

2610

LEASE MODIFICATION

This Lease Modification is entered into this 2/24 day of April, 1987 by and between D & Z, Inc. of Pelham, Alabama (hereinafter called "Lessor") and Blue Water Park, Inc. of Helena, Alabama (hereinafter called "Lessee").

WHEREAS, on the 27th day of June, 1986, the parties entered into a Lease Agreement concerning the property known as Blue Water Park, Inc., and,

WHEREAS, it is the purpose of this Lease Modification to modify the terms and conditions of said lease.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) in hand paid by each party of this Lease Modification to the other, the receipt and sufficiency of which is herewith acknowledged, and the covenants and conditions set out herein, the said parties agree as follows, to wit:

1. Lessee agrees to relinquish control and usage of all scuba diving facilities and further agrees to share the parking facilities on a non-exclusive basis with Blue Water Scuba, Inc.

2. Lessor has entered into a lease with Blue Water Scuba, Inc., and does herewith agree to credit Lessee for all lease payments made by Blue Water Scuba, Inc. Restated, Lessee shall receive credit for all lease payments made by Blue Water Scuba, Inc. toward Lessee's rental obligations under the lease herein modified.

3. All other terms and conditions of the lease entered into by the parties on the 27th day of June, 1986 are unchanged and/or herewith reaffirmed and ratified.

D & Z, INC.

By: *[Signature]*

Its: *[Signature]*

BLUE WATER PARK, INC.

By: *[Signature]*

Its: *[Signature]*

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✓
Don Smith

LEASE AGREEMENT

THIS LEASE, made this 27th day of June, 1986, by and between D & Z, INC., P. O. Box 217, Pelham, Alabama 35124, first party (hereinafter called "Lessor"); and BLUE WATER PARK, INC., 1094 Chateau Drive, Helena Alabama 35080, second party, (hereinafter called "Lessee").

W I T N E S S E T H:

1. PREMISES. Lessor does hereby rent and lease to Lessee the following described space or land situated at 743 Industrial Park Drive, Pelham, Alabama 35124, and more particularly described as a large lake with surrounding land and appurtenances (hereinafter called "Premises").

2. TERM. The term of this Lease shall be on a year to year basis, commencing on the 27th day of June, 1986.

3. POSSESSION. Possession shall be given immediately upon execution of this Lease.

4. RENTAL. Lessee shall pay to Lessor at its office in Pelham, Alabama, or such other place as Lessor shall designate in writing, promptly on the twenty-seventh day of June in advance, during the term of this Lease, an amount to be negotiated immediately upon the start of each renewal year. Credit can be given on rental amount for permanent improvements made to the premises provided that the value of said improvements is agreed upon between the said parties. The aforesaid rent shall be due and payable in all events and Lessee hereby agrees to pay said rent and not to exercise any right of termination due to the breach by Lessor of any of the terms hereof.

5. USE. Premises shall be used for swimming, scuba diving, sunbathing and such other related uses as may be compatible and no other. Premises shall not be used for any illegal purposes; nor in violation of any regulations of any governmental body, nor in any manner to create any nuisance or trespass; nor in any manner to vitiate the insurance or increase the rate of insurance on Premises. Lessee hereby agrees to comply with any and all municipal, county,

state, and federal regulations, and/or requirements applicable or in any way relating to the use and occupancy of the Premises.

6. LESSEE'S ACCEPTANCE. Lessee accepts Premises in their condition and as suited for the use intended by Lessee. Lessor shall not be required to make any repairs or improvements to Premises.

7. LESSEE'S CARE. Lessee shall repair walls and all glass and plate glass. Lessee shall be liable for and shall hold Lessor harmless in respect to damage or injury to the leased Premises, or the person or property of the Lessee, or the person or property of Lessor's other tenants, or any one else, if due to act of neglect of Lessee or any one in his control or employ. Lessee is responsible for all maintenance and repairs of the buildings, and is required to return the buildings upon termination of the Lease for any reason, in its present condition, wear and tear excepted. All personal property upon the Premises shall be at the risk of Lessee only, and Lessor shall not be liable for any damage thereto or theft thereof.

8. INSPECTIONS. Lessor may enter the Premises at reasonable hours to exhibit same to prospective purchasers or tenants; to inspect Premises to see that Lessee is complying with all his obligations hereunder.

9. DEFAULT, REMEDIES. In the event (A) the rent specified in Paragraph 4 is not paid at the time and place when and where due; within five (5) days after written notice by Lessor to Lessee that the rent is due and unpaid; (B) the leased Premises shall be deserted or vacated; (C) the Lessee shall fail to comply with any term, provision, condition, or covenant of this Lease, other than the payment of rent, or any of the Rules and Regulations now or hereafter established for the government of this building, and shall not cure such failure within ten (10) days after notice to the Lessee of such failure to comply; (D) any petition is filed by or against Lessee under any section or chapter of the National Bankruptcy Act as amended; (E) Lessee shall become insolvent or make a transfer in fraud of creditors; (F) Lessee shall make an assignment for benefit of creditors; (G) a receiver is appointed for a substantial part of the assets of Lessee; (H) the leasehold interest is levied on under

execution in any of such events, Lessor shall have the option to do any of the following in addition to and not in limitation of any other remedy permitted by law or by this Lease:

(1) Terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, but if Lessee shall fail to so do, Lessor may, without further notice and without prejudice to any other remedy Lessor may have for possession or arrearages in rent or damages for breach of contract, enter upon the Premises and expel or remove Lessee and his effects, by force if necessary, without being liable for prosecution or any claim for damages therefor; and Lessee agrees to indemnify Lessor for all loss and damage which Lessor may suffer by reason of such Lease termination, whether through inability to relet the Premises, or through decrease in rent, or otherwise; in the event of such termination, Lessor may, at its option, declare the entire amount of the rent which would become due and payable together with all rents theretofore due, at the office of Lessor, Pelham, Alabama, provided, however, that such payments shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment in advance of the rent for the remainder of the said term. Upon making such payment, Lessee shall receive from Lessor all rents received by Lessor from other tenants on account of said Premises during the term of this Lease, provided, however, that the monies to which the Lessee shall so become entitled shall in no event exceed the entire amount payable by Lessee or Lessor under the preceeding sentence of this sub-paragraph.

(2) Enter the leased Premises as the agent of the Lessee, by force if necessary, without being liable to prosecution or any claim for damages therefor, and relet the Premises as the agent of the Lessee, and receive the rent therefor, and the Lessee shall pay the Lessor any deficiency that may arise by reason of such reletting, on demand at any time and from time to time at the office of Lessor, Pelham, Alabama.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law.

10. PERSONALTY OF LESSEE. If the Lessee shall not remove all his effects from said Premises at any termination of this Lease, Lessor may, at its option, remove all or part of said effects in any manner that Lessor shall choose and store the same without liability to Lessee for loss thereof, and Lessee shall be liable to Lessor for all expenses incurred in such removal and also storage of said effects. Upon any termination of this Lease wherein Lessee shall be liable in any amount to Lessor, Lessor shall have a lien upon the personal property and effects of Lessee on said Premises, and Lessor may, at its option, without notice, sell at private sale all or part of said property and effects for such price as Lessor may deem best and apply the proceed of such sale upon any amounts due under this Lease from Lessee to Lessor, including the expenses of the removal and sale.

11. SERVICES. Lessor to provide no services under this contract, the same being the sole responsibility of the Lessee.

12. SUBLETTING AND ASSIGNMENTS. Lessee may, but only with prior written consent of Lessor, which consent shall not be unreasonably withheld, sublease Premises or any part thereof.

13. DESTRUCTION OR DAMAGE. Should the demised Premises be so damaged by fire, or other cause that rebuilding or repairs cannot be completed within one hundred and eighty (180) days from the date of the fire, or other cause of damage, then either Lessor or Lessee may terminate this Lease, in which event rent shall be abated from the date of such damage or destruction. However, if the damage or destruction is such that rebuilding or repairs can be completed within one hundred and eighty (180) days, the Lessor covenants and agrees to make such repairs with reasonable promptness and dispatch, and to allow Lessee an abatement in the rent for such time as the building is untenable or proportionately for such portion of the leased Premises as shall be untenable and the Lessee covenants and agrees that the terms of this Lease shall not be otherwise affected.

14. CONDEMNATION, ETC. If the whole or any part of the demised Premises shall be taken or condemned by any competent authority for any public or equal public use or purpose, then, and in that event,

the term of this Lease shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose, and the entire amount of the condemnation award shall be paid to Lessor. The current rental, however, shall in such case be apportioned.

15. ALTERATIONS AND IMPROVEMENTS. Lessee will make no alterations in, or additions to, said Premises without first obtaining the Lessor's written consent. All erections, additions, fixtures and improvements, whether temporary or permanent in character (except only the movable office furniture of the Lessee) made in or upon said Premises, either by the Lessee or the Lessor, shall be the Lessor's property, and shall remain upon said Premises at the termination of said term by lapse of time or otherwise, without compensation to the Lessee.

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BOOK 16. ATTORNEY'S FEE. Lessee agrees to pay all attorney's fee and expenses the Lessor incurs in enforcing any of the obligations of the Lessee under this Lease, or in any litigation or negotiation in which the Lessor shall, without his fault, become involved through or on account of this Lease.

17. ENTIRE AGREEMENT. This Lease contains the entire agreement of the parties and no representation or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of Lessor to exercise any power given Lessor, hereunder, or to insist upon strict compliance by Lessee of any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Lessor's right to demand exact compliance with the terms hereof.

18. Time is of the essence of this agreement.

19. USUFRUCT ONLY. This contract shall create the relationship of landlord and tenants between Lessor and Lessee; no estate shall pass out of Lessor, Lessee has only a usufruct, not subject to levy or sale.

20. SURRENDER OF PREMISES. At termination of this Lease, Lessee shall surrender Premises and keys thereof to Lessor in same condition as at commencement of the term, natural wear and tear only excepted.

21. PARTIES. "Lessor" as used in this Lease shall include first party, its representatives, assigns and successors in title to Premises. "Lessee" shall include second party, its representatives, and if this Lease be validly assigned or sublet, shall include all Lessee's assignees or sublessees, as to Premises covered by such assignment or sublease. "Lessor" and "Lessee", include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

22. SUBORDINATION. Lessee agrees that this Lease shall remain subject to and subordinate to all present and future mortgages affecting the Premises of which the leased Premises are a part, and Lessee shall promptly execute and deliver to Lessor such certificate or certificates in writing as Lessor may request, showing the subordination of this Lease to such mortgage or mortgages and in default of Lessee's so doing, Lessor shall be and is hereby authorized and empowered to execute such certificate in the name of and as the act and deed of Lessee, this authority being hereby declared to be coupled with an interest and to be irrevocable.

23. WITHHOLDING OF PREMISES. If the Lessee withholds from the Lessor possession of the Premises at the termination of this Lease, whether by lapse of time or by election of the Lessee, and after a twenty-four (24) hours' written notice to vacate the Premises has been given by the Lessor, the damages for which the Lessee shall be liable for such detention shall be and are hereby liquidated at a sum equal to double the rate of rentals stipulated herein the same to be due for the entire period of such holding over or detention; or, if the Lessee remains in the Premises after the termination of this Lease, then in that event, the Lessor may elect, without notice to the Lessee, to constitute such withholding of the Premises as a hold over under this Lease and such tenancy shall be considered a tenancy at sufferance and in no event shall it be considered a tenancy from month to month or from year to year, and the rental rates shall be double the amount of

the rent as set out herein, if the parties cannot agree otherwise, or if the parties can agree otherwise, it shall be whatever amount the parties hereto agree upon.

IN WITNESS WHEREOF, the parties herein have hereunto set their hand and seals, the day and year first above written.

WITNESS OR ATTEST:

David S. Smith
Bay D. Bick

LESSOR:

D & Z, INC.

By: Joe Huber
Its: Joe Huber

WITNESS OR ATTEST:

David S. Smith
Bay D. Bick

LESSEE:

BLUE WATER PARK, INC.

By: Joe Huber
Its: Joe Huber

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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1987 APR 24 AM 9:29

Thomas A. Shoups, Jr.
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$20 ⁰⁰
Index Fee	1 ⁰⁰
TOTAL	\$21 ⁰⁰