

20755

FOURTH AMENDMENT TO AMENDED AND RESTATED LEASE

1
2 This Fourth Amendment to Amended and Restated Lease ("Amendment")
3 is made and entered, in duplicate, as of July 28, 2010, pursuant to a minute
4 order adopted by the City Council of the City of Long Beach at its meeting held on June
5 15, 2010, by and between the CITY OF LONG BEACH, a municipal corporation ("City" or
6 "Lessor") and BAJA LA PALAPA RESTAURANT GROUP, INC., a California corporation
7 ("Lessee").

8 WHEREAS, City and Campo Corporation, as predecessor-in-interest to
9 Lessee, previously entered into (i) an Amended and Restated Lease dated July 24, 1990,
10 and (ii) a First Amendment to Amended and Restated Lease dated June 14, 1995, and
11 City and Lessee previously entered into (iii) a Second Amendment to Amended and
12 Restated Lease dated August 13, 1999, and (iv) a Third Amendment to Amended and
13 Restated Lease dated July 19, 2005 (collectively, the "Lease"), covering certain premises
14 more particularly described in the Lease (the "Premises"); and

15 WHEREAS, City and Lessee now desire to further amend certain provisions
16 of the Lease;

17 NOW, THEREFORE, Lessor and Lessee mutually agree as follows:

18 1. Effective Date. This Amendment shall be effective as of July 24,
19 2010 (the "Effective Date").

20 2. Premises. The Premises shall be expanded to include the restrooms
21 on the north side of the ground floor of the restaurant on the Premises, as more
22 particularly described in Exhibit "A-6" attached to this Amendment ("Expansion
23 Premises"). Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the
24 Expansion Premises and such Expansion Premises shall hereafter be subject to the
25 terms and conditions of the Lease.

26 3. Term. The term of the Lease shall be extended for a period of five
27 (5) years so that the Lease shall terminate at midnight on July 23, 2015, unless sooner
28 terminated in accordance with the terms thereof. Lessee shall have the option of

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1 extending the Lease for one (1) additional five (5) year period; provided that at least
2 ninety (90) days prior to the expiration of the Lease, Lessee shall deliver to Lessor written
3 notice of its exercise of the option; and provided further that Lessee is not then in default
4 of its obligations under the Lease.

5 4. Minimum Rent. Commencing on the Effective Date and continuing
6 monthly thereafter, Lessee shall pay to Lessor as "minimum rent" for the Premises the
7 sum of Six Thousand Four Hundred Dollars (\$6,400) per month, payable in accordance
8 with the Lease. "Percentage rent" shall continue to be paid in accordance with the
9 Lease. In the event Lessee exercises its extension option hereunder, minimum rent shall
10 be increased during the extension period in the manner described in Section 5.A of the
11 Lease, and "average rent" shall include both minimum rent and percentage rent.

12 5. Capital Improvement Account. City shall establish a stand-alone
13 account to be funded by Lessee ("Capital Improvement Account") which shall accrue
14 funds for the future construction of a public restroom facility on the beach in the vicinity of
15 the Premises or other projects approved by the Lessor's City Manager. Lessee shall
16 fund the Capital Improvement Account according to the following schedule:

17	<u>Gross Receipts (July 24 through July 23)</u>	<u>Contribution</u>
18	\$1,250,000	\$2,500
19	\$1,500,000	\$5,000
20	\$1,750,000	\$7,500
21	\$2,000,000	\$10,000

22 Gross receipts from the previous year shall be calculated on each anniversary of the
23 Effective Date. Contributions for the previous period shall be due on or before October 1
24 immediately subsequent to each anniversary of the Effective Date. Gross receipts shall
25 be calculated in accordance with Section 7 of Exhibit "B" to the Lease, and shall be
26 subject to the provisions of Section 9 of Exhibit "B" of the Lease.

27 6. ADA Compliance and Lessee Termination Option. Lessee, at
28 Lessee's sole cost and expense, shall complete all improvements necessary to ensure

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1 the Premises comply with the Americans with Disabilities Act (the "ADA"), including
2 without limitation, access to the second floor banquet room and restrooms. Should
3 Lessee be required by an applicable agency or court of law to make such improvements
4 and thereafter Lessee determines that it is not economically feasible to make such
5 improvements, Lessee shall have the right to either (i) surrender the entirety of the
6 Premises on the second floor and terminate the Lease with respect to that portion of the
7 Premises, or (ii) terminate the Lease in its entirety. The effective date of such termination
8 shall be no sooner than ninety (90) days after Lessee delivers written notice to Lessor of
9 its intention to terminate. If Lessee opts to terminate a portion of the Premises under this
10 Section, then the parties shall promptly execute an amendment to the Lease reflecting
11 such termination.

12 7. City Termination Option. If City moves forward with a project
13 renovating the Belmont Plaza Pool and/or affiliated structures, and such renovation plans
14 require, in the sole and absolute discretion of the City, the closure of the restaurant
15 located on the Premises, then City shall have the right to terminate the Lease provided
16 that City provides Lessee with at least one (1) year prior written notice.

17 8. Notification of Events. Beginning on the first September 1 after the
18 Effective Date and continuing quarterly thereafter, City shall deliver to Lessee a written
19 schedule of events for the Belmont Plaza Pool for the upcoming quarter, and Lessee
20 shall deliver to City a written schedule of weddings on the Premises for the upcoming
21 quarter.

22 9. Equal Benefits Ordinance. The Lease shall be subject to the
23 applicable provisions of Section 2.73 of the Long Beach Municipal Code ("Equal Benefits
24 Ordinance"), as it may be amended from time, incorporated herein by this reference as if
25 set forth in full. Lessee agrees to comply with the Equal Benefits Ordinance. Lessee
26 agrees to post the following statement in conspicuous places at its place of business
27 available to employees and applicants for employment:

28 "During the term of a Lease Agreement with the City of Long Beach, the

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1 Baja La Palapa Restaurant Group, Inc., to the extent it provides benefits to
2 employees' spouses, will provide equal benefits to employees' registered domestic
3 partners. Additional information about the City of Long Beach's Equal Benefits
4 Ordinance may be obtained from the City of Long Beach Business Services
5 Division at 562-570-6200."

6 Failure to comply with the Equal Benefits Ordinance may be deemed
7 to be a material breach of the Lease. Upon a finding duly made that Lessee has failed to
8 comply with the Equal Benefits Ordinance as incorporated into the Lease by this
9 Amendment, the Lease may be forthwith terminated, in addition to any other available
10 remedies.

11 10. All terms, covenants, and conditions of the Lease, except as
12 amended herein, shall remain unchanged and in full force and effect.

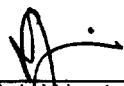
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IN WITNESS WHEREOF, the parties hereto have executed this
Amendment.

"Lessor"

CITY OF LONG BEACH, a California municipal
corporation

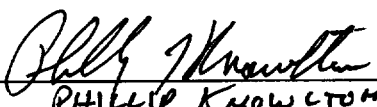
By:  Assistant City Manager
Patrick West
City Manager

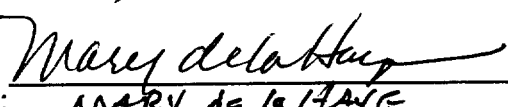
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

Date: 7.28.10

"Lessee"

BAJA LA PALAPA RESTAURANT GROUP, INC.,
a California corporation

By: 
Name: PHILLIP KNOWLTON
Title: SEA/TREAS

By: 
Name: MARY de la HAZA
Title: PRESIDENT

Date: July 15, 2010

Approved as to form this 19 day of July, 2010.

ROBERT E. SHANNON, City Attorney

By: 
Deputy

05-03167

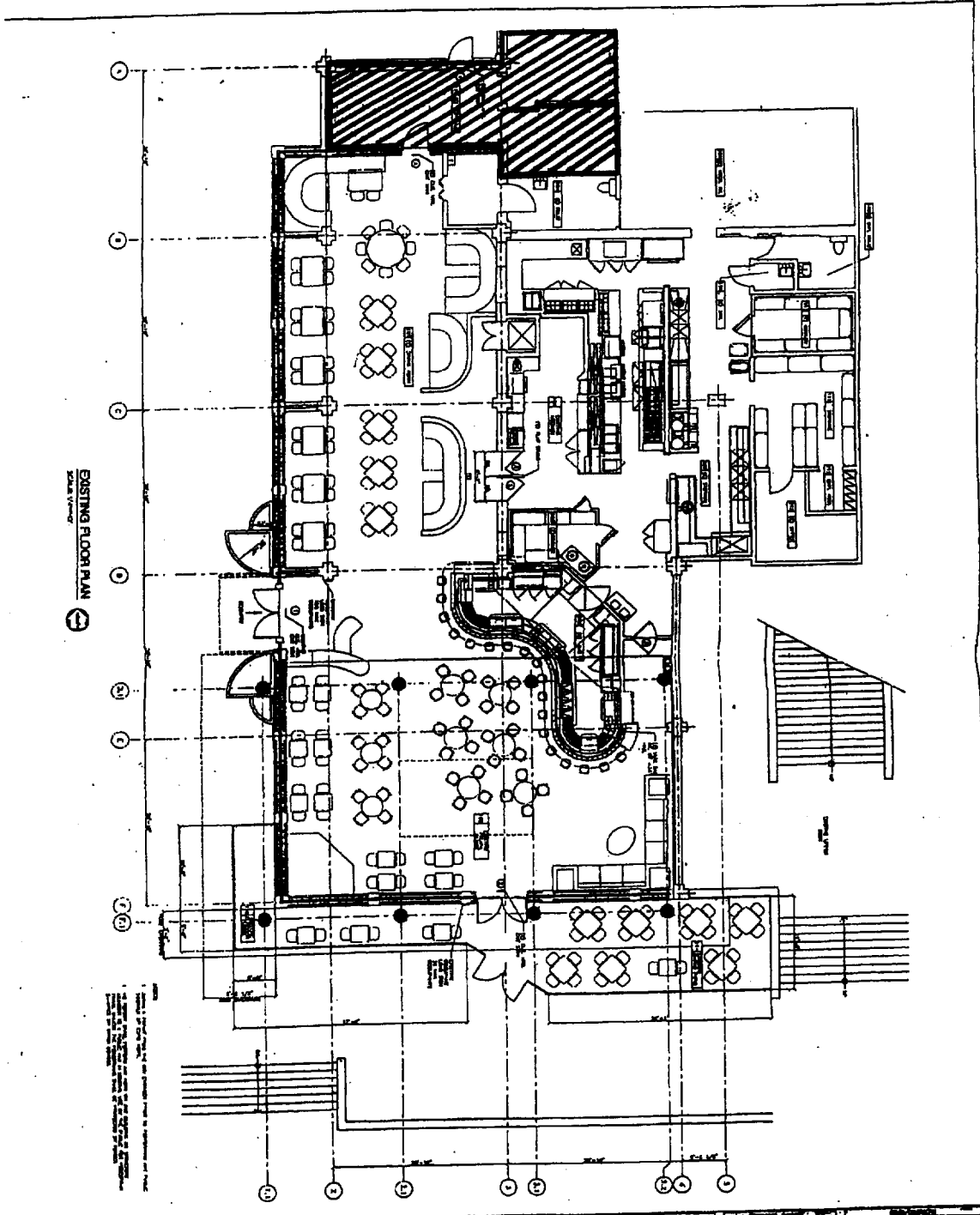
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EXHIBIT "A-6"
EXPANSION PREMISES

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Expansion
Premises



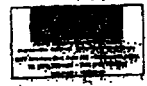
EXISTING FLOOR PLAN
SCALE: 1/8" = 1'-0"

NO.	DESCRIPTION
1	EXISTING RESTROOM
2	EXISTING BAR
3	EXISTING KITCHEN
4	EXISTING DINING AREA
5	EXISTING PATIO
6	EXISTING STAIRS
7	EXISTING ELEVATOR

A-1

LA PALAPA RESTAURANT & BAR
NEW OUTDOOR PATIO
4020 OLYMPIC PLAZA
LONG BEACH CALIFORNIA

EXISTING FLOOR PLAN



La Palapa
S.E.L.A.M.A.R.
Architects
4020 Olympic Plaza
Long Beach, California
90801

EXHIBIT A-6