

## FIFTH AMENDMENT TO RETAIL LEASE

**THIS FIFTH AMENDMENT TO RETAIL LEASE** (“Fifth Amendment”) is made effective on the \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the CITY OF LAKE WORTH BEACH, a Florida Municipal Corporation (“Landlord”) and RTT-BENNY’S ON THE BEACH, INC., a Florida corporation, DBA Benny’s on the Beach Oceanwalk (“Tenant”) (collectively, “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 (“Premises”) (“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**, on October 17, 2023, the Landlord and the Tenant entered into the Third Amendment to Retail Lease for the assignment of the Lease to RTT-Benny’s On the Beach, Inc.; and

**WHEREAS**, on January 24, 2025, the Parties entered into the Fourth Amendment to Retail Lease to consent to and address the sublease of approximately 400 square feet of the Premises to Sushi By Bou Global, LLC, (“Subtenant”); and

**WHEREAS**, the Parties wish to amend the Lease to waive rent during September and October 2025, while the Tenant is undergoing construction at the Premises; 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 Fifth 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 Fifth Amendment as true and correct statements of the Parties and form part of the consideration for this Fifth Amendment. All material terms as utilized in this Fifth 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. **Waiver of Rent.** The Tenant anticipates commencing construction for improvements to the Premises. As long as the construction is actively progressing and the restaurant remains closed for business, the Landlord will waive the rent for a period of up to two (2) months. This waiver is expected to apply to the months of September and October 2025. The City Commission hereby authorizes the City Manager (including any interims) to amend the dates of the waiver based on the timing of the construction and restaurant closure. If the rent is waived and the Landlord discovers that the restaurant was open for business during any part of either month, the Landlord shall be

entitled to a pro rata share of the rent based upon the time the restaurant remained open. The Tenant shall pay this sum upon demand of the Landlord.

4. **Agreement Unchanged.** Except as amended herein, all other provisions of the Lease, as previously amended, shall remain in full force and effect.
5. **Controlling Documents.** To the extent that there exists a conflict between this Fifth Amendment and the Lease (as previously amended), the terms and conditions of this Fifth 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.
6. **Entire Agreement.** The Parties agree that the Lease (as previously amended) and this Fifth Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
7. **Counterparts.** Each party may sign one copy of this Fifth Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Fifth Amendment.
8. **Effective Date.** This Fifth Amendment shall not be binding upon the Parties until approved by Tenant and the City Commission of the City of Lake Worth Beach. The Effective Date of this Fifth Amendment shall be the date set forth above.

**IN WITNESS WHEREOF**, the Parties have caused this Fifth 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, MMC, 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

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

**Witnesses:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Lee M. Lipton, President

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

[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 \_\_\_\_ day of \_\_\_\_\_, 2025, 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 has produced the following \_\_\_\_\_ as identification.

Notary Public

\_\_\_\_\_  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_