

TRADEMARK CONSENT AGREEMENT

This Trademark Coexistence Agreement ("**Agreement**") is made by and between Gerardo Mejia, an individual, with an address c/o Singh, Singh & Trauben, LLP, 400 South Beverly Drive, Suite 240, Beverly Hills, California 90212 ("**Mejia**") and Nutrimax, Inc. a California corporation, with offices located at 27720 Avenue Scott, Suite 170, Valencia, California 91355 ("**Nutrimax**"), together the "**Parties**".

RECITALS

WHEREAS, Nutrimax currently maintains a trademark registration for the word mark "Rico Suave" for "soft drinks, energy drinks, sport drinks" in Class 032, Registration No. 4761791 (the "**Soft Drinks Mark**");

WHEREAS, on or around August 6, 2019, Mejia caused to be filed a United States Trademark Application, Serial No. 88568867 with the United States Patent and Trademark Office ("**USPTO**") for trademark registration of the word mark "Rico Suave" for "Coffee" in Class 030 and for "Coffee Roasting and Processing" in Class 040 (the "**Coffee Mark**") on an Intent-to-Use basis Under Section 1(b) (the "**Coffee Mark Application**");

WHEREAS, on or around November 8, 2018 the USPTO issued an initial refusal to register the Coffee Mark and on June 2, 2020 issued a final refusal to register the Coffee Mark, in both instances citing a purported likelihood of confusion with the Soft Drinks Mark as the grounds for refusing to register the Coffee Mark;

WHEREAS, on or around June 12, 2020, Mejia filed a Petition for Cancellation seeking to cancel the Soft Drinks Mark and on June 15, 2020 a cancellation proceeding was initiated in front of the Trademark Trial and Appeal Board (the "**TTAB**") with the proceeding number of 92074476 (the "**Cancellation Proceeding**");

WHEREAS, on or around August 27, 2020, Mejia caused to be filed a United States Trademark Application, Serial No. 90141878 with the USPTO for trademark registration of the word mark "Rico Suave" for "Restaurants, Breakfast Restaurants, Brunch Restaurants and Café Restaurants" in Class 043 on an Intent-to-Use basis under Section 1(b) (the "**Restaurants Mark Application**");

WHEREAS, in order to compromise and settle all claims, as set forth more specifically below, Mejia, will withdraw the Coffee Mark Application and will file a new trademark application for the mark "Rico Suave Coffee" for "Coffee" in Class 030 and for "Coffee Roasting and Processing" in Class 040 (the "**Amended Coffee Mark**");

WHEREAS, Mejia and Nutrimax have entered into an agreement to compromise and settle all claims, disputes and controversies which they may have or claim to have against one another, arising from or related to the Soft Drinks Mark, the Coffee Mark, the Restaurants

Mark, the Amended Coffee Mark and the Cancellation Proceeding under which neither party will pay the other any monetary consideration;

WHEREAS, Mejia and Nutrimax contend that, subject to the restrictions and conditions set forth herein, Nutrimax's Soft Drinks Mark can coexist in the United States marketplace with the Amended Coffee Mark and the Restaurants Mark without a likelihood of consumer confusion.

WHEREAS, the Parties contend that their respective use of the Soft Drinks Mark, the Amended Coffee Mark and the Restaurants Mark in whole or in part, as applied to their respective goods, are not likely to be confused as to source, sponsorship, affiliation or association.

WHEREAS, the Parties desire to set forth their respective rights and obligations in the concurrent use of their respective marks pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Effective Date**. This agreement shall become effective as of the latest signature date as set forth below.
2. **Consents and Agreements**.
 - 2.1. Provided that Nutrimax is in compliance with this Agreement, Mejia will file a withdrawal of the current Cancellation Proceeding within (5) business days of the full execution of this Agreement.
 - 2.2. Provided Nutrimax is in compliance with this Agreement, Mejia will file a request for abandonment of the Coffee Mark Application and will file a new application for the Amended Coffee Mark within ten (10) business days of the full execution of this Agreement.
 - 2.3. Provided that Nutrimax is in compliance with this Agreement, Mejia consents to the Soft Drinks Mark and shall not assert any challenge or bring any action against Nutrimax, its affiliates, subsidiaries, officers, or employees (including but not limited to any action for trademark infringement, trademark dilution or unfair competition or any proceeding in front of the Trademark Trial and Appeal Board "TTAB" or any court in the United States or internationally) based on Nutrimax's use and/or registration of the Soft Drinks Mark.
 - 2.4. Provided that Mejia is in compliance with this Agreement, Nutrimax consents to the

Amended Coffee Mark and the Restaurants Mark and shall never challenge or bring any action (including but not limited to any action for trademark infringement, trademark dilution or unfair competition or any proceeding in front of the TTAB or any court in the United States or internationally) based on Mejia's use and/or registrations of the Amended Coffee Mark and the Restaurants Mark and fully releases and discharges Mejia from any purported claim or liability related to the Coffee Mark, Amended Coffee Mark and the Restaurants Mark.

2.5. Provided that Nutrimax is in compliance with this agreement, Mejia consents that Nutrimax reserves the right to add extensions to its line of beverage products branded Rico Suave, including but not limited to soft drinks, energy drinks or drinks intended to have a calming or relaxing effect, but excluding coffee, coffee roasting or processing, any drink derived from coffee or branded as coffee flavored or including coffee in any way or which includes the word coffee in its labeling, advertising or branding in any manner.

2.6. Provided that Nutrimax is in compliance with this agreement, Mejia consents to never bring any action against Nutrimax, its affiliates, subsidiaries, officers, or employees, due to any challenge or refusal by the United States Patent and Trademark Office "USPTO" to register the Amended Coffee Mark or the Restaurants Mark.

3. **No Likelihood of Confusion.** The Parties acknowledge and agree that there is no likelihood of confusion by consumers based upon the following factors:

3.1. The Amended Coffee Mark is dissimilar as to appearance and commercial impression with the Soft Drinks Mark. Namely, the Amended Coffee Mark has the word Coffee added to it, which creates a different commercial impression than the Soft Drinks Mark thus rendering different commercial impressions in the mind of the respective purchasers of the goods for each of the Parties.

3.2. The goods provided by Nutrimax under the Soft Drinks Mark and the goods that will be provided by Mejia under the Amended Coffee Mark and Restaurants Mark are very different and not closely related. Nutrimax sells and licenses a hemp infused energy drink called "Rico Suave" under the Soft Drinks Mark – a picture of which is below:



The goods provided by Mejia under the Amended Coffee Mark will be roasted coffee beans and coffee, in a bags and cups that will look similar to this:



The bags and cups of coffee that will eventually be sold under the Amended Coffee Mark will be even further different, as it will be branded with the Amended Coffee Mark in a form substantially similar to the below:



Further, the Restaurants Mark will be used to brand restaurants which will largely specialize in breakfast foods as "Rico Suave", which physical buildings and restaurant services would not be reasonably confused with Nutrimax's hemp infused canned energy drink.

The relevant purchasers of the Parties' respective goods and services are different. Nutrimax markets a hemp infused energy drink through convenience stores and to a largely youthful market. Mejia's coffee products will be sold at a high price point in high end coffee shops. The products sold under the Soft Drinks Mark

could never be substituted for the products sold under the Amended Coffee Mark. A canned energy drink could never be sold as boutique small batch roasted coffee nor *vice versa*. Similarly, a canned energy drink could never be substituted for a breakfast restaurant nor *vice versa*. Accordingly, the types of consumers that purchase Nutrimax's goods and who would purchase Mejia's goods differ substantially. Further the respective goods and services are not sold through the same market channels. Consumers will not encounter Nutrimax's goods and Mejia's goods and services in the same marketing channels because each party will sell its goods and services through different channels, utilizing its own business model and marketing partners focused on different sets of consumers using very different price points and marketing strategies.

4. **Mutual Undertakings.**

- 4.1. **Further Action to Avoid Confusion.** The Parties agree that they will not advertise or promote the goods or services under their respective marks in a manner that implies that such party or its goods or services are affiliated or connected with the other party or the other party's goods or services.
- 4.2. **Cooperation in the Event of Actual Confusion.** The Parties agree that if, in the unlikely event either party becomes aware of any actual consumer confusion resulting from the simultaneous use of the marks as permitted by this Agreement, such party shall advise the other party within a reasonable time thereafter of the details of such confusion, and the Parties shall take commercially reasonable steps to address the confusion and prevent its future occurrence.
- 4.3. **Applications.** Each party shall be permitted to file this Agreement as needed within the USPTO to assist in prosecuting its applications and maintaining its registrations.

5. **Representations and Warranties.** The Parties make the following representations and warranties:

- 5.1. Each Party agrees that this Agreement is freely, voluntarily, and validly executed and that each Party has entered into the Agreement with the advice of counsel.
- 5.2. Each Party is relying solely upon his or her own judgment and the judgment of each Party's own counsel in making this Agreement and has not been influenced by any representations or statements made by any other persons.
- 5.3. Each Party has the legal capacity and authority to enter into this Agreement.

6. **Assignment of Agreement.** This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and assigns.

7. Term. This Agreement shall continue in full force and effect without limitation of term.

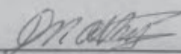
8. Miscellaneous.

- 8.1. The terms of this Agreement shall be national in scope and shall be binding in the United States on the Parties, their affiliates, related companies, successors, assigns, and licensees.
- 8.2. This Agreement shall be governed by and construed under the laws of the United States and the State of California. In the event of any action arising out of any breach of the obligations in this Agreement, the Parties hereby submit to the jurisdiction of, and waive any venue objections against, venue in the United States District Court for the Central District of California or before the United States Trademark Trial and Appeal Board.
- 8.3. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and merges all prior discussions between the Parties.
- 8.4. No waiver or modification to this Agreement shall be effective unless it is in writing and executed by both Parties.
- 8.5. Each Party represents to the other that the person signing this Agreement on its behalf is authorized to do so and to bind each respective Party hereto.
- 8.6. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

DATED: September 30, 2020

NUTRIMAX, INC.

By: 

Its: President

DATED: September 29, 2020

GERARDO MEJIA

By: 