

CO-EXISTENCE AGREEMENT

This Trademark Co-Existence Agreement (“Agreement”) is made this 27th day of November, 2018 by and between Boulevard Brewing Company, a Delaware corporation (“Boulevard”), and North American Breweries, Inc., a Delaware corporation (“NAB”). Boulevard and NAB are referred to herein collectively as the “Parties” and each individually as a “Party.”

RECITALS

A. NAB is the owner of a registration and application for the word mark FLING for use in International Class 32 for “beer, ale and lager” (USPTO Serial No. 77952055, Registration No. 3860525) (the “NAB Mark”).

B. Boulevard wishes to produce a line of ready-to-drink spirit-based cocktails under the name FLING.

C. Boulevard intends to file an application for the word mark FLING in International Class 33 for “alcoholic beverages except beer” (the “Boulevard Mark”).

D. Provided that each Party complies with the terms and conditions of this Agreement, the Parties do not believe there will be any confusion between the Parties’ respective marks in connection with their respective goods, and the Parties desire to enter into this Agreement to ensure that use of their respective marks avoids any confusion in the future.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth hereinafter, the Parties hereto agree as follows:

1. **No Likelihood of Confusion.** The Parties have concluded that consumer confusion is not likely to arise from the concurrent use of their respective marks in accordance with this Agreement, because such marks shall be used in connection with completely different products.

2. **Limitation of Use and Registration of the Boulevard Mark.** Boulevard can use the Boulevard Mark as set forth in this Agreement; provided, however, that Boulevard agrees that:

a. Boulevard will not use the word FLING in connection with malt beverages or beer.

b. Boulevard will only use the word FLING in connection with ready-to-drink spirit-based cocktails.

c. With respect to all future trademark applications filed by or on behalf of Boulevard that include the word FLING, Boulevard will include a copy of this Agreement as evidence of its rights and obligations with respect to the use of the word FLING in connection with its ready-to-drink spirit-based cocktails.

3. **Oppositions and Cancellations.** Subject to the limitations in Section 2, Boulevard agrees not to oppose, seek to cancel or otherwise challenge the NAB Mark or any related applications or registrations existing now or in the future where such applications or registrations specify the same, or similar, goods as those identified in this Agreement and otherwise comply with the terms of this Agreement. Likewise, subject to the limitations in Section 2, NAB agrees not to oppose, seek to cancel or otherwise challenge any applications or registrations existing now or in the future for Boulevard’s FLING where such applications or registrations specify the same, or similar, goods as those identified in this Agreement and otherwise comply with the terms of this Agreement. In any event, should an issue arise

with respect to an application or registration belonging to either Party, the Parties agree to cooperate to attempt to resolve any such issues, including, without limitation, agreeing on amendments to descriptions of goods supporting such applications and/or registrations and providing letters of consent or other documents to be filed with the United States Patent and Trademark Office and other applicable trademark agencies.

4. **Measures to Avoid Confusion.** Subject to compliance with the terms and conditions of this Agreement, the Parties will not intentionally use their respective marks or promote their goods in connection with their respective marks in a manner that is likely to cause confusion with the other Party's mark(s). Neither Party shall use or duplicate the other Party's trade dress. Neither Party will suggest to any third party that there is an affiliation or association between itself and the other Party or the other Party's goods. The Parties will take reasonable measures and precautions to avoid any possible confusion in the marketplace between the goods offered by either Party under their respective marks or labels containing the word FLING, and the Parties agree to consult with each other in good faith should future conditions develop that would suggest to either Party the possibility that the Parties' respective marks or labels might be confused with each other. For the avoidance of doubt, nothing set forth in this Agreement will prohibit NAB from producing, distributing or selling a flavored malt-based beverage containing the word FLING and, notwithstanding the proposed application for the Boulevard Mark, Boulevard agrees not to seek any to prohibit NAB from using the word FLING in connection with any such flavored malt-based beverage.

5. **License Obligations.** Each Party may license its respective marks that include the term FLING to its respective affiliates and/or any third party (each, a "Licensee"), provided that the Party granting such license shall (a) ensure that the scope of any such license is consistent with the terms and conditions of this Agreement and that each Licensee is bound by terms and conditions that are no less restrictive than those contained herein (it being understood that any license granting rights in violation of the foregoing shall be null and void), (b) use its commercially reasonable efforts to cause each Licensee to comply with such terms and conditions (which shall not require the expenditure of any out-of-pocket costs to seek such compliance), and (c) be responsible for any breach of the terms and conditions of this Agreement by any such Licensee.

6. **Limited Agreement.** Subject to the terms of this Agreement, and except as expressly set forth herein, nothing shall prevent either Party from enforcing its trademark rights against the other in the future, and seeking damages and/or equitable relief for a violation thereof, and nothing in this Agreement or otherwise shall prevent either Party from bringing an action for breach or enforcement of this Agreement.

7. **Term.** This Agreement shall continue in perpetuity unless either party abandons its trademark or this Agreement is terminated in writing executed by both parties.

8. **Notices.** All notices, requests, and other communications to any Party shall be in writing (including electronic mail ("e-mail")), so long as a receipt of such e-mail is requested and received) and shall be given as follows:

Boulevard: Boulevard Brewing Company
Jeffery A. Krum, President
2501 Southwest Boulevard
Kansas City, Missouri 64108
jkrum@boulevard.com

NAB: FIFCO USA
Ian Kaminski, Director, Legal
79 Perry Street, Suite 200
Buffalo, New York 14203
ian.kaminski@fifco.com

9. **Authority to Bind.** Each Party represents and warrants to the other Party that (a) it is duly formed, validly existing and in good standing under the laws of its jurisdiction of formation and it is authorized to enter into this Agreement, (b) the execution, delivery and performance of this Agreement are within the corporate powers of such Party, have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party, and (c) the execution, delivery, and performance of this Agreement and its obligations hereunder shall not breach any separate agreement by which such Party is bound.

10. **Assignment and Binding Effect.** This Agreement is binding upon and shall inure to the benefit of the Parties and their affiliates and their respective officers, directors, employees, attorneys, successors, assignees, and all others acting by, through, or with them, or under their direction or in privity with them. For the avoidance of doubt, any future acquirer or transferee of either Party's rights in any trademarks, brands or other marks governed by this Agreement (whether by change of control, merger, stock or asset sale, or otherwise) shall be bound by the terms and conditions of this Agreement, and no assignment, transfer, or other such transaction shall relieve such Party of any of its obligations hereunder.

11. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. federal law, without application of New York choice of law principles. Any action at law by either party to interpret, construe, or enforce any of the provisions of this Agreement shall be brought solely in the state of New York in a state court or federal court located in Erie County in accordance with the laws of the State of New York and the judicial code of the United States in force at the time that an action is commenced. The Parties agree that a state or federal court within the state of New York and County of Erie shall have personal jurisdiction over the Parties to this Agreement in any action to interpret, construe, or enforce any of the provisions of this Agreement.

12. **Severability.** If any provision of this Agreement is in violation of any federal, state, or national statute or law, such provision shall be severed and shall not affect the validity of the remaining provisions, and the Parties shall negotiate a good faith amendment of this Agreement consistent with the spirit of this Agreement.

13. **Waiver.** No failure, refusal or neglect on the part of either party to exercise any right under this Agreement or to insist on full compliance by the other party with any obligations under this Agreement shall constitute a waiver of any provision of this Agreement or of any subsequent breach or non-compliance.

14. **Entire Agreement; Counterparts.** This Agreement represents the entire understanding between the Parties and supersedes all previous agreements or understandings, whether written or oral, expressed or implied. This Agreement may be signed in counterparts, each of which will be deemed to be an original, but all such separate counterparts will together constitute one and the same instrument. Signatures provided by facsimile transmission or in Adobe Portable Document Format (PDF) sent by e-mail shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Parties have executed this Trademark Co-Existence Agreement as of the date and year first written above.

BOULEVARD BREWING COMPANY

By: 

Name: Jeffery A. Korman

Title: President

NORTH AMERICAN BREWERIES, INC.

By: 

Name: Ian R. Kaminski

Title: Secretary