

*Item 201* *4/6/15*  
*Subitem A*

(R-2015-28)  
Cor. Copy 3

RESOLUTION NUMBER R- 309579

DATE OF FINAL PASSAGE APR 22 2015

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THE AMENDED AND RESTATED CITY OF SAN DIEGO PERCENTAGE LEASE BETWEEN THE CITY OF SAN DIEGO AND SYMPHONY ASSET POOL XVI, LLC TO LEASE THE PROPERTY COMMONLY KNOWN AS BELMONT PARK AND POTENTIALLY THE MISSION BEACH ROLLER COASTER.

WHEREAS, the City of San Diego ("City") and Belmont Park Associates entered into a Percentage Lease dated March 14, 1987, on file in the Office of the City Clerk as Document No. RR-266064, for the development and operation of Belmont Park. This lease was amended by the following agreements: an Operating Memorandum to the Percentage Lease dated December 23, 1987; a Second Operating Memorandum to Percentage Lease dated December 11, 1990; a Third Operating Memorandum to Percentage Lease dated February 25, 1991; a Fourth Operating Memorandum to Percentage Lease dated August 12, 1991; and a Fifth Operating Memorandum to Percentage Lease dated June 26, 2000, on file in the Office of the City Clerk as Document No. RR-293393 (collectively the "Original Lease"); and

WHEREAS, the Original Lease was assigned from Belmont Park Associates to PARS Belmont Park pursuant to that certain Lessor Consent, Estoppel and Non-Disturbance Agreement dated December 1, 1995; PARS Belmont Park subsequently assigned its interests to Wave the Planet, LLC, pursuant to that certain Assignment of Ground Lease dated June 22, 2000, with the written consent and approval of City pursuant to the Consent to Assignment of Ground Lease dated June 23, 2000; thereafter Wave the Planet, LLC assigned its interests to Wave House

San Diego, LLC by that certain Settlement and Mutual Release Agreement dated May 13, 2002, with the written consent and approval of City pursuant to the Consent to Assignment of Ground Lease dated May 20, 2002; and, thereafter, Wave House San Diego, LLC assigned its interests to Wave House Belmont Park, LLC ("Wave House"), pursuant to that certain Acceptance and Assignment of Ground Lease dated August 22, 2004, with the written consent and approval of City pursuant to the Consent to Assignment of Lease Agreement dated October 8, 2004; and

WHEREAS, a dispute arose between Wave House and City regarding rental charges and Plunge maintenance responsibilities under the Original Lease, which were resolved by way of a settlement; and

WHEREAS, East West Bank ("Bank"), was a lender to Wave House and related entities and individuals holding the first priority security interests pursuant to a deed of trust ("Deed of Trust") in Wave House's interest in the Original Lease and other security instruments and agreements (collectively the "Bank Loan Agreements"). Symphony Asset Pool XVI LLC ("Symphony") purchased the Bank Loan Agreements from Bank and, as a result thereof, stepped into the position of Bank in connection with the Bank Loan Agreements. Symphony acquired Wave House's interest in the Original Lease as part of the agreement with Wave House that allowed for the foreclosure of Symphony's security interest. Symphony duly noticed and conducted a trustee's sale pursuant to the Deed of Trust. Symphony was the successful bidder at the trustee's sale and on or about November 16, 2012 became the lessee under the Original Lease; and

WHEREAS, pursuant to a separate agreement between Symphony and Wave House, Symphony had, under a certain set of conditions and for a limited amount of time, the right to

direct Wave House to dismiss its lawsuit against City (Wave House Belmont Park, LLC v. City of San Diego, San Diego Superior Court case number 37-2011-00102475 (“Lawsuit”)); and

WHEREAS, in consideration for Symphony’s act of immediately directing Wave House to dismiss the Lawsuit with prejudice, City agreed to negotiate in good faith a new lease with Symphony consistent with the terms of the Letter of Intent dated July 16, 2013 (“LOI”); and

WHEREAS, Symphony has requested an amended and restated lease (“Amended Belmont Lease”) consistent with the LOI, to facilitate Symphony’s intentions to improve Belmont Park by investing in capital improvements and upgrades to Belmont Park and the parking lot adjacent to the southern boundary of Belmont Park, for a twenty-three (23) year term, with a first option to revise the term to an additional forty (40) years from the first of the month following the date of Symphony’s written request to revise the term if Symphony has fully satisfied its obligation to provide \$18,000,000 in capital improvements and upgrades to Belmont Park and the Plunge Swimming Pool and Plunge Swimming Pool Building, and with a second option to revise the term to an additional ten (10) years from the then remaining term if Symphony has fully satisfied its obligation to provide an additional \$5,000,000 in capital improvements and upgrades to the premises; and

WHEREAS, Symphony has acquired all the outstanding stock of the San Diego Coaster Company. San Diego Coaster Company is the current lessee under that certain City of San Diego Percentage Lease by and between the City and San Diego Seaside Company, Inc., on file with the Office of the City Clerk as Document No. RR-274204 (“Roller Coaster Lease”), which lease authorizes San Diego Coaster Company to operate the Mission Beach Roller Coaster

and the improvements and structures associated with the operation of the roller coaster, located adjacent to Belmont Park ("Roller Coaster"); and

WHEREAS, Symphony has requested that City allow the Roller Coaster Lease to become part of, and subject to, the terms and conditions of the Amended Belmont Lease, including the new term thereof, upon the termination of the Roller Coaster Lease; and

WHEREAS, City staff has negotiated proposed terms and conditions for the Amended Belmont Lease with Symphony wherein Symphony would pay the City a base annual rent of Nine Hundred Thousand Dollars (\$900,000), which will be adjusted upward two and one-half percent (2.5%) annually. Said base annual rent will be increased to One Million Twenty Four Thousand Dollars (\$1,024,000), which will be adjusted upward two and one-half percent (2.5%) annually, upon the termination of the Roller Coaster Lease and its inclusion in the Amended Belmont Lease. Said base annual rent will be subject to a further upward adjustment if Symphony exercises the proposed first and second options to revise the Amended Belmont Lease's term; and

WHEREAS, as appraised by City staff, the market value of Belmont Park is approximately \$19,724,000 and the market value of the Roller Coaster is \$7,200,000; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain Amended and Restated City of San Diego Percentage Lease by and between the City of San Diego and Symphony Asset Pool XVI, LLC, for the lease and operation of Belmont Park, and potentially the Roller Coaster, as more fully set forth in Document No. RR- 309579 on file with the City Clerk.

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force only upon the final passage of Resolution R- 309580, approving the Lease Suspension and Termination Agreement between the City and San Diego Coaster Company, a California corporation, on file as Document No. RR- 309580, but in no event earlier than the date of final passage of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Hilda R. Mendoza  
Hilda R. Mendoza  
Deputy City Attorney

HRM: mcm  
7/14/2014  
09/19/14 Cor. Copy  
01/06/15 Cor. Copy 2  
03/19/15 Cor. Copy 3  
Or.Dept:Real Estate Assets Dept.  
Doc. No. 866503\_3

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 06 2015.

ELIZABETH S. MALAND  
City Clerk

By Elizabeth S. Maland  
Deputy City Clerk

Approved: 4/21/15  
(date)

Kevin L. Faulconer  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 06 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 22 2015

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

(Seal)

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 309579