

THIRD AMENDMENT TO RETAIL LEASE

THIS THIRD AMENDMENT TO RETAIL LEASE (“Third Amendment”) is made effective on the ___ day of _____, 2023, by and between the CITY OF LAKE WORTH BEACH, a Florida Municipal Corporation (“Landlord”) and NUSTART, LTD., a Florida limited partnership DBA Viva la Playa (“Tenant/Assignor”) and RTT-BENNY’S ON THE BEACH, INC., a Florida corporation, DBA Benny’s on the Beach Oceanwalk (“Tenant/Assignee”) (Landlord, Tenant/Assignor and Tenant/Assignee are collectively referred to as the “Parties”).

RECITALS

WHEREAS, on March 19, 2012, the Landlord and the original tenant, Shore Restaurants of Lake Worth, LLC (“Shore Restaurants”) entered a retail lease for Units #7 and #8 at the Lake Worth Beach Municipal Casino Building (“Lease”); and

WHEREAS, on January 21, 2016, the Landlord and Shore Restaurants entered that First Amendment to the Lease allowing the assignment of the Lease to Mulligans Lake Worth Acquisitions, LLC (“Mulligans”); and

WHEREAS, on July 14, 2020, the Landlord and Mulligans entered that Second Amendment to the Lease allowing the assignment of the Lease to NuStart, Ltd. DBA Viva la Playa; and

WHEREAS, the general and all limited partners of NuStart, Ltd. have assigned their interest in NuStart, Ltd. to LL Beach, LLC, the sole shareholder of RTT-Benny’s on the Beach, Inc.; and

WHEREAS, the Tenant/Assignor, contacted the Landlord about an assignment of the Lease from the Tenant/Assignor, NuStart, Ltd., to RTT-Benny’s on the Beach, Inc., the Tenant/Assignee; and

WHEREAS, 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, as previously amended, and this Third 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 Third Amendment as true and correct statements of the Parties and form part of the consideration for this Third Amendment. All material terms as utilized in this Third Amendment are as defined in the Lease.
2. **No Default:** The Parties agree that the Lease remains in full force and effect and that there are no defaults or disagreements with regard to the terms and conditions set forth in the Lease.
3. **Assignment and Release.** The Parties agree to the assignment of the Lease to the Tenant/Assignee, RTT-Benny’s on the Beach, Inc. DBA Benny’s on the Beach Oceanwalk, and Landlord releases Tenant/Assignor from the Lease except as otherwise stated herein.
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 Third 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. **Administrative Fee and Attorneys' Fees.** Section 6.1 requires that the Tenant pay the Landlord an administrative fee of \$1,000.00 plus all reasonable attorneys' fees and actual costs associated with Landlord's consideration of Tenant's transfer request and the review and preparation of all documents associated therewith. Tenant shall pay the City the administrative and attorneys' fees (total amount of \$2,200.00) within five (5) business days of the effective date of this Third Amendment; otherwise, the City may render this Third Amendment null and void, in its sole discretion.
6. **Insurance.** On or before the effective date of this Third Amendment, Tenant shall provide the City with certificates of insurance in accordance with the Lease as previously amended.
7. **Amended Sections.** The following specific amendments are made to the Lease (with the Tenant/Assignee recognized as the "Tenant"):
 - a. **Tenant.** Subsection 1.2 is deleted and amended in full to reflect the new name of the Tenant as, "RTT-Benny's on the Beach, Inc."
 - b. **Tenant's Trade Name.** Subsection 1.3 is deleted and amended in full to reflect the new trade name (fictitious name) of Tenant as, "Benny's on the Beach Oceanwalk."
 - c. **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 an American-themed Family Restaurant and Bar for on and off-premises consumption, and for retail sales and other incidental uses 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."
 - d. **Security Deposit.** The Guarantee previously provided by, Guarantor, Lee M. Lipton, on behalf of the Tenant/Assignor, for the security deposit as set forth in subsection 1.17 shall remain in effect on behalf of the Tenant/Assignee.
 - e. **Tenant's Notice Address.** Subsection 1.19 is deleted and amended in full to reflect the Tenant's Notice Address as, "RTT-Benny's on the Beach, Attn: Lee M. Lipton, President, 10 S. Ocean Blvd., Lake Worth Beach, FL 33460."
8. **Agreement Unchanged.** Except as amended herein, all other provisions of the Lease, as previously amended, shall remain in full force and effect.
9. **Controlling Documents.** To the extent that there exists a conflict between this Third Amendment and the Lease (as previously amended), the terms and conditions of this Third 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.
10. **Entire Agreement.** The Parties agree that the Lease (as previously amended) and this Third Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.

11. *Counterparts.* Each party may sign one copy of this Third Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Third Amendment.
12. *Effective Date.* This Third 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 Third Amendment shall be the date set forth above.

IN WITNESS WHEREOF, the Parties have caused this Third Amendment to the Lease to be executed by their duly authorized representatives on the date set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE FOR TENANT/ASSIGNOR
AND TENANT/ASSIGNEE FOLLOWS.]**

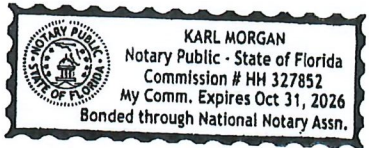
Witnesses:

By: [Signature]
Print Name: Christopher Starling

By: [Signature]
Print Name: Staterina Chizh

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me, by means of [] physical presence or [] online notarization, this 8 day of August, 2023, by LEE M. LIPTON, as the MANAGER of NUSTART, LLC, General Partner of NUSTART, LTD, DBA VIVA LA PLAYA, and who () is personally known to me or who () has produced the following _____ as identification.



TENANT/ASSIGNOR:
NUSTART, LTD. DBA VIVA LA PLAYA
a Florida limited partnership

By: NUSTART, LLC, a Florida limited liability company, its General Partner

By: [Signature]
Lee M. Lipton, Manager

[Corporate Seal]

Notary Public [Signature]
Print name: KARL MORGAN
My commission expires: 10/31/2026

TENANT/ASSIGNEE:
RTT-BENNY'S ON THE BEACH, INC.
DBA BENNY'S ON THE BEACH OCEANWALK

By: [Signature]
Lee M. Lipton, President

[Corporate Seal]

Witnesses:

By: [Signature]
Print Name: Christopher Starling

By: [Signature]
Print Name: Staterina Chizh

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me, by means of [] physical presence or [] online notarization, this 8 day of August, 2023, by LEE M. LIPTON, as the MANAGER of RTT-BENNY'S ON THE BEACH, INC. DBA BENNY'S ON THE BEACH OCEANWALK, a Florida limited liability company and who () is personally known to me or who () who has produced the following _____ as identification.

Notary Public [Signature]
Print name: KARL MORGAN
My commission expires: 10/31/2026

