

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

THIS THIRD AMENDMENT TO THE AMENDED AND RESTATED CITY OF SAN DIEGO PERCENTAGE LEASE ("Third 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 "Third 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 dated May 27, 2016 ("First Amendment"), and that certain Second Amendment to the Amended and Restated San Diego Percentage Lease dated March 8, 2017 ("Second 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 and Second Amendment are on file with the Real Estate Assets Department of CITY. The Original Lease, the First Amendment and the Second 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 and Section 1 of the Second Amendment, LESSEE is required to complete the Plunge Refurbishment and have the Plunge Swimming Pool reopened to the general public no later than January 8, 2019, unless delay is caused by factors beyond LESSEE'S control.
- C. As of the Third Amendment Effective Date, the Plunge Refurbishment is approximately fifty five percent (55%) complete.
- D. Progress on the Plunge Refurbishment was unavoidably delayed due to factors beyond LESSEE'S control, specifically resulting from conditions imposed by the County of San Diego Department of Environmental Health ("DEH") after LESSEE received all CITY permits and approvals to proceed with the project, including the Original Building Permit – Project No. 485074, Construction Approval No. 1699118 issued on September 28, 2016 (the "Building Permit"). Accordingly, LESSEE will not be able to complete the Plunge Refurbishment by January 8, 2019.
- E. On November 8, 2017, DEH issued a notice to cease and desist construction of the Plunge Swimming Pool ("Stop Work Order") arising out of the inadvertent failure to secure DEH approval on LESSEE'S construction plans before issuance of the Building Permit. As part of securing DEH approval after the Stop Work Order, LESSEE was required to revise its construction plans and submit the applicable Construction Change No. 3 to the CITY for approval under the Building Permit.

- F. DEH provided its final approval of LESSEE'S revised construction plans on February 9, 2018, and the CITY approved the related Construction Change No. 3 on March 19, 2018. On March 21, 2018, DEH lifted its Stop Work Order and LESSEE resumed the Plunge Refurbishment shortly thereafter.
- G. LESSEE requests to extend the Plunge Refurbishment Completion and the Plunge Occupancy Date to the Second Extended Plunge Occupancy Date (as hereafter defined) due to the delay in the completion of the Plunge Refurbishment in light of the time necessary to secure the removal of the Stop Work Order 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.
- H. In addition and as a result of the unavoidable delays to complete the Plunge Refurbishment as further set forth in the First Amendment, Second Amendment and this Third Amendment, Section 3.4 of the Lease requires a corresponding modification and change to the date by which LESSEE must fully satisfy the Plunge Refurbishment in Section 3.4.
- H. CITY has determined that due to delays caused by factors beyond LESSEE'S control after the Second Amendment Effective Date, the completion date for the Plunge Refurbishment and the corresponding Plunge Occupancy Date will be extended to the Second Extended Plunge Occupancy Date, all subject to and in accordance with the terms and conditions of this Third Amendment, and the date by which LESSEE must fully satisfy the Plunge Refurbishment in Section 3.4 shall be extended.
- I. 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 Third Amendment is approved by the Mayor or his designee.
- J. All defined terms used in this Third 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 in the Lease 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 Lease, this Third Amendment, the California Coastal Commission Coastal Development Permit No. 6-15-1251, the DEH approval and/or the lifting of the Stop Work Order, the Building Permit, Construction Change No. 3, or other permits and approvals relating to the Plunge Refurbishment, or any amendments or modifications thereto (the "Plunge Refurbishment Approvals"): (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 September 28, 2019 (the “Second Extended Plunge Occupancy Date”), unless delay is caused by factors beyond LESSEE’S control after the Third 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 2018 and/or thereafter, in which case the Second 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. Section 3.4 Forfeiture of Initial Revised Term is deleted in its entirety and replaced with the following:

3.4 Forfeiture of Initial Revised Term. If LESSEE fails to fully satisfy the Plunge Refurbishment or the \$18M Improvement Obligation by the end of the fifth (5th) Lease Year, the foregoing provision to extend the term of this Lease shall terminate as of the first day of the sixth (6th) Lease Year of the Initial Term and shall be of no further force or effect. Notwithstanding the foregoing and any other provision in this Lease to the contrary, the CITY hereby acknowledges that, prior to the Effective Date, LESSEE has fully paid, performed and satisfied the \$18M Improvement Obligation, all to the full and complete satisfaction and approval of the CITY, and the corresponding condition for the Initial Revised Term (as set forth in Section 3.2 above) is hereby satisfied. Accordingly, LESSEE shall not be required to pay, perform or otherwise satisfy any portion of the \$18M Improvement Obligation following the Effective Date pursuant to this Section 3.4, Section 3.1, Section 3.2 or otherwise.

3. 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 Third Amendment and those of the Lease shall be resolved in favor of the terms and conditions of this Third Amendment.
4. Authority. Each individual executing this Third Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Third 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 Third Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Third 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.

5. Counterparts. This Third Amendment may be executed in any number of counterparts, all of which together shall constitute one instrument.

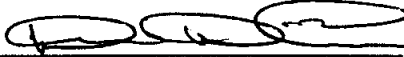
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IN WITNESS WHEREOF, this Third Amendment is executed to be effective as of the Third Amendment Effective Date.

Date: 04/20/18


Symphony Asset Pool XVI LLC, a Delaware limited liability company

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

By: 
Name: DARIO DELUCA
Title: PRESIDENT


Date: 4/21/18
Third Amendment Effective Date

THE CITY OF SAN DIEGO,
a California municipal corporation

By: 
Name: CYBELE THOMPSON
Title: DIRECTOR, RCM ESMT ASSCS

Approved as to form:

Mara W. Elliot, CITY ATTORNEY

By: 
Name: Hilda R. Mendoza
Title: Deputy City Attorney