

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO THE LEASE (“Second Amendment” hereinafter) is made this 19th day of May, 2020, between the **City of Lake Worth Beach**, Florida, a municipal corporation (the “Landlord”), and **RTT-Benny’s on the Beach, Inc.**, a Florida corporation (the “Tenant”).

RECITALS

WHEREAS, on February 11, 2013, the Landlord and Tenant (collectively, the “Parties”) entered into a Lease for the lease of certain space located at the Lake Worth Municipal Ocean Pier for use by the Tenant as a restaurant with incidental pier management, retail sales and a bait shop (the “Lease”); and,

WHEREAS, the Landlord and Tenant entered into the First Amendment to the Lease on August 5, 2015, which addressed the use of the additional outdoor patio area by the Tenant; and,

WHEREAS, the Landlord and Tenant desire to amend the Lease to address changes to the terms and conditions of the Lease associated with the COVID-19 pandemic; and,

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

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

1. **RECITALS.** The foregoing recitals are hereby incorporated into this Second Amendment as true and correct statements of the Parties.
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.
3. **LANDLORD.** Subsection 1.1 of the Lease, entitled “Landlord”, is amended to reflect the new name of the Landlord as follows:

1.1 Landlord. CITY OF LAKE WORTH BEACH, a municipal corporation under the laws of the State of Florida.

4. **RENT ABATEMENT/DEFERRAL.** Subsection 4.4 of the Lease, entitled “Rent”, is amended to include a new sub-subsection, 4.4.1, as follows:

“4.4.1 General. Due to the COVID-19 pandemic, on March 20, 2020, Florida Governor Ron DeSantis issued Executive Order 20-70, which closed indoor premise service by restaurants with seating of more than ten (10) people. This resulted in Tenant having to close the leased premises on March 20, 2020. On May 11, 2020, the Governor through Executive Order 20-120 (based on Executive Order 20-112) authorized the Tenant to re-open indoor premise service so long as the Tenant adopted appropriate social distancing measures and limited Tenant’s indoor occupancy to no more than 25 percent of Tenant’s building occupancy. This Executive Order also allowed Tenant to start serving its outdoor areas (subject to mandatory social distancing between tables and limited to groups of 10 or less people). It is anticipated (but not known) that the Governor will continue to ease the COVID-19 restrictions and allow for further indoor premise service by Tenant. Based on the foregoing, the following amendments are made to this Subsection 4.4:

4.4.1.1 Tenant and Landlord agree that despite the COVID-19 restrictions, Tenant shall pay all March, April and May Rent as due under the Lease without any abatement or deferral of any amounts due as Rent.

4.4.1.2 If on **June 1, 2020 and each month thereafter until November 1, 2020**, there are still governmental COVID-19 pandemic restrictions in place on Tenant's indoor occupancy which restricts the Tenant's existing occupancy level, 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. 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.

4.4.1.3 As of the 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 under subsection 4.4.1.2 above.

4.4.1.4 For subsections 4.4.1.2 and 4.4.1.3 above, the "Date of Reopening" is defined as the earlier of the following dates: (1) the date that all federal, state and local restrictions related to COVID-19 are released; or, (2) **November 1, 2020.**"

5. **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 November 1, 2020 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 the then accruing Base Rent shall be deferred consistent with the extent that the governmental regulations restrict Tenant's existing indoor occupancy ("Additional 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 indoor occupancy, 75 percent of Tenant's then accruing Base Rent shall be deferred until the Date of Reopening (as defined below). 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 Date of Reopening (as defined below) to pay the Additional Deferred Rent to the Landlord. 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, as immediately due and payable. Failure to pay the Additional Deferred Rent shall also be considered a Monetary Default under section 7 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. As of the 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 Additional Deferred Rent, the "Date of Reopening" is defined as the earlier of the following dates: (1) the date that all governmental restrictions 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 Additional Deferred Rent due to a new infectious disease, the Tenant’s repayment of the Additional 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.”

6. **SCRUTINIZED COMPANIES.** A new Section 32.15 is added to the Lease as follows:

32.15 **SCRUTINIZED COMPANIES.**

32.15.1 Tenant certifies that it and any sublessee is not on the Scrutinized Companies that Boycott Israel List and is not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Landlord may immediately terminate this Lease at its sole option if the Tenant or a sublessee is found to have submitted a false certification; or if the Tenant or sublessee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Lease.

32.15.2 The Tenant agrees to observe the above requirements for applicable subleases entered into for performance under the Lease.

32.15.3 The Tenant agrees that the certifications in this section shall be effective and relied upon by the Landlord for the term of the Lease, including any and all renewals.

32.15.4 The Tenant agrees that if it or any of its sublessees’ status changes in regards to any certification herein, the Tenant shall immediately notify the Landlord of the same.

32.15.5 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

7. **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.

8. **ENTIRE AGREEMENT.** This Second Amendment is intended to amend the Lease as specified herein and shall take precedence over the Lease and the First Amendment. All other terms of the Lease, as previously amended by the First Amendment, that are not amended by this Second Amendment shall remain in full force and effect. No other agreements, statement, or promise relating to the subject matter of this Second Amendment and the Lease, as amended by the First Amendment, which are not contained herein or therein shall be valid or binding.

9. **EFFECTIVE DATE.** This Second Amendment shall not be binding upon the parties until approved by the Tenant and the City Commission of the City of Lake Worth Beach, as the Landlord. The Effective Date of this Second Amendment shall be the date this Second Amendment is approved and fully executed by the Landlord.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to the Lease (with RTT-Benny's on the Beach, Inc., as the Tenant) to be executed by their duly authorized representatives on the date(s) set forth below.

LANDLORD: CITY OF LAKE WORTH BEACH, FLORIDA

Witness: [Signature]
By: _____

Print Name: Wanda Maldonado

By: [Signature]
Betty Resch, Mayor

Date: 8/18/21



ATTEST:

Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
Christy Goddeau
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL SUFFICIENCY

By: [Signature]
Bruce Miller
Bruce T. Miller, Financial Services Director

TENANT: RTT-BENNY'S ON THE BEACH, INC.

Witnesses (two):

[Signature]
Signature

LEELA WHARWOOD
Print Name

[Signature]
Signature

Frank Block
Print Name

By: [Signature]
Print Name: LEE LIPTON
Title: president

Date: 7/13/2021

STATE OF FLORIDA)
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me, by means of [] physical presence or [] online notarization, this 13 day of July, 2020, 2021 by LEE LIPTON as the PRESIDENT (title) of RTT-Benny's on the Beach Inc, and who is personally known to me or who has produced the following photo as identification.



Notary Public [Signature]
Print name: LEELA WHARWOOD
My commission expires: 6/1/2023