

SECOND AMENDMENT TO RETAIL LEASE

THIS SECOND AMENDMENT TO RETAIL LEASE ("Second Amendment") is made effective on the ___ day of _____, 2020, by and between the CITY OF LAKE WORTH BEACH, a Florida Municipal Corporation ("Landlord") and MULLIGANS LAKE WORTH ACQUISITIONS, LLC, a Delaware Corporation registered to do business in the State of Florida ("Tenant/Assignor") and NUSTART, LTD., a Florida limited partnership, d/b/a Viva la Playa ("Tenant/Assignee") (collectively Landlord, Tenant/Assignor and Tenant/Assignee are referred to as the "Parties").

RECITALS

WHEREAS, on March 19, 2012, the Landlord and the Tenant/Assignor's predecessor entered a retail lease for Units #7 and #8 at the Lake Worth Beach Municipal Casino Building ("Lease"); and

WHEREAS, on January 19, 2016, the Landlord and the Tenant/Assignor's predecessor entered that First Amendment to the Lease allowing Tenant/Assignor's predecessor to assign the Lease to Tenant/Assignor; and

WHEREAS, in April 2020, Tenant/Assignee's manager, Lee Lipton, contacted the Landlord about an assignment of the Lease to the Tenant/Assignee for the purposes of renovating the premises for the operation of a Mexican restaurant; and

WHEREAS, Tenant/Assignee has committed to invest approximately \$150,000 into the premises; and

WHEREAS, as specifically set forth in this Second Amendment, the Parties desire to amend the Lease to consent to and address the assignment to Tenant/Assignee and related matters; and,

WHEREAS, the City Commission finds amending the Lease as set forth herein serves a valid public purpose.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in the Lease and this Second Amendment, and for other good and valuable consideration, the receipt of which the Parties expressly acknowledge, the Parties agree to amend the Lease as follows:

1. **Recitals and Definitions:** The foregoing recitals are hereby incorporated into this Second Amendment as true and correct statements of the Parties and form part of the consideration for this Second Amendment. All material terms as utilized in this Second Amendment are as defined in the Lease.
2. **No Default:** The Parties agree that the Lease remains in full force and effect, that there are no defaults or disagreements with regard to the terms and conditions set forth in the Lease. As of the Effective Date, **Tenant/Assignor has paid all Rent that is due to the Landlord for the months of March, April, and May 2020.**
3. **Assignment and Release.** Subject to the Landlord's receipt of all Rent due for the month of June by no later than June 1, 2020, the Parties agree to and the Landlord consents to the assignment of the Lease to the Tenant/Assignee, NUSTART, LTD. d/b/a Viva la Playa and Landlord releases Tenant/Assignor (including George Hart) from the Lease. If the Landlord fails to receive all Rent due for the month of June by June 1, 2020, this Second Amendment shall be deemed null and void and the Tenant/Assignor (including George Hart) shall remain liable for all Tenant obligations under the Lease.

4. **Waiver of Right of Termination and Assignment Payment.** Sections 6.1 of the Lease authorizes the Landlord to terminate the Lease upon notice of a requested assignment and Section 6.2 requires the Tenant/Assignor to pay the Landlord any amount received from Tenant/Assignee for the assignment of the Lease in excess of the Rent then being paid by the Tenant/Assignor to the Landlord. Solely for the purposes of this Second Amendment, the Landlord waives its right of termination under Section 6.1 of the Lease and waives its right to any payment that may be due from the Tenant/Assignor under Section 6.2.
5. **Amended Sections.** The following specific amendments are made to the Lease (with the Tenant/Assignee recognized as the "Tenant"):
- a. **Landlord.** Subsection 1.1 is deleted and amended in full to reflect the new name of the Landlord as, "CITY OF LAKE WORTH BEACH, a municipal corporation under the laws of the State of Florida."
 - b. **Tenant.** Subsection 1.2 is deleted and amended in full to reflect the new name of the Tenant as, "NUSTART, LTD."
 - c. **Tenant's Trade Name.** Subsection 1.3 is deleted and amended in full to reflect the new trade name (fictitious name) of Tenant as, "Viva la Playa".
 - d. **Permitted Use of the Premises.** Subsection 1.8 is deleted and amended in full to reflect the new permitted use as, "Tenant is leasing the subject property for use as a Mexican-themed Family Restaurant and Bar for on and off-premises consumption, and for no other purpose whatsoever. Restaurant shall be allowed to have a full service bar during all hours of operation serving beer, wine, spirits, and other alcoholic beverages with its SRX or COP license."
 - e. **Commencement Date.** Subsection 1.9, is deleted and amended in full to reflect the Commencement Date as, "The Commencement Date is the Effective Date of the Second Amendment to this Lease."
 - f. **Rental Concessions.** Subsection 1.10, is deleted and amended in full to reflect the Rental Concessions as, "Tenant shall not pay Rent during Tenant's renovation period with the maximum renovation period ending September 30, 2020 ("Free Rent Period"). If Tenant opens for business prior to September 30, 2020, Tenant shall start paying Rent, on a pro rata basis as of the date of opening."
 - g. **Rent Commencement Date.** Subsection 1.12 is deleted and amended in full to reflect the Rent Commencement Date as, "Except for the Rent to be paid as set forth in the Second Amendment for June 2020, all Rent shall be due from Tenant upon the earlier of the expiration of the Free Rent Period or when Tenant opens for business."
 - h. **Lease Term.** Subsection 1.13 is deleted and amended in full to reflect the Lease Term as, "A term commencing on the Rent Commencement Date and continuing for one hundred and twenty (120) months (plus any partial calendar month in which the Rent Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Rent Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall commence on the first day of the calendar month immediately following the Rent Commencement Date and the pro rata portion of the Rent shall be paid by the Tenant for the partial month. Following the initial one hundred and twenty (120) month base term, two (2) options for renewal are provided for five (5) years each. After the first sixty (60) months of the initial base term of one hundred and twenty



(120) months (plus any partial calendar month in which the Rent Commencement Date falls), Tenant shall have the right to terminate the Lease upon 12 months written notice to Landlord.”

- i. **Renewal Option Rates.** Subsection 1.14 is deleted and amended in full to reflect the Renewal Option Rates as, “Both five (5) year renewal options shall be based on a Base Rent increase of 3.5% per year.”
- j. **Base Rent.** Subsection 1.15 is deleted and amended in full to reflect the Base Rent as set forth in Exhibit “1”, which is attached hereto and incorporated herein. Base Rent as shown in Exhibit “1” does not include applicable tax which Tenant must pay to Landlord.
- k. **Security Deposit.** Subsection 1.17 is deleted and amended in full to reflect the Security Deposit as, “The Security Deposit shall be due within thirty (30) days after the execution of this Second Amendment to the Lease. **The Security Deposit shall cover the first two months of Base Rent and shall be in the amount of \$31,820.22.** The Security Deposit may be provided in the form of a Letter of Credit generally in the form attached to the Lease, Exhibit “L”. The Security Deposit or Letter of Credit shall be kept in force and effect for the first sixty (60) months of the initial one hundred and twenty (120) month base term. If the Tenant timely pays all Rent due under the Lease, the Landlord shall return the Security Deposit or Letter of Credit and no further Security Deposit shall be required of Tenant for the remainder of the Lease.”
- l. **First Month’s Rent.** Subsection 1.18 is deleted and amended in full to reflect the First Month’s Rent as, “\$26,420.78 to be paid to the Landlord upon the Rent Commencement Date by Tenant.

Base Rent:	\$15,910.11
CAM:	\$ 5,314.50
Patio Rental:	\$ 2,753.95
Employee Parking:	\$ 760.00
Tax:	\$ 1,682.22
Total:	\$26,420.78

- m. **Tenant’s Notice Address.** Subsection 1.19 is deleted and amended in full to reflect the Tenant’s Notice Address as, “NUSTART, LTD, Attn: Lee Lipton, Manager, 10 S. Ocean Blvd., Lake Worth Beach, FL 33460.”
- n. **Landlord’s Notice Address.** Subsection 1.20 is deleted and amended in full to reflect Landlord’s Notice Address as, “c/o City Manager, City of Lake Worth Beach, 7 N, Dixie Highway, Lake Worth Beach, FL 33460.”
- o. **Landlord and Tenant Broker.** Subsections 1.21 and 1.22 and Section 24 are deleted as the Parties have not utilized a broker for this Second Amendment.
- p. **Guarantor.** Subsection 1.23 and Exhibit “C” are deleted as the Tenant will be providing a security deposit as set forth above.
- q. **Rent.** Section 4 regarding the Rent is amended by adding the following Subsections:

“4.1 **COVID-19 Deferral.** If on the Rent Commencement Date, and each month thereafter until **no later than December 31, 2020 (midnight)**, Tenant is limited in its ability to utilize its existing indoor occupancy due to COVID-19 based restrictions mandated by a

governmental entity, the Landlord agrees to abate and defer Tenant's Base Rent as follows: 50 percent of all Base Rent will be abated ("Abated Rent") and 50 percent of all Base Rent will be deferred ("Deferred Rent"). The Abated Rent amount shall not be paid by Tenant and not collected by Landlord. Tenant shall have one (1) year from the Date of Reopening (as defined below) to pay the Deferred Rent to Landlord. If Tenant fails to pay the Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Deferred Rent plus interest, as immediately due and payable. Failure to pay the Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments.

4.2 If on **January 1, 2021 until no later than March 31, 2021 (midnight)**, Tenant is limited in its ability to utilize its existing indoor occupancy due to COVID-19 based restrictions mandated by a governmental entity, the Landlord agrees to defer the Tenant's Base Rent consistent with the restrictions in place on the Tenant's indoor occupancy (the "Additional Deferred Rent"). By way of example only, if on January 1, 2021, Tenant is limited to only utilizing 25 percent of its indoor occupancy due to COVID-19 restrictions mandated by a governmental entity, 75 percent of Tenant's Base Rent shall be deferred and Tenant shall be required to pay the Landlord 25 percent of its Base Rent. Tenant shall have one (1) year from the Date of Reopening (as defined below) to re-pay the Additional Deferred Rent. If Tenant fails to pay the Additional Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Additional Deferred Rent plus interest, immediately due and payable. Failure to pay the Additional Deferred Rent shall also be considered a Monetary Default under section 8 of the Lease. The Additional Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments.

4.3 As of the Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without any abatement or deferral.

4.4 For Subsections 4.1, 4.2 and 4.3 above, the "Date of Reopening" is defined as the earlier of the following dates: (1) the date that all governmental restrictions related to COVID-19 are released and Tenant is allowed to utilize 100 percent of its indoor occupancy; or, (2) **April 1, 2021.**"

- r. **Common Area Maintenance Costs (CAM).** Subsection 5.3 is amended by deletion of the second to last sentence of Subsection 5.3; specifically, the following sentence is deleted, "CAM shall not exceed \$7 per square foot for the first year".
- s. **Insurance.** Subsection 7.1, regarding the Tenant's insurance is amended for commercial general liability insurance, including contractual liability, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form by deleting the combined single limits "of \$3 million per occurrence" and adding in a combined single limits "of \$1 million per occurrence / \$2 million aggregate". No other changes to the Tenant's insurance requirements shall be made. Within thirty (30) days of the Commencement Date, the Tenant shall provide the Landlord with certificates of insurance as required in the Lease.

- t. **Grease Traps.** Subsection 15.6 is deleted and amended in full to clarify the current operation of Grease Traps at the Project: "Landlord and/or a prior tenant has installed grease trap and other equipment necessary to maintain the Tenant's restaurant in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project; however, if such discharge occurs, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which may be assessed against Landlord or Landlord may incur. Tenant shall contract with a licensed and qualified vendor for the regular maintenance and pumping of the grease trap and proper disposal of the same. Tenant shall provide a copy of the grease trap contract to the Landlord upon the Rent Commencement Date. In the event Tenant fails to have the grease trap regularly and properly maintained and/or pumped, the Landlord shall be entitled to utilize Tenant's contracted vendor (or another vendor of Landlord's choice) to timely and properly maintain and/or pump the grease trap. Tenant shall be responsible for all costs incurred for the maintenance and pumping of the grease trap. Tenant shall also be responsible for all costs and expense to repair the grease trap if the grease trap is damaged by the negligence of the Tenant, its employees, or its contracted vendor."
- u. **Impossibility of Performance.** Under Section 28 of the Lease, payment of Rent is not excused in the event of an "Unavoidable Delay" as defined therein. In light of COVID-19 restrictions and impacts on the Tenant, the Landlord and Tenant agree to add the following provision under Section 28:

"Notwithstanding the foregoing, if on April 1, 2021 or thereafter, governmental restrictions are imposed due to an infectious disease which restrictions limit the Tenant's use of its existing indoor occupancy, Tenant's payment of Base Rent shall be deferred consistent with the extent that the governmental regulations restrict Tenant's existing indoor occupancy ("I.D. Deferred Rent"). By way of example only, if governmental restrictions due to an infectious disease limits Tenant's existing indoor occupancy to 25 percent of Tenant's existing indoor occupancy, 75 percent of Tenant's Base Rent shall be deferred until the I.D. Date of Reopening (as defined below) and Tenant shall be required to pay the Landlord 25 percent of its Base Rent. During the period of time in which Tenant's Base Rent is deferred under this provision, Tenant shall not be entitled to any abatement of the Rent under this Lease or otherwise. Tenant shall have one (1) year from the I.D. Date of Reopening (as defined below) to pay the I.D. Deferred Rent to the Landlord. If Tenant fails to pay the I.D. Deferred Rent within one (1) year from the I.D. Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the I.D. Deferred Rent plus interest, as immediately due and payable. Failure to pay the I.D. Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The I.D. Deferred Rent shall accrue interest from the I.D. Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments. As of the I.D. Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without abatement or deferral under any provision of the Lease or otherwise. For this provision regarding I.D. Deferred Rent, the "I.D. Date of Reopening" is defined as the earlier of the following dates: (1) the date that all governmental restrictions on Tenant's indoor capacity related to the infectious disease are released; or, (2) one year from the date the governmental restrictions were put in place (even if governmental restrictions are still in place). If new governmental restrictions are mandated during the one (1) year of Tenant's repayment of the I.D. Deferred Rent due to a new infectious disease, the Tenant's

repayment of the I.D. Deferred Rent shall not be abated or deferred. However, this provision will apply to the new infectious disease and will allow for the deferral of the Tenant's Base Rent then accruing consistent with the extent of the new mandated governmental restrictions on Tenant's indoor occupancy."

- v. **Financial Reporting.** Section 29 is amended to remove the reference to "Mulligans" and insert "Tenant's".
 - w. **Exhibit "E", Tenant Improvements.** Exhibit "E", entitled, "Tenant Improvements" is amended as follows:
 - i. The Landlord's Work provision in subsection 1 is deleted in full.
 - ii. The Tenant's Work in Subsection 2 is amended by replacing the first two full sentences as follows: "Tenant shall, but is not required to, at its sole cost and expense, perform all work necessary or desirable for Tenant's occupancy of the Premises (the "Tenant's Work or Improvements"). **Within thirty (30) days of the Commencement Date**, Tenant shall furnish to Landlord, for Landlord's written approval, two complete permit sets (final construction drawings) of plans and specifications for the Tenant's Work (the "Plans")."
 - iii. The Tenant Delays provision in Subsection 4 is deleted in full.
 - iv. The Changes provision in Subsection 5 is deleted in full.
 - v. Exhibit "E-1" regarding the Landlord's Work Schedule is deleted in full.
 - x. **Exhibit "K", Prohibited/Restricted Uses.** Exhibit "K", entitled "Prohibited/Restricted Uses" is amended to add the following: "Other Restricted Uses: The Tenant is prohibited from selling pizza. The Tenant is encouraged to be mindful of the other Project tenants and the products they sell so as not to unnecessarily compete with the other tenants."
 - y. **Exhibit "H", Special Requirements.** Exhibit "H", entitled "Special Requirements" is amended to remove all references to "Mulligans" and insert "Tenant".
 - z. **Lease and all Exhibits.** Except as otherwise specifically addressed in this Second Amendment, throughout the Lease and all Exhibits, the reference to "Mulligans" is deleted and "Tenant" is inserted.
6. **Right of First Refusal.** Tenant/Assignee has expressed an interest in the vacant commercial space of approximately 5,000 sq. ft. directly above the Premises in the Building (the "Vacant Space"). In consideration of this Second Amendment and the Landlord and Tenant/Assignee existing relationship, the Landlord grants the Tenant/Assignee a six (6) month right of first refusal to expand into or otherwise use the Vacant Space. The six (6) month right of first refusal shall run from the Rent Commencement Date and expire six (6) months thereafter. If the Landlord receives an offer from a third party to use the Vacant Space during the pendency of said six (6) months, Landlord shall provide notice of the offer to Tenant/Assignee and Tenant/Assignee shall have fifteen (15) days to activate its right of first refusal or decline. If the Tenant/Assignee fails to respond to the Landlord's notice, it will be assumed that Tenant/Assignee declined to activate its right of first refusal. If Tenant/Assignee seeks to activate its right of first refusal during the aforementioned six (6) months or upon notice of a third party offer from the Landlord, this Lease shall be amended to include the Vacant Space as part of Tenant/Assignee's total square footage at the then applicable rate for all Rent under this Lease including all applicable tax. Tenant/Assignee and Landlord may further negotiate additional terms and conditions for the Tenant/Assignee's assumption of the Vacant Space.

7. **Agreement Unchanged.** Except as amended herein, all other provisions of the Lease shall remain in full force and effect.
8. **Controlling Documents.** To the extent that there exists a conflict between this Second Amendment and the Lease, the terms and conditions of this Second Amendment shall prevail. Whenever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between the provisions of the various documents.
9. **Entire Agreement.** The Parties agree that the Lease (as amended) and this Second Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
10. **Counterparts.** Each party may sign one copy of this Second Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Second Amendment.
11. **Effective Date.** This Second Amendment shall not be binding upon the Parties until approved by Tenant/Assignor, Tenant/Assignee and the City Commission of the City of Lake Worth Beach. The Effective Date of this Second Amendment shall be the date this Second Amendment is approved and fully executed by the Landlord.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to the Lease (with Mulligan's Lake Worth Acquisition, LLC) to be executed by their duly authorized representatives on the date(s) set forth below.

CITY OF LAKE WORTH BEACH, FLORIDA

Witness:

By: _____
 Print Name: _____

By: _____
 Pam Triolo, Mayor

ATTEST:

Date: _____

 Deborah M. Andrea, CMC, City Clerk

APPROVED AS TO FORM AND
 LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
 SUFFICIENCY

By: _____
 Glen J. Torcivia, City Attorney

By: _____
 Bruce T. Miller, Financial Services Director

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR TENANT/ASSIGNOR AND TENANT/ASSIGNEE FOLLOWS



Witnesses:

By: Mary Hart
Print Name: MARY HART

By: Ann Ferguson
Print Name: Ann Ferguson

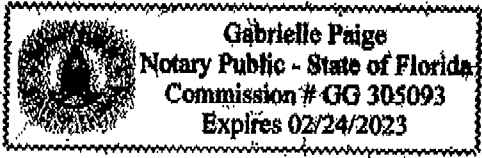
TENANT/ASSIGNOR:
MULLIGANS LAKE WORTH ACQUISITION,
LLC

By: George Hart
George Hart,
Managing Member

[Corporate Seal]

STATE OF FLORIDA)
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 29 day of May, 2020, by George Hart as the owner (title) of _____, and who is personally known to me or who has produced the following FL DL as identification.



Notary Public
Gabrielle Paige
Print name: Gabrielle Paige
My commission expires: 02/24/2023

Witnesses:

By: Joel P. Koepfel
Print Name: JOEL P. KOEPFEL

By: Lisa J. Sandoval
Print Name: Lisa J. Sandoval

TENANT/ASSIGNEE:
NUSTART, LTD. d/b/a Viva la Playa

By: NUSTART, LLC
By: Lee Lipton
Lee Lipton,
Manager

[Corporate Seal]

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 29th day of May, 2020, by Lee Lipton, as the Manager of NUSTART, LLC, a Florida limited liability company, General Partner of NUSTART, LTD., a Florida limited partnership, who is personally known to me or who has produced the following _____ as identification.



LISA J. SANDOVAL
Commission # GG 335011
Expires May 19, 2023
Bonded thru Budget Notary Services

Notary Public
Lisa J. Sandoval
Print name: Lisa J. Sandoval
My commission expires: May 19, 2023

EXHIBIT "1"
Section 1.15 Base Rent

<u>Period</u>	<u>Rate P/S/F Per Annum</u>	<u>Monthly Base Rent</u>	<u>Period Base Rent</u>
1 st year	\$38.169	\$15,910.11	\$190,921.34
2 nd year	\$39.505	\$16,467.00	\$197,604.01
3 rd year	\$40.887	\$17,043.06	\$204,516.77
4 th year	\$42.318	\$17,639.55	\$211,674.63
5 th year	\$43.799	\$18,256.88	\$219,082.59
6 th year	\$45.330	\$18,895.06	\$226,740.66
7 th year	\$46.917	\$19,556.57	\$234,678.83
8 th year	\$48.559	\$20,241.01	\$242,892.11
9 th year	\$50.259	\$20,949.63	\$251,395.51
10 th year	\$52.018	\$21,682.84	\$260,194.03

