

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO THE LEASE ("Amendment" hereinafter) is made this 5 day of ^{July} ~~July~~, 2015 between the **City of Lake Worth**, Florida, a municipal corporation ("Landlord" hereinafter), with its principal office located at 7 North Dixie Highway, Lake Worth, Florida 33460, and, **RTT-BENNY'S ON THE BEACH, INC.**, a corporation authorized to do business in the State of Florida, ("Tenant" hereinafter).

RECITALS

WHEREAS, on February 11, 2014, the Landlord entered a Lease with the Tenant for premises located on the City of Lake Worth Municipal Pier for use by the Tenant as a restaurant with incidental retail sales and a bait shop (the "Lease" hereinafter);

WHEREAS, the Tenant approached the Landlord about using an extra 400 square feet of space adjacent to and west of the Lease premises for additional food and beverage services ("Patio Area" hereinafter);

WHEREAS, the Landlord and Tenant have negotiated a price of \$15 per square foot as the annual payment to the Landlord for the Patio Area, which is to be made in monthly installments of \$500 per month to the Landlord;

WHEREAS, the Tenant has been using the Patio Area since March 1, 2015 and agrees to pay the Landlord \$2000 in recognition of such use through July 1, 2015;

WHEREAS, the Landlord and Tenant desire to amend the Lease to provide terms and conditions for the Tenant's use of the Patio Area.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the Landlord and Tenant agree to amend the Lease as follows:

1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Amendment as true and correct statements.

2: AMENDMENT TO LEASE. A new paragraph 4.5 is added to the Lease as follows:

4.5 PATIO. So long as the federal, state, and local laws, codes, zoning restrictions, ordinances, regulations, and safety requirements permit, Landlord agrees that Tenant shall have a revocable license to use the area adjacent to and immediately outside of the Premises, as described on Exhibit "A" attached hereto and incorporated herein ("Patio Area" hereinafter); provided that, Tenant complies at all times with the following license requirements for the Patio Area:

- 4.5.1 Tenant's use of the Patio Area shall comply with all laws, codes, zoning restrictions, ordinances, regulations, safety requirements, approvals, permits and licenses relating thereto.
- 4.5.2 Tenant shall obtain at its sole cost and expense all necessary approvals, permits, and licenses in connection with use of the Patio Area (with copies furnished to Landlord) and keep the same in full force and effect during Tenant's use of the Patio Area; provided that, Tenant's failure to obtain such approvals, permits and licenses shall not be deemed to be a contingency of the effectiveness of the Lease or entitle Tenant to terminate the Lease.
- 4.5.3 Tenant shall install, at its sole cost and expense, all furniture and equipment (collectively, "Furniture") it deems desirable for its use in the Patio Area and Tenant shall be solely responsible for any destruction, damage, theft, or vandalism of, or to, the Furniture. If at any time the Furniture is damaged or is in need of repair or replacement, Tenant shall promptly repair or replace the same and maintain all Furniture to present a clean and functioning appearance.
- 4.5.4 Tenant hereby covenants and agrees that it shall not: (i) restrict access to the Premises or pedestrian flow through the areas outside the Patio Area; (ii) erect or place any canopy or other enclosure or covering on the Patio Area without Landlord's prior written approval; (iii) permit any music or other similar sounds to be played in the Patio Area without Landlord's prior written approval; or (iv) permit loitering in the Patio Area by persons who are not customers of Tenant.
- 4.5.5 Tenant shall clean and keep in good repair the Patio Area and shall remove all trash generated therefrom on a daily basis or more frequently as needed. If Tenant fails to clean or keep the Patio Area in good repair, or remove trash therefrom as required by this section, then in addition to and not in lieu of any other remedy to which Landlord may be entitled, Landlord shall have the right but not the obligation, upon 24 hours' prior written notice to Tenant, to clean and/or repair the Patio Area, or remove the trash on Tenant's behalf; and Tenant shall pay Landlord 125 percent of Landlord's cleaning, repair, or trash removal costs (including any overtime costs) immediately upon Landlord's demand therefore.
- 4.5.6 Tenant shall reimburse Landlord immediately upon Landlord's demand therefore, the cost of repairs or restoration of the common areas arising out of Tenant's use of the Patio Area or acts or

negligence of Tenant, its customers, employees, agents, contractors, invitees, or licensees.

- 4.5.7 Tenant agrees to pay the Landlord \$15.00 per square foot per annum for use of the Patio Area which shall be added to the Lease Rent and subject to all escalation clauses contained in this Lease document including lease renewal options ("Patio Area Rent"). The Tenant's payment of the Patio Area Rent shall be made in equal monthly installments (initially at the rate of \$500 per month) commencing July 1, 2015. The Patio Area Rent shall be paid at the same time and in the same manner as the Tenant's Rent is paid under the Lease. If Tenant terminates its use of the Patio Area or the City revokes the license to use the Patio Area, the Patio Area Rent will be terminated as of the effective date of said termination or revocation (with the amount prorated on a daily basis). Tenant shall also pay any and all taxes and assessments related to or arising out of Tenant's use of the Patio Area.
- 4.5.8 Tenant will cooperate with the Landlord and reasonably accommodate the Landlord's request to conduct special events in the Patio Area; provided that, the Landlord will use the food and beverage services of the Tenant for such special events.
- 4.5.9 Tenant's right granted herein to use the Patio Area is neither transferable nor assignable independently from its leasehold interest.
- 4.5.10 Landlord shall have no liability to Tenant if it is unable to use the Patio Area for any reason; provided that if Tenant is unable to use the Patio Area due to Landlord's negligence or wrongful acts or the failure of any governmental agency to issue required licenses or permits necessary to use the Patio Area as provided for in this Lease Amendment, the Patio Area Rent shall be abated for that period of time that Tenant is unable to use the Patio Area. Tenant must notify Landlord within five (5) business days of being unable to use the Patio Area, or the Tenant waives the right to have the Patio Area Rent abated.
- 4.5.11 Landlord shall be entitled, for reasonable cause, to revoke Tenant's license to use the Patio Area, upon 30 days' prior written notice to Tenant ("Revocation Notice") setting forth the reason for the revocation ("Defect") and providing Tenant with the right to cure the Defect within thirty (30) days of its receipt of the Revocation Notice ("Cure Period"). In the event Tenant has not cured the Defect within the Cure Period, or if the Defect is such that it cannot be reasonably cured within the Cure Period, if Tenant has not commenced the correction of the Defect within the Cure Period and diligently pursued its resolution, then in that event Landlord may remove Tenant therefrom; and, prior to the revocation

of such license, Tenant, at its sole cost and expense, shall remove its Furniture from the Patio Area and restore the Patio Area to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove Tenant's Furniture and restore the Patio Area, and Tenant shall pay the cost of such removal and restoration to Landlord, upon demand. Notwithstanding anything to the contrary in this Lease, Landlord, in its sole and absolute discretion, shall be entitled to revoke Tenant's license to use the Patio Area upon 180 days' prior written notice to Tenant.

- 4.5.12 Tenant shall be entitled, in its sole and absolute discretion, to terminate its use of the Patio Area, upon 30 days' prior written notice to Landlord; and, prior to the termination of such use, Tenant, at its sole cost and expense, shall remove its Furniture from the Patio Area and restore the Patio Area to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove Tenant's Furniture and restore the Patio Area, and Tenant shall pay the cost of such removal and restoration to Landlord, upon demand.
- 4.5.13 Should Landlord require the use of any portion of the Patio Area in connection with special events at the Premises or Beach; operation or maintenance of the Premises or Beach; or, for any other purpose or use, Tenant shall remove its Furniture and other personal property from the Patio Area for such periods of time as Landlord shall designate in order to accommodate such uses. Such Landlord use shall be limited to no more than five (5) times per calendar year.
- 4.5.14 To the fullest extent permitted by laws, Tenant shall indemnify, defend, save and hold harmless, Landlord, its officers, agents and employees from any and all claims, damages, losses, liabilities and expenses, pertaining to or arising out of the City's License of the Patio Area to Tenant and/or Tenant's use of the Patio Area by the Tenant, any of its contractors, agents, officers, employees, invitees or guests. Tenant shall pay all losses, claims, liens, settlements, or judgments of any nature whatsoever in connection with the foregoing indemnification, including but not limited to, reasonable attorney's fees (including at all levels of trial and appeals). All costs and attorney's fees associated with any such defense shall be the responsibility of the Tenant. Nothing contained herein is intended nor shall it be construed to waive the Landlord's rights and immunities under the common law or Florida Statute 768.28, as amended from time to time.

The Tenant's obligation to defend the Landlord in the defense and trial of any claim and related settlement negotiations, shall be triggered by the Landlord's notice of claim to Tenant. Tenant's inability to evaluate liability or its evaluation of liability, shall not excuse the Tenant's duty to defend within 7 days after such notice is given by the Landlord. Only an adjudication or judgment after the highest appeal is exhausted, specifically finding the Landlord solely negligent, shall excuse performance of this provision by Tenant and Tenant shall pay all costs and attorney's fees related to this obligation and its enforcement by the Landlord. The Landlord's failure to notify the Tenant of a claim shall not release the Tenant from the above duty to indemnify.

- 4.5.15 The parties hereto agree that the Landlord's right to terminate the license to use the Patio Area as stated herein is absolute and shall not result in any inequity to Tenant because of any Furniture purchased and used in the Patio Area or any authorized improvements by Tenant to the Patio Area. Accordingly, the license to use the Patio Area shall not be construed as an irrevocable license or a license coupled with an interest because of said Furniture or improvements.
- 4.5.16 The Tenant acknowledges that the Landlord and the public will be irreparably damaged if the terms and conditions of the license to use the Patio Area are not adhered to and specifically enforced. Therefore, in the event of a violation or threatened violation by the Tenant of the terms and conditions stated herein for the Patio Area, then the Landlord shall be entitled to all the rights and remedies, including but not limited to injunctive relief, restraining such violation without being required to show any actual damage, irreparable harm, or to post any bond or other security.
- 4.5.17 Nothing contained herein, whether express or implied, is intended to confer any rights or remedies under or by reason of this license on any persons other than the parties hereto and their respective administrators and legal representatives, nor is anything in this license intended to relieve or discharge the obligation or liability of any third person to any party to this license nor shall any provision give any third persons any right of subrogation or action over or against any party to this license.
- 4.5.18 Tenant shall ensure that all Furniture (in whole or in part) remains inside the Patio Area. Failure to keep all Furniture inside the Patio Area may result in the City immediately requiring Tenant to remove the Furniture; define the Patio Area with paint and/or other border; and/or, revoke Tenant's license to use the Patio Area.

4.5.19 Tenant shall extend its Commercial General Liability insurance (as required under the Lease) to the Patio Area and maintain the same at all times while the Tenant uses the Patio Area. Tenant shall provide proof of the extended insurance to the Landlord upon the execution of this Amendment.

4.5.20 For purposes of the rights and obligations of the parties under the Lease, the Patio Area shall be considered part of the Premises; however the provisions herein related to the license to use the Patio Area shall supersede any conflict provisions in the Lease regarding the Premises.

3: PAYMENT OF EARLIER PATIO AREA RENT. The Tenant agrees to pay the Landlord \$2,000 upon the execution of this Amendment as Patio Area Rent for the Tenant's use of the Patio Area from March 1, 2015 to June 30, 2015.

4: ENTIRETY OF AGREEMENT. The Landlord and Tenant agree that the Lease including this Amendment set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. Except as may be provided for in the Lease, none of the provisions, terms and conditions contained in the Lease including this Amendment may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

5: LEGAL EFFECT. This Amendment shall not become binding and effective until approved by the City Commission.

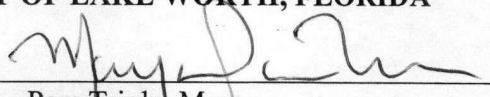
6: COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Amendment.

7: AMENDMENT. Except as stated herein, all other terms and conditions of the Lease shall remain in full force and effect.

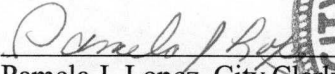
(SIGNATURE PAGES FOLLOW)

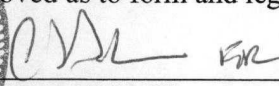
IN WITNESS WHEREOF the parties hereto have made and executed this First Amendment to the Lease on the day and year first above written.

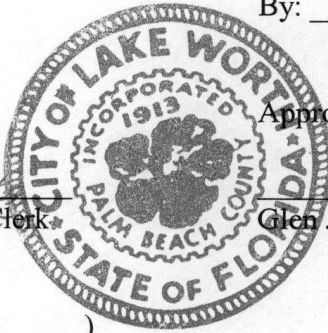
CITY OF LAKE WORTH, FLORIDA

By: 
Pam Triolo, Mayor

ATTEST:

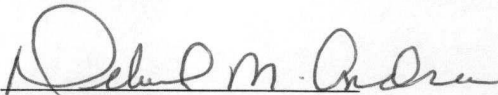

Pamela J. Lopez, City Clerk

Approved as to form and legal sufficiency:

Glen J. Torcivia, City Attorney



STATE OF FLORIDA)
COUNTY OF PALM BEACH)

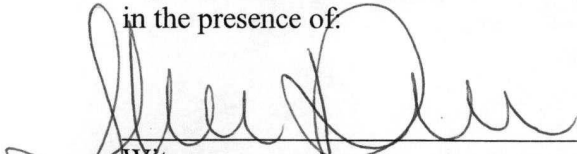
The foregoing instrument was acknowledged before me this 5th day of July, 2015, by Pam Triolo, Mayor, and Pam Lopez, City Clerk, on behalf of the City of Lake Worth, and who are personally known to me.


NOTARY PUBLIC

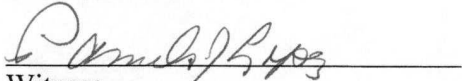


(SIGNATURE PAGE FOLLOWS)

Signed, sealed and delivered
in the presence of.

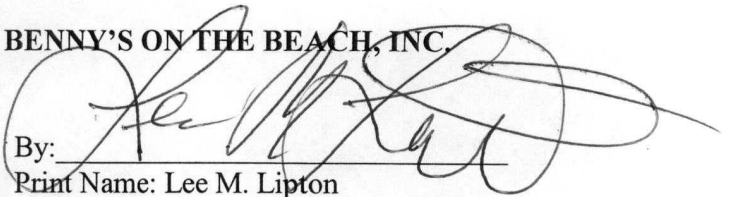


Witness
Shanovia Denwiddie
(print name of witness)



Witness
Pamela J. Lopez
(print name of witness)

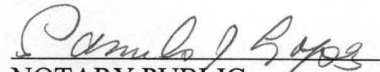
RTT- BENNY'S ON THE BEACH, INC.

By: 

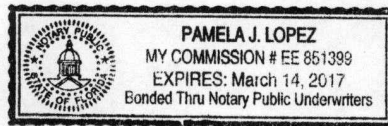
Print Name: Lee M. Lipton
Title: President

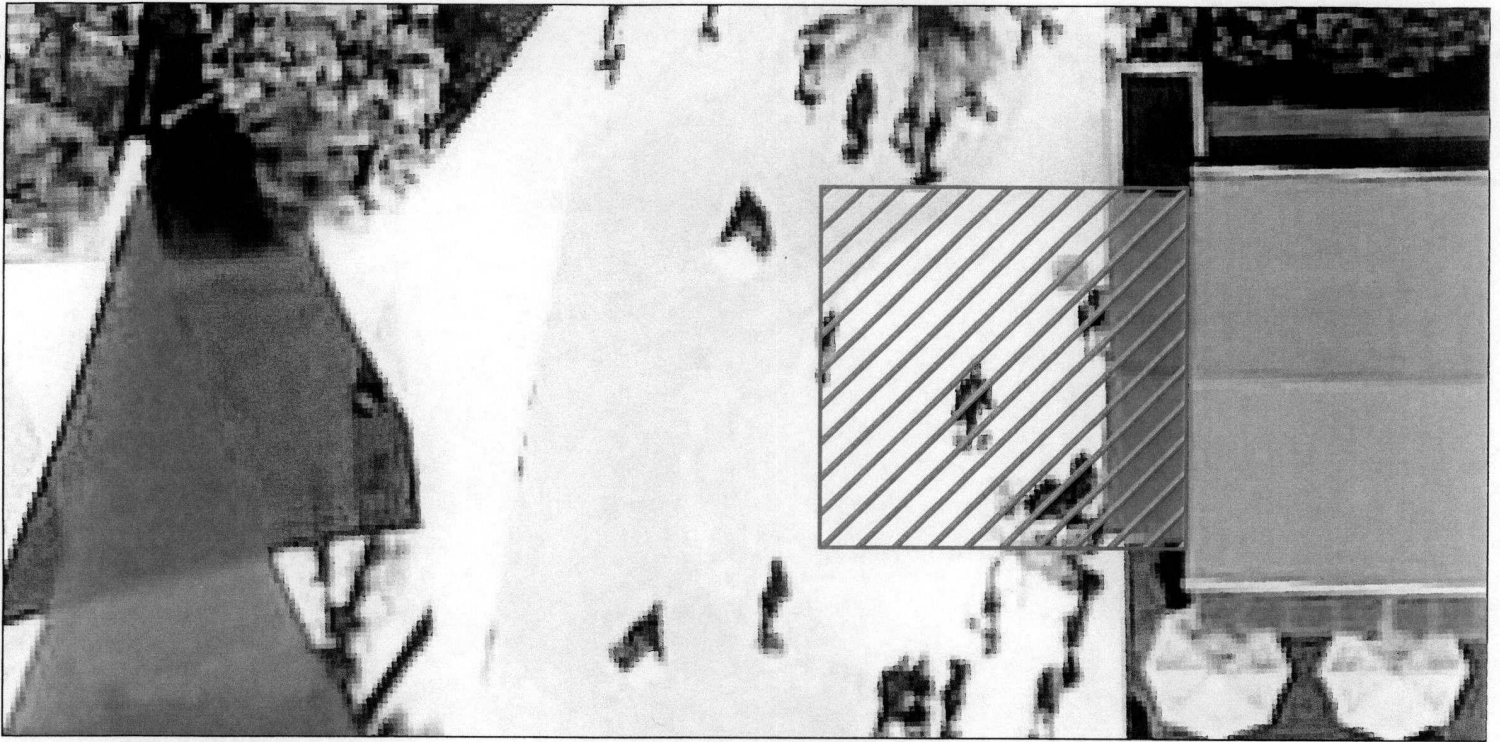
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 23 day of July, 2015, by Lee M. Lipton, as President of **RTT- BENNY'S ON THE BEACH, INC.**, a Florida corporation, on behalf of said company, who () is personally known to me or () produced _____ as identification.



NOTARY PUBLIC





Benny's Patio Area 20' x 20'



PREPARED BY
MICHAEL ELEVINS
THE CITY OF LAKE WORTH
COMMUNITY SUSTAINABILITY
DEPARTMENT
1960 S.W. 47th St.
LAKE WORTH, FL 33463
305.946.3100
Updated 03.26.2010



Exhibit A