# TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM417165

| | |
|---|---|
| **SUBMISSION TYPE:** | NEW ASSIGNMENT |
| **NATURE OF CONVEYANCE:** | SECURITY INTEREST |

**CONVEYING PARTY DATA**

| Name | Formerly | Execution Date | Entity Type |
|---|---|---|---|
| BIG TIME RESTAURANT GROUP CORP. | | 02/15/2017 | Corporation: FLORIDA |

**RECEIVING PARTY DATA**

| | |
|---|---|
| **Name:** | TD BANK, N.A. |
| **Street Address:** | 2130 Centrepark West Drive |
| **Internal Address:** | Attn: John J. Bowers, Vice President |
| **City:** | West Palm Beach |
| **State/Country:** | FLORIDA |
| **Postal Code:** | 33409 |
| **Entity Type:** | National Banking Association: UNITED STATES |

**PROPERTY NUMBERS Total: 4**

| Property Type | Number | Word Mark |
|---|---|---|
| **Registration Number:** | 2474852 | BIG CITY TAVERN |
| **Registration Number:** | 2468779 | BIG CITY TAVERN |
| **Registration Number:** | 3862508 | GREASE BURGER BAR |
| **Registration Number:** | 4786333 | LOUIE BOSSI'S |

**CORRESPONDENCE DATA**

**Fax Number:** 2158511420

***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.***

**Phone:** 215-851-8100
**Email:** phlipdocketing@reedsmith.com
**Correspondent Name:** Matthew P. Frederick, Reed Smith LLP
**Address Line 1:** 1717 Arch Street
**Address Line 2:** Three Logan Square, Suite 3100
**Address Line 4:** Philadelphia, PENNSYLVANIA 19103

| | |
|---|---|
| **NAME OF SUBMITTER:** | Matthew P. Frederick |
| **SIGNATURE:** | /Matthew P. Frederick/ |
| **DATE SIGNED:** | 02/23/2017 |

**Total Attachments: 13**

OP $115.00 2474852

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# TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement") is made this 15th day of February 2017, by **BIG TIME RESTAURANT GROUP CORP.**, a Florida corporation, with a mailing address of 400 Clematis Street, West Palm Beach, FL 33401, Attn: Todd M. Herbst and William A. Watson, ("Grantor") and delivered to **TD BANK, N.A.** having an address of 2130 Centrepark West Drive, West Palm Beach, FL 33409, Attn: John J. Bowers, Vice President ("Lender").

## BACKGROUND

A. This Agreement is being executed contemporaneously with that certain Loan and Security Agreement of even date herewith among Grantor, Delray Tavern Corp., a Florida corporation, Las Olas Tavern, Ltd., a Florida limited partnership, National Tavern, Ltd., a Florida limited partnership, Ristorante Numero Dieci Ltd., a Florida limited partnership, Ristorante Numero Quattordici Ltd., a Florida limited partnership, Osteria Numero Uno, Ltd., a Florida limited partnership (individually each "Borrower" and collectively "Borrowers"), and Lender (as it may be supplemented, restated, superseded, amended or replaced from time to time, the "Loan Agreement"), under which Grantor is granting Lender a lien on and security interest in certain assets of Grantor associated with or relating to services or products sold under Grantor's trademarks and the goodwill associated therewith, and under which Lender is entitled to foreclose or otherwise deal with such assets under the terms and conditions set forth therein. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Grantor 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").

C. Pursuant to the Loan Agreement and this Agreement, Lender is acquiring a lien on and security interest in and, after the occurrence and during the continuance of an Event of Default, a royalty-free license to use, the Trademarks and the registration thereof, together with all the goodwill of Grantor associated therewith and represented thereby, as security for all of the Obligations (as defined in the Loan Agreement), and Lender 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 Loan Agreement, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, Grantor grants to Lender a lien on and security interest in all of Grantor's present and future right, title and interest in and to the Trademarks, together with all the goodwill of Grantor 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. Grantor hereby covenants and agrees to maintain the registrations for the Trademarks in full force and effect until all of the Obligations are indefeasibly paid and satisfied in full; provided that, Grantor may abandon any such registrations upon receipt of the written consent of the Lender, which consent will not be unreasonably withheld or delayed.

3. Grantor represents, warrants and covenants to Lender that:

(a) The registrations for 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, and such registrations are valid and enforceable;

(c) Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, as used in its business, and each of the Trademarks is free and clear of any liens, charges and encumbrances including, without limitation, pledges, assignments, licenses (other than to Grantor and Lender hereunder and licenses granted to other Loan Parties in the ordinary course of business and otherwise permitted under the Loan Agreement) and covenants by Grantor not to sue third persons;

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

(e) Grantor 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) Grantor 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) Grantor 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 Lender and its employees and agents the right (with no obligation of any kind upon Lender to do so) to visit Grantor's business 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 Grantor's compliance with this paragraph 3(g).

4. Grantor further covenants that:

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

(b) If Grantor acquires rights to any new trademark registrations, or files any new applications for trademark registrations, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the Trademarks. Grantor shall give Lender prompt written notice thereof along with an amended Schedule "A."



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5. So long as this Agreement is in effect and so long as Borrower has not received notice from Lender that an Event of Default has occurred under the Loan Agreement and that Lender has not elected to exercise its rights hereunder: (i) Grantor shall continue to have the exclusive right to use the Trademarks; and (ii) Lender 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. Grantor 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 Lender (and other than licenses granted to other Loan Parties in the ordinary course of business and otherwise permitted under the Loan Agreement) without the prior written consent of Lender.

7. Anything herein contained to the contrary notwithstanding, if and while an Event of Default exists under the Loan Agreement, Grantor hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect from time to time, in the State of Florida, may take such action permitted hereunder, in its exclusive discretion, to foreclose upon the Trademarks covered hereby and shall have, and is hereby granted, a royalty-free license to use the Trademarks covered hereby. For such purposes, while an Event of Default exists, Grantor hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its exclusive discretion, as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender 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. Grantor 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 Loan Documents, and until all Obligations are indefeasibly paid and satisfied in full.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan 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 Lender shall be in addition to any rights and remedies granted to Lender under the Loan Documents. In the event of an inconsistency between this Agreement and Loan Agreement, the language of this Agreement shall control.

10. Upon Grantor's performance of all of the obligations under the Loan Documents and after all Obligations are indefeasibly paid and satisfied in full, Lender shall, at Grantor's expense, execute and deliver to Borrower all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender 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



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therewith) in public offices, the payment or discharge of any taxes, reasonable 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 Grantor on demand by Lender and until so paid shall be added to the principal amount of Obligations to Lender and shall bear interest at the otherwise applicable rate prescribed in the Loan Agreement.

12. Grantor 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 Lender, Grantor shall make federal application on registerable but unregistered Trademarks belonging to Grantor and licensed to Grantor. Any reasonable expenses incurred in connection with such applications shall be borne exclusively by Grantor. Grantor shall not abandon any Trademarks without the prior written consent of Lender, which consent will not be unreasonably withheld or delayed.

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

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

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

16. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties. Grantor may not transfer, assign or delegate any of its duties or obligations hereunder.

17. THIS AGREEMENT, AND ALL MATERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND ALL RELATED AGREEMENTS AND DOCUMENTS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF FLORIDA. THE PROVISIONS OF THIS AGREEMENT AND ALL OTHER AGREEMENTS AND DOCUMENTS REFERRED TO HEREIN ARE TO BE DEEMED SEVERABLE, AND THE INVALIDITY OR UNENFORCEABILITY OF ANY PROVISION SHALL NOT AFFECT OR IMPAIR THE REMAINING PROVISIONS WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.



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18. Grantor hereby irrevocably consents to the non-exclusive jurisdiction of the Courts of the Courts of Palm Beach County of the State of Florida or the United States District Court for the Southern District of Florida in any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking. Grantor waives any objection which Grantor may have based upon lack of personal jurisdiction, improper venue or forum non conveniens. Grantor irrevocably agrees to service of process by certified mail, return receipt requested to the address of the appropriate party set forth in the preamble of this Agreement.

19. GRANTOR (AND LENDER 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 LOAN DOCUMENTS 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 HEREUNDER OR UNDER THE LOAN DOCUMENTS.

**[SIGNATURES TO FOLLOW ON SEPARATE PAGE]**



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

Grantor:
BIG TIME RESTAURANT GROUP CORP.

By:_____
Name: Todd Herbst
Title: President



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Approved and Accepted:

TD BANK, N.A.

By: _____
Name: Jean Bassel
Title: Vice President

Schedule A to Trademark Security Agreement

| COUNTRY | MARK | APPLICATION NO. | REGISTRATION NO. | REGISTRATION DATE |
|---|---|---|---|---|
| US | BIG CITY TAVERN | 75607810 | 2474852 | Aug. 07, 2001 |
| US | BIG CITY TAVERN & Design | 75611575 | 2468779 | Jul. 17, 2001 |
| US | GREASE BURGER BAR | 77678734 | 3862508 | Oct. 19, 2010 |
| US | LOUIE BOSSI'S | 85945321 | 4786333 | Aug. 04, 2015 |

Exhibit 1 to Trademark Security Agreement

# TRADEMARK ASSIGNMENT

WHEREAS, _____, a _____ ("Grantor"), 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, _____ ("Grantee") having a place of business at _____, 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, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, 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.

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

_____

Witness: _____

By: _____
As Attorney-in-fact

UNITED STATES OF AMERICA :
STATE OF _____ : SS
COUNTY OF _____ :

On this the _____ day of _____, 20____ before me a Notary Public for the said County and State, personally appeared _____ known to me or satisfactorily proven to me to be attorney-in-fact on behalf of _____ ("Grantor"), and he/she acknowledged to me that he/she executed the foregoing Trademark Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

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

_____
(Individual Notary)

My Commission Expires:

_____, _____

## SCHEDULE A TO TRADEMARK ASSIGNMENT

| COUNTRY | MARK | APPLICATION NO. | REGISTRATION NO. | REGISTRATION DATE |
|---|---|---|---|---|
| US | BIG CITY TAVERN | 75607810 | 2474852 | Aug. 07, 2001 |
| US | BIG CITY TAVERN & Design | 75611575 | 2468779 | Jul. 17, 2001 |
| US | GREASE BURGER BAR | 77678734 | 3862508 | Oct. 19, 2010 |
| US | LOUIE BOSSI'S | 85945321 | 4786333 | Aug. 04, 2015 |

# POWER OF ATTORNEY

**BIG TIME RESTAURANT GROUP CORP.**, a Florida corporation ("Grantor"), hereby authorizes **TD BANK, N.A.**, its successors and assigns, and any officer or agent thereof (collectively "Grantee") as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Trademark Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the "Trademark Agreement"), including, without limitation, the power to use the Trademarks (as defined in the Trademark Agreement), to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks.

This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to a certain Loan and Security agreement bearing even date herewith among Grantor and Grantee, among others, as it may be supplemented, restated, superseded, amended or replaced from time to time.

Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

This Power of Attorney shall be coupled with an interest and irrevocable for the life of the Trademark Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, under seal, this 15th day of February 2017.

**BIG TIME RESTAURANT GROUP CORP.**

Witness: _____

By: _____
Name: Todd Herbst
Title: President

Witness: _____

Attest: _____

STATE OF :

: ss.

COUNTY OF :

On this 15th day of February 2017, before me, the undersigned officer, personally appeared Todd Herbst, who acknowledged himself to be the President of Big Time Restaurant Group Corp., and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer; that he knows the seal of the company; that the seal so affixed to the Agreement is such company seal; that he signed the Agreement and affixed the seal of the company thereto as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such company; and he desires the same to be recorded as such.

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

Kathryn M Boldman

Notary Public

[STAMP] NOTARY PUBLIC STATE OF FLORIDA KATHRYN M. BOLDMAN MY COMMISSION # FF 053643 EXPIRES: October 7, 2017 Bonded Thru Budget Notary Services

NOTARIAL SEAL