

FOURTH AMENDMENT TO LEASE No. 23858

23858

THIS FOURTH AMENDMENT TO LEASE No. 23858 is made and entered into, in duplicate, pursuant to a minute order dated April 18, 2006, adopted by the City Council of the City of Long Beach, by and between the **CITY OF LONG BEACH**, a municipal corporation and trust grantee of the State of California of certain tide and submerged lands within said City ("City" or "Landlord"), and **GOLDEN SHORE RECREATIONAL VEHICLE PARK, INC.**, a California corporation ("Tenant").

Recitals:

A. Landlord and Tenant entered into Lease No. 23858 on February 17, 1995 (the "Lease").

B. Landlord and Tenant amended the Lease as of January 12, 1996, August 16, 1996 and April 15, 2003.

C. Landlord and Tenant now desire to further amend certain provisions of the Lease.

THE PARTIES AGREE as follows:

1. Section 10 of the Lease is amended in its entirety to read as follows:

"10. RENT.

A. Tenant shall pay to Landlord as rent the following:

1. From October 1, 2002 to the end of the Lease (including the option term if exercised by Tenant) Tenant shall pay the City of Long Beach seven percent of the Gross Revenues received for the

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month that ended one month before. For example, the May 1 payment will be calculated using the Gross Revenues for the just preceding March. However, no monthly payment shall be less than \$2,500.

2. Should the total monthly rent paid for a fiscal year be less than the Minimum Annual Rent, as defined below, Tenant will make a separate and additional payment to the City of Long Beach equal to the difference by October 31st each year. For example, if the Minimum Annual Rent is \$35,000 and the total monthly rent payments for the fiscal year totaled \$32,000, Tenant will make an additional payment to the City of \$3,000. If the rent received by the City for a fiscal year exceeds the Minimum Annual Rent, no refund shall be due Tenant.

3. Landlord and Tenant agree for annual rent calculation purposes accounting years will be October 1st through September 30th throughout the term of the agreement.

4. The Minimum Annual Rent for a fiscal year shall be determined each fiscal year using the following formula: The sum of Gross Revenues received by Tenant for the previous fiscal year will be multiplied by seven percent and the result of this calculation will be multiplied by eighty percent. For example if the Gross Revenues received by

1 Tenant for the fiscal year ended in 2002 were
2 \$550,000, the Minimum Annual Rent for the fiscal
3 year ending in 2003 would be \$30,800. ($\$550,000 \times$
4 $.07 \times .80 = \$30,800$). However, in no event
5 shall the Minimum Annual Rent be less than
6 \$30,000. For example if the Gross Revenues
7 received by Tenant for the fiscal year ended in
8 2002 were \$500,000, the Minimum Annual Rent for
9 the fiscal year ending in 2003 would be \$30,000.

10 B. "Gross Revenues" includes: all receipts whether for
11 cash, credit or trade generated or received by all of
12 Tenant's operations, before deductions for expenses,
13 and includes but is not limited to fees for use of the
14 Premises or the Facility or any part thereof, monies,
15 credit or trade received for the sale of goods or
16 services at, from or through the Premises or the
17 Facility, and monies, credit or trade received from
18 vending machines on the Premises or the Facility
19 whether owned or leased by Tenant.

20 C. Gross Revenues exclude:

21 1. Deposits for reservations accepted by Tenant prior
22 to the guest stay at the facility. For example,
23 advance reservations are popular for the Long
24 Beach Grand Prix. Tenant shall report the advance
25 reservation deposit as Gross Revenue at the time
26 the Guest stays at the facility. If a guest
27 cancels the reservation, that portion of the
28 advance reservation deposit refunded is excluded,

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- as provided in subsection 2 herein. At the time of the refund, any amount of the advance reservation deposit retained by Tenant shall be reported as Gross Revenues.
2. All credits or refunds made to customers, guests, or patrons, all sums or credits received in settlement of claims for loss or damage to property.
 3. Sales to Tenants, employees of uniforms, t-shirts, hats, etc., for which Tenant receives no profit but is reimbursed a reasonable carrying charge.
 4. Proceeds of casualty insurance claims.
 5. That portion of the Gross Revenues of all coin-operated devices that must be, by contracting concerning them, turned over to a person, firm, or corporation, in which the Tenant, its subtenant concessionaires, or licensees have no direct or indirect financial interest in the coin-operated device.
 6. All Gross Revenues' taxes, transaction taxes and other similar taxes or use tax imposed by any governmental entity or similar tax paid to or collected by or payable by Tenant or its subtenants, concessionaires and licensees and others under contract with Tenant but only if collected separately from the selling price of services and collected from customers.
 7. Sums and deposits received by Tenant for securing

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1 performance of obligations under subtenant,
2 concession, and licensing agreements; provided,
3 however, upon application by Tenant of any of said
4 sums or deposits toward the performance of any
5 such obligations, the amount so applied shall be
6 included within Gross Revenues.

7 8. Gratuities received by Tenant's employees and the
8 employees of Tenant's assignees, subtenants,
9 concessionaires and licensees to the extent that
10 said gratuities are retained by said employees and
11 not paid over to the employer or deducted from
12 wages or salaries paid to said employees, and
13 other "pass-through" charges such as the cost of a
14 service provided to a customer by a company other
15 than Tenant where the customer pays Tenant for the
16 service in an amount equal or less than the cost
17 of service borne by the Tenant.

18 D. For any rent which is not timely paid in accordance
19 with the terms of this Lease, any such arrearage shall
20 bear interest at the rate of ten percent (10%) per
21 annum."

22 2. Section 11 of the Lease is amended in its entirety
23 to read as follows:

24 "11. BOOKS AND RECORDS.

25 A. Tenant shall on or before the twentieth (20th) day of
26 each month deliver to the Director at 2760 Studebaker Road, Long
27 Beach, California 90815-1697, a signed statement showing gross
28 revenues on each day of the preceding month. Within sixty (60)

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1 days after the end of a lease year (including a partial lease
2 year at the beginning and at the end of the term or any extension
3 thereof), Tenant shall prepare and deliver or cause to be
4 prepared and delivered to Landlord a complete gross revenue
5 statement for the use permitted herein, certified to be correct
6 by Tenant and prepared in accordance with generally accepted
7 accounting practices containing a statement of gross revenues and
8 a computation of Percentage Rent.

9 B. If Tenant fails to prepare and deliver or cause to be
10 prepared and delivered the statements as and when required above
11 and such failure continues after thirty (30) days' notice thereof
12 by Landlord to Tenant, Landlord may audit or cause an audit to be
13 made of all books, records and accounts of business operations
14 conducted in, on or from the Premises and may prepare the
15 statement or statements which Tenant failed to prepare and
16 deliver. Said audit shall be in addition to the special audit in
17 subparagraph D. Tenant shall pay on demand all expenses of such
18 audit and the preparation of any such statements and all sums as
19 may be shown by such audit to be due as additional rent together
20 with interest thereon at the rate of ten percent (10%) per annum
21 from the date of Landlord's demand.

22 C. Tenant shall keep or cause to be kept during the term,
23 any extended term and for four (4) years after the expiration or
24 termination of this Lease complete books of accounts and other
25 records reflecting all business transactions conducted in, on or
26 from the Premises. Such books and records shall include a daily
27 record of gross revenues. Tenant shall maintain a method of
28 accounting for the receipts and disbursements in connection with

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1 all business transactions conducted in, on or from the Premises
2 which correctly reflects all gross revenues and disbursements.
3 Tenant's books of accounts and records shall include but not be
4 limited to general ledgers, cash receipts, sales and purchases
5 journals including any supporting and underlying documents such
6 as vouchers, checks, tickets, and bank statements, state sales
7 tax returns, check and other documents proving payment of the
8 sums shown, and such other accounting records as Landlord, in its
9 sole discretion, deems necessary. Tenant's records and books of
10 account shall reflect only those transactions conducted in, on or
11 from the Premises and shall not be maintained on a consolidated
12 basis with other activities of Tenant or with any other entity
13 including without limitation any parent corporation or other
14 wholly-owned subsidiary or affiliate of Tenant. Said records and
15 books of account shall be kept and maintained in accordance with
16 generally accepted accounting practices. Landlord shall have
17 access to said records and books of account at all reasonable
18 times for the purpose of examining and auditing them.

19 The receipt by Landlord of any financial
20 information or the acceptance of rent shall not bind Landlord to
21 the correctness of the information or amount of rent.

22 D. Landlord shall have the right once during each
23 lease year and once within a period of nine (9) months following
24 the expiration or termination of this Lease to undertake a
25 special audit of Tenant's records and books of account. Tenant
26 shall cooperate fully with Landlord or Landlord's agents in the
27 special audit. The audit shall be conducted during usual
28 business hours. If there is a deficiency in the payment of rent

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1 due to Landlord, the deficiency shall become immediately due and
2 payable together with interest thereon at the rate of ten percent
3 (10%) per annum from the date of Landlord's demand for payment of
4 the deficiency. If the amount of any deficiency for any lease
5 year or partial lease year exceeds three percent (3%) of the rent
6 paid, Tenant shall pay the cost of this audit; otherwise the cost
7 thereof shall be paid by Landlord."

8 3. Except as otherwise provided by this Fourth
9 Amendment to Lease No. 23858 shall remain in full force and
10 effect.

**GOLDEN SHORE RECREATIONAL VEHICLE
PARK, INC.**, a California
corporation

11
12 June 22, 2006, 2006

13 By: [Signature]
14 Name: Kimberly Wasick
15 Title: Chief Financial Officer / Treasurer

16 June 21, 2006

17 By: [Signature]
18 Name: ROBERT L. ALPERIN
19 Title: Vice-President

"TENANT"

CITY OF LONG BEACH, a municipal
corporation

20
21 10.27., 2006

22 By: [Signature]
23 City Manager

"LANDLORD"

24 Approved as to form this 21 day of September,
25 2006.

26 ROBERT E. SHANNON, City Attorney

27 By: [Signature]
28 Deputy

JCP: abc06-01902

L: \APPS\CtyLaw32\WPDOCS\D019\P005\00088375.WPD

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Los Angeles } ss.

On June 22, 2006 before me, Barbara D. Smith, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Kimball K. Wasick and Robert L. Alperin
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Barbara D. Smith
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Fourth Amendment to Lease No. 238558

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

