



COUNCILMEMBER LORIE ZAPF CITY OF SAN DIEGO

P R E S S R E L E A S E

For Immediate Release
April 6, 2015

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City Council Approves Belmont Park Lease

Lease agreement allows for renovations and reopening of the historic Plunge Pool

San Diego, CA – Today the San Diego City Council voted 7-2 to approve an amended lease agreement with Symphony Asset Pool XVI, LLC (Symphony), for operations and maintenance of Belmont Park and the historic Mission Beach rollercoaster. The City Council last saw this item in September, when it was returned to staff to for further negotiations.

Since the September meeting, Councilmember Lorie Zapf has worked closely with Cybele Thompson, the City’s Director of Real Estate Assets, and Symphony to negotiate a better deal for taxpayers. In this new deal, Symphony has agreed to Councilmember Zapf’s request to increase capital improvements from \$10 million to \$18 million, with the potential for \$5 million more if the lease is renewed in the future.

In addition, Pacifica will spend \$5.9 million to fix the city-owned Plunge pool and will also be responsible for all the repairs and maintenance of the Plunge going forward for the remainder of the lease term. Without this new provision, the Plunge would have been closed for years, and added to the City’s multi-billion dollar deferred maintenance backlog.

“Symphony took over Belmont Park a few years ago after the previous operator went bankrupt. In that time they have invested millions to bring new life to the once dilapidated amusement park, turning it into a world-class, family-friendly destination,” said Councilmember Zapf. **“Their investment has had a positive ripple effect on the entire Mission Beach neighborhood. There are more customers visiting nearby businesses, crime**

is down significantly, and with this new agreement, the historic Plunge pool will open far sooner than had been possible if the City was funding repairs.”

Attached is a spreadsheet outlining the differences between the old lease, the proposed September lease, and the final lease which was approved by the Council today.

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THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: March 19, 2015 REPORT NO: 15-001 (Rev)

ATTENTION: Honorable Council President and Members of the City Council

SUBJECT: Amended and Restated Percentage Lease Between the City and Symphony Asset Pool XVI, LLC, a Delaware Limited Liability Company

REFERENCE: N/A

REQUESTED ACTION: Authorize the Mayor or his designee to enter into an Amended and Restated Percentage Lease with Symphony Asset Pool XVI, LLC, a Delaware Limited Liability Company, for the lease of certain City-owned property located in Belmont Park, at 3146 Mission Boulevard, San Diego, CA 92109, which includes the Mission Beach Roller Coaster property.

Authorize the Mayor or his designee to enter into the Lease Suspension and Termination Agreement with San Diego Coaster Company, to suspend and hold in abeyance the lease of certain City-owned property located at 3190 Mission Boulevard, San Diego, California, 92109, and for the termination of the lease.

Determine that the approval of the Amended and Restated Percentage Lease with Symphony Asset Pool XVI, LLC, a Delaware Limited Liability Company, is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, and

Declare that the Symphony Assets Pool XVI – Amended and Restated Lease Agreement is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Sections 15301, as it involves the operation and leasing of an existing public or private facility, with negligible or no expansion of use.

Declare that the Council of the City of San Diego has determined that an exception to the exemption as set forth in CEQA Guidelines Section 15300.2 does not apply.

STAFF RECOMMENDATION: Adopt the resolution(s).

EXECUTIVE SUMMARY OF ITEM BACKGROUND: The Amended and Restated Percentage Lease with Symphony Asset Pool XVI, LLL, a Delaware Limited Liability Company ("SYMPHONY") was presented to the City Council for approval on September 22, 2014. At that time, Council requested staff to bring a plan to address repairs at the Plunge and resubmit the lease within 60 days. On November 10, 2014, the lease agreement and Plunge repairs were heard in closed session of the City Council. Staff was requested to negotiate a new deal to

address additional City Council comments and to bring the revised lease agreement to City Council for approval.

Since September 22, 2014, staff and SYMPHONY representatives had met regularly to address Plunge repairs and other major terms of the lease. A revised deal has been agreed upon by both parties and is presented to the City Council for approval.

The table below is a comparison of the existing lease, the amended lease that was denied by the City Council on September 22, 2014, and the proposed amended lease that is presented to City Council for approval:

LEASE PROVISIONS	EXISTING LEASE	AMENDED AND RESTATED PERCENTAGE LEASE PRESENTED TO THE CITY COUNCIL ON SEPTEMBER 22, 2014	PROPOSED AMENDED AND RESTATED LEASE
Lessee	Symphony Asset Pool XVI LLC	No change (Symphony Asset Pool XVI LLC)	No change (Symphony Asset Pool XVI LLC)
Permitted Use	Park/visitor-oriented commercial and recreational center.	No change. Park/visitor-oriented commercial and recreational center.	No change. Park/visitor-oriented commercial and recreational center.
Leased Area	7.2079 acres.	7.241 acres.	7.241 acres.
Lease Term Expiration	June 30, 2038 (23 years, and 2 months).	No change. June 30, 2038 (23 years, and 2 months).	No change. June 30, 2038 (23 years, and 2 months).
Option to Extend Term	<ul style="list-style-type: none"> No option to extend, but Lessee has right of first refusal to enter new lease at expiration upon terms agreed between City and Lessee, if City continues to use the land for the permitted uses City may not lease to anyone on terms more favorable than offered to Lessee for the permitted uses 	<ul style="list-style-type: none"> Option to extend, but must be exercised within 5 years of Lease effective date <i>and only valid if:</i> <ul style="list-style-type: none"> (i) Lessee within 3 years spends \$10M in capital improvements and upgrades per Exhibit G ; AND (ii) Lessee pays City a lump sum of \$500,000 If Lessee validly exercises Option then lease term is extended so that the remaining term is 50 years. By way of example, if the Option was validly exercised on January 1, 2020, the lease term would expire on December 30, 2069 rather than June 30, 2038, resulting in a 31 year and 6 months extension. 	<ul style="list-style-type: none"> Option to extend, but must be exercised within 5 years of Lease effective date <i>and only valid if:</i> <ul style="list-style-type: none"> (i) Lessee within 3 years spends \$18M in capital improvements and upgrades per Exhibit G; AND (ii) Lessee pays City a lump sum of \$500,000 If Lessee validly exercises Option then lease term is extended so that the remaining term is 40 years. If after the 30th lease year, Lessee obtains City approval for additional \$5M of capital obligations, and complete improvements by end of 40th lease year, the term will be extended for additional 10 years. By way of example, if the Option was validly exercised on January 1, 2020, the lease term would expire on December 31, 2059 rather than June 30, 2038, resulting in a 21year and 6 month extension and on December 31, 2069 if the term is extended for additional 10 years, resulting in 31 year and 6 months extension.
Minimum Annual Rent	\$863,300	<ul style="list-style-type: none"> \$900,000 if Option to extend <i>not</i> exercised. 	<ul style="list-style-type: none"> \$900,000 if Option to extend <i>not</i> exercised.

		<ul style="list-style-type: none"> • \$1,100,000 if Option to extend <i>is</i> exercised. 	<ul style="list-style-type: none"> • \$1,100,000 if Option to extend <i>is</i> exercised.
Minimum Rent Upward Adjustment	<ul style="list-style-type: none"> • No guaranteed upward adjustment, and only adjusted, if at all, every 3 years • Adjusted every 3 years to 80% of actual rents paid during the preceding 3-year period. No decrease is allowed. 	Guaranteed upward adjustment every year by 2.5%.	Guaranteed upward adjustment every year by 2.5%.
Percentage Rent	Currently fixed at 5% of gross revenue from all operations.	<ul style="list-style-type: none"> • Varies according to the use from 3% to 50% of gross revenue from all operations. • As applied to 2013 gross revenue equates to approximately a 5.3% blended rate. 	<ul style="list-style-type: none"> • Varies according to the use from 3% to 50% of gross revenue from all operations. • New rent category--3% on any mandatory gratuity/service charges, including service charges from a Use and Occupancy Permit. • As applied to 2013 gross revenue equates to approximately a 5.3% blended rate.
Percentage Rent Upward Adjustment	<ul style="list-style-type: none"> • Percentage rent is eligible for upward adjustment every 10 years • Adjustment is by mutual agreement of Lessee and City • If no agreement is reached, then percentage rent remains the same, unless City elects to go to appraisal, which appraisal shall establish the percentage rent for the next 10-year period. 	<ul style="list-style-type: none"> • Percentage rent is eligible for upward adjustment every 10 years at the option of City • Adjustment is by mutual agreement of the Lessee and City. If no agreement is reached, then percentage rent is established by appraisal, which appraisal shall establish the percentage rent for the next 10-year period. 	<ul style="list-style-type: none"> • Percentage rent is eligible for upward adjustment every 10 years at the option of City • Adjustment is by mutual agreement of the Lessee and City. If no agreement is reached, then percentage rent is established by appraisal, which appraisal shall establish the percentage rent for the next 10-year period.
Invalidation of the lease	<ul style="list-style-type: none"> • No provisions 	<ul style="list-style-type: none"> • No provisions. 	<ul style="list-style-type: none"> • Allows "corrective measures" if future development and/or current and future uses and/or lease term are determined to be invalid in whole or in part by a final judgment of a court of competent jurisdiction and any appeals.
Suspension and Supersession of Existing Lease	<ul style="list-style-type: none"> • No provisions. 	<ul style="list-style-type: none"> • No provisions. 	<ul style="list-style-type: none"> • Existing lease will be suspended and held in abeyance (but not terminated). The lease will be terminated on the earlier to occur of the following conditions: <ul style="list-style-type: none"> ○ The effective date of termination the new lease if pursuant to default by Symphony. ○ Expiration of the original

			lease (i.e. the 1987 lease).
Coaster Acquisition Provisions	<ul style="list-style-type: none"> No provisions relating to ownership of the San Diego Coaster Company, but Lessee has right of first refusal to enter new lease for the Coaster premises at expiration of the existing Coaster Lease upon terms agreed between City and Lessee, if City continues to use the land for the permitted uses City may not lease to anyone on terms more favorable than offered to Lessee for the permitted uses 	<ul style="list-style-type: none"> If Lessee within 180 days of City Council approval of this Lease acquires complete ownership of the San Diego Coaster Company (current holder of the Coaster Lease), then upon notice from Lessee: <ul style="list-style-type: none"> (i) the premises of the Coaster Lease will become part of Lessee's premises (ii) minimum rent will increase to \$1,024,000 adjusted 2.5% upward annually; AND (iii) percentage rent for the Coaster Ride will increase to 10% In addition, if Lessee exercises its Option to extend the Lease, then: <ul style="list-style-type: none"> (i) minimum rent will increase to \$1,300,000 adjusted 2.5% upward annually; AND (ii) Lessee will be required to expend \$2,500,000 on improvements to the coaster premises (in addition to the prior \$10,000,000 improvement obligation). 	<ul style="list-style-type: none"> Lessee acquired complete ownership of the San Diego Coaster Company (current holder of the Coaster Lease), on November 7, 2014. The percentage rent is increased to 10% as of date of acquisition. Upon approval of the lease by City Council: <ul style="list-style-type: none"> (i) SD Coaster lease will be suspended and hold in abeyance (but not terminate). (ii) SD Coaster Lease will be terminated under certain condition, but no later than its original expiration date. (iii) the premises of the Coaster Lease will become part of Lessee's premises (iv) minimum rent will increase to \$1,024,000 adjusted 2.5% upward annually; AND In addition, if Lessee exercises its Option to extend the Lease, then: <ul style="list-style-type: none"> (i) minimum rent will increase to \$1,300,000 adjusted 2.5% upward annually; AND (ii) Lessee will be required to expend \$2,500,000 on improvements to the coaster premises within first 5 years (in addition to the prior \$18,000,000 improvement obligation).
Capital Expenditures	<p>No initial capital investment.</p> <p>Lessee is required every 4 years to spend 2.5% of gross sales on capital expenditures, but in turn receives a dollar-for-dollar credit against gross sales thereby reducing percentage rent.</p>	<ul style="list-style-type: none"> Initial minimum investment \$10,000,000. Lessee receives <i>no credit</i> against gross sales, regardless of the dollar amount spent on capital expenditures 	<ul style="list-style-type: none"> Initial minimum investment \$18,000,000. Lessee receives <i>no credit</i> against gross sales, regardless of the dollar amount spent on capital expenditures After 30 years, Lessee is obligated to spend an additional \$5,000,000 in capital improvements, if additional option is exercised.
Rent Credit for Original Lease Improvements	<ul style="list-style-type: none"> Lessee has approximately \$2,368,474 of rent credit from Public Improvements constructed previously and may be applied to 50% of rent owing above \$70,000 	<p>No change.</p> <p>(Lessee has approximately \$2,368,474 of existing rent credit from Public Improvements constructed previously and may be applied to 50% of rent owing above \$70,000. This rent credit will be exhausted in approximately 5-6 years.)</p>	<p>No change.</p> <p>(Lessee has approximately \$2,368,474 of existing rent credit from Public Improvements constructed previously and may be applied to 50% of rent owing above \$70,000. This rent credit will be exhausted in approximately 5-6 years.)</p>

	<ul style="list-style-type: none"> This rent credit will be exhausted in approximately 5-6 years 		
Plunge Improvement/Repair Rent Credit	<p>If Lessee desires redevelopment or adaptive reuse of the Plunge building, Lessee may request additional rent credit to be issued in City's discretion</p>	<ul style="list-style-type: none"> Upon completion of Plunge repairs, Lessee shall receive an additional rent credit not to exceed the lesser of \$5,200,000 or the actual cost of the Plunge repairs, which will be added to the existing rent credit and applied identically. Lessee is obligated, at Lessee's expense, to pay for any costs over and above \$5,200,000 (not to be off-set by any rent credit). Lessee shall establish and implement a regular Plunge pool and building maintenance program. 	<ul style="list-style-type: none"> Upon completion of Plunge repairs, Lessee shall receive an additional rent credit not to exceed the lesser of \$5,200,000 or the actual cost of the Plunge repairs, which will be added to the existing rent credit and applied identically. Lessee is obligated, at Lessee's expense, to pay for any costs over and above \$5,200,000 (not to be off-set by any rent credit). Lessee shall establish and implement a regular Plunge pool and building maintenance program. 5-year facilities assessment reports shall be prepared at Lessee's expense by an engineer, selected by Lessee and approved by City. Lessee is responsible to correct all repairs and maintenance items.
General Parking	<ul style="list-style-type: none"> Lessee shall maintain public parking facilities on the Premises with no less than 325 public parking spaces Subject to City Council, and any other required approvals, Lessee may charge a parking fee in the east lot, subject to payment of percentage rent 	<p>No change. (Lessee shall maintain public parking facilities on the Premises with no less than 325 public parking spaces. Subject to City Council, and any other required approvals, Lessee may charge a parking fee in the east lot, subject to payment of percentage rent).</p>	<p>No change. (Lessee shall maintain public parking facilities on the Premises with no less than 325 public parking spaces. Subject to City Council, and any other required approvals, Lessee may charge a parking fee in the east lot, subject to payment of percentage rent).</p>
Valet Parking	<ul style="list-style-type: none"> Lessee, subject to annual City approval, may establish a 9-stall valet parking drop-off zone in the north lot. Valet parking revenue is subject to percentage rent. 	<ul style="list-style-type: none"> Lessee, subject to annual City approval, may establish a 9-stall valet parking drop-off zone in the north lot. Valet parking revenue is subject to percentage rent. Lessee will invest \$2,500,000 to reconfigure City-owned adjacent parking lot (South Parking) to create 90-valet parking spaces and 18 free parking spaces within first 3 years of the term. Valet parking will be approved under a separate permit. Valet parking revenue is subject to 5% of gross revenue rent. 	<p>Same as in the existing lease.</p>
Community Meeting Room	<p>Lessee must provide access for the general public to a community meeting room for public</p>	<p>No fundamental change. For meetings 15 person or less – 10 day advance notice. For meetings 16 person or more – 90</p>	<p>No fundamental change For meetings 15 person or less – 10 day advance notice. For meetings 16 person or more – 90</p>

	service use.	days' advance notice. (Lessee must provide access for the general public to a community meeting room for public service use).	days' advance notice. (Lessee must provide access for the general public to a community meeting room for public service use).
Accessory Use Permit	<ul style="list-style-type: none"> City, subject to annual renewal, shall grant a separate Accessory Use Permit allowing beach concessions and service of food on the beach (but no alcohol) on the western boundary of the premises Lessee shall pay minimum and percentage rent 	<ul style="list-style-type: none"> City, subject to up to 3-year renewal periods, shall grant a separate Accessory Use Permit allowing beach concessions and service of food on the beach (but no alcohol) on the western boundary of the premises (specific boundaries to be approved) Lessee shall pay minimum and percentage rent. Lessee must obtain all required permits and approvals. 	<ul style="list-style-type: none"> City, subject to up to 2-year renewal periods, shall grant a separate Accessory Use Permit allowing beach concessions and service of food on the beach (but no alcohol) on the western boundary of the premises (specific boundaries to be approved) Lessee shall pay minimum and percentage rent. Lessee must obtain all required permits and approvals.
Assignments	Assignments are subject to consent of City.	<ul style="list-style-type: none"> Assignments are subject to consent of City. In addition, on assignment or a majority sublease, Lessee must pay City 2% of the gross amount paid to Lessee for the assignment or majority subleases. 	<ul style="list-style-type: none"> Assignments are subject to consent of City. In addition, on assignment or a majority sublease, Lessee must pay City 2% of the gross amount paid to Lessee for the assignment or majority subleases.
Subleases	City only to approve subleases of more than 5,000 square feet.	City must approve all subleases.	City must approve all subleases.
Prevailing Wage	No provisions.	Extensive language requiring payment by Lessee of prevailing wage and compliance with prevailing wage law.	Extensive language requiring payment by Lessee of prevailing wage and compliance with prevailing wage law.
Hazardous Substances	No provisions.	Extensive language requiring the removal and remediation of any hazardous substances by Lessee, as well as indemnification of City.	Extensive language requiring the removal and remediation of any hazardous substances by Lessee, as well as indemnification of City.
Disabled Access Compliance	No provisions.	Extensive language requiring ADA compliance by Lessee.	Extensive language requiring ADA compliance by Lessee.
Equal Benefits	No provisions.	Payment of equal benefits to spouses with domestic partners required.	Payment of equal benefits to spouses with domestic partners required.
Drug-Free Workplace	No provisions.	Must adopt and enforce a policy to maintain a drug-free workplace.	Must adopt and enforce a policy to maintain a drug-free workplace.
Water Quality Assurance	No provisions.	Must comply with all applicable laws and regulations regarding water quality assurance and storm water management.	Must comply with all applicable laws and regulations regarding water quality assurance and storm water management.
Local Business and Employment	No provisions.	Must use reasonable efforts to contract and employ local firms and residents for work associated with Lease.	Must use reasonable efforts to contract and employ local firms and residents for work associated with Lease.

SYMPHONY is required to operate and maintain the Plunge per the terms of the existing lease. If a new lease proposal which includes full capital repairs of the Plunge is not approved, SYMPHONY will make all repairs as required per the terms of its existing lease at the Plunge and in compliance with all applicable laws. Repairs will commence upon receiving all applicable City permits and approvals and will be completed approximately 6 months from the commencement date. However, as a long term solution, the Plunge will require refurbishment

and upgrades to its structure including the pool, which SYMPHONY is not obligated to complete under the terms of the current lease. If a new amended and restated lease, which will require SYMPHONY to make repairs in exchange for rent credits, is not approved, the Plunge will need to be placed in the City's Capital Improvement Project (CIP) queue for future repair and get prioritized along with all the City's other CIP projects.

FISCAL CONSIDERATIONS: If the proposed amended and restated lease is approved, at least \$415,000 of rent will be deposited into General Fund 100000 annually. In addition, the City will continue to deposit \$70,000 annually into a special fund to be used for amelioration of traffic problems in the Mission Beach community and for enhancing community landscaping.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): Work Force Report and Equal Benefit Ordinance Certificate of Compliance are attached.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: This action was heard in Closed Session on July 23, 2013 and at the City Council meeting on September 22, 2014 and in Closed Session on November 10, 2014.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Letters of support for valet parking received from the Mission Beach Town Council and Mission Beach Precise Planning Board are attached. On October 21, 2014, the proposed lease was docketed as information item on the agenda of the Mission Beach Precise Planning Board. Community voiced its strong support of the proposed lease.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Local community, other City lessees in Mission Beach and Mission Bay Park, City Park and Recreation Department.



Originating Department



Deputy Chief/Chief Operating Officer