

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: March 1, 2021

Agenda Item: 7B	Prepared for: Chris Noury	
Agenda Section: New Business: Ordinance. First Reading	Date: February 22, 2021	
Subject: Award of the Parasail and Banana Boat Franchise Agreement in the vicinity of 17 th Avenue South in the Crescent Beach section of North Myrtle Beach.	Division: Legal	
<u>BACKGROUND:</u> The Franchise Agreement for the Parasail and Banana Boat Franchise Agreement in the vicinity of 17th Avenue South in the Crescent Beach section of North Myrtle Beach expired on December 31, 2020. A Request for Proposals (RFP) was advertised, at large, to the public. The sole responder was the prior franchise operator, Aaron Lewis d/b/a New Wave Watersports. The offer presented is reasonable and past performance of the franchise operator is more than satisfactory. Staff deems it in the best interest of the City to award the Franchise without a rebid. <u>RECOMMENDED ACTION:</u> Award of the Parasail and Banana Boat Franchise Agreement in the vicinity of 17th Avenue South in the Crescent Beach section of North Myrtle Beach to Aaron Lewis d/b/a New Wave Watersports.		
Reviewed by Department Head	Reviewed by City Manager	Reviewed by City Attorney
Council Action: Motion By _____ 2nd By _____ To _____		

STATE OF SOUTH CAROLINA) PARASAIL AND BANANA BOAT
FRANCHISE AGREEMENT
COUNTY OF HORRY) AARON LEWIS d/b/a
NEW WAVE WATERSPORTS

WHEREAS, the City of North Myrtle Beach is a tourist community with nine (9) miles of public beach along the Atlantic Ocean; and

WHEREAS, the City is visited by hundreds of thousands of people each year; and

WHEREAS, the City has as its public purpose the provision of a safe environment for its visitors and residents; and

WHEREAS, Mayor and Council for the City of North Myrtle Beach, hereinafter called "City", have determined in the interest of health, safety and general welfare of the citizens, residents and visitors of the City, that the franchise for parasail and banana boat operations be conducted in the vicinity of 17th Avenue South in Crescent Beach on the public beaches within the City should be granted unto a suitable and proper person, firm or corporation; and

WHEREAS, Mayor and Council have determined that Aaron Lewis, hereinafter called "Franchisee", is a suitable individual unto whom such franchise should be granted. The Franchise shall operate under the name of New Wave Watersports.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

In consideration for providing parasail and banana boat operations on the public beach, and other good and valuable consideration, the City does hereby grant a limited parasail and banana boat franchise unto the within-named Franchisee for the purposes and under the conditions herein mentioned, such franchise to be operated under the following terms and conditions of this Agreement, hereinafter called "Agreement".

This agreement supersedes and voids and nullifies all parasail and banana boat franchise agreements and addendums entered into between Aaron Lewis d/b/a New Wave Watersports and the City of North Myrtle Beach prior to the execution of this Agreement.

ARTICLE I: GENERAL

Section 1 The Franchisee shall have the right and privilege of conducting upon the public beaches of the City as herein designated and hereinafter called "Public Beaches", a parasail and banana boat business which consists of the sale of parasail and banana boat rides to the general public for profit.

"Parasailing" means anything with a rider towed by a power vessel by means of a tow rope where the rider ascends into the air by the towline extended from the vessel and remains suspended in the air as the vessel runs its course.

“Operator” means one that operates a banana boat, non-propeller personal watercraft, or parasailing vessel. The term also includes the operator serving as an observer on such watercraft.

“Banana Boat Operations” means rental of rides on a banana boat towed by a non-propeller personal watercraft. Banana boats shall not exceed six (6) passengers at any time.

Section 2 The granting of this franchise shall in no way imply that said franchise is exclusive and the City reserves the right at any time to grant an additional franchise to qualified applicants if and when the City Council shall determine that the public convenience and necessity would best be served by such additional franchise or franchises.

Section 3 The Franchisee shall operate in an area known as the public beach in the vicinity of 17th Avenue South in the Crescent Beach section of North Myrtle Beach, which area is seaward of the primary dune line as defined by South Carolina Coastal Council in the W-1 Waterfront Pleasure District, which is under the control of the City of North Myrtle Beach and which is shown on the official zoning map of the City of North Myrtle Beach.

Section 4 The Franchisee shall not conduct any business activities upon the public beaches other than those enumerated in Section 3 hereof, or unless otherwise approved by the City.

Section 5 The Franchisee shall conduct all business activities in a passive manner. Concession or sales personnel shall make no initial direct contact with beach patrons for the sale of parasail and banana boat rides and shall not be allowed to solicit any sales. No sale shall be practiced by the Franchisee or its employees, to influence, pressure, coerce, or hawk the general public to utilize its services. All employees of the Franchisee shall be properly attired at all times.

ARTICLE II: DURATION, FEES & REQUIREMENTS OF OPERATION

Section 1 The parties agree that this Franchise Agreement shall be treated as if an option to extend the agreement had been granted and the franchise fee shall be paid as required in optional years pursuant to Article II, Section 3. This Agreement shall be in effect from the 15th day of March 2021 and shall end on the 31st day of December 2025 unless earlier terminated, as provided herein. However, the City may, at its option, extend the term of the Franchise for a five (5) year period. Such extension shall be based upon the quality of service provided, the condition of the equipment and the anticipated service level during the option period. The right to extend the agreement for the option period remains the sole right and judgment of the City. A decision not to extend the agreement period is not disputable.

Section 2 Subcontracting any portion of the Franchise Agreement shall not be allowed. Any violation of this shall result in the immediate revocation of the Franchise.

Section 3 This Agreement and any portion hereof shall not be alienated, conveyed, sold, leased, granted, donated, pledged or encumbered, or in any manner whatsoever, or by whatever name or form assigned by the Franchisee to any other person, firm or corporation without the prior, express written consent of the North Myrtle Beach City Council. Such consent shall be conveyed by the adoption of an ordinance granting a parasail and banana boat franchise to the new owner.

Any ownership change during the term of this Franchise Agreement shall be construed as a sale of the Franchise and shall result in the immediate revocation of the Franchise.

Section 4 If Franchisee elects to add a fourth parasail watercraft during the term of the Franchise Agreement, as authorized in Article V “Operating Requirements and Limitations”, Section 2B, the Franchisee shall be required to pay a franchise fee in the amount of \$72,930.38 each year. There shall be no prorating of fees for adding a fourth parasail watercraft. The fees for any optional period shall increase by five percent (5%) successively for each year. The franchise fee shall be payable in one installment due by July 15th of each year. In the event this date falls on a weekend, payment shall be due the first Monday after July 15th. If payment has not been received within 15 days after the due date a \$100 per day penalty will be assessed until payment is received in full. The Franchisee shall first notify the City in writing no less than thirty (30) days prior to adding a fourth parasail watercraft informing the City of the date the fourth parasail watercraft will become operational.

In the event the Franchisee does not exercise the option to add a fourth parasail watercraft, the Franchisee shall pay to the City a franchise fee of \$51,500 each year. The fees for the optional period shall increase by five percent (5%) successively for each year. The franchise fee shall be payable in one installment due by July 15th each year. In the event this date falls on a weekend, payment shall be due the first Monday after July 15th. If payment has not been received within 15 days after the due date a \$100 per day penalty will be assessed until payment is received in full.

Section 5 In addition to all other remedies available to the City, the City shall have the right to levy civil fines for each violation of the franchise terms and/or conditions. The amount of these fines may not exceed Five Hundred Dollars (\$500.00) per infraction. Within ten (10) days, the Franchisee may appeal the use of this remedy to the City Manager or designee, whose decision shall be final. If any fines remain unpaid after the ten (10) day period set aside for appeal, the City may terminate this Agreement.

Section 6 The Franchisee shall comply with all rules, regulations, laws and permitting requirements of the City of North Myrtle Beach, Horry County, the State of South Carolina, and the United States Government now in force or hereinafter to be adopted.

Section 7 The Franchisee shall be required to obtain and pay for all necessary permits and licenses for operation, and be solely responsible for payment of any sales tax, hospitality fees or any and all taxes levied upon this Franchise operation. A business license for this Franchise operation is not required.

Section 8 If the Franchisee is unable or unwilling to perform the franchise at any time for any reason, the paid franchise fee remains with the City and is non-refundable. Failure to perform shall constitute grounds for the City to terminate the Franchise Agreement in whole or part without any termination liability on the part of the City.

ARTICLE III: OPERATING LOCATION AND EMPLOYEE GUIDELINES

Section 1 The operating location for this franchise is on the public beach in the vicinity of 17th Avenue South in the Crescent Beach section of North Myrtle Beach. For the health and safety

of the customers and employees of the Franchisee and members of the public, in an effort to minimize a collision or some other boating accident with the franchise holder operating from the area of 17th Avenue South in the Crescent Beach section of North Myrtle Beach, the Franchisee shall not conduct parasailing or banana boat activities or otherwise operate any watercraft related to the franchise north of 12th Avenue South in North Myrtle Beach.

Section 2 Parasail and banana boat operations as required under Section 1 hereof shall be in place, manned and fully operational in compliance with the starting and ending dates negotiated between the Franchisee and City Manager or designee.

Section 3 Franchisee operations personnel mentioned in this Article shall:

- A. Only conduct operations between the hours of 8:00 a.m. to 7:00 p.m. on each day, unless precluded by weather and/or sea conditions. The Franchisee may begin preparing for operations at 7:00 a.m. on each day, but cannot begin operations until 8:00 a.m.
- B. Be neatly attired in uniform supplied by the Franchisee and approved by the City. Swimming suits shall be of a bright, distinctive color, resistant to color fading, and shall have lettering easily seen by the public but shall not conflict with or in any way be identified as City lifeguards.
- C. Be neat and clean in appearance, free of visible exotic body piercing and shall conduct themselves in a courteous manner to the general public.
- D. Shall have, while on duty, an approved safety system that will provide uninterruptible communications from shore operating locations to in-water operations and vice-versa. The Beach Patrol Division of the North Myrtle Beach Department of Public Safety shall be made aware of the radio type, frequency and channel(s) designated for franchise communication. Any changes to same shall be reported immediately to both the duty lifeguard and the Beach Patrol Division of the North Myrtle Beach Department of Public Safety.
- E. Not wear any part of his/her uniform while drinking beer, wine, or any alcoholic beverages, nor in a place where beer, wine, or any alcoholic beverages are consumed (except when obtaining lunch or non-alcoholic beverage during on-duty breaks).

Section 4 The primary duty of the Franchisee personnel is to protect the safety of the general public in the use of the public beaches and the ocean waters of the City while conducting parasail or banana boat operations. It is mandatory that the parasail and banana boat operator's attention be focused on this duty; therefore, the Franchisee's personnel on duty shall not:

- A. Conduct lengthy conversations with persons in a manner or in such a fashion as to impair the performance of safety duties.
- B. Permit persons to be in the operations area unless they are qualified Franchisee employees or patrons.

Section 5 It is the Franchisee's responsibility to monitor the health of its employees and not assign an employee who is ill or physically unable to execute his or her responsibilities.

Section 6 During the times and periods operations are conducted, the Franchisee shall keep their equipment and work areas neat, clean, and safe. All equipment shall be secured and kept from public nuisance when operations are not being performed. No equipment shall be stored at the operating site or street-end after daily operations have ceased.

Section 7 Any employee or operator of a Franchisee, who pleads guilty, is found guilty, pleads nolo contendere or no contest to, or has any prior conviction within the last ten years, for any offense that carries a possible penalty of incarceration for a year or more shall be dismissed from the franchise operation. In addition, any employee or operator who consumes or is under the influence of an alcoholic beverage, unlawful controlled substance, or prescription drug(s) that could impair performance while on duty, shall be immediately dismissed. Failure of the Franchisee to dismiss any employee or operator pursuant to this section shall be grounds for revocation of the franchise at the discretion of the City Manager or his/her designee. The franchisee shall not utilize any equipment including, but not limited to, any boats, personal watercraft, banana boat, transport watercraft or parasail for any use in the operation of the franchise if the individual, or entity, or any officer of, board member of, shareholder, investor or director of the entity that owns the equipment pleads guilty, is found guilty, pleads nolo contendere to, or has any conviction within the last ten years for any offense that carries a possible penalty of incarceration for a year or more. If the Franchisee continues to use any equipment in the operation of the franchise in violation of the above terms, the City shall have the option to revoke the franchise.

The Franchisee shall submit copies of certificates of title to all boats, personal watercraft, banana boats and/or other watercraft to be used in the operation of the franchise. If a corporation, LLC, or other entity owns any of the equipment used for the operation of the franchise, the Franchisee shall provide the City with a certified copy of the articles of incorporation for that entity. If the Franchisee fails to provide this information, the City shall have the option to revoke the franchise.

Section 8 If any employee of the Franchisee observes or becomes aware of a violation of the law or a violation of the beach rules, he or she shall report such violation immediately to a supervisor or on duty lifeguard, who shall immediately report such violation to the Beach Patrol Division of the North Myrtle Beach Department of Public Safety.

Section 9 The Franchisee shall have at least one (1) experienced supervisor overseeing the operations, exclusively, at all times. The qualifications of the supervisor as an operator shall include a minimum experience level of two (2) years.

ARTICLE IV: PARASAIL AND BANANA BOAT OPERATORS TRAINING AND QUALIFICATIONS

Section 1 Operators furnished by the Franchisee shall be at least eighteen (18) years of age and shall hold and maintain in full force proper watercraft licenses and permits.

Section 2 Parasail operators and watercraft operators shall, in the presence of the City Manager or appointed designee, demonstrate lifesaving abilities and surf rescue operations at least once each year.

Section 3 Every employee shall have successfully completed a course of instruction in CPR for the Professional Rescuer or Basic Life Support, AED, and First Aid and be certified to that effect. Every operator must also be certified by the Red Cross as a lifeguard.

The Franchisee shall keep a record of the training conducted and make a copy available to the City Manager or his/her designated appointee.

ARTICLE V: OPERATING REQUIREMENTS AND LIMITATIONS

Section 1 The Franchisee shall comply with all applicable Federal, State, County, and City laws and regulations, whether or not explicitly specified in this Article. These include but are not limited to those of the Federal Aviation Administration (FAA), the United States Coast Guard (CG), and the South Carolina Department of Natural Resources (SCDNR).

Section 2 The following requirements apply to this Franchise Agreement and will be strictly enforced throughout the term of the Franchise Agreement:

- A. The Franchisee and its employees are required to abide by operating standards and guidelines established by the industry for best operating and safety practices. The City reserves the right to amend or adjust the operating standards as it deems appropriate.
- B. The Franchisee shall have the option to add an additional parasail watercraft to the franchise operation, which, if the option is exercised, shall authorize the use of four (4) parasail watercraft. If the Franchisee exercises the option to add an additional parasail watercraft, the Franchisee shall notify the City in writing at least thirty (30) days prior to the date the Franchisee intends to begin operating the fourth parasail watercraft. If the Franchisee exercises the option to add a fourth parasail watercraft, the Franchisee shall be authorized to operate and limited to: three (3) banana boats not exceeding six (6) passengers including franchise employees and customers, four (4) non-propeller personal watercraft, two (2) transport or ferrying watercraft not exceeding six (6) passengers, and four (4) parasail watercraft. One of the three (3) banana boats must be a dual pontoon vessel. The dual pontoon banana boat may be utilized to transport passengers from the beach to the parasail watercraft. All parasailing watercraft shall be equipped with an attached launch platform and winch tow line. Personal watercraft may be utilized to tow passengers on banana boats from the shore to the parasail watercraft; however, customers and non-franchise employees are prohibited from being transported upon personal watercraft.
- C. In the event the Franchisee utilizes a propeller driven transport or ferrying watercraft to transport customers/passengers to the parasailing watercraft, the Franchisee shall be prohibited from operating the propeller driven transport watercraft within five hundred (500) feet of the shoreline.
- D. Vessels engaged in parasailing and banana boat operations must be designed by the manufacturer for such purposes.
- E. Prior to commencement of seasonal operations, vessels shall submit to a United States Coast Guard safety check and shall provide a copy of the current exam form to the City

and adhere the safety check decal to the vessel. The Franchisee is required to have inspections readily available for review by the City at any time. All Franchise employees who are engaged in the parasailing operation must be involved in a Federal Drug and Alcohol Testing Program making available the results to the City upon request.

- F. All commercial parasail operators shall have, at all times, a current license for carrying passengers for hire issued by the United States Coast Guard.
- G. Non-propeller personal watercraft operators shall have the proper license and the Franchisee shall maintain, current at all times, evidence of drug tests performed.
- H. All parasailing operations shall include, in addition to the captain/driver of parasailing vessel, an observer on the parasailing vessel at all times to monitor the progress of the airborne parasail rider(s) and parachute. No more than three (3) parasail riders, at any given time shall be allowed and the total passenger weight shall not exceed 450 pounds. The Franchisee shall post a sign at the point of sale, the location to be approved by the City Manager or his/her designee, for the purpose of notifying customers that the total combined weight of passengers shall not exceed 450 pounds. Towlines shall not exceed five hundred (500) feet. See paragraph “m” in this section for height restrictions.
- I. Non-propeller personal watercraft must be equipped with wide-angle rear-view mirrors.
- J. All rental patrons and franchise employees must wear an approved personal flotation device. All parasail riders shall wear a United States Coast Guard approved Type I, II, III or V personal flotation device of the proper size and must be connected to the towline and secured in a set harness attached to an ascending type of parachute.
- K. Parasailing conducted in the Atlantic Ocean shall be restricted to not less than one thousand five hundred (1,500) feet from the shore. This restriction applies to the entire parasailing apparatus, including vessel, towline, and passengers.
- L. Parasailing operations shall not be conducted within three hundred (300) feet of a public pier or persons in the water.
- M. Advertisement banner flying is prohibited.
- N. The Franchisee must maintain a current Certificate of Waiver or Authorization from the Federal Aviation Administration (FAA) at all times. The maximum altitude authorized within a five (5) nautical mile radius of the North Myrtle Beach Airport is three hundred (300) feet above ground level (AGL). The Certificate of Waiver or Authorization shall be carried aboard the launch vessel during all parasail operations.
- O. Prior to any parasail operations being conducted, all parasail operators must have proof of attendance at an annual operator safety and standardization meeting sponsored by the FAA.
- P. Parasail operations shall not be conducted when the ceiling is less than one thousand (1,000) feet AGL and the ground visibility is less than three (3) miles.
- Q. Parasail operations shall not be conducted closer than five hundred (500) feet to any aircraft and the parasail shall not be maneuvered in such a manner so as to force any aircraft toward the swim line or a populated beach. Parasail operators shall yield the right-of-way to all aircraft.
- R. The parasail and surrounding airspace shall be under constant observation of a safety

monitor, not encumbered by other duties, onboard the launch vessel. The safety monitor must be in a position to observe the operation and airspace and shall halt operations in order to yield the right-of-way to aircraft.

- S. The parasail vessel shall be equipped with an 800 MHZ and VHF radio capable of sending and receiving radio traffic and to receive weather reports from the National Weather Service.
- T. Parasailing is prohibited when there are sustained winds above sixteen (16) knots or nineteen (19) miles per hour or when a small craft advisory has been issued. The NOAA Maritime Weather Service shall be used to determine wind speeds and other advisories. Parasail operations may be temporarily suspended due to inclement weather by order of the City Manager or his/her designee.
- U. The Franchisee shall require a consent/release form signed by all patrons. For those patrons less than 18 years of age, a parent or legal guardian shall sign the form. On the form, the patron must acknowledge that a safety briefing was given prior to operations. The City Attorney must approve the form prior to commencement of any franchise operations.
- V. The Franchisee is permitted to use, as a temporary structure, one (1) portable tent, not to exceed in size that of a 12 X 12. This structure must be removed at the end of each business day. An advertising banner that has been approved by the City Manager or his/her designee may be placed on the tent for the purpose of identifying the name of the franchisee's business.
- W. The Franchisee is authorized to use one (1) beach box for general storage purposes associated with the franchise operations. The beach box shall be constructed of exterior grade plywood and shall be painted low gloss dark blue. The beach box shall be placed at a distance no greater than five (5) feet from the sand fence. The dimensions of the beach box shall be:
 - Back side of box (side facing sand dune) – 55” in height
 - Front side of box (side facing ocean) – 48” in height
 - Width of box – 98”
 - Depth – 39”
 - (The above dimensions include 4” x 6” skids mounted to the bottom of the box.)
- X. The Franchisee is authorized to place the name of the parasail/banana boat franchise on the side of the box that faces the ocean and on the side of the box that faces toward Ocean Boulevard. The Franchisee may also place the phone number for the parasail/banana boat business three (3) inches below the name of the parasail/banana boat business. The height of the letters and numbers placed on the box cannot exceed four (4) inches. No other items, including but not limited to, signs, symbols, letters, numbers, icons or advertisements may be placed, painted or drawn on or otherwise affixed to the box. The beach box shall be removed from the beach no later than October 31st of each year and returned to the beach no sooner than April 1st of each year for the duration of the Franchise Agreement. In addition, the Franchisee shall move or remove the beach box as directed by the City Manager or his/her designee as may be deemed necessary by the City Manager or his/her designee for safety purposes.

Section 3 The following administrative requirements shall be met, kept current at all times, and be subject to inspection or review by City representatives and other oversight agencies as necessary. This information must be presented to the Department of Public Safety prior to the commencement of any operations and as requested anytime thereafter.

- A. Evidence that the parasail equipment has been properly annually inspected and serviced by a certified manufacturer's representative or facility. (Servicing receipt, logbook, etc.)
- B. Maintain (on board the vessel) all appropriate manufacturer instructions and manuals as to the maintenance, care, inspection, servicing, capacities, and capabilities of all parasail equipment used onboard the vessel.
- C. Maintain a parasail daily logbook that captures all required maintenance and inspection checks on all parasailing equipment. All required maintenance to parasail equipment shall be in accordance to the manufacturer guidelines.
- D. Maintain a daily weather logbook that documents the forecasted weather for the operational area prior to departure with passengers. All forecasted weather should be analyzed for the determination of safe parasail operations in accordance to the vessel and parasail equipment capabilities.
- E. Provide evidence of crew training and the company's training policies and procedures.
- F. A means to determine the true weight of parasail riders shall be maintained onboard the vessel. All parasail equipment is to be confirmed as appropriate for the associated weight of the parasail passengers. The equipment manufacturer's guidelines shall be readily available for reference.
- G. Written operating parameters and policy of the parasail operations which should include, among other things, operational distances offshore to allow room to retrieve parasail riders downwind without losing sea room.
- H. Establish emergency procedures to adequately address any parasailing emergency that may occur. Such emergencies shall include the retrieval of aloft parasailers and a means to obtain assistance (minimum tensile strength - 4,800 pounds).
- I. Require that all parasail towlines be fitted with chaffing devices such as metal hardware (D-rings) or a thimble in the formed eye of the rope, either attached by a splice or through the use of a knot. Appropriate knots, such as a double figure eight knot or splices are to be used rather than a bowline to provide greater reliability and strength.
- J. Adequate stowage shall be provided for all parasail equipment while not in use. Placement of the equipment in the bilge compartment of the engine is prohibited.

Section 4 The City reserves the right to inspect operations and administrative requirements at any time and terminate operations at any time if the City believes that the operations are unsafe and administrative requirements have been violated.

ARTICLE VI: REQUIRED INSURANCE COVERAGES FOR FRANCHISEE

Section 1 The Franchisee shall carry and maintain in full force and effect at all times during the operation on City beaches, the following insurance coverage:

- A. A TWO MILLION DOLLAR (\$2,000,000) umbrella policy which should sit over the general liability, automobile, and watercraft policies and the same shall be clearly communicated to all underwriters.
- B. General Liability in the minimum amount of ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in annual aggregate for bodily injury and property damage, including coverage for any person renting or using the equipment furnished by the Franchisee or other third persons injured as a result of the use of the equipment rented of the Franchises. This policy must also contain coverage for operations, equipment, and contractual liability. This policy will insure against any personal injury, bodily injury or loss of life or damage to property sustained in or on the Franchisee's or City's premises by reason of or as a result of the Franchisee's use, activities, and operations thereon.
- C. Automobile Liability for owned, non-owned and hired vehicles with minimum of ONE MILLION DOLLARS (\$1,000,000) combined single limit.
- D. Watercraft Liability in the minimum amount of ONE MILLION DOLLARS (\$1,000,000) combined single limit.
- E. Worker's Compensation and Employer's Liability to meet the statutory requirements of the State of South Carolina.

The City must be named as an additional insured on all policies required above in Section 1(A) through (E).

Section 2 The insurance policies shall be executed by an AM Best rating of A-rated or greater insurance company or companies authorized to do business in the State of South Carolina.

Section 3 The City shall receive at least thirty (30) days advance written notice of cancellation or changes of the above-mentioned policies.

Section 4 The Franchisee and its guarantor or guarantors shall hold harmless and indemnify the City and its agents, officers and employees from and against any and all claims, damage, loss, expenses, injury, action or any other demand of any nature and description whatsoever, either related directly or indirectly hereto; which the City may suffer or will suffer as a result of any claims, costs, judgements, demands, actions of any and every nature and description arising either directly or indirectly from the activities of the Franchisee, any subcontractor, anyone employed by any one of them or anyone whose acts of them is found to be liable hereunder. The Franchisee and its guarantor or guarantors shall also totally and absolutely be responsible for any and all investigative fees, costs or attorney's fees that may be incurred related to any matter herein.

Section 5 A copy of all insurance policies required under Section 1 hereof shall be furnished to the City Manager or his/her designated appointee, prior to the conduct of any business by the Franchisee. No business shall be conducted by the Franchisee until such proof of insurance is delivered to the City Manager; however, the failure to have such insurance shall not relieve the Franchisee of its other responsibilities set forth herein.

ARTICLE VII: SAFETY AND ACCOUNTABILITY

Section 1 The Franchisee shall be available to the City Manager or his/her designated appointee at all times beginning with the first day of operations and ending with the last day of operations; such availability to be either in person or by telephone at the option of the Franchisee.

Section 2 No business may be conducted by the Franchisee until all requirements of this Franchise Agreement are met by the Franchisee and the required equipment and safety equipment is approved by the City Manager or his/her designated appointee, and such approval may be withheld if such equipment is found by the City Manager or his/her designated appointee to be in an unsafe condition or of an unsafe nature. The decision of the City Manager or his/her designated appointee regarding safety equipment shall be final. The failure of the Franchisee to meet the requirements of this section shall not relieve the Franchisee of its other responsibilities set for herein.

Section 3 The Franchisee shall keep on the beach only that equipment necessary for rental as specified in Article V. All such equipment shall be kept in a safe and sound state of repair at all times and shall be immediately removed from the public beach, if found to be defective or in ill repair. All rental and operational equipment used by the Franchisee shall be new or in like new condition during the terms of this Agreement and shall be kept neat, clean, attractive and in a state of good repair.

ARTICLE VIII: INCIDENT REPORTING

The Franchisee shall report, in writing, on Monday of each week, any incidents involving violations by the Franchisee of the requirements of this Agreement. All incidents involving personal injury, loss of life, rescue action or the administering of first aid shall be communicated immediately to the City's Beach Patrol Supervisor.

ARTICLE IX: REVOCATION OF FRANCHISE

Upon the violation of Article II, Section 2, or the change of any of the principals involved with the Franchisee, or the conviction of or plea of guilty, or no contest or nolo contendere, by any of the principals or employees of the Franchisee and/or the Franchisee of a crime of moral turpitude, or upon violation of Article III, Section 7, or the declaration of bankruptcy or proceedings of reorganization under Federal or State law by the Franchisee, or the failure of the Franchisee to comply with terms and conditions of the Franchise Agreement, the City reserves the right to immediately revoke this Franchise.

ARTICLE X: FRANCHISE ENFORCEMENT AND SUPERVISION

Section 1 The City Manager or his/her designated appointee shall be responsible for the enforcement and supervision of this Franchise Agreement.

Section 2 This Agreement may only be modified in writing as authorized by Mayor and City Council at a regular or special meeting of City Council, and no other changes to this Agreement shall be effective, including attempted modifications.

ARTICLE XI: SEVERABILITY/PERFORMANCE GUARANTEES

Section 1 This Franchise Agreement supersedes all other Agreements previously made, and all other Agreements, in writing or otherwise, regarding such previous Agreements.

Section 2 This Agreement memorializes the complete understanding of all parties hereby, and any other statements, promises, representations, inducements and any and all negotiations of any nature, form or description previously had or contemporaneously conducted with the formation and execution hereof, are hereby deemed fully abandoned, and the same form no part of this Agreement, nor of the understanding of the parties, nor of the consideration of inducement heretofore.

Section 3 The City shall have the right to revoke and terminate this Franchise Agreement at any time if provisions of the Franchise Agreement are not strictly adhered to. The provisions of the Franchise Agreement, particularly Articles II, III, IV, V and VI are intended to provide a safe environment for uses of the public beach in the City of North Myrtle Beach, and any regulation pertaining to the safe operation of the activities on the beach will be strictly construed to the benefit and safety of the general public. No lapse of time, expenditure of money or any other thing shall be deemed to give the Franchisee any vested interests or right in the continuation of this Franchise Agreement.

Section 4 In the event of a default, the Franchisee agrees to pay all fees, including attorney's fees, necessarily incurred in enforcing the City's rights under this Agreement as a result of said default.

Section 5 The Franchisee hereby waives any claims against the City and its employees regarding any damages, loss of revenue or any other losses of whatsoever nature resulting from legislative, judicial, or other governmental action which renders the City unable to perform under this Agreement. The Franchisee shall indemnify, defend, and hold the City, its employees, officers, elected officials, agents, contractors, (the "Indemnified Parties"), harmless from and against all injury, loss, damage, or liability (or any claims with respect to the forgoing) that may arise as the result of any negligent or willful acts of the Franchisee, related in any way to the operations of this Franchisee Agreement. The indemnity provided for in this section shall not apply to any liability resulting from the negligence or willful misconduct of the City or an Indemnified Party.

Section 6 There shall be no discrimination as to race, religion, sex, color, creed, or national origin in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation. All rental services on the beach shall be made available to the public, subject to the right of the Franchisee to establish and enforce rules and regulations to provide for the safety, orderly operation, and security of the parasail operations.

Section 7 Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the law, but if any provision of this Agreement is prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Franchise Agreement.

WHEREAS, the Franchisee has entered into an Agreement with the City of North Myrtle Beach for the operation of a parasail and banana boat franchise on the public beaches within the City; and,

WHEREAS, the undersigned have agreed to guarantee full performance to the Franchisee pursuant to the terms of the Franchise Agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the aforesaid Franchise Agreement to Aaron Lewis d/b/a New Wave Watersports located in the vicinity of 17th Avenue South in the Crescent Beach section of North Myrtle Beach, the undersigned jointly and separately hereby absolutely and unconditionally guarantee to the City of North Myrtle Beach the full performance of the Franchise Agreement and the prompt payment of all franchise fees to the City of North Myrtle Beach when due from the Franchisee to the City, together with any and all charges, and/or penalties and, in addition, the undersigned agree to pay the cost of enforcement of any terms of the Franchise Agreement, including legal expenses and attorney's fees, paid or incurred by the City of North Myrtle Beach.

The undersigned expressly waives protest and notice of this honor or of default of any terms and the Franchise Agreement.

IN WITNESS WHEREOF, THE PARTIES DO HERETO AFFIX THEIR HANDS AND SEALS, THIS THE ____ DAY OF _____ 2021, BINDING THEMSELVES, THEIR SUCCESSORS, HEIRS AND ASSIGNS FOREVER.

IN THE PRESENCE OF:

CITY OF NORTH MYRTLE BEACH

BY: _____
Michael Mahaney
Its: City Manager

IN THE PRESENCE OF:

Aaron Lewis d/b/a New Wave Watersports

**AN ORDINANCE TO GRANT A FIVE-YEAR FRANCHISE AGREEMENT WITH A FIVE-YEAR OPTION TO
EXTEND THE TERMS THEREOF TO AARON LEWIS FOR THE OPERATION OF A THREE WATERCRAFT
PARASAIL AND BANANA BOAT FRANCHISE IN THE VICINITY OF 17TH AVENUE SOUTH
IN THE CRESCENT BEACH SECTION OF NORTH MYRTLE BEACH**

Whereas, the Parasail and Banana Boat Franchise Agreements for Cherry Grove and Crescent Beach were bid and RFP responses due on February 16, 2021 prior to 4 p.m.; and

Whereas, the offer was reasonable and deemed in the best interest of the City; and

Whereas, the Franchisee has entered into an Agreement with the City of North Myrtle Beach for the operation of a parasail and banana boat franchise on the public beaches within the City; and,

Whereas, the undersigned have agreed to guarantee full performance to the Franchisee pursuant to the terms of the Franchise Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:

Section 1: The Parasail and Banana Boat Franchise Agreement in the vicinity of 17th Avenue South in the Crescent Beach section of North Myrtle Beach be awarded to Aaron Lewis, d/b/a New Wave Watersports.

Section 2: The Franchise Agreement shall be solely for watercraft specified within this Agreement.

Section 3: The Franchise Agreement shall expire December 31, 2025 at midnight.

Section 4: A five-year option to extend the Franchise Agreement, based on Franchisee's performance of the Franchise terms and compliance with all applicable federal, state and City laws and codes, may be granted by City Council.

Section 5: The City Manager is authorized to sign the Franchise Agreement on behalf of the City.

Section 6: The ordinance shall become effective upon the date of passage.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2021.

Mayor Hatley

Attest:

First Reading: March 1, 2021

Second Reading: _____

City Clerk

Approved as to Form:

Reviewed:

City Attorney

City Manager