



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: August 21, 2014

REPORT NO: 14-055

ATTENTION: 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 ACTIONS: Authorize the Mayor or his designee to enter into a new Amended and Restated Percentage Lease (Proposed New Lease) with Symphony Asset Pool XVI, LLC, a Delaware Limited Liability Company (SYMPHONY), for the lease of certain City-owned property located at Belmont Park, located at 3146 Mission Boulevard (the Property), San Diego, CA 92109, which may include the Mission Beach Roller Coaster 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

Declaring 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.

Declaring 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: In July 1988 the City entered into a 50 year lease at Belmont Park to allow the construction of approximately 89,000 sq.ft of improvements (Current Lease). The improvements that are currently in place are owned by the lessee, except approximately 22,000 sq.ft of the historically designated Mission Bay Plunge Pool and the Plunge Building that was constructed to enclose the pool. Although the City owns the Plunge Pool and Plunge Building, the Current Lease required the lessee to operate and maintain these facilities.

The leasehold passed through the ownership of a number of lessees until 2000, when the Current Lease was assigned to Thomas Lochtefeld doing business as Wave the Planet LLC (Wavehouse).

At that time the Current Lease was amended through an operating agreement with the following basic financial terms:

1. Minimum Rent - \$705,208 adjusted every 3 years (subject to Tier 1 and Tier 2 rent credit), not less than \$70,000 annually;
2. Percentage Rent - 5% of gross revenues;
3. \$8,500,000 - Tier 1 Original Rent Credits for the Public Improvements constructed by Lessee when the lease was executed;
4. \$4,000,000 - Tier 2 Rent Credits for New Capital Improvement approved in 2000 to be applied to 50% of rent.

Due to the rent credits, Wavehouse paid \$70,000 per year in rent to the City until the Tier 2 Rent Credits were exhausted in June 2010. After June 2010, although, the Tier 1 Rent Credits were still in place, the annual rent due the City increased to approximately \$420,000. Wavehouse refused to pay the increased rent and the City placed the Current Lease in default. In November 2010, Wavehouse declared bankruptcy and the leasehold lender holding a beneficial interest in the leasehold estate substituted itself to the estate of Wavehouse and commenced performance under the Current Lease. In July 2011, a Receiver was appointed by California Superior Court to administer the Current Lease on behalf of the lender. Shortly thereafter, Wavehouse brought suit against the City for \$25,000,000, claiming that the City denied Wavehouse the promised right to redevelop the leasehold to built a hotel. That lawsuit was dismissed in October 2013.

In addition to failure to pay rent, in May 2011 Wavehouse was placed in default for failure to maintain the Plunge Building. The lack of maintenance, exterior salt air exposure and interior chlorinated water exposure to the structure caused structural damage due to corrosion which resulted in the Plunge Pool and Plunge Building being closed. According to a City commissioned engineering study from 2011, needed permanent repairs were estimated to cost at least \$1,200,000.

In November 2012, Pacifica Enterprises, doing business as SYMPHONY, foreclosed on the note, took possession of the Property and is currently operating under the Current Lease. Since acquisition SYMPHONY has opened two new restaurants, remedied multiple deferred maintenance items such as installing new lighting, new signage, painting exterior of the buildings and construction of a new ADA approved restroom. In addition SYMPHONY invested approximately \$6,000,000 in capital improvements at the Property. In 2014, SYMPHONY conducted further inspection of the Plunge Building and Plunge Pool. The inspection revealed additional major structural and maintenance items such as metal corrosion beyond repair, substandard welding, roof corrosion, inadequate mechanical ventilation system, pool water seepage, and ADA non-compliance. According to SYMPHONY, estimated cost of repairs for the Plunge Building and Plunge Pool have increased from approximately \$1,200,000 to \$5,900,000.

As lessee under the Current Lease, SYMPHONY is currently on the way to achieving its stated goal to reposition Belmont Park to create a family friendly, safe and secure atmosphere. For the Property to reach its optimum level of performance, a significant additional capital investment will be required by SYMPHONY. City and SYMPHONY have negotiated the Proposed New Lease which provides for the needed capital investment at the leasehold. The following is an outline summary of some of the terms and conditions of the Proposed New Lease which is being presented for the Council's consideration:

1. Term – upon execution of the City and through June 30, 2038;
2. Minimum rent - \$900,000 annually, increased by 2.5% per year;
3. Percentage rent- 4% of the gross income received from specialty shops, 3% sale of food, 6% sale of alcoholic beverages, 5% game rooms and miniature golf, 5% health-club and pool operations, 5% valet parking (if approved by City), 50% wireless telecommunication facilities and 10% from all other approved activities, Percentage rent is subject to market adjustments every 10 years by appraisals;
4. Capital Improvements - SYMPHONY proposed to invest at least \$10,000,000 (Improvement Obligation) within the first 3 years of the Proposed New Lease to upgrade the Property; all improvements shall be approved by City;
5. SYMPHONY will complete all structural repairs of the Plunge Building within the first 18 months of the Proposed New Lease for an estimated cost of \$5,900,000, which will be included as part of the Improvement Obligation;
6. Park and Recreation Department and Police Department staff will cooperate with SYMPHONY to have a portion of the parking lot south of the leasehold designated for valet parking. SYMPHONY has proposed to invest approximately \$2,500,000 to increase the number of parking spaces from 463 to 571, which will provide for 90 paid valet parking spaces and 18 additional free public parking spaces. If valet parking operations are approved, the parking lot will be authorized under a separate right of entry permit. If the valet parking operations are not approved, the Improvement Obligation will be reduced to \$8,000,000;
7. Upon completion of the Improvement Obligation, SYMPHONY will, within the first 5 years of the Proposed New Lease, have the option to extend the term to fifty (50) years, for a lump sum payment to the City of \$500,000. If the Improvement Obligation is reduced to \$8,000,000, SYMPHONY will spend an additional \$2,000,000 on capital improvements within the first 5 years of the Extended Term of the Proposed New Lease;
8. Upon commencement of the Extended Term option, the initial minimum annual rent will be adjusted to \$1,100,000 and will be increased by 2.5% annually thereafter;
9. The existing Tier 1 Rent Credit under the Current Lease, estimated to be \$2,918,972, will remain in effect and be applied in the same manner as the Current Lease;

10. In consideration for structural repairs to the City-owned Plunge Building and Plunge Pool, SYMPHONY will receive an additional rent credit not exceeding \$5,200,000 (subject to additional City verification of proposed expenditures), which will be added to the remaining Tier 1 Rent credit balance;

11. City will receive, as additional rent, two percent (2%) of the total consideration received if the Proposed New Lease is assigned, or if a majority of the leasehold is subleased;

12. The beach accessory rental and food and non/alcoholic beverage concession on the City beach adjacent to the Property included in the Current Lease shall be included in the Proposed New Lease. The concession is renewable every 36 months at the City's discretion;

13. SYMPHONY is currently under negotiations to acquire the San Diego Coaster Company ("SD Coaster), the lessee under the Mission Beach Roller Coaster lease (Roller Coaster Lease), which lease is separate and distinct from the Current Lease. If SYMPHONY acquires complete ownership of the San Diego Coaster Company within 180 days of the City Council's approval of the Proposed New Lease, certain provisions included within the Proposed New Lease will become effective without further City Council action, making the Roller Coaster Leasehold part of the Proposed New Lease, and terminating the Roller Coaster Lease. Upon combining the Property subject to the Current Lease with the property subject to the Roller Coaster Lease, the minimum annual rent will immediately be increased from \$900,000 to \$1,024,000;

14. If the term of the Proposed New Lease is extended by the Extended Term, and the Roller Coaster Lease has merged into the Proposed New Lease, then the initial minimum annual rent will be increased from \$1,100,000 to \$1,300,000 upon commencement of the Extended Term;

15. The percentage rent from the Mission Beach Roller Coaster ride will be increased from 5% - 10% of gross revenue, to 10% of gross revenue, and 5% of gross revenue for all other uses of the property subject to the Roller Coaster Lease; and

16. SYMPHONY will invest \$2,500,000 in capital improvements, repairs and refurbishments of the property subject to the Roller Coaster Lease within the first 5 years of the Proposed New Lease's term.

A staff estimate from July 2014 determined that present market value of the SYMPHONY lease fee interest is approximately \$19,724,000, and the present market value of the Roller Coaster Lease fee interest is approximately \$7,200,000.

FISCAL CONSIDERATIONS: 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.

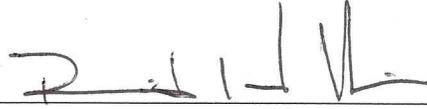
PREVIOUS COUNCIL and/or COMMITTEE ACTIONS: This action was heard in Closed Session on July 23, 2013.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS: Letters of support for valet parking received from the Mission Beach Town Council and Mission Beach Precise Planning Board are attached.

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



Originating Department



Deputy Chief/Chief Operating Officer