

**RESOLUTION NO. 23-xxx**

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

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FINDINGS:

1. The City of Orange Beach, Alabama (the “City”), Wharf Retail Properties, LLC, a Louisiana limited liability company (“Wharf Retail”) and Wharf Entertainment Properties, LLC, a Louisiana limited liability company (“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 “Wharf 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.
2. 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 Wharf 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”).
3. The Wharf Landing, LLC, a Louisiana limited liability company (“Wharf Landing”) has acquired certain real property situated on the north side of the Intracoastal Waterway across from the Wharf Development (the “Northside Property”).
4. 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.
5. 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.
6. The City is desirous of having the blighted structures on the Northside Property demolished and removed therefrom, so that such Northside Property can be put in a state where it can be re-purposed and re-developed.
7. The City is desirous of acquiring from Wharf Landing a certain parcel within the Northside Property located in the northwest area thereof, consisting of approximately 24.7 acres (the “Proposed City Parcel”).
8. Wharf Retail, Wharf Entertainment and Wharf Landing (collectively, the “Wharf Parties” or the “Wharf Entities”) are all wholly-owned by Arthur Emmette Favre, III.
9. The City and Wharf Retail desire to supplement and amend the Development Agreement by entering into a Supplement and First Amendment to Third Amended and Restated Development Agreement between the City and Wharf Retail (the “Supplement and First Amendment”), pursuant to which the City would 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 plus \$6,000,000 (the “2023 Warrant”).

10. Subject to terms and conditions contained in the Supplement and First Amendment and the 2023 Warrant, the City desires to lend its credit and/or grant public funds and things of value in aid of Wharf Retail for the purposes set forth below.

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

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

The City, at its public meeting on May 16, 2023 and in accordance with Alabama Constitutional Amendment No. 750, hereby finds and determines 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 in the Supplement and First Amendment and for the purposes described herein and therein 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 Supplement and First Amendment contemplates the following actions, amongst others (as more particularly set forth therein):

- (a) Conveyance of Proposed City Parcel. Wharf Landing will convey to the City the Proposed City Parcel.
- (b) Demolition. Wharf Landing will demolish and remove certain of the blighted structures on the Northside Property.
- (c) Tree Buffer. In the event that the City constructs a roadway and parking lot on the Proposed City Parcel, the City will plant and maintain a tree buffer around the new proposed roadway and parking lot on the Proposed City Parcel.
- (d) Restructuring of 2019 Warrant. The principal amount of the 2019 Warrant will be increased by \$6,000,000 (such that the new principal amount will be equal to the amount of the outstanding balance thereof as of the date of re-issuance plus \$6,000,000), and the percentage of sharing of sales and lodging tax revenues generated from the Wharf Development under the 2019 Warrant will be increased from 50% to 75% commencing effective January 1, 2023, until such time as an additional \$24,000,000 of gross sales and lodging tax revenues are generated at the Wharf Development beginning as of January 1, 2023. The 2019 Warrant will be amended and restated in its entirety, to be evidenced by the 2023 Warrant.

2. **Approval of Supplement and First Amendment to Third Amended and Restated Development Agreement.**

The City hereby authorizes, adopts and approves the Supplement and First Amendment in substantially the form and of substantially the content as the form of the Supplement and First Amendment presented to and considered at this meeting (a copy of which has been ordered filed in the permanent records of the City in the custody of the City Clerk) with such changes and additions thereto and deletions therefrom as the Mayor shall approve, which approval shall be evidenced by his executing the Supplement and First Amendment, and the Mayor is hereby authorized and directed, in the name and on behalf of the City, to execute, acknowledge and deliver said Supplement and First Amendment (and the closing deliverables and exhibits contemplated thereunder), and the City Clerk is hereby authorized and directed to affix to the Supplement and First Amendment (and the closing deliverables and exhibits contemplated thereunder) the seal of the City and to attest the same.

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

The City hereby authorizes, adopts and approves the 2023 Warrant in the principal amount of the outstanding principal balance of the 2019 Warrant as of the date of issuance of the 2023 Warrant plus \$6,000,000, in substantially the form and of substantially the content as the form of the 2023

Warrant presented to and considered at this meeting (a copy of which is attached as an exhibit to the Supplement and First Amendment and has been ordered filed in the permanent records of the City in the custody of the City Clerk) with such changes and additions thereto and deletions therefrom as the Mayor shall approve, which approval shall be evidenced by his executing the 2023 Warrant, and the Mayor is hereby authorized and directed, in the name and on behalf of the City, to execute, acknowledge and deliver said 2023 Warrant, and the City Clerk is hereby authorized and directed to affix to the 2023 Warrant the seal of the City and to attest the same.

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

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

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

The public benefits sought to be achieved by the City's adoption of the Supplement and First Amendment 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 Wharf Development, (iv) promoting local economic development and stimulating the local economy, (v) increasing employment opportunities in the City, (v) increasing the City's tax base, which will result in additional tax revenues for the City, and (vi) promoting the expansion and retention of business enterprise in the City.

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

ADOPTED THIS 6<sup>th</sup> DAY OF JUNE, 2023.

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Renee Eberly  
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on June 6, 2023.

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City Clerk