

**SECOND AMENDMENT TO THE AMENDED AND RESTATED CITY
OF SAN DIEGO PERCENTAGE LEASE**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED CITY OF SAN DIEGO PERCENTAGE LEASE ("Second Amendment") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and SYMPHONY ASSET POOL XVI LLC, a Delaware limited liability company, as lessee ("LESSEE"), to be effective as of the date of execution by CITY (the "Second Amendment Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

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

RECITALS

- A. CITY and LESSEE entered into the Amended and Restated City of San Diego Percentage Lease dated April 22, 2015 ("Original Lease"), as amended by that certain First Amendment to the Amended and Restated San Diego Percentage Lease ("First Amendment"), in respect to the Premises. The Original Lease is on file as Document No. RR-309579 in the Office of the City Clerk, and the First Amendment is on file with the Real Estate Assets Department of CITY. The Original Lease and the First Amendment shall be collectively referred to herein as the "Lease."
- B. Pursuant to Section 1.15 of the Original Lease, as amended by Section 1 of the First Amendment, LESSEE is required to complete the Plunge Refurbishment and have the Plunge Swimming Pool reopened to the general public no later than March 5, 2018, unless delay is caused by factors beyond LESSEE'S control.
- C. On or about October 7, 2016, LESSEE duly notified CITY that it would not be able to complete the Plunge Refurbishment by March 5, 2018 due to unavoidable delays caused by factors beyond LESSEE'S control, specifically that significant delays were caused by a condition imposed by the California Coastal Commission in the Coastal Development Permit (as hereafter defined), which cannot be practicably satisfied and, therefore, LESSEE must now apply for and petition the Coastal Commission for an amendment to such condition ("CC Permit Amendment 6-15-1251-A1") attached hereto as Exhibit "A".
- D. LESSEE requests to extend the Plunge Refurbishment Completion and the Plunge Occupancy Date to the Extended Plunge Occupancy Date (as hereafter defined) due to the possible delay in commencement and completion of the Plunge Refurbishment in light of the time necessary to secure the appropriate CC Permit Amendment 6-15-1251-A1 and the anticipated annual beach construction moratorium ("Construction Moratorium") for the period from Memorial Day to Labor Day, should the Construction Moratorium be issued by CITY or other governmental agency or be otherwise imposed as a condition or restriction in any of its permits for the Plunge Refurbishment.
- E. CITY has determined that due to delays caused by factors beyond LESSEE's control after the First Amendment Effective Date, the completion date for the Plunge Refurbishment and the corresponding Plunge Occupancy Date will be extended to the

Extended Plunge Occupancy Date, all subject to and in accordance with the terms and conditions of this Second Amendment.

- F. Pursuant to Section 10.17 of the Lease and the Mayor's authority to administer the Lease pursuant to San Diego Charter section 28 and San Diego Municipal Code section 22.0220, this Second Amendment is approved by the Mayor or his designee.
- G. All defined terms used in this Second Amendment shall have the same meaning as set forth in the Lease unless specifically stated otherwise.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

- 1. Section 1.15 Plunge Swimming Pool and Plunge Swimming Pool Building Refurbishment and Upgrades by LESSEE, is deleted in its entirety and replaced with the following:

1.15 Plunge Swimming Pool and Plunge Swimming Pool Building Refurbishment and Upgrades by LESSEE. Plunge Swimming Pool is currently closed for repairs and upgrades. LESSEE shall, at its sole cost and expense perform, unless delay is caused by legal action filed against LESSEE arising from the California Coastal Commission approval of the Plunge Swimming Pool Refurbishment and Upgrades, Coastal Development Permit No. 6-15-1251 (the "Coastal Development Permit"), or any amendments thereto: (a) the Allowed Plunge Refurbishment, as described in the attached **Exhibit C**, and (b) all repairs referenced as "Long Term Approach" in the "Mission Bay Plunge Building Structural and Mechanical (Heating and Ventilation) System Evaluation Report" dated August 8, 2011, prepared by Harris and Associates, attached hereto as **Exhibit D** (the "Plunge Report") (the items described in clauses (a) and (b) shall be collectively referred to as the "Plunge Refurbishment"), estimated to cost Five Million Nine Hundred Thousand Dollars (\$5,900,000). The cost of the Plunge Refurbishment shall be in addition to the "\$18M Improvement Obligation" (defined below). The Plunge Refurbishment shall be deemed to be completed upon the date in which the certificate of occupancy is issued permitting use of the Plunge Swimming Pool by the general public (the "Plunge Refurbishment Completion"). The Plunge Swimming Pool shall reopen to the general public upon the Plunge Refurbishment Completion, but in no event later than January 8, 2019, which is the date that is twenty-four (24) consecutive calendar months following January 9, 2017, the date the CC Permit Amendment 6-15-1251-A1 was expected to be issued by the California Coastal Commission (the "Extended Plunge Occupancy Date"), unless delay is caused by factors beyond LESSEE'S control after the Second Amendment Effective Date (including, without limitation, if a Construction Moratorium is imposed as a condition or restriction in any of the permits for the Plunge Refurbishment or is otherwise issued by the CITY or other governmental agency for 2017 and/or thereafter, in which case the Extended Plunge Occupancy Date shall be extended by double (or two times) the number of days any such Construction Moratorium is in effect). Concurrently with the Plunge Refurbishment Completion, LESSEE shall establish and implement a regular Plunge Swimming Pool building maintenance program as referenced in the Plunge Report, or as otherwise approved by CITY in writing. A copy

of the most current City-approved Plunge Swimming Pool building maintenance program shall be filed with the City Real Estate Assets Department.

2. No Other Changes. All other terms and conditions of the Lease shall remain in full force and effect. Any conflict between the terms and conditions of this Second Amendment and those of the Lease shall be resolved in favor of the terms and conditions of this Second Amendment.
3. Authority. Each individual executing this Second Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Second Amendment 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, and that this Second Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Second Amendment on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

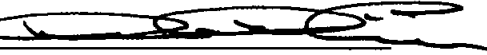
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IN WITNESS WHEREOF, this Second Amendment is executed to be effective as of the Second Amendment Effective Date.

Date: March 03, 2017

Symphony Asset Pool XVI LLC, a Delaware
limited liability company

By: Pacifica Enterprises, Inc.,
A California Corporation (Manager)

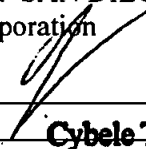
By: 

Name: Dario De Luca

Title: President

Date: March 8, 2017
Second Amendment Effective Date

THE CITY OF SAN DIEGO, a California
municipal corporation

By: 

Name: Cybele Thompson

Title: Director, Real Estate Assets

Approved as to form:

Mara W. Elliot, CITY ATTORNEY

By: 

Name: Mara W. Elliot

Title: Deputy City Attorney

Exhibit "A" CCC Permit Amendment 6-15-1251-A1
[To follow behind this page]

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CALIFORNIA 92108-4402
PH (619) 767-2370 FAX (619) 767-2384
WWW.COASTAL.CA.GOV

**AMENDMENT TO COASTAL DEVELOPMENT PERMIT**

December 16, 2016

Coastal Development Permit Amendment No. 6-15-1251-A1

Permit Number 6-15-1251 issued to Symphony Asset Pool XVI, LLC for: **Demolish existing approximately 48-ft. tall, 21,000 sq. ft. Plunge pool structure (building 9) to construct a new approximately 21,000 sq. ft. Plunge pool structure in the same footprint and height, with a new approximately 6,381 sq. ft. interior mezzanine connected to a previously approved remodel of the adjacent athletic facility (building 8).**

at: **3119 Oceanfront Walk, Belmont Park, Mission Beach, San Diego, San Diego County (APN: 760-217-07)** has been amended to include the following change(s): **Amend condition to use public parking lot for construction staging and storage; operate a public shuttle program during construction activity; allow work to occur during the summer season.**

This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that the original permit conditions unaffected by this amendment are still in effect.

Sincerely,

John Ainsworth
Acting Executive Director

Alexander Llerandi
Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above permit and agree to be bound by the conditions as amended of Coastal Development Permit 6-15-1251.

Date: 12/27/16

Signature

December 16, 2016

Permit Application No.: 6-15-1251-A1

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

This permit is granted subject to the following special conditions:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment no. 6-15-1251-A1. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment no. 6-15-1251-A1 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in strikeout/underline format. This will result in one set of adopted special conditions.

1. [Special Condition No. 1 of CDP No. 6-15-1251 remains unchanged and in effect]
2. **Revised Construction Staging and Storage Plan.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval final construction staging and storage plans that substantially conform to the plans submitted by Symphony Asset Pool XVI, LLC on November 3, 2016 and attached as Exhibit No. 3 of this staff report, but revised to include the following:

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- A. Each phase of construction may not occupy more public parking than is shown by the marked areas in Exhibit No. 3. Phase 1 of construction may not occupy more than 77 parking spaces; phase 2 may not occupy more than 107 parking spaces, and phase 3 may not occupy more than 134 parking spaces.
- B. Construction workers shall be prohibited from parking within the north, east, or southern parking lots adjacent to Belmont Park.
- C. Belmont Park tenants and their employees shall be informed of the construction staging and encouraged to not park in the north, east, or southern parking lots adjacent to Belmont Park.

The applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. [Special Condition No. 3 of CDP No. 6-15-1251 remains unchanged and in effect]

4. **Timing of Development.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a construction phasing plan which indicates that all or substantially all construction activities will be suspended during the peak summer season (Memorial Day to Labor Day), as well as indicates that the proposed temporary unloading area in the south parking lot will not be closed off to pedestrian traffic except during active unloading, and then only if necessary to ensure public safety.

If any work is later proposed between Memorial Day and Labor Day, a detailed construction activity plan shall be submitted that includes the following requirements for all work during that period:

- (a) A schedule of proposed construction and an estimate of the number of vehicles/workers required at the site during each phase of construction.
- (b) A written statement indicating that all deliveries to and from the project site shall occur before 12:00 PM and avoid blocking the flow of public traffic.
- (c) Construction staging and storage, including worker parking, may not be sited on nor impact public areas, including pedestrian walkways and all public parking areas, and all construction activity must be contained within the footprint of the Plunge building.
- (d) A written statement indicating that the applicant agrees to stop work from Memorial Day to Labor Day if it is infeasible to contain the construction activities within the footprint of

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the Plunge building for any reason. All work must stop regardless of the stage of development and the state of the project site.

(e) If submitted plans indicate that construction activities, materials, or equipment cannot be contained within the footprint of the Plunge building at any point from Memorial Day to Labor Day, and thus must be suspended until after Labor Day, the construction schedule shall indicate how the applicant has prepared to weatherproof, secure, and otherwise protect the construction site in sufficient time to suspend activities by Memorial Day weekend. Visual impacts of construction site protection shall be minimized to the extent feasible.

(f) The applicant shall submit evidence that the approved construction schedule has been incorporated into construction documents to ensure that contractors are fully aware of the restriction on work from Memorial Day through Labor Day.

The applicant's property will be inspected on or about the week of July 10th to confirm compliance with the requirements of the development moratorium. Nothing in this CDP is intended to limit in any way the right of entry or inspection that the Commission, or any agency, may otherwise have by operation of any law, and in addition to the inspection date noted herein, monitoring of condition compliance by Commission staff may occur at any time necessary to ensure compliance with the CDP.

The applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No change to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

5. [Special Condition No. 5 of CDP No. 6-15-1251 remains unchanged and in effect]

6. **Revised Shuttle Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, , the permittee shall submit to the Executive Director for review and written approval a final shuttle program that substantially conforms to the plans submitted by Symphony Asset Pool XVI, LLC on November 3, 2016 and attached as Exhibit No. 4 of this staff report, but revised to include the following:

(a) The shuttle service shall operate according to the following schedule:

- i. Every Saturday and Sunday from January 7, 2017 to project completion, excepting the summer season between Memorial Day and Labor Day, when no staging or storage may occur in public parking areas.
- ii. The shuttle service shall also operate during the following holidays of any year: New Year's Day, Martin Luther King Day, Presidents' Day, Veterans' Day, Thanksgiving Day, and Christmas Day. Should any of the above holidays occur on a weekend, the shuttle shall operate on the related weekday holiday.

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- iii. The shuttle service shall also operate during the following school holiday periods: spring break for the University of San Diego, the San Diego Unified School District, and San Diego State University, as well as Easter Break for the University of San Diego.
 - iv. The shuttle service shall operate during park operating hours of each of the days listed above. Should the park not be operating during any of the above holidays, the hours shall be 11:00 AM until 8:00 PM.
- (b) During the days in which the shuttle program operates, the applicant shall monitor parking lot usage of the north, east, and southern parking lots adjacent to Belmont Park. When 90% of the total available spaces of all three lots (576 spaces out of 641 spaces not occupied by construction staging and storage) are occupied, the shuttle program shall be initiated and begin services within 30 minutes according to the route and off-site parking locations as shown on Exhibit 4, and shall continue service so long as the lots are at least 90% occupied. The applicant shall conduct a survey documenting the dates the shuttle was initiated, the number of hours the shuttle operated for each of those days initiated, and the number of passengers transported, to be submitted to the Executive Director at the completion of construction activities.
- (c) By January 7, 2017, the permittee shall implement the following measures to inform the public of the existence of the approved shuttle program:
- i. Update Belmont Park's website and related social media pages to advertise the existence and parameters of the shuttle program to the public.
 - ii. Inform the Mission Beach Town Council, Mission Beach Precise Planning Board, and Mission Beach Women's Club of the existence and parameters of the shuttle program.
 - iii. E-mail Belmont Park's database of nearly 36,000 subscribers informing them of the existence and parameters of the shuttle program.
 - iv. Purchase advertising in the Mission Beach Bay & Press's January editions explaining the existence and parameters of the shuttle program.
 - v. Contact the office of San Diego City Councilwoman Lori Zapf with a form letter or e-mail to send to her constituents explaining the existence and parameters of the shuttle program.
- (d) By January 7, 2017, the permittee shall implement the following signage plan to inform and direct the public regarding the approved shuttle program:
- i. Permanent signs of no less than 24 inches by 18 inches shall be installed on poles of at least 6 feet in length at each vehicular entrance to the north and east parking

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lots adjacent to Belmont Park and at every southern pedestrian entrance to Belmont Park. The signs shall advertise the existence of the shuttle program, the shuttle's operating parameters, and the location of the pick-up and drop-off sites.

- ii. A portable sign (e.g. sandwich board) of no less than 24 inches by 36 inches identifying the location of the shuttle drop-off/pick-up area shall be placed within the east parking lot adjacent to Belmont Park whenever the shuttle is in operation. Signs shall be placed as required for the duration of the construction period, and shall state that the shuttle service is available as needed according to the parking demands.
- iii. At least one portable sign (e.g. sandwich board) of no less than 24 inches by 36 inches identifying the location of all the shuttle drop-off/pick-up area shall be placed within each off-site lot as shown in in Exhibit No. 4 whenever the shuttle is in operation. Signs shall be placed as required for the duration of the construction period, and shall state that the shuttle service is available as needed according to parking demands.

The applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.