



Real Estate Assets Department

SDC003

Symphony Assets Pool XVI LLC
P201R9-003-COO

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



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CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SYMPHONY ASSET POOL XVI LLC, a Delaware limited liability company ("PERMITTEE"), to be effective as of June 9, 2023 ("Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

Recitals:

A. CITY and PERMITTEE entered into that certain Amended and Restated City of San Diego Percentage Lease dated April 22, 2015, filed as Document No. RR-309579 in the Office of the City Clerk ("Lease") for use of the City-owned property described in the Exhibit A attached to the Lease ("Premises").

B. Section 1.21 of the Lease, titled "Use and Occupancy Permit," authorizes City to grant non-exclusive permits for use of City-owned property outside of the Premises for accessory uses as defined in the Lease ("Permit").

C. Lessee has requested this Permit for the period of June 9, 2023, to June 8, 2025.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:

1.1 **"Monthly Rent"** shall mean monetary consideration to CITY in the amount of the "Percentage Rent" applicable to the products or services comprising the Permit Use under Section 4.12 of the Lease.

1.2 **"Permit Area"** shall mean the CITY-owned public beach area, excluding the seawall and boardwalk, adjacent to the western boundary of the Premises commonly known as "Belmont Park Beach," consisting of approximately 24,000 sq. ft. of sand and more particularly described in **Exhibit A: Permit Area**, attached to this Permit.

1.3 **"Permit Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of One Thousand Fifty Dollars (\$1,050).

1.4 **"Permit Use"** shall mean the non-exclusive use of the Permit Area solely to operate a beach accessory rental and food/non-alcoholic beverage concession as specifically described below in this Section 1.4 serving the general public in the Permit Area from two (2) hours after sunrise to 10:00 P.M. local time from October 1 through March 31 and to 11:00 P.M. local time from April 1 through September 30, on the terms and conditions set forth in this Permit. PERMITTEE shall be allowed to conduct only the following activities in the Permit Area:

1.4.1 Place and rent beach chairs, umbrellas and cabanas in the Permit Area in a manner that does not interfere with access-ways of emergency vehicles, in the CITY's sole discretion;

1.4.2 Rent surfboards and body boards and sell beach necessities (e.g., sunscreen, hats, towels, etc.) from the Permit Area; and

1.4.3 Serve food and non-alcoholic beverages (using only non-glass containers) in the Permit Area directly to patrons who are using PERMITTEE'S rental cabanas, umbrellas or beach chairs. PERMITTEE shall not operate or allow the operation of any food handling services on the Permit Area that do not qualify for the "A Card" issued by the County of San Diego Department of Environmental Health to operators of food-handling establishments, or such other rating/approval system adopted to modify or replace the system as it exists on the Effective Date.

1.5 **"PERMITTEE's Address for Notices"** shall mean Symphony Asset Pool XVI, LLC, 18029 Calle Ambiente, Suite 500, Rancho Santa Fe, CA 92091.

1.6 **"Security Deposit"** shall mean an amount equal to One Thousand Dollars (\$1,000).

1.7 **"Term"** shall mean two years, commencing on the Effective Date and ending at 11:59 p.m. Pacific Time on June 8, 2025.

2. [RESERVED].

3. Use of Permit Area. Subject to the terms and conditions of this Permit, CITY authorizes PERMITTEE and its officers, employees, agents, guests, invitees, and contractors (collectively, **"PERMITTEE Parties"**) to use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY's prior written consent in each instance.

4. Public Use. The general public shall have access to the Permit Area during the Permit Use. The general public shall not be wholly or partially excluded from any portion of the Permit Area. PERMITTEE may reasonably restrict the general public's use of the Permit Area, so such use does not unreasonably conflict with the Permit Use.

5. Signs. PERMITTEE shall install and at all times during the Term maintain a CITY approved sign identifying the Permit Area as CITY-owned and available for public use consistent with the terms of this Permit. The sign shall be installed by PERMITTEE at a location approved by CITY. Other than the sign required in the immediately preceding sentence, PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice from CITY, or CITY may thereafter remove the item at PERMITTEE's cost.

6. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to the Permit Use on the Permit Area. "Discretionary action" includes, without limitation, re-zonings, variances, environmental clearances, and all other required governmental approvals.

7. CITY's Consent; Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided in this Permit. CITY's discretionary acts under this Permit shall be made at the Mayor's discretion, unless otherwise expressly provided in this Permit or required by law.

8. [RESERVED].

9. Revocable License. This Permit is not a lease. It is a license to use CITY real property, and may be revoked at will by CITY, in its sole discretion: (a) on PERMITTEE's breach or default of any of PERMITTEE's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to PERMITTEE; and (b) for CITY's convenience, upon sixty (60) days' prior written notice delivered to PERMITTEE. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit.

9.1 PERMITTEE's Waiver. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S REVOCATION OR TERMINATION OF THIS PERMIT.

10. No Holdover. If PERMITTEE continues to use the Permit Area after the expiration or earlier termination of this Permit, such use shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to use the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for use of the Permit Area calculated on a per diem basis at the fair market rental rate determined as of the date of expiration or termination of this Permit by an appraisal prepared by a qualified appraiser selected by CITY, in its sole discretion. CITY's acceptance of such rent shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.

11. Restoration of Permit Area. Except as otherwise provided in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted.

12. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, licenses, easements and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take all actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

13. Permit Fee. PERMITTEE shall pay the Permit Fee to CITY upon PERMITTEE signing this Permit.

14. Rent. PERMITTEE shall pay the Monthly Rent in arrears on the first day of each month during the Term. If the Effective Date is not the first day of a calendar month, then Monthly Rent shall be payable for the partial month.

15. Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days' written notice to PERMITTEE. Mailed payments shall be deemed paid on the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid only upon actual receipt.

16. Delinquent Payments. If PERMITTEE fails to make any payment under this Permit when due, PERMITTEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, PERMITTEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection and shall be subject to San Diego Municipal Code ("SDMC") section 22.1707, as may be amended from time to time. PERMITTEE shall pay to CITY any collection referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the SDMC. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity to CITY as a result of PERMITTEE's breach or default. As required by law, PERMITTEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

17. Security Deposit. Upon PERMITTEE signing this Permit, PERMITTEE shall deliver the Security Deposit to CITY as security for the performance of PERMITTEE's obligations under this Permit. CITY shall not be liable to PERMITTEE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the Security Deposit but shall be and remain the property of CITY. All or any portion of the Security Deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Permit by PERMITTEE, or for expenses incurred by CITY as a result of PERMITTEE's breach or default of this Permit. PERMITTEE shall maintain (replenish under Section 17.1) the Security Deposit throughout the

Term. Notwithstanding any other provision of this Permit to the contrary, if PERMITTEE fails or refuses to deposit or maintain (replenish under Section 17.1) the Security Deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.

17.1 Utilization. If CITY utilizes all or any portion of the Security Deposit, then upon ten (10) days prior written notice, PERMITTEE shall replenish the Security Deposit to the full required amount.

17.2 Increase. Upon thirty (30) days prior written notice by CITY, PERMITTEE shall deliver to CITY such additional funds as CITY may reasonably require to adequately secure PERMITTEE's obligations under this Permit.

17.3 Return. Provided PERMITTEE is not in breach or default of this Permit, CITY shall return the Security Deposit, or any balance thereof, to PERMITTEE within sixty (60) days after the expiration or termination of this Permit.

18. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term. CITY is not required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter at all times.

19. Inspection. CITY may at all times enter and inspect the Permit Area.

20. Utilities. PERMITTEE shall order, obtain and pay for all utilities and all utility service and installation charges in connection with its use of the Permit Area. All newly installed utilities shall be subject to CITY's prior written approval, in CITY's sole and absolute discretion, and, at CITY's option, installed underground.

21. Improvements/ Alterations. PERMITTEE shall not construct any improvements, structures or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY, which may be given, withheld, or conditioned in the CITY's sole and absolute discretion. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

22. Removal of Improvements and Personal Property.

22.1 Improvements. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all improvements, fixtures, structures and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE with CITY's consent under Section 21 ("**PERMITTEE Improvements**"). PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them at PERMITTEE's sole cost and expense.

22.2 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.

22.3 Post-Permit License. CITY grants permission to PERMITTEE to enter upon the Permit Area, under the same terms and conditions of this Permit, after the expiration or earlier termination of this Permit solely for the purpose of removing PERMITTEE Improvements and PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit.

22.4 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such rent shall be the rent payable for a holdover under Section 10.

22.5 [RESERVED].

23. Insurance. Prior to the Effective Date of this Permit, PERMITTEE shall deliver to CITY's Department of Real Estate & Airport Management a current certificate of insurance and all relevant endorsements showing that PERMITTEE has all the following insurance coverage in place:

23.1 Commercial General Liability Insurance. Commercial General Liability Insurance providing coverage on the Permit Area for bodily injury, including death, personal injury and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the Commercial General Liability Insurance limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy;

23.2 Automobile Liability Insurance. Automobile Liability Insurance providing coverage on the Permit Area for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on ISO form CA 00 OJ I 2 90, or a substitute form providing equivalent liability coverage; and

23.3 Workers' Compensation Insurance. Workers' Compensation Insurance as required by the laws of the State of California for all of PERMITTEE's employees and Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against CITY and its elected officials, officers, employees, representatives and agents.

23.4 Additional Insureds. To the fullest extent allowed by law, including, but not limited to, California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an insured CITY and its elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf, (b) PERMITTEE's products, (c) PERMITTEE's work, including, but not limited to, PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf, or (d) premises owned, leased, controlled, or used by PERMITTEE.

23.5 Primary & Non-Contributory. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability Insurance policy or policies is primary to any insurance or self-insurance of CITY and/or its elected officials, officers, employees, agents and representatives as respects operations of the named insured. Any insurance maintained by CITY and/or its elected officials, officers, employees, agents and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.

23.6 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and are approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described in this Section 23. Each insurer shall be subject to CITY's approval in each instance.

23.7 Deductibles/Retentions. All deductibles and self-insured retentions under any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

23.8 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term.

23.9 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances or CITY's reasonable re-evaluation of risk levels related to the Permit Use or the Permit Area.

23.10 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to one or more persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and all other pertinent information.

23.11 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.

24. Indemnification.

24.1 PERMITTEE Indemnity Obligations. In addition to PERMITTEE's obligations to indemnify, defend, and hold harmless (collectively, "**Indemnify**") CITY and its elected officials, officers, employees, agents and representatives ("**CITY Parties**") under other provisions of this Permit, PERMITTEE shall Indemnify the CITY Parties against all claims, losses, costs, damages, expenses, liabilities, liens, causes of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charges, awards, assessments, fines or penalties of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and attorney fees) and any judgment (collectively, "**Claims**") arising from: (a) PERMITTEE's use of the Permit Area, including all activities under Permit Use and all Environmental Conditions; (b) this Permit; (c) wrongful intentional acts or negligence of one or more of the PERMITTEE Parties; or (d) services, labor, material, or equipment supplied to, for, on behalf of, or at the request of one or more of the PERMITTEE Parties related to PERMITTEE's use of the Permit Area. Notwithstanding anything to the contrary in this Permit, PERMITTEE's obligations to Indemnify the CITY Parties excludes Claims arising solely from the established gross negligence or willful misconduct of one of the CITY Parties.

24.2 Independence of Insurance and Indemnity Obligations. PERMITTEE's obligations to Indemnify the CITY Parties under this Permit shall not be construed or interpreted as in any way restricting, limiting, or modifying PERMITTEE's insurance or other obligations under this Permit. PERMITTEE's obligations to Indemnify the CITY Parties under this Permit are independent of PERMITTEE's insurance and other obligations under this Permit. PERMITTEE's compliance with its insurance obligations and other obligations under this Permit shall not in any way restrict, limit, or modify PERMITTEE's obligations to Indemnify the CITY Parties under this Permit and are independent of PERMITTEE's obligations to Indemnify the CITY Parties and other obligations under this Permit.

24.3 Survival of Indemnification Obligations. PERMITTEE's obligations to Indemnify the CITY Parties under this Permit shall survive the expiration or earlier termination of this Permit, until all actual or prospective Claims subject to PERMITTEE's obligations to Indemnify the CITY Parties under this Permit are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

24.4 Selection of Counsel. PERMITTEE shall select counsel reasonably acceptable to CITY's City Council. Even though PERMITTEE shall defend the Claim, the affected CITY Parties may, at their respective options, engage separate legal counsel, at PERMITTEE's expense, to advise them regarding the Claim and their defense. The affected CITY Parties' separate legal counsel(s) may attend all proceedings and meetings. PERMITTEE's legal counsel shall actively consult with the CITY Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

24.5 Settlement. PERMITTEE may only settle a Claim with the prior written consent of the affected CITY Parties, in their respective sole and absolute discretion.

24.6 Immediate Duty to Defend. The duty to defend that is within PERMITTEE's obligations to Indemnify the CITY Parties under this Permit includes Claims for which the CITY Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of PERMITTEE or the CITY Parties have been determined. The duty to defend applies immediately, regardless of whether the CITY Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims.

24.7 Savings Provision. Notwithstanding anything in this Permit to the contrary, if the extent of PERMITTEE's obligation to Indemnify the CITY Parties under this Permit exceeds the indemnity obligation allowed by applicable law, PERMITTEE's obligation to Indemnify the CITY Parties shall be reduced to the extent required to comply with applicable law.

25. Compliance with Laws. PERMITTEE shall at all times in its use of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, all at PERMITTEE's sole cost and expense. At least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspections, if applicable).

26. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits and approvals for the Permit Use on the Permit Area from the applicable local, state and federal authorities, including without limitation CITY.

27. [RESERVED.]

28. No Discrimination. PERMITTEE shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. PERMITTEE shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. PERMITTEE understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Upon CITY's request, PERMITTEE agrees to provide to CITY, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that PERMITTEE has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by PERMITTEE for each subcontract or supply contract. PERMITTEE further agrees to fully cooperate in any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance codified in SDMC sections 22.3501 through 22.3517. PERMITTEE understands and agrees that violation of this clause shall be considered a material breach of this Permit and may result in contract termination, debarment, and other sanctions.

29. Equal Benefits Ordinance Certification. Unless an exception applies, PERMITTEE shall comply with the "Equal Benefits Ordinance" codified in SDMC sections 22.4301 through 22.4308.

30. PERMITTEE Certification of Compliance with Federal Americans with Disabilities Act ("ADA") and State of California Access Laws and Regulations. PERMITTEE shall comply with

all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations ("Title 24"). When a conflict exists between the ADA and Title 24, PERMITTEE shall comply with the most restrictive requirement (i.e., that which provides the most access). PERMITTEE also shall comply with the CITY's ADA Compliance/CITY Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Permit by reference. PERMITTEE shall comply with all Federal and State access laws and regulations and shall include in all subcontracts relating to this Permit, or the Permit Area the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and all applicable Federal and State access laws and regulations.

31. Equal Pay Ordinance. Unless an exception applies, PERMITTEE shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. PERMITTEE shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of PERMITTEE to the same extent as it would apply to PERMITTEE. PERMITTEE shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

32. Compliance with CITY's Equal Employment Opportunity Program ("EEO"). PERMITTEE acknowledges the EEO codified in SDMC sections 22.2701 through 22.2708 and agrees to comply with all EEO requirements. PERMITTEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law. PERMITTEE shall provide equal opportunity in all employment practices. PERMITTEE shall ensure that its subcontractors comply with the EEO. Nothing in this Section 32 shall be interpreted to hold PERMITTEE liable for any discriminatory practice of its subcontractors. Prior to commencing the Permit Use on the Permit Area, PERMITTEE shall contact the CITY's EEO staff to determine compliance with all applicable rules and regulations.

32. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to CITY's City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.

33. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

34. Business Tax Certificate. Unless CITY's Treasurer determines in writing that PERMITTEE is exempt from the payment of business tax, PERMITTEE is required to obtain a CITY business tax certificate and provide a copy of such certificate to CITY before commencing the Permit Use.

35. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use of the Permit Area and any

damages to improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.

36. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in the surrounding area.

37. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent, in each instance. Any assignment by operation of law shall automatically terminate this Permit.

38. Protection Against Claims or Liens. IF A CLAIM OR LIEN IS RECORDED OR ASSERTED AGAINST THE REAL PROPERTY CONTAINING THE PERMIT AREA ("PROPERTY") ARISING OUT OF OR RELATED TO, DIRECTLY OR INDIRECTLY, PERMITTEE'S USE OF THE PERMIT AREA, PERMITTEE SHALL SATISFY AND DISCHARGE SUCH CLAIM OR LIEN, AT THE SOLE COST AND EXPENSE OF PERMITTEE, WITHIN TEN (10) CALENDAR DAYS FOLLOWING NOTICE OF THE EXISTENCE OR ASSERTION OF SUCH CLAIM OR LIEN. CITY SHALL NOT BE LIABLE FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO PERMITTEE OR PERMITTEE'S CONTRACTOR(S) UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE PROPERTY. NOTHING IN THIS PERMIT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE CITY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, PROFESSIONAL, LABORER, EQUIPMENT, OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR THE BENEFIT OF CITY OR THE PROPERTY, NOR AS GIVING PERMITTEE ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY CLAIM OR LIEN AGAINST CITY OR THE PROPERTY.

39. No Liens Against Public Property. PERMITTEE ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE PROPERTY IS OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY. PERMITTEE FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY HIRED BY OR FOR THE BENEFIT OF PERMITTEE OF SUCH FACT AND THAT CITY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

40. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by PERMITTEE, or levied by reason of

PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.

41. Environmental Conditions. PERMITTEE shall not cause or permit any Environmental Condition. If PERMITTEE discovers or becomes aware of an Environmental Condition, PERMITTEE shall notify City of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the PERMITTEE becoming aware of such Environmental Condition.

41.1 Remediation. If an Environmental Condition occurs, PERMITTEE shall remediate the Environmental Condition in accordance with law to allow all uses of the Permit Area permitted by law immediately before the Environmental Condition is discovered, at PERMITTEE's sole cost and expense. If PERMITTEE knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the imminent danger, at PERMITTEE's sole cost and expense.

41.2 Removal. If one or more of the PERMITTEE Parties stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Permit Area in accordance with law, PERMITTEE shall remove all such Hazardous Substances from the Permit Area prior to the end of the Term and provide City with documentation demonstrating the legal removal and disposal of the Hazardous Substances. PERMITTEE shall be responsible for all costs incurred by City to remove or dispose of any Hazardous Substances not removed from the Permit Area by PERMITTEE in accordance with this Section 41.2.

41.3 Reports. PERMITTEE shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to City within three (3) days after notifying City of the Environmental Condition. PERMITTEE shall also submit all required reports relating to the Environmental Condition to other government entities as required by law.

41.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, City may cause an environmental assessment of the Permit Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at PERMITTEE's sole cost and expense. PERMITTEE shall reimburse City for all costs and expenses reasonably incurred by City in performing the environmental assessment within fifteen (15) calendar days after notice to PERMITTEE of the amount of such costs and expenses. Any amount reimbursable to City by PERMITTEE under this Section 41.4 that is not paid within fifteen (15) calendar days after notice to PERMITTEE of such amount, shall accrue interest at the rate of 7% annually until paid.

41.5 Definitions.

41.6 *Environmental Condition.* Any of the following events relating to the Permit Area and arising from the Permit Use, any action by one or more PERMITTEE Parties, or any failure to act by one or more PERMITTEE Parties that had a duty to act: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

41.7 *Environmental Law.* All federal, State of California, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Permit Area or relating to the Permit Use); (c) occupational or environmental conditions on, under or about the Permit Area or relating to the Permit Use; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

41.8 *Hazardous Substance.* Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State of California to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any law, any matter, waste, or substance subject to any law regulating, relating to, or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

41.9 *Hazardous Substance Discharge.* Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Permit Area, or during transportation of any Hazardous Substance to or from the Permit Area, or arising at any time from activities conducted at, on, under, or from the Permit Area, whether or not caused by CITY or PERMITTEE.

42. Waiver. The Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing signed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

43. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
44. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
45. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
46. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or individual, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other individual or entity.
47. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and the Permit Use on the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
48. Counterparts. This Permit may be signed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one and the same instrument.
49. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally, delivered by a nationally recognized courier service, or by the United States Postal Service ("USPS"), postage prepaid. If notice is given by USPS, it shall be deemed given as of the date four (4) USPS business days after the postmark date, unless the postmark is illegible or a return receipt is requested, in which event it shall be effective when received. Notices shall be addressed to PERMITTEE's Address for Notices and to CITY as follows:

THE CITY OF SAN DIEGO
Attention: Director, Department of Real Estate &
Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California
92101 (619) 236-6020

50. Authority to Contract. Each individual signing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to sign and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

51. Acceptance of Permit Area. PERMITTEE ACCEPTS ALL PHYSICAL CONDITIONS OF THE PERMIT AREA, AS OF THE EFFECTIVE DATE, AND RELEASES CITY FROM ALL LIABILITY WHATSOEVER FOR ALL KNOWN OR UNKNOWN CONDITIONS OF THE PERMIT AREA. PERMITTEE SHALL ENTER THE PERMIT AREA FOR THE PERMIT USE UNDER THIS PERMIT, IN THE PERMIT AREA'S "AS IS," "WHERE IS" AND "SUBJECT TO ALL FAULTS" CONDITION, AS OF THE EFFECTIVE DATE. PERMITTEE ACKNOWLEDGES AND AGREES THAT IT IS RELYING SOLELY UPON ITS OWN KNOWLEDGE OR INVESTIGATION OF THE PERMIT AREA, AS IT DEEMS APPROPRIATE. PERMITTEE HAS BEEN USING THE PERMIT AREA FOR THE PERMIT USE SINCE JULY 2, 2014. PERMITTEE IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION BY ANY OF THE CITY PARTIES RELATING TO THE CONDITION OF THE PERMIT AREA. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 51, CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE PERMIT AREA OR WHETHER THE PERMIT AREA PRESENTLY COMPLIES WITH ANY LAW. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 51, PERMITTEE, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES CITY AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING ATTORNEY FEES), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO THE PHYSICAL CONDITION OF THE PERMIT AREA OR COMPLIANCE OF THE PERMIT AREA WITH ANY LAW APPLICABLE TO THE PERMIT AREA. PERMITTEE EXPRESSLY WAIVES ALL RIGHTS OR BENEFITS AVAILABLE TO IT WITH RESPECT TO THE RELEASES CONTAINED IN THIS SECTION 51 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY, INCLUDING STATE OF CALIFORNIA CIVIL CODE SECTION 1542. THE PROVISIONS OF THIS SECTION 51 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS PERMIT.

[Remainder of page intentionally blank. Signatures appear on the next page.]

**SIGNATURE PAGE
TO
USE & OCCUPANCY PERMIT**

IN WITNESS WHEREOF, this Permit is signed and entered into to be effective on the Effective Date:

THE CITY OF SAN DIEGO:

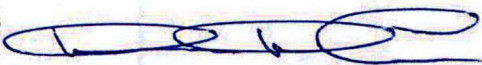
The City of San Diego,
a California municipal corporation

By: *Penny Maus*
Penny Maus (Jun 28, 2023 12:11 PDT)
Penny Maus
Director
Department of Real Estate and Airport
Management

PERMITTEE:

Symphony Asset Pool XVI, LLC,
a Delaware limited liability company

By: Pacifica Enterprises Investments LLC,
a Delaware limited liability company

am
By: 
Dario De Luca
Manager

Approved as to form on
Jul 17, 2023

MARA W. ELLIOTT
City Attorney

By: *Delmar Williams*
Delmar Williams (Jul 17, 2023 11:56 PDT)
Delmar G. Williams
Deputy City Attorney

Exhibit A: Permit Area



Exhibit A
Permit Area

6/20/2023

Attachment A

Environmental Determination	
Environmental Planner	Tara Ash-Reynolds (tashreynolds@sandiego.gov)
Project Name	Use and Occupancy Permit in Belmont Park Beach Lease Area
Environmental Determination	On March 18, 2015, the San Diego City Council approved an Amended and Restated Percentage Lease with Symphony Asset Pool XVI LLC (Lessee) which allowed for the issuance of permits by the City to the Lessee in the designated beach lease area for beach concession activities. The City Council also, in Resolution R-309581, declared the lease to be categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities). This activity to issue a Use and Occupancy Permit to the Lessee for beach concessions within the designated beach lease area falls within the scope of the lease agreement approved by the City Council. Therefore, this activity is a subsequent discretionary action and is not considered to be a separate project for the purposes of CEQA review pursuant to CEQA Guidelines Sections 15378(c) and 15060(c)(3).
Date Environmental Determination made	06/20/2023



PACIFICA
ENTERPRISES, INC.

December 10, 2019

THE CITY OF SAN DIEGO
Attention: Cybele Thompson
Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, California 92101

Dear Cybele Thompson,

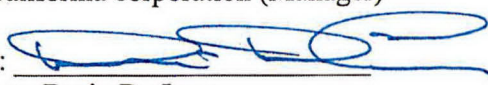
Pursuant to Section 3.2 of the Amended and Restated City of San Diego Percentage Lease, dated April 22, 2015, Symphony Asset Pool XVI LLC, a Delaware limited liability company ("Lessee"), hereby activates the *Initial Term Revision*. By virtue of now availing itself of this right, the then remainder of the term of this Lease shall be forty (40) years, commencing on the first day of the month following the date of this written request, which shall be January 1, 2020, and expiring on December 31, 2059.

Lessee hereby remits to City the requisite, lump-sum payment of \$500,000.

Sincerely,

Symphony Asset Pool XVI LLC, a
Delaware limited liability company

 By: Pacifica Enterprises, Inc.,
a California corporation (Manager)

BY: 
Name: Dario De Luca
Title: President

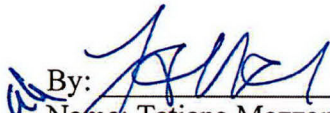


PACIFICA
ENTERPRISES, INC.

December 10, 2019

I, Tatiana Mazzone, personally delivered the enclosed letter and requisite lump-sum payment of \$500,000 (collectively, "Package"), to Cybele Thompson, or her agent, on behalf of Symphony Asset Pool XVI LLC, a Delaware limited liability company, Pursuant to Sections 3.2 & 10.1 of the Amended and Restated City of San Diego Percentage Lease, dated April 22, 2015, to the person at the address listed below:

THE CITY OF SAN DIEGO
Attention: Cybele Thompson
Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, California 92101.

By: 
Name: Tatiana Mazzone
Date: 12/10/2019

ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge receipt of the Package.

By: 
Name: A. Saldana
Title: Account Clerk
Date: 12/10/19