original sealed 2019 Warrant and the executed 2023 Investment Letter, the City agrees to execute and re-issue to Wharf Retail on the Effective Date, and Wharf Retail agrees to accept from the City on the Effective Date, the 2023 Warrant, in the principal amount of the outstanding principal balance of the 2019 Warrant as of the Effective Date plus \$6,000,000, in the form attached hereto as Exhibit G, which shall amend, restate, replace and supersede in its entirety the 2019 Warrant. The principal amount of the 2023 Warrant is subject to reduction as provided in Section 5.2 below. The 2023 Warrant shall bear no interest, and shall be payable in quarterly installments, all as is more particularly specified in the Development Agreement (as amended hereby) and in the 2023 Warrant. Upon issuance of the 2023 Warrant and execution and delivery of the 2023 Investment Letter, references in the Development Agreement to the “Warrant” shall hereafter mean the 2023 Warrant, and references in the Development Agreement to the “Investment Letter” shall mean the 2023 Investment Letter. The provisions of this Section 5 are intended to replace and supersede the provisions of Section 7.1 of the Development Agreement.

5.2 Reduction if Right of Redemption is Exercised or if City Does Not Acquire Proposed City Parcel. In the event that the Right of Redemption is timely exercised or in the event that the City elects to terminate the provisions described in Section 1 above (in accordance

with Section 1.3), then the principal amount of the 2023 Warrant shall be reduced by \$5,000,000 *ab initio* from the Effective Date, and the reference to \$24,000,000 in Section 4.1 above shall be reduced to \$4,000,000 *ab initio* as of the Effective Date. Any dispute regarding the Right of Redemption shall be determined by the title company who issues the title policy on the Proposed City Parcel in favor of the City. In the event of any legal proceedings involving the Right of Redemption, the City shall be entitled to tentatively make the reductions set forth in this Section pending the final outcome. The intent being that, if the City loses the Proposed City Parcel due to the exercise of the Right of Redemption or does not acquire the Proposed City Parcel, the Warrant amount shall only be increased by \$1,000,000 from what it is as of the Effective Date (instead of being increased by \$6,000,000). In the event that any amounts are overpaid by the City under the 2023 Warrant based on the occurrence of an event described in this Section 5.2 (which causes the reductions described herein to be effective *ab initio* as of the Effective Date), such amount shall be repaid by Wharf Retail to the City, or, at the City's option, may be offset against future payments under the 2023 Warrant. In the event of such a reduction, upon request by the City, Wharf Retail agrees to deliver to the City the 2023 Warrant (the sealed original), to be marked for cancellation and re-issuance, together with an investment letter, duly executed by Wharf Retail, in substantially the form of the 2023 Investment Letter, such that the City could re-issue to Wharf Retail a further amended and restated warrant reflecting the reduced principal amount, consistent with the foregoing provisions. However, such reduction in principal amount as described above would nonetheless be effective and self-operative regardless of whether the City re-issues such a further amended and restated warrant.

5.3 Additional Setoff Rights. In addition to the City's setoff rights under Section 7.10 of the Development Agreement, the City shall be entitled to set off against the 2023 Warrant: (i) the value of any obligations to be undertaken by Wharf Landing under this Agreement, and/or (ii) any damages suffered or incurred by the City on account of any breach by Wharf Landing under this Agreement. 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.

6. MISCELLANEOUS.

6.1 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 Wharf Landing) or the City, as the case may be, in respect to the transactions herein contemplated.

6.2 Expenses. Each party shall be responsible for payment of their own respective attorneys' fees, provided, however, that Developer agrees to reimburse the City for one-half (1/2) of the attorneys' fees and costs incurred by the City in connection with the transactions described herein, the preparation and negotiation of this Agreement, the 2023 Warrant, any other instruments and agreements contemplated hereby, the publication of the Amendment 750 notice,

and attending meetings with City officials and council meetings; one-half (1/2) of which fees and costs will be limited to a maximum amount of \$20,000; provided, however, that the City will pay its own legal fees associated with the acquisition of the Proposed City Parcel (including deed preparation costs, preparation and review of closing affidavits, and review of title, survey and environmental reports associated with the Proposed City Parcel). The payment of the foregoing fees may be deducted by the City as a credit against the amounts payable under the 2023 Warrant.

6.3 Notices. Any notice required or permitted to be delivered hereunder to Wharf Retail, Wharf Entertainment or the City shall be given in the manner provided in the Development Agreement. Any notice required or permitted to be delivered hereunder to Wharf Landing 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 by 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 Landing: The Wharf Landing, 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.
One American Place, 23rd Floor
301 Main Street
Baton Rouge, LA 70801
Attn: Michael R. Hubbell, Esq.
Direct: (225) 381-8040
Facsimile: (225) 381-8029

6.4 Entire Agreement. This Agreement, together with the other agreements and exhibits referenced herein and the “Ancillary Agreements” (as defined in the Development Agreement) contains the entire agreement of the parties with respect to the subject matter hereof, 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 Deed, the 2023 Warrant and the 2023 Investment Letter, 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.

6.5 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.

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

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

6.8 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.

6.9 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, shall remain in full force and effect thereafter, and shall not be merged into the documents executed on the Effective Date or the Closing Date.

6.10 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.

6.11 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.

6.12 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.

6.13 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.

6.14 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 the Wharf Parties and their respective successors and permitted assigns.

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

6.16 No Third-Party Beneficiaries. Except as set forth herein, this Agreement is intended only for the benefit of the City and the Wharf Parties, 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.

6.17 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.

6.18 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.

6.19 Public Purpose. Pursuant to Amendment 750, the City does hereby ascertain, determine, declare and find that the proposed lending of its credit and/or granting of public funds and things of value to Wharf Retail in connection with the transactions described herein and for the purposes described herein will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to the Wharf Parties or any other private entity or entities. The public benefits sought to be achieved by the City’s adoption of this Agreement and issuance of the 2023 Warrant are: (i) the City’s acquisition of the Proposed City Parcel, (ii) the demolition and removal of blighted structures on the Northside Property, which would put it in a state where it can be re-purposed and re-developed, (iii) further incentivizing development within the Development, (iv) promoting local economic development and stimulating the local economy, (v) increasing employment opportunities in the City, (vi) increasing the City’s tax base, which will result in additional tax revenues for the City, and (vii) promoting the expansion and retention of business enterprise in the City.

6.20 Time for Performance. Time is of the essence with respect to every provision of this Agreement. If the date of Closing, the last day under any notice, or the last day to perform any obligation hereunder falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

6.21 Further Assurances. The parties agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done and made, upon the written requests of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirming or otherwise, as may be reasonably required to effect the purpose and intent of this Agreement.

6.22 Clarification. For the avoidance of doubt, any development on the Northside Property shall not be deemed to be part of the Development or subject to the sharing of sales and lodging tax revenues (whether any of the Wharf Parties treat such development on the Northside Property as part of the “Wharf” branded Development or not). This is not intended to preclude the parties from discussing future incentives with respect to the Northside Property, but just to clarify that the transactions contemplated by this Agreement do not include such a concept.

6.23 Effect of Amendment. Except as supplemented and amended hereby, the Development Agreement shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions of this Agreement and the Development Agreement, the provisions of this Agreement shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused this Supplement and First Amendment to 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

By: _____
Arthur Emmette Favre, III
Its Sole Member and Manager

CITY:

CITY OF ORANGE BEACH, ALABAMA

By: _____
Tony Kennon
Its Mayor

ATTEST: _____
City Clerk

[SEAL]

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

WHARF ENTERTAINMENT:

WHARF ENTERTAINMENT PROPERTIES, LLC

By: _____
Arthur Emmette Favre, III
Its Sole Member and Manager

WHARF LANDING:

THE WHARF LANDING, LLC

By: _____
Arthur Emmette Favre, III
Its Sole Member and Manager

EXHIBIT A

Northside Property

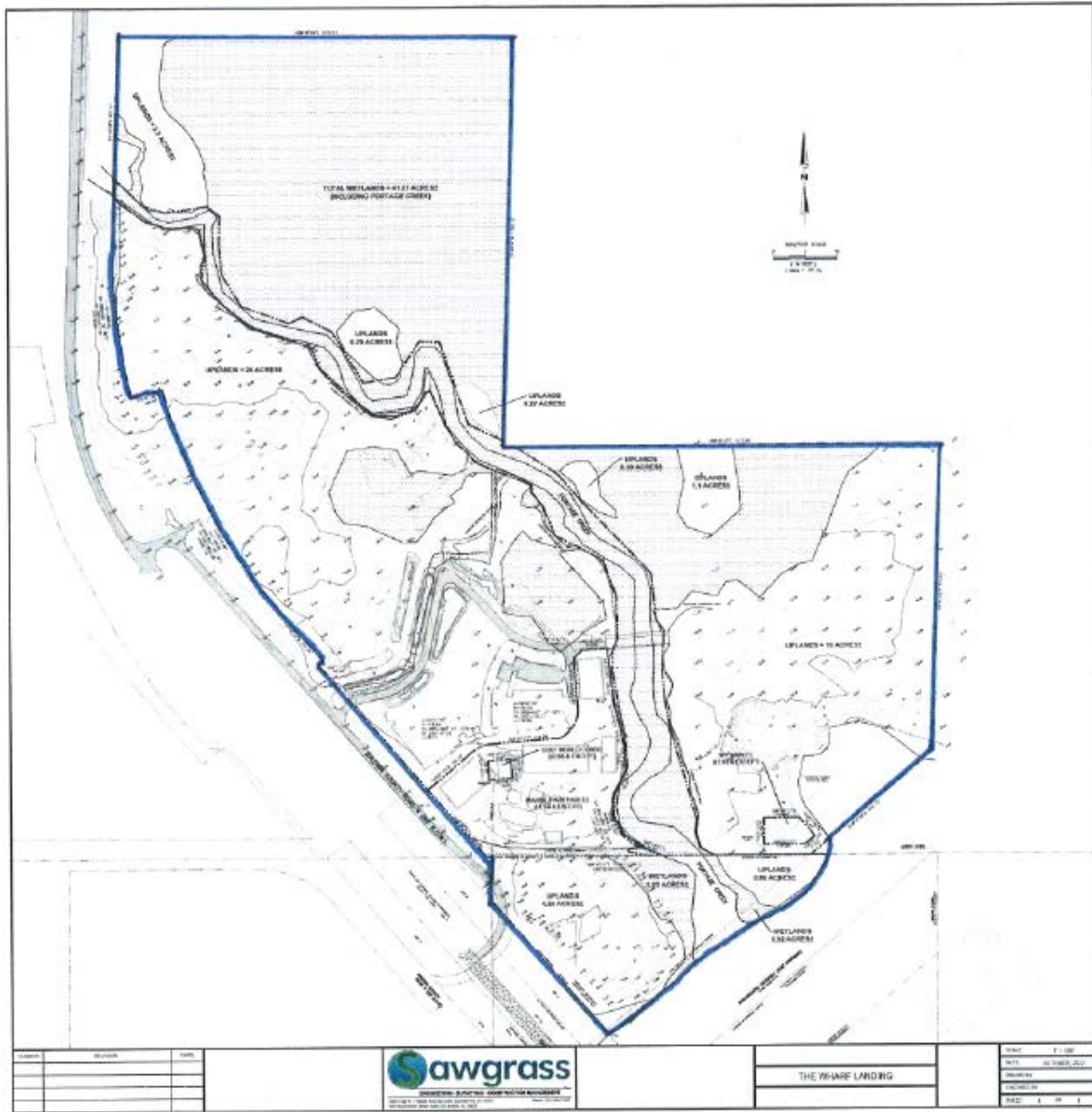


EXHIBIT B

Proposed City Parcel

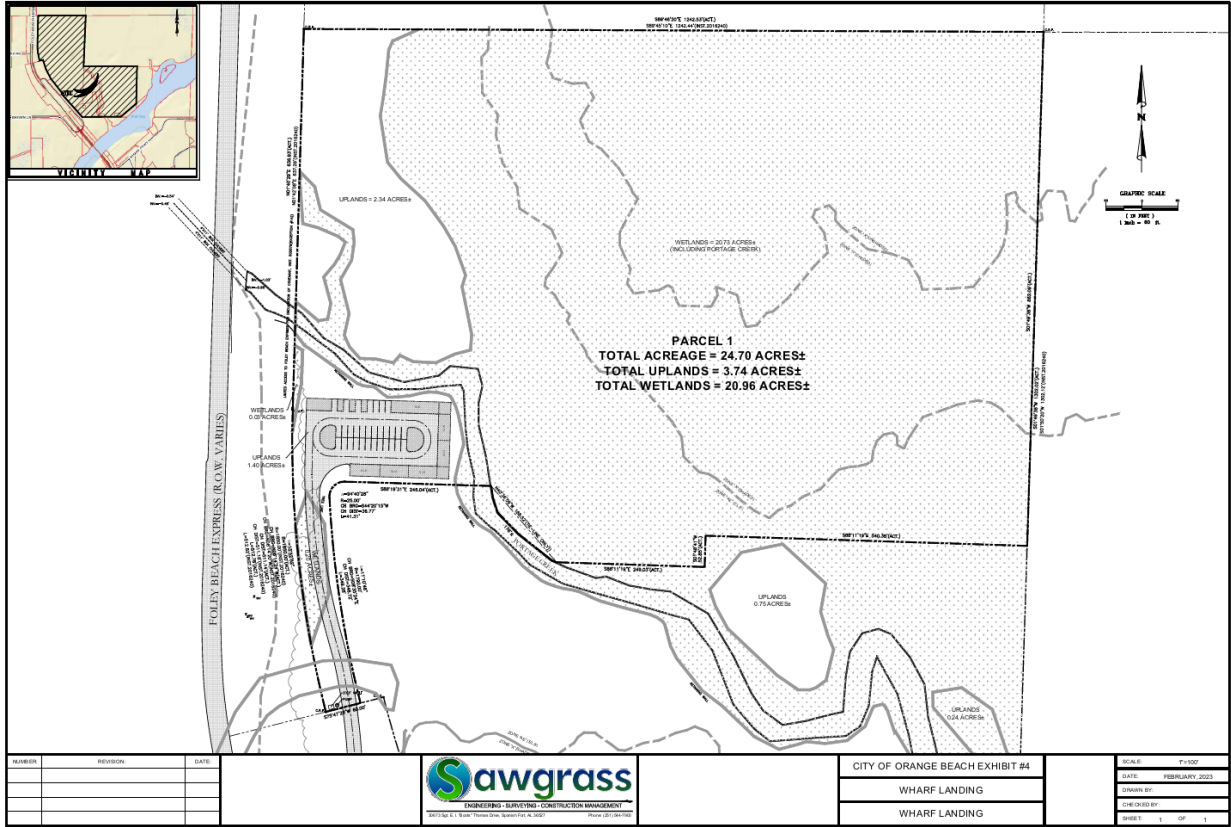


EXHIBIT D

Access Point

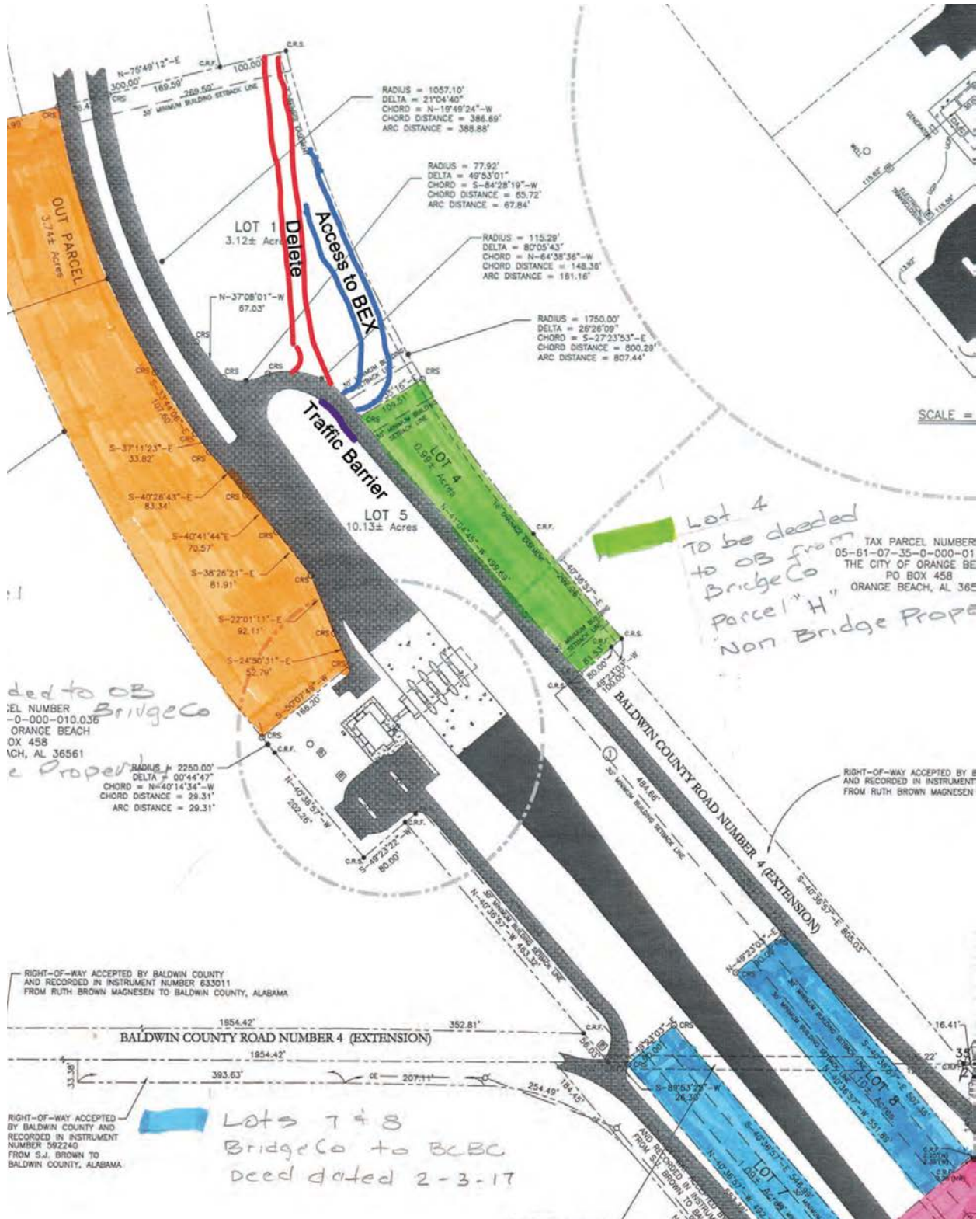


EXHIBIT E

Form of Deed

EXHIBIT F

Form of 2023 Investment Letter

EXHIBIT G

Form of 2023 Warrant