

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM406971

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|---|---|-----------------------|--|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | SECURITY INTEREST | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| Taco Keeper, LLC | | 11/30/2016 | Limited Liability Company: NEW YORK |
| RECEIVING PARTY DATA | | | |
| Name: | BankUnited, N.A. | | |
| Street Address: | 14817 Oak Lane | | |
| City: | Miami Lakes | | |
| State/Country: | FLORIDA | | |
| Postal Code: | 33016 | | |
| Entity Type: | National Banking Association: UNITED STATES | | |
| PROPERTY NUMBERS Total: 1 | | | |
| Property Type | Number | Word Mark | |
| Serial Number: | 86769165 | PLAYA BETTY'S | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | 5162226209 | | |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> | | | |
| Phone: | 516-780-0225 | | |
| Email: | f.leung@bhpp.com | | |
| Correspondent Name: | Miriam R. Milgrom, Berkman, Henoch, etc | | |
| Address Line 1: | 100 Garden City Plaza | | |
| Address Line 2: | 3rd Floor | | |
| Address Line 4: | Garden City, NEW YORK 11530 | | |
| NAME OF SUBMITTER: | Miriam R. Milgrom, Esq. | | |
| SIGNATURE: | /Miriam R. Milgrom/ | | |
| DATE SIGNED: | 11/30/2016 | | |
| Total Attachments: 13 | | | |
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TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement") is made as of the 30th day of November, 2016, by **Taco Keeper, LLC**, a New York limited liability, with its principal place of business at 630 Ninth Avenue, Suite 311, New York, New York 10036 ("Obligor") and delivered to **BankUnited, N.A.**, a national association organized under the laws of the United States of America, having an office at 14817 Oak Lane, Miami Lakes, FL 33016 ("Bank").

BACKGROUND

A. Obligor has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

B. Bank has acquired a lien on, security interest in and a license to use the Trademarks and the registration thereof, together with all the goodwill of Obligor associated therewith and represented thereby, as security for the Obligations (as the term "Obligations" is defined in the Continuing General Security Agreement dated of even date hereof by Obligor in favor of Bank ("Security Agreement")), and Bank desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Security Agreement, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, Obligor grants to Bank a lien on and security interest in all of Obligor's present and future right, title and interest in and to the Trademarks, together with all the goodwill of Obligor associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.
2. Obligor hereby covenants and agrees to maintain the Trademarks in full force and effect until all the Obligations are indefeasibly paid and satisfied in full, subject to the provisions of Section 12 hereinbelow.
3. Obligor represents, warrants and covenants to Bank that:
 - (a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;
 - (b) All of the Trademarks (other than application for the registration thereof which have been filed) are registered, valid and enforceable;

(c) Obligor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances including, without limitation, pledges, assignments, licenses (other than to Obligor, Cactus Pear, LLC and Bank hereunder) and covenants by Obligor not to sue third persons;

(d) Obligor has the unqualified right, power and authority to enter into this Agreement and perform its terms;

(e) Obligor has complied with, and will continue for the duration of this Agreement to comply with the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks;

(f) Obligor has no notice of any suits or actions commenced or threatened against it, or notice of claims asserted or threatened against it, with reference to the Trademarks; and

(g) Obligor has used and will continue to use for the duration of this Agreement, consistent standards of quality in services or products leased or sold under the Trademarks and hereby grants to Bank and its employees and agents the right (with no obligation of any kind upon Bank to do so) to visit Obligor's affiliates, franchises or management locations and to inspect the use of the Trademarks and quality control records relating thereto at reasonable times during regular business hours to ensure Obligor's compliance with this paragraph 3(g).

4. Obligor further covenants that:

(a) Until the Obligations are indefeasibly paid and satisfied in full, Obligor will not enter into any agreement, including, without limitation, license agreements or options, which are inconsistent with the obligations under this Agreement, the Obligations under the Security Agreement or which restrict or impair Bank's rights hereunder or under the Security Agreement.

(b) If Obligor acquires rights to any new Trademarks, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the Trademarks. Obligor shall give Bank prompt written notice thereof along with an amended Schedule "A."

(c) With respect to Playa Betty's, Obligor is in the process of filing a Statement of Use with the United States Patent and Trademark Office, therefore, the trademark registration number for "Playa Betty's" is pending. A Statement of Use that meets all legal requirements must be filed before a registration certificate can be issued. Upon receipt of registration certificate, Obligor will provide Bank with the registration number.

5. So long as this Agreement is in effect and so long as Obligor has not received notice from Bank that an Event of Default has occurred (with "Event of Default" having the meaning set forth in the Security Agreement) and that Bank has not elected to exercise its rights hereunder:

(i) Obligor shall continue to have the exclusive right to use the Trademarks; and (ii) Bank shall

have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Obligor agrees not to sell, grant any option, assign or further encumber its rights and interest in the Trademarks to any entity or person other than Bank without the prior written consent of Bank.

7. Anything herein contained to the contrary notwithstanding, if and while an Event of Default exists, Obligor hereby covenants and agrees that Bank, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in the jurisdiction set forth in the Security Agreement, may take such action permitted hereunder, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, while an Event of Default exists, Obligor hereby authorizes and empowers Bank to make, constitute and appoint any officer or agent of Bank as Bank may select, in its exclusive discretion, as Obligor's true and lawful attorney-in-fact, with the power to endorse Obligor's name on all applications, documents, papers and instruments necessary for Bank to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Bank to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute a Trademark Assignment in the form attached hereto as Exhibit 1. Obligor hereby ratifies all that such attorney or agent shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney or agent. This power of attorney shall be irrevocable for the life of this Agreement, the Security Agreement or the other loan documents, and until the Obligations are indefeasibly paid and satisfied in full.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Security Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Bank shall be in addition to any rights and remedies granted to Bank under the Security Agreement. In the event of an inconsistency between this Agreement and Security Agreement, the language of this Agreement shall control.

10. Upon Obligor's performance of the Obligations and after the Obligations are indefeasibly paid and satisfied in full, Bank shall, at Obligor's expense, execute and deliver to Obligor all documents reasonably necessary to terminate Bank's security interest in the Trademarks.

11. Any and all actual out-of-pocket fees, costs and expenses, of whatever kind or nature, including the actual out-of-pocket attorneys' fees and legal expenses incurred by Bank in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, actual out-of-pocket counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Agreement, shall be borne and paid by Obligor on demand by Bank and until so

paid shall be added to the principal amount of Obligor's Obligations to Bank and, if applicable, and so provided in the Security Agreement, shall bear interest at the otherwise applicable rate prescribed in the Security Agreement.

12. Subject to the terms of the Security Agreement, Obligor shall have the duty to prosecute diligently any application and/or registration with respect to the Trademarks pending as of the date of this Agreement or thereafter, until the Obligations are indefeasibly paid and satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of Bank, Obligor shall make federal application on registerable but unregistered Trademarks belonging to Obligor and licensed to Obligor. Any reasonable expenses incurred in connection with such applications shall be borne exclusively by Obligor. Obligor shall not abandon any Trademarks without the prior written consent of Bank, which consent shall not be unreasonably withheld, conditioned or delayed.

13. Obligor shall have the right to bring suit in its own name to enforce the Trademarks, in which event Bank may, if Obligor reasonably deems it necessary, be joined as a nominal party to such suit if Bank shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Obligor shall promptly, upon demand, reimburse and indemnify Bank for all damages, costs and expenses, including actual out-of-pocket attorneys' fees and costs, incurred by Bank in the fulfillment of the provisions of this paragraph.

14. Upon the occurrence of an Event of Default under the Security Agreement, Bank may, without any obligation to do so, complete any obligation of Obligor hereunder, in Obligor's name or in Bank's name, but at the expense of Obligor.

15. No course of dealing between Obligor and Bank, nor any failure to exercise, nor any delay in exercising, on the part of Bank, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Bank's rights and remedies with respect to the Trademarks, whether established hereby or by the Security Agreement, or by any other future agreements between Obligor and Bank or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in conformity with the laws of the jurisdiction set forth in the Security Agreement, without regard to its otherwise applicable principles of conflicts of laws.

19. Obligor agrees to the jurisdiction of the state and federal courts of the jurisdiction set forth in the Security Agreement and to service by certified mail, return receipt requested at the address of Obligor.

20. Obligor (and Bank by its acceptance hereof) hereby waives any and all rights it may have to a jury trial in connection with any litigation, proceeding or counterclaim arising with respect to rights and obligations of the parties hereto or under the other loan documents executed by Obligor or with respect to any claims arising out of any discussions, negotiations or communications involving or related to any proposed renewal extension, amendment, modification, restructure, forbearance, workout, or enforcement of the transactions contemplated by such loan documents.

21. Defined terms not specifically defined herein, shall have the meanings set forth in the Security Agreement.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, under seal, the day and year first above written.

Taco Keeper, LLC

By: 
Name: Simon Oren
Title: Authorized Signatory

Address:
630 Ninth Avenue, Suite 311
New York, New York 10036

Approved and Accepted:

BankUnited, N.A.

By: _____
Name: John S. Wamboldt
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, under seal, the day and year first above written.

Taco Keeper, LLC

By: _____

Name: Simon Oren

Title: Authorized Signatory

Address:

630 Ninth Avenue, Suite 311

New York, New York 10036

Approved and Accepted:

BankUnited, N.A.

By:  _____

Name: John S. Wamboldt

Title: Senior Vice President

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 10th day of November, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared **Simon Oren** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

CHETRAM F. DEOLA
Notary Public, State of New York
No. 010E0196134
Qualified in Orange County
Commission Expires 11/03/2020

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared **John S. Wamboldt** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared **Simon Oren** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

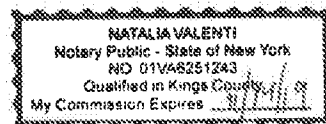
Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 14th day of November, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared **John S. Wamboldt** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Natalia Valenti

Notary Public



Schedule A to Trademark Security Agreement

| <u>TRADEMARK</u> | <u>SERIAL NO.</u> | <u>APPLICATION OR REGISTRATION NO.</u> | <u>COUNTRY</u> | <u>FILING DATE</u> |
|------------------|-------------------|--|----------------|------------------------|
| Playa Betty's | 86769165 | | USA | 09/25/2015 |

Exhibit 1 to Trademark Security Agreement

TRADEMARK ASSIGNMENT

WHEREAS, **Taco Keeper, LLC**, a New York limited liability company ("Obligor"), is the registered owner of the United States trademarks, tradenames and registrations listed on Schedule "A" attached hereto and made a part hereof (the "Trademarks"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, **BankUnited, N.A.**, a national association organized under the laws of the United States of America ("Bank") having an office at 14817 Oak Lane, Miami Lakes, FL 33016, is desirous of acquiring the Trademarks;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Obligor, its successors and assigns, does hereby transfer, assign and set over unto Bank, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed as of the _____ day of _____, 20_____.

TACO KEEPER, LLC

Witness: _____

By: _____

As Attorney-in-fact

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Individual Notary)

My Commission Expires:

SCHEDULE A TO TRADEMARK ASSIGNMENT

| <u>TRADEMARK</u> | <u>SERIAL NO.</u> | <u>APPLICATION OR REGISTRATION NO.</u> | <u>COUNTRY</u> | <u>FILING DATE</u> |
|------------------|-------------------|--|----------------|------------------------|
| Playa Betty's | 86769165 | | USA | 09/25/2015 |

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