

Tidal Wave Water Sports, Inc.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

COMMERCIAL LEASE AGREEMENT

THIS AGREEMENT is made and entered into effective this first day of June, 2004, by and between The City of Isle of Palms, S.C. ("Landlord"), and Tidal Wave Water Sports, Inc., a South Carolina corporation ("Tenant").

In consideration of the mutual covenants and agreements of the respective parties herein contained, which are expressly agreed to by Landlord and Tenant, the parties hereto, for themselves, their respective successors and permitted assigns, hereby agree as follows:

1. LEASED PREMISES. Landlord by these presents does hereby demise and let unto Tenant and Tenant hires and leases from Landlord that certain strip of highland and adjoining dock, situated on the Intracoastal Waterway side of the Isle of Palms Marina, the exact description of which is set forth on the drawing attached hereto and made a part hereof, labeled Exhibit I (the "Leased Premises").

2. TERM OF LEASE. The term of this Lease shall commence on June 1, 2004, and end on September 30, 2005. This Lease shall be automatically renewed for successive one (1) year terms commencing on October 1, 2005, under the same terms, covenants and conditions set forth in this agreement until either party gives the other party at least ninety (90) days prior written notice of termination of this Lease at the end of any such renewal term. ~~Provided, however, that notwithstanding any provision in this Section to the contrary, if the Marina Management Agreement between Landlord and Marina Joint Ventures, Inc. is terminated for any reason, Landlord may terminate this Lease upon ninety (90) days prior written notice to Tenant.~~

Deleted  
as  
Amendment  
#1

3. RENT.

A. Tenant agrees to pay initial annual base rent to the Landlord, or such agent of

Landlord as Landlord may from time to time designate in writing, in the sum of Eighteen Thousand and no/100 (\$18,000.00) Dollars, due and payable in equal monthly installments of One Thousand Five Hundred and no/100 (\$1,500.00) Dollars, due and payable in advance on or before the first day of each month, commencing on June 1, 2004, and continuing throughout the entire term of this Lease.

B. In addition to the base rent set forth in this Section, Tenant agrees to pay additional annual rent to Landlord equal to twenty (20.00%) percent of Tenant's gross profit (as defined by Generally Accepted Accounting Principles, or "GAAP") derived from the Leased Property in excess of Three Hundred Thousand and no/100 (\$300,000.00) Dollars per lease year. Such amount shall be due and payable in full within thirty (30) days after the end of each year of each lease year. Tenant agrees to keep true, accurate and complete records of all activities conducted at the Leased Property and along with the payment of the additional annual rent shall provide Landlord with a certified statement showing the monthly gross income for the subject year. Landlord and its agents and representatives are hereby authorized to inspect and copy all books and records of Tenant relating to the Leased Property at such times as Landlord may determine. Tenant agrees that each year, within 90 days after the end of Tenant's fiscal year, Tenant will provide Landlord with a copy of Tenant's annual compiled financial statements, certified by Tenant's independent accounting firm. Tenant also agrees that each year, Tenant will provide Landlord with a certified copy of Tenant's state and federal income tax returns no later than the due date for filing the returns. If Tenant receives an extension for filing any such return, Tenant will provide Landlord with copy of same upon filing. To the extent allowed by the South Carolina Freedom of Information Act, Landlord agrees to keep all such information confidential.

C. For the first renewal term, if any, and for each renewal term thereafter, if any, the monthly rental for each such term shall be increased by a percentage equal to the average yearly increase in the Consumer Price Index for All Urban Consumers (CPI-U) most recently published prior to the expiration of the preceding term by the South Carolina Department of Revenue and Taxation for Landlord's use in determining the allowable real property tax cost of living millage increase (the "Index"). If the Index is discontinued, then the parties agree to use the closest comparable measure of the effect of inflation in lieu of the Index. Provided, however, that notwithstanding any provision contained herein, the monthly rental shall never be lower than the amount paid for the initial term.

D. In the event that Landlord fails to receive any rental payment within ten (10) days of the due date, a late charge of five (5%) percent of the rental payment shall be added to the rental and paid to Landlord for each such late payment, and the same shall be deemed to be additional rent, due and payable with such rental payment.

4. SECURITY DEPOSIT. Landlord waives the requirement of an initial Security Deposit but reserves the right to at any time require Tenant to deposit with Landlord the sum of Five Thousand and no/100 (\$5,000.00) Dollars as security for the full and faithful performance by Tenant of all the terms of this Lease required to be performed by Tenant. The deposit, without interest, will be returned to Tenant after the termination of this Lease provided that Tenant has fully and faithfully performed all of its obligations hereunder.

5. USE OF THE LEASED PREMISES.

A. The Leased Premises and all improvements located thereon shall be used only for the rental of personal watercraft, water skiing rides, parasailing rides, or, so long as all City Marina dock slips are then-leased, off-season dock slip rentals, in strict compliance with the

operational limitations and rights set forth in subsection B, and for no other purposes. Tenant agrees to obtain and maintain, at Tenant's sole expense, such licenses or permits as are required for its use of the Leased Premises, and Tenant agrees that all activities conducted on and about the Leased Premises shall be in compliance with all applicable federal, state and local laws, rules and regulations. The rights granted to Tenant in this Lease shall have no effect on any City ordinances which are now or may in the future become applicable to Tenant's use of the Leased Premises.

**B. OPERATIONAL LIMITATIONS AND RIGHTS.**

1. Tenant agrees to not store, operate or keep more than sixteen (16) personal watercraft at the Leased Premises at any time.

2. Tenant may store, operate or keep at the Leased Premises two (2) outboard motor boats no longer than twenty (20) feet each, and one (1) parasailing motor boat no longer than thirty-five (35) feet, for Tenant's use in monitoring and supervising the use of the personal watercraft or conducting water skiing and parasailing activities.

3. Tenant agrees not to operate, or allow to be operated, personal watercraft above "idle" speed within a one-half (.50) mile radius of the Isle of Palms Marina. Launching and landing at the Marina ramp, and fueling at the fuel dock shall only be performed by Tenant's employees. Tenant agrees not to allow or conduct water skiing or parasailing within the City of Isle of Palms corporate limits or within a one-half (.50) mile radius of the Isle of Palms Marina.

4. Personal watercraft, water skiing, or parasailing activities shall be operated or conducted on or about the Leased Premises only during daylight hours.

5. Tenant shall be provided eight (8) parking places for customers and two

(2) parking places for employees in the locations designated on the attached Exhibit I.

6. Tenant shall be entitled to reasonable Marina ramp usage for launchings and landings of Tenant's watercraft permitted under this Lease, not to exceed a total of eighteen (18) per day, at no additional charge. Landlord reserves the right to establish and modify reasonable rules and regulations regarding the time and manner of Tenant's ramp use to minimize interference with the ramp's primary use as a public boat ramp.

7. Tenant is entitled at all times throughout the term of this Lease, for so long as Landlord operates the fuel dock at the Isle of Palms Marina, to purchase gasoline for its operations allowed hereunder at the fuel dock at a price of ten (10 %) percent less than the retail price charged at the fuel dock.

6. CONDITION AND MAINTENANCE OF THE PREMISES. The Tenant accepts the property in its present condition. City makes no representations or warranties to Tenant regarding the condition of any of the Leased Premises or its fitness for any particular purpose. Tenant agrees that at all times during the term of this Lease and any renewals thereof it will be responsible for all normal and routine repairs and maintenance at the Leased Premises, and Tenant agrees to keep the Leased Premises in as good of order and repair as it is as of the commencement of the term of this Lease, normal wear and tear excepted. All repairs, replacements and renovations shall be performed in a good and workmanlike manner. The Tenant's maintenance includes, but is not limited to, the responsibility for garbage, trash or rubbish disposal in compliance with all applicable laws, rules and regulations prescribed from time to time. Tenant agrees to be responsible for litter control and agrees to maintain the Leased Premise in a clean, safe and orderly condition. Landlord agrees to be responsible for any extraordinary maintenance, repairs or replacements at the Leased Premises which are not caused

by the fault or neglect of the Tenant or its agents, employees, invitees and licensees.

7. TAXES. Throughout the term of this Lease, Tenant agrees to be responsible for the payment of all real property taxes accruing against the Leased Premises during the term of this Lease, including the County of Charleston Solid Waste Disposal User's fee.

8. UTILITIES. Tenant agrees to be responsible for the payment of all telephone, electrical, water, sewer or other utility service to the Leased Premises, which accounts shall be in the name of Tenant.

9. ASSIGNMENT OR SUBLEASE. Tenant agrees not to assign or sublet the Leased Premises or any part thereof without Landlord's prior written consent. Any change in control of the ownership of Tenant shall be deemed to be an assignment of this Lease.

10. SUBORDINATION OF LEASE. Tenant's rights under this Lease shall be and remain subordinate to any bona fide mortgage debt which is now or may hereafter be placed upon the Leased Premises by Landlord. Tenant agrees to execute such written estoppel certificates regarding the status of this Lease as Landlord may request from time to time.

11. RIGHT OF ENTRY BY LANDLORD OR LANDLORD'S AGENTS. Tenant agrees to permit inspection of the Leased Premises at all times during the term of this Lease during reasonable business hours by Landlord or Landlord's agents or representatives for any purpose. Landlord may make emergency inspections at any time. Tenant also agrees to cooperate fully with the present or any future environmental contamination remediation efforts at the Marina, including access to the Leased Premises as required by such efforts.

12. INDEMNIFICATION. Tenant agrees to hold harmless and indemnify Landlord against any loss or damage, including attorney's fees and expenses, incurred as a result of any and all claims, demands, causes of action, suits, judgments, fines or penalties (including but not

limited to all fees and expenses incurred as a result of death or injury to persons or for loss of or damage to property) arising out of or in connection with the use and occupancy of the Leased Premises by Tenant, its agents, employees, customers, licensees or invitees. In the event of any such claims made or suits filed, Landlord agrees to give Tenant reasonable notice thereof, and Tenant shall have the right to defend or settle the same to the extent of its interest hereunder. Tenant agrees to at all times carry public liability insurance in the amount of at least \$300,000.00 per person and \$1,000,000.00 per claim, and \$300,000.00 per claim property damage, with Landlord named as an additional insured, through a company approved by Landlord, and agrees to provide Landlord with proof of such coverage from time to time upon Landlord's request.

13. IMPROVEMENTS AND ALTERATIONS.

A. No alterations or improvements to the Leased Premises shall be made by Tenant without the prior written consent of Landlord. Any alterations, additions or improvements made by the Tenant and any fixtures installed by Tenant shall at the Landlord's option become the property of the Landlord at the expiration or other sooner termination of this Lease; provided, however, that Landlord has the right to require Tenant to remove all such modifications upon the termination of this Lease, at Tenant's expense.

B. Tenant desires to make certain improvements to the dock. Landlord is agreeable to Tenant effecting the improvements so long as the plans, specifications and exact cost for the work are approved in writing in advance by Landlord, who shall be under no legal obligation to consent to any improvements. For improvements made by Tenant with Landlord's consent, Landlord agrees to reimburse Tenant for actual out-of-pocket expenses for materials and supplies incorporated into the improvements through a proportionate abatement of future rent accruing after the completion of the improvements by Tenant and so long as the improvements

are completed in strict accordance with the approved plans and specifications.

14. DAMAGE OR DESTRUCTION. If the Leased Premises are partially damaged by fire or other casualty without the fault of Tenant or its employees, invitees and licensees, the damage shall be repaired by and at the expense of Landlord. If such damage shall render the premises untenable in whole or in part, the rent shall be abated wholly or proportionately as the case may be until the damage is repaired and the premises are restored. All insurance proceeds from such loss shall be paid to Landlord. If the damage is so extensive as to require the substantial rebuilding (i.e. expenditure of 50% or more of the replacement cost) of the Leased Premises, Landlord may elect to retain the insurance proceeds thereof and terminate this Lease by written notice to the Tenant, provided that such notice shall be given within thirty (30) days after occurrence of such damage.

15. DEFAULT.

A. If Tenant defaults in the fulfillment of any of the covenants and conditions hereof Landlord may, at Landlord's option, after thirty (30) days prior written notice to Tenant, make performance for Tenant and for that purpose advance such amounts as may be necessary. Any amount so advanced or any reasonable expense incurred or sum of money paid by Landlord by reason of the failure of Tenant to comply with any covenant, agreement, obligation, or provision of this Lease, or in defending any action to which Landlord may be subjected by reason of any such failure shall be deemed to be additional rent for the Leased Premises and shall be due and payable to Landlord on demand. The acceptance by Landlord of any installment of fixed rent or any additional rent hereunder shall not be a waiver of Landlord's right to demand full payment of any additional rent then due and to hold Tenant in default under this Lease.

B. If Tenant fails to pay rent when due, or to promptly perform any of the other

covenants herein, and such failure continues for fifteen (15) days, then Tenant shall be in default under this Lease. However, Landlord agrees that Tenant will have 15 days after receipt of written notice thereof, which written notice need only be given by Landlord to Tenant twice during any calendar year, to cure any such default. In the event of any default, Landlord may, in addition to any other rights or remedies, declare the Lease to be in default, retake possession of the Leased Premises, declare the full amount of the remaining rent for the balance of the term at once due and payable, re-let or sublet the Leased Premises at the risk of Tenant, or declare this Lease terminated for the balance of its term, all of which rights and remedies shall be cumulative.

16. ENFORCEMENT. If either party enforces the terms of this Lease by legal proceedings, then the prevailing party in such proceedings shall be entitled to reimbursement from the other party of all costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorney's fees, at all trial and appellate levels.

17. RIGHTS OF SUCCESSORS AND ASSIGNS. The covenants and agreements contained in the Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, and their respective successors and permitted assigns.

18. PARAGRAPH HEADINGS. The paragraph headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no way to be construed to be part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

19. ENTIRE AGREEMENT. This agreement contains the entire understanding of the parties hereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation by the other party, either express or implied, which are not contained in this agreement. All prior understandings, terms or conditions are deemed merged into this agreement. This Lease may be altered or amended only by an instrument in writing signed by

both parties.

20. ADDITIONAL INSTRUMENT. The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition, or assurance in this agreement whenever occasion shall arise.

21. SURRENDER OF LEASED PREMISES. Tenant agrees to deliver all keys and to surrender the Leased Premises at the expiration or sooner termination of this Lease, or any extension thereof, broom clean and in substantially the same condition as when said Premises were delivered to Tenant, or as altered pursuant to the provisions of this Lease, reasonable wear and tear excepted, and Tenant agrees to remove all of its personal property. Tenant agrees to pay a reasonable cleaning charge if it is necessary for Landlord to restore or cause to be restored the Leased Premises to a clean and orderly condition.

22. WAIVER OF COVENANTS. It is agreed that the waiver of any of the covenants of this Agreement by either party shall be limited to the particular instance and shall not be deemed a waiver of any other breaches of such covenant or any other provision herein contained.

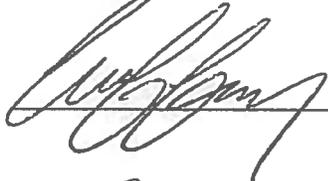
23. NOTICE. Any notices or demand required or permitted by law, or any provision of this agreement, shall be in writing, and shall be deemed to be received by Landlord when personally delivered to Landlord, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid, and addressed to Landlord, attention City Administrator, at Post Office Drawer 508, Isle of Palms, S.C. 29451, or at such other address as Landlord may hereafter designate in writing to Tenant.

Any such notice or demand to be served upon the Tenant shall be in writing and shall be deemed to be received by Tenant when personally delivered to Tenant, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid, and

addressed to Tenant at Post Office Box 412, Isle of Palms, S.C. 29451, or at such other address as Tenant may hereafter designate in writing to Landlord.

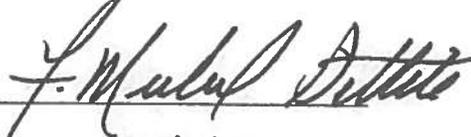
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, by and through the undersigned officers, effective as of the date stated above.

WITNESS:

 3/3/05

  
(as to both parties)

The City of Isle of Palms, S.C.

By:   
Title: MAYOR

Tidal Wave Water Sports, Inc.

By:   
Title: PRESIDENT





STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON ) **CONSENT TO ASSIGNMENT OF LEASE  
AND AGREEMENT TO AMEND LEASE**

This Agreement is made and entered into this 30<sup>th</sup> day of September, 2006, by and between the City of Isle of Palms, S.C. ("Landlord"), Tidal Wave Water Sports ("Assignor") and Water Toys, LLC ("Assignee").

WHEREAS, by Commercial Lease Agreement dated June 1, 2004 (the "Lease"), Landlord and Assignor entered into the lease of certain highland and dock space at Landlord's marina, the exact description of which is set forth in the Lease; and

WHEREAS, Assignor desires to transfer and assign the Lease to Assignee and Assignee desires to assume the Lease from Assignor; and

WHEREAS, Landlord is willing to consent to the assignment of the Lease subject to the terms of this Agreement; and

WHEREAS, Landlord and Assignee desire to amend the Lease in certain respects.

THEREFORE, in consideration of the premises and the mutual covenants and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Landlord hereby consents to the assignment of the Lease from Assignor to Assignee, conditional upon its receipt of a copy of a written Assignment of Lease from Assignor to Assignee whereby Assignee has agreed to be bound by all terms and conditions contained in the Lease and to perform and keep all promises, covenants, conditions and agreements of the tenant thereunder which arise or accrue after the delivery of the Assignment.

2. Landlord agrees to release Assignor's principal, Brian J. Berrigan, from his personal guaranty of the Lease as to all matters arising after the date of the assignment upon the execution and delivery to Landlord of the attached unconditional guaranty of the Lease from Assignee's principals, Mark Fiem and Michael Fiem, as to all matters arising after the date of the assignment.

3. Landlord and Assignee agree to amend the Lease by deleting the last sentence of Section 2 of the Lease in its entirety.

4. All terms and conditions of the Lease which are not inconsistent with the terms of this Agreement shall remain in full force and effect.

*Amend #1*

IN WITNESS WHEREOF, the parties hereto, by and through their undersigned agents, have executed this Agreement as of the date stated above.

WITNESS:

*Amy S. Williams*  
*Rae Mallett*  
(as to Landlord)

The City of Isle of Palms, South Carolina  
By: *Linda Lovvorn Tucker*  
Title: Linda Lovvorn Tucker, City Administrator

*Michael Mallett*  
*Michael Mallett*  
(as to Assignor)

Tidal Wave Water Sports, Inc.  
By: *Juan G. Jarama*  
Title: OWNER

*Michael Mallett*  
*Michael Mallett*  
(as to Assignee)

Water Toys, LLC  
By: *Michael Mallett*  
Title: OWNER

## ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Assignment Agreement") is executed this 30<sup>th</sup> day of August 2006, by and between Tidal Wave Watersports, a South Carolina corporation (the "Seller"), Watertoys LLC dba "Tidalwave Watersports," a South Carolina limited liability company (the "Buyer"), and the South Carolina City of ISLE OF PALMS (the "City").

### RECITALS

1. Tidalwave Watersports, Inc. (the Seller) and the City are parties to an agreement dated June 1, 2004 for the performance of lease services, a copy of which is attached hereto as Exhibit A (the "Lease").
2. Tidalwave Watersports, Inc. (the Seller) desires to assign to, and Watertoys, LLC (the "Buyer") desires to accept the assignment of and assume the obligations under, the Lease upon the terms and conditions set forth herein.

### AGREEMENTS

NOW, THEREFORE, in consideration of the recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

1. Assignment. The Seller hereby sells, assigns, conveys, transfers and delivers to the Buyer all of the Seller's rights, title and interest in and to the Lease.
2. Assumption. The Buyer hereby accepts the foregoing assignment, and in connection therewith, agrees to assume, perform and discharge Seller's obligations under the Lease arising from and after the date hereof.
3. Consent to Assignment. The City hereby consents to the assignment of the Lease from Seller to Buyer. The City hereby confirms that, to the best of its knowledge, that no default exists under the Lease and the City has no claims against the Seller for default under the Lease as of the date hereof.
4. Effective Time. The effective time of this Assignment Agreement is the date first set forth above.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement as of the date first above written.

*Brian J. Berrigan*

By: Brian J. Berrigan [SELLER]  
Owner, Tidal Wave Watersports, Inc.

*Willie Wiley*  
Witness

*Mark Fiem*

By: Mark Fiem [BUYER]  
Co-owner of Watertoys, LLC

*Willie Wiley*  
Witness

*Michael Fiem*

By: Michael Fiem [BUYER]  
Co-owner of Watertoys, LLC

*Willie Wiley*  
Witness

CITY OF ISLE OF PALMS

*Linda Lovvorn Tucker*

By: Linda Lovvorn Tucker [CITY]  
City Administrator

*Angie S. Wain*  
Witness

STATE OF SOUTH CAROLINA )

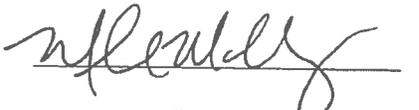
COUNTY OF CHARLESTON ) **UNCONDITIONAL GUARANTY  
OF LEASE AGREEMENT**

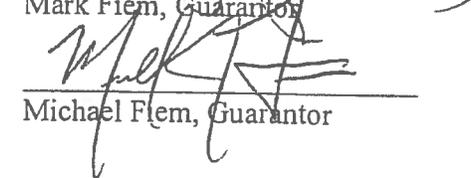
IN CONSIDERATION of independent value received by us, the receipt and sufficiency of which are hereby acknowledged, we hereby unconditionally guarantee the performance of all terms, covenants and conditions contained in that certain Commercial Lease Agreement by and between The City of Isle of Palms, S.C., as Landlord, and Tidal Wave Water Sports, Inc. as Tenant, dated June 1, 2004, to be performed by the Tenant from and after the date of this Agreement, including without limitation all extensions, renewals or modifications thereto, and all expenses, including attorney's fees, to which Landlord may become entitled to under the Lease, and hereby waive presentment, demand, notice of dishonor, protest and all other notices whatsoever, and agree that the Lease may from time to time be modified, renewed or extended without notice to or consent by the undersigned and without affecting the undersigned's liability hereunder, and the undersigned agrees that the undersigned may be sued with or without joining the Tenant or any other Guarantor hereof and without first or contemporaneously suing such persons or otherwise seeking or proceeding to collect from them.

This is a continuing unconditional guaranty of payment and performance and not of collection and shall remain in full force and effect throughout the entire remaining term of the Lease and any extensions or renewals thereof and so long as any amounts due from Tenant under the terms of the Lease remain unpaid.

IN WITNESS WHEREOF, the undersigned Guarantors have hereunto set their hands and seals this 30<sup>th</sup> day of September, 2006.

WITNESS:


  
Mark Fiem, Guarantor  
  
Michael Fiem, Guarantor



**“Landlord may, upon reasonable notice to Tenant, amend the exact location of the dock space described in Exhibit I; provided, however, that Tenant shall at all times have adequate dock space for the uses defined in Section 5 of the Lease.”**

3. That Section 2, “Term of Lease,” of the Lease is hereby amended as follows:

“The term of this Lease shall commence on ~~June 1, 2004~~ **October 1, 2010**, and end on ~~September 30, 2005~~ **September 30, 2015**. This Lease shall be automatically renewed for **three (3)** successive ~~one (1)~~ **five (5)** year terms commencing on ~~October 1, 2005~~ **October 1, 2015**, under the same terms, covenants and conditions set forth in this agreement until either party gives the other party at least ~~ninety (90) days~~ **1 year** prior written notice of termination of this Lease at the end of any such renewal term.”

4. That Section 3, “Rent,” of the Lease is hereby amended in Paragraphs A and B as follows:

“A. Tenant agrees to pay initial annual base rent to the Landlord, or such agent of Landlord as Landlord may from time to time designate in writing, in the sum of Eighteen Thousand and no/100 (\$18,000.00) Dollars, due and payable in equal monthly installments of One Thousand Five Hundred and no/100 (\$1,500.00) Dollars, ~~due and payable~~ in advance on or before the first day of each month, commencing on ~~June 1, 2004~~ **October 1, 2010**, and continuing throughout the entire term of this Lease. **Notwithstanding any other provision contained in this Section to the contrary, for any lease year Tenant may elect to re-allocate the payment of annual rent due for such lease year into variable installments,**

**provided that the total amount of annual rent due is paid in full by September 30 of each lease year.**

B. In addition to the base rent set forth in this Section, Tenant agrees to pay additional annual rent to Landlord equal to twenty (20.00%) percent of Tenant's gross profit (as defined by Generally Accepted Accounting Principles, or "GAAP") derived from the Leased Property in excess of Three Hundred Thousand and no/100 (\$300,000.00) Dollars per lease year. Such amount shall be due and payable in full within thirty (30) days after the end of ~~each year of~~ each lease year. Tenant agrees to keep true, accurate and complete records of all activities conducted at the Leased Property and ~~along with the payment of the additional annual rent shall~~ provide Landlord with a certified statement, certified by the Tenant's Owner to be true and correct, showing the monthly gross income revenues and deductions from gross revenues to derive gross profit for the subject year. Such statement shall be provided along with the payment of the additional annual rent, or if no additional annual rent is due, within thirty (30) days after the end of each lease year. Landlord and its agents and representatives are hereby authorized to inspect and copy all books and records of Tenant relating to the Leased Property at such times as Landlord may determine. ~~Tenant agrees that each year, within 90 days after the end of Tenant's fiscal year, Tenant will provide Landlord with a copy of Tenant's annual compiled financial statements, certified by Tenant's independent accounting firm. Tenant also agrees that each year, Tenant will provide Landlord with a certified copy of Tenant's state and federal income tax returns no later than the due date for filing the returns. If Tenant receives an extension for filing any such return, Tenant will provide Landlord with copy of same upon filing. To the extent~~

allowed by the South Carolina Freedom of Information Act, Landlord agrees to keep all such information confidential.”

5. That Section 9, “Assignment or Sublease,” of the Lease is hereby amended as follows:

“Tenant agrees not to assign or sublet the Leased Premises or any part thereof without Landlord’s prior written consent. Any change in control of the ownership of Tenant shall be deemed to be an assignment of this Lease. Notwithstanding any such consent by Landlord, Tenant agrees to remain personally liable for the full performance of all terms and conditions contained in this Lease to be performed by the Tenant. Tenant agrees to hold harmless and indemnify Landlord against any loss or damage, including attorney’s fees and expenses, incurred as a result of any and all claims, demands, causes of action, suits, judgments, fines or penalties (including but not limited to all fees and expenses incurred as a result of death or injury to persons or for loss of or damage to property) arising out of or in connection with Tenant’s sublease or assignment of the Leased Premises and any activities performed thereunder, including negligent or willful acts or omissions, by Tenant, Tenant’s sublessee or assignee, and their respective members, officers, agents, employees, subcontractors, customers, licensees, and invitees.

All insurance coverage required to be maintained by Tenant and its sublessees under any City-approved subleases pursuant to this Section of the Lease shall be with companies approved by Landlord, who shall be named as an additional insured on all such policies held by Tenant and its sublessees. Tenant agrees to provide City with certificates of such insurance for Tenant and its sublessees within ten (10) days from the renewal date of each such policy.”

6. That Section 12, "Indemnification," of the Lease is hereby amended in the last sentence as follows:

"Tenant agrees to at all times carry public liability insurance in the amount of at least \$300,000.00 per person and \$1,000,000.00 per claim, and \$300,000.00 per claim property damage, with Landlord named as an additional insured, through a company approved by Landlord, and agrees to provide Landlord with ~~proof of such coverage from time to time upon Landlord's request~~ **certificates of such insurance within ten (10) days from the renewal date of such policies.**"

7. That all other terms and conditions of the Lease, Assignment Agreement and Consent to Assignment and Agreement to Amend Lease, which are not inconsistent herewith shall remain in full force and effect.

IN WITNESS WHEREOF, the Landlord and Tenant have caused this Second Amendment to be duly executed, sealed and delivered, by and through the undersigned agents, as of the date stated above.

SIGNATURE PAGE FOLLOWS

C.A. Tucker  
(Witness #1 as to Landlord)

Erin Dzul  
(Witness #2 as to Landlord)

[Signature]  
(Witness #1 as to Tenant)

[Signature]  
(Witness #2 as to Tenant)

The City of Isle of Palms, S.C., Landlord

By: [Signature]

Title: City Administrator

Watertoys, LLC d/b/a "Tidalwave Watersports,"  
Tenant

By: [Signature]

Title: AWSEL