

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

THIRD AMENDMENT TO LEASE NO. 27959

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THIS THIRD AMENDMENT TO LEASE NO. 27959 is made and entered, in duplicate, as of April 24, 2017, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on May 14, 2002, by and between THE GONDOLA GETAWAY, INC., a California corporation ("Lessee"), whose address is 5437 E. Ocean Boulevard, Long Beach, California 90803, and the CITY OF LONG BEACH, a municipal corporation organized and trust grantee of the State of California of certain tide and submerged lands within said City ("City" or "Lessor").

WHEREAS, Lessor and Lessee (the "Parties") entered into Lease No. 27959 (the "Lease"), whereby Lessor leases to Lessee real property, and improvements thereon, located in the City of Long Beach, more particularly described in the Lease; and

WHEREAS, the Parties entered into a First Amendment to the Lease to expand the lease area of operation to include Rainbow Lagoon and modify the insurance cover; and

WHEREAS, the Parties entered into a Second Amendment to the Lease to extend the term for an additional five (5) year period; and

WHEREAS, the Parties desire to extend the term for an additional five (5) year period and revise certain required services and uses;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions herein contained, the Parties agree as follows:

1. Section 3 of the Lease is hereby amended to read as follows:
"3. TERM. The term of this Lease shall commence at midnight on April 30, 2002, and shall terminate at 11:59 p.m. on April 30, 2022. Lessee has no further options to extend the Lease."
2. Section 4 of the Lease is hereby amended to read as follows:
"4. REQUIRED SERVICES AND USES - LIMITATION ON USE. Lessor's primary purpose for entering into this Lease is to provide for services needed by the public.

1 In furtherance of that purpose, Lessee shall, during the lease term use the Premises for
2 the purposes of operating a gondola service and for no other use or uses without the prior
3 written consent of the City Manager of Lessor.

4 A. Alamitos Bay.

5 i. Lessee shall berth its gondolas in a side-tie manner in the area
6 shown on Exhibit "A" adjacent to the existing public structure; or may use sand
7 stakes to secure its gondolas in a manner approved by the City Manager or his
8 designee. The maximum approved inventory of gondolas which may be moored
9 at/operated within Alamitos Bay shall not exceed the following: one (1) thirty-five
10 foot (35') gondola, three (3) twenty-six foot (26') gondolas, five (5) twenty-five foot
11 (25') gondolas, two (2) thirty-two foot (32') gondolas, and one (1) seventeen foot
12 (17') support/chase boat. Lessee may not increase the number of gondolas placed
13 in service without the written consent of the City Manager or his designee. The
14 replacement of a gondola by a gondola of a similar type will be allowed. Lessee
15 may on a non-exclusive basis, use any portion of the public dock structure to embark
16 and disembark passengers provided such activity will not interfere with the activities
17 or Lessor or Lessor's authorized contract instructors, the public and other permittees
18 using the dock structure. Lessee understands that at low tide its gondolas berthed
19 adjacent to the dock structure may be grounded. Lessee, its principals, employees
20 and patrons shall have the nonexclusive right of ingress and egress over and upon
21 the walkways, pier and dock structures on premises now being used by the Trustees
22 of the California State University pursuant to an agreement with the City dated
23 September 1, 1981. Lessee acknowledges that it has received a copy to that
24 agreement and agrees to conduct the activities permitted by this agreement in a
25 manner which will not interfere with the programs and activities contemplated by
26 that agreement.

27 ii. During the early part of the final term, the City plans to
28 undertake a capital improvement project, replacing the existing Leeway Sailing

1 Center Dock and the stand along building from which Lessee operates. Upon
2 completion of the new dock, Lessee will make no modifications (to include but not
3 limited to lighting, seating, décor elements, storage, signage, etc.) to either the dock
4 or the support building without having first received advanced authorization in writing
5 from designated City staff. Further, Lessee will store no equipment or materials on
6 the replacement dock structures, and will make no modifications to the replacement
7 dock structures.

8 B. Rainbow Lagoon.

9 i. Allow the "in-water" storage of no more than one (1) twenty-five
10 foot (25') gondola in Rainbow Lagoon between May 1st and September 30th each
11 year throughout the final five-year term. Based on reported business activities for
12 2015 and 2016, this five-month window accounts for most of the business activity in
13 this location (weddings, festivals, and weekend operations). During the balance of
14 the year (October 1st through April 30th annually), vessels may not be stored within
15 the Lagoon, and instead must be trailered to the location (no earlier than forty-eight
16 (48) hours prior to the scheduled use) and removed from the site (no later than forty-
17 eight (48) hours following the scheduled use). The trailered gondola must be stored
18 at an off-site private location at the operator's expense.

19 ii. During the first twelve (12) months of the agreement, the
20 operator will develop alternative concepts for operational support/storage solutions
21 for the City's consideration, with the goal of removing the existing wooden support
22 shed now located at Rainbow Lagoon (near the corner of Pine Avenue and
23 Shoreline Drive), to be implemented no later than eighteen (18) months into the five-
24 year extension. These proposed alternatives will either account for continued
25 Rainbow Lagoon operations without such a support structure or replacing it with a
26 structure more in keeping with adjacent architectural elements, and/or sited in a
27 location of the Lagoon that is less prominent.

28 C. Lessee shall comply with all applicable laws pertaining to its

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1 occupancy of the Premises and use thereof whether federal, state or local. Without limiting
2 the foregoing, Lessee shall fully comply with all applicable requirements of the United
3 States Coast Guard and any other agency having jurisdiction over coastal and/or water
4 related activities.”

5 3. Except as expressly modified herein, all of the terms and conditions
6 contained in Lease No. 27959 are ratified and confirmed and shall remain in full force and
7 effect.

8 IN WITNESS WHEREOF, the parties have caused this document to be duly
9 executed with all formalities required by law as of the date first stated above.

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THE GONDOLA GETAWAY, INC., a
California corporation

May 10th, 2017

By [Signature]
Name Michael O'Toole
Title President

May 22, 2017

By [Signature]
Name Jane Reader
Title Financial Manager

“Lessee”

CITY OF LONG BEACH, a municipal
corporation

Sept. 19, 2017

By [Signature] EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.
City Manager

“Lessor” Tom Modica
Assistant City Manager

This Third Amendment to Lease No. 27959 is approved as to form on
6/6, 2017.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy