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11-30-2000

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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

#### Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231  
**TRADEMARK**

REEL: 002200 FRAME: 0774

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

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**Number of Properties**

Enter the total number of properties involved. #

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment:

Enclosed  Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Lisa Brooks Hammond  
Name of Person Signing

  
Signature

11-30-2000  
Date Signed

TRADEMARK ASSIGNMENT and LICENSE AGREEMENT

This Trademark Assignment and License Agreement is made as of August 11, 2000, by and between **Brew Moon Enterprises, Inc.**, a Massachusetts corporation (herein "Assignor"), having its principal place of business at 145 Rosemary Street, Suite H, Needham, Massachusetts 02494, and **Boulevard Brewing Associates Limited Partnership**, a Missouri limited partnership (herein "Assignee"), having its principal place of business at 2501 Southwest Boulevard, Kansas City, Missouri 64108.

WHEREAS, Assignee has filed Application No. 75/515,212 with the United States Patent and Trademark Office ("PTO") for registration on the Principal Register of its "NUTCRACKER ALE and Design" trademark (the "Boulevard Mark"), which Assignee uses in connection with beer offered for sale to retail outlets;

WHEREAS, the PTO has registered on the Principal Register Assignor's "NUTCRACKER FESTIVAL ALE SEASONAL and Design" trademark (the "Brew Moon Mark") under Registration No. 1,961,788, which Assignor uses in conjunction with ale, namely, handcrafted ale freshly brewed for consumption in pubs and restaurants owned and operated by Assignor;

WHEREAS, Assignee has asserted that Registration No. 1,961,788 is subject to cancellation;

WHEREAS, Assignor has asserted that it believes that Registration No. 1,961,788 is not subject to cancellation and that Assignor may oppose Application No. 75/515,212 should the application pass for publication;

WHEREAS, the parties desire to resolve their differences and clarify their respective rights to use the Boulevard Mark and the Brew Moon Mark as provided herein;

NOW, THEREFORE, in consideration of the payment by Assignee to Assignor of the sum of seventeen thousand five hundred dollars (\$17,500.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Assignment.** Assignor does hereby sell, assign, transfer, and convey to Assignee its entire right, title, and interest throughout the world in any and all rights in and to the Brew Moon Mark, whether arising at common law or under any federal or state registrations thereof or any federal or state applications for registration thereof which may now or hereafter exist, together with all of Assignor's goodwill associated therewith and symbolized thereby. This assignment shall specifically include any and all rights in, to, and arising under Federal Registration No. 1,961,788.

2. **Goodwill.** The said sale, transfer, assignment, and conveyance to Assignor herein includes all the goodwill of the business of Assignor associated with and symbolized by the Brew Moon Mark.

**3. Assignor's Representations.** Assignor represents and warrants as follows:

(a) Assignor has adopted and continuously used the Brew Moon Mark to identify the goods listed in the Registration No. 1,961,788. The Mark reflects and symbolizes the considerable goodwill of the Assignor with respect to Assignor's business of selling and offering for sale the goods identified by the Brew Moon Mark.

(b) Assignor is the sole owner of the Brew Moon Mark and has the right to transfer ownership of the Brew Moon Mark, Registration No. 1,961,788, and all the goodwill associated therewith to Assignee free of any and all liens, claims, charges, encumbrances, licenses, mortgages, or security interests.

(c) The transfer of ownership of the Brew Moon Mark, as provided herein, will not breach any agreement, covenant, or understanding to which Assignor is a party and will not violate any law, rule, regulation, ordinance, or decree of any municipal or governmental agency, entity, or branch.

(d) The Brew Moon Mark, to the knowledge of Assignor, has not been infringed nor is being infringed by any third party, and Assignor has not previously licensed, sold, transferred, conveyed, granted, or given to any third party any title to or rights in the Mark which would, in any way, interfere with the exclusive, uninterrupted, and unencumbered ownership and right of use by Assignee.

**4. Other Acts.**

(a) Assignor agrees to execute and deliver to Assignee all instruments and documents reasonably necessary, and to perform all acts deemed reasonably necessary or desirable by Assignee, in Assignee's reasonable discretion, to permit and assist Assignee, at Assignee's expense, in obtaining and enforcing the full ownership, benefits, enjoyment, rights and title throughout the world in and to the Brew Moon Mark hereby assigned, including U.S. Registration No. 1,961,788.

(b) Assignee agrees to perform all acts deemed necessary or desirable by Assignor, in Assignor's reasonable discretion, to permit and assist Assignor, at Assignor's expense, in obtaining and enforcing the full benefits, enjoyment, and rights throughout the License Area (as defined in paragraph 6(a) below) in and to the Brew Moon Mark hereby licensed.

**5. Non-competition and Non-protest.**

(a)(i) Assignor agrees to terminate all use of the Brew Moon Mark, except as expressly provided in the license granted to Assignor by Assignee pursuant to paragraph 6 below, and agrees not to use the Brew Moon Mark or any other name or mark confusingly similar therewith, whether for itself or for or in connection with any other person, firm, or corporation in which Assignor or any of its officers, directors, shareholders, agents, or employees has any interest whatsoever.

(ii) During the term of this agreement, Assignor further agrees not to petition to cancel the federal registration for the Brew Moon Mark or for the Boulevard Mark should it mature to registration. Assignor further agrees not to oppose at any time the current pending federal Application No. 75/515,212 for the Boulevard Mark or any future application for the Boulevard Mark or the Brew Moon Mark filed by Assignee.

(b) Assignee agrees not to use the Brew Moon Mark or the Boulevard Mark or any other name or mark confusingly similar therewith in the Greater Metropolitan Boston, Massachusetts area during the term of the license in paragraph 6 below, provided that Assignor is actually using the Brew Moon Mark in that State pursuant to the terms of said license.

## **6. License.**

(a) Assignee hereby grants to Assignor a perpetual gratis license to use the Brew Moon Mark solely during the months of November, December and January (the "Use Period") for sales of ale in Assignor's brew pubs in the Greater Metropolitan Boston, Massachusetts area (the "License Area"), wheresoever in the License Area such brew pubs are now located or may in the future be opened and operated by Assignor. Assignor may not sell, transfer or sublicense its license to use the Brew Moon Mark to any third party except in the event of a sale of its entire interest or a controlling interest in all its brew pubs, which sale must include the sale or transfer of all Assignor's goodwill associated with and symbolized by the Brew Moon Mark.

(b) Assignor agrees that the quality of all goods manufactured, distributed, and sold by Assignor using the Mark will conform to Assignee's quality control standards, and Assignor agrees, from time to time, to furnish Assignee with samples of advertisements and promotional materials using or products bearing the Mark in order to permit Assignee to inspect same to determine compliance with its quality control standards. Assignor will alter or modify, within thirty (30) days after written notice from Assignee, the quality of the goods or any advertisements or promotional materials which Assignee determines does not conform to Assignee's quality control standards.

(c) This license may be terminated by mutual agreement of the parties. This license may also be terminated by Assignee if Assignor shall breach any provision of paragraphs 5(a) and 6(a).

## **7. Additional Rights.**

(a) In addition to the other rights referenced herein, Assignor specifically assigns to Assignee all its claims (if any) to recover for any infringement or other violation of the ownership rights of the Mark, whether such infringement or violation occurs in the future or has occurred in the past. This right includes the right to sue for injunctive relief and monetary damages and to recover attorneys' fees for Assignee's own account and for the account of Assignor (but solely to the extent that Assignor has been damaged by such infringement or violation and that Assignor has paid a pro rata share of the monies expended, and not recovered, on the action pursuant to which the relief, damages or fees were

awarded). Assignor agrees to cooperate with Assignee in any such action, at Assignee's expense. Assignee is authorized to communicate with the PTO, and the PTO is authorized to receive and act upon all instructions, communications, correspondence, or other information sent or provided by Assignee to the same extent as if this Assignment had not been made and such item had been received from Assignor.

(b) In the event Assignor desires that Assignee institute a claim for any alleged infringement or other violation of the rights of the Mark related to the license issued to Assignor hereunder, Assignor shall notify Assignee in writing of all pertinent information (including, without limitation, the parties, liabilities, and amounts in controversy) regarding such claim, and Assignee shall notify Assignor of Assignee's decision whether or not to pursue such claim. If Assignee decides not to pursue any particular claim, then Assignor shall have the right to pursue such claim on and for Assignor's sole behalf, provided that Assignor shall advise Assignee of the status of such claim from time to time as requested by Assignee and that Assignee shall have the right at any time to participate in such litigation or resolution of such claim, at Assignee's sole expense and with counsel of Assignee's choice, to the extent that Assignee determines that such participation becomes necessary to preserve Assignee's ownership rights in the Mark.

**8. Indemnification.** Each party hereto agrees to and does hereby indemnify, defend, and hold harmless the other party and its officers, directors, shareholders, employees, partners and agents (the "Indemnitees") from and against, and to reimburse the Indemnitees for, any and all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, damages, and expenses, of any kind and nature (hereinafter collectively referred to as "Claims"), including, without limitation, attorneys' fees and costs of litigation or settlement incurred in connection with successful Claim or incident to successfully establishing the right to indemnification, arising from, related to or connected with (a) the breach of any of the parties' respective covenants, agreements, representations, warranties, or obligations hereunder, (b) any third party Claims brought as retaliation for or resulting from actions taken by the other party in an attempt to enforce, protect or monitor its rights in the Mark.

**9. Notice of Disputes.**

(a) Neither party may terminate this Agreement or take any legal action to enforce this Agreement until thirty (30) days after it provides the other party written notice of the alleged non-compliance or default with respect to which enforcement is sought. The written notice shall describe the alleged noncompliance or default with reasonable particularity to allow the recipient to respond to the assertion. The party accused of noncompliance or default shall have the thirty-day notice period during which to cure the alleged noncompliance or default, except in the case of (i) Assignor's default under paragraph 5(a) or 6(a), for which Assignor shall have only 5 days to cure any such default or noncompliance, and (ii) Assignee's default under paragraph 6(a), for which Assignee shall have only 5 days to cure any such default or noncompliance.

(b) Any notice allowed or required to be given hereunder shall be provided as follows:

If to Assignor: Brew Moon Enterprises, Inc.  
145 Rosemary Street, Suite H  
Needham, Massachusetts 02494  
Attention: Elliot J. Feiner;

with a copy to: Matthew A. Berlin, Esq.  
Deutsch Williams Brooks DeRensis Holland  
& Drachman, P.C.  
99 Summer Street  
Boston, Massachusetts 02110.

If to Assignee: Boulevard Brewing Associates Limited Partnership  
2501 Southwest Boulevard  
Kansas City, Missouri 64108  
Attention: Jeffery A. Krum;

with a copy to: Lisa Brooks Hammond, Esq.  
Spencer Fane Britt & Browne LLP  
1000 Walnut Street, Suite 1400  
Kansas City, Missouri 64106.

All notices must be in writing and shall be given by facsimile transmission (provided that a fax machine generated confirmation of transmission is obtained by the sender and a confirmation copy of the notice is simultaneously sent by fully prepaid first class mail or other mail service of an express or faster nature), by personal delivery (provided that a signed receipt is obtained indicating that such delivery was made) or by certified or registered mail, return receipt requested, all postage prepaid. Any such notice shall be effective upon delivery or on the date that recipient signs the certified mail or other mailing receipt.

**10. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement may not be modified except by a written instrument executed by duly authorized officers of both parties.

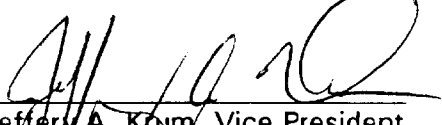
**11. Governing Law.** This Agreement and the license granted hereunder shall be governed by and construed in accordance with the substantive laws of the State of Missouri, without giving effect to its conflicts of laws principles.

**12. Severability.** If any provision hereof is determined by any court of competent

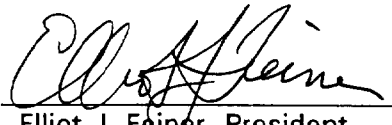
jurisdiction to be void, invalid, or unenforceable, the offending provision shall be deemed stricken, and the remainder of this Trademark Assignment and License Agreement shall continue in full force and effect as if the offending provision had never been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Assignment and License Agreement in duplicate originals as of the day and year first above written.

BOULEVARD BREWING ASSOCIATES  
LIMITED PARTNERSHIP

By:   
Jeffery A. Krum, Vice President  
of BBC Management Company,  
sole General Partner of Boulevard  
Brewing Associates Limited Partnership

BREW MOON ENTERPRISES, INC.

By:   
Elliot J. Feiner, President