

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT ("Agreement") is made and entered into as of _____ ("Effective Date") between Save Mart Supermarkets, a California corporation ("Company") and _____ ("Recipient").

1. Definition of "Confidential Information." Any and all information of the Company and each of its related companies (if any), which is not generally publicly available and which is commercially valuable and is related to the business of such party, including without limitation any and all trade secrets, techniques, methodologies, methods, product specifications, volume information, manufacturing, marketing, development, financial or operations information, technical, scientific, laboratory, experimental, research or statistical data, tooling, machinery, diagrams, drawings, forecasting, business and new product plans, reports, procedures, designs, formulae, recipes, improvements, processes, customer information, records, or knowledge, processes, formulas, know-how or data regardless of form disclosed by the Company to Recipient either directly or indirectly, whether written, oral, photographic, electronic, magnetic, computer, by inspection of tangible objects, or otherwise (including without limitation materials, records, reports, documents, prototypes, samples, plant and equipment), treated or designated by the Company as "**Confidential**", "**Proprietary**" or some similar designation or which information would, under similar circumstances, appear to a reasonable person to be confidential or proprietary or is, or should be, reasonably understood by the Recipient to be, confidential and proprietary.

2. Exceptions. Confidential Information shall not include any information which: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Company; (ii) becomes publicly known and made generally available after disclosure by the Company to the Recipient through no breach of this Agreement and/or fault by the Recipient; (iii) is legally in the possession of, or known by, the Recipient without restriction, at the time of disclosure by the Company as sufficiently evidenced by the Recipient's files and records; (iv) is obtained by the Recipient from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Recipient without use of, or reference to, the Company's Confidential Information by employees of the Recipient who have not had access to the Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.

3. Non-use and Non-disclosure. In consideration of the Company's disclosure of its Confidential Information to Recipient, Recipient agrees not to use any Confidential Information of the Company for any purpose except to evaluate and engage in discussions concerning the business purpose for which this Agreement is being executed ("Purpose"). Recipient agrees not to disclose any Confidential Information of the Company to third parties, except as permitted by this Agreement and then only to those officers, directors, employees, agents or representatives of the Recipient or its parent entities, subsidiaries or affiliates ("Representatives") who need to know the Confidential Information for the Purpose and who are bound in writing to keep such Confidential Information confidential consistent with the obligations under this Agreement. Recipient shall not export, reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Company's Confidential Information. Recipient agrees to promptly notify the Company in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which comes to the Recipient's attention.

4. Disclosure Required by Law. In the event any Confidential Information is required to be disclosed by Recipient under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, or by a demand or information request from an executive or administrative agency or other governmental authority, Recipient shall, unless prohibited by the terms of a subpoena, order, or demand, promptly notify the Company in writing of the existence, terms and circumstances surrounding such demand or request prior to such disclosure in order to allow the Company a reasonable opportunity to seek an appropriate protective order or other means to protect the confidentiality of such Confidential Information.

5. **Maintenance of Confidentiality.** Recipient agrees that it shall take commercially reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Company. Without limiting the foregoing, Recipient shall take at least those measures that it takes to protect its own confidential information but in no event less than reasonable care. Recipient shall not make any copies of the Confidential Information of the Company except as necessary to assist it in its evaluation of the Purpose. Recipient shall reproduce Company's proprietary rights notices on any copies in the same manner in which such notices were set forth in or on the original. Without the prior written consent of the Company, Recipient shall not publicly announce or disclose the existence of this Agreement or its terms, or the fact that the parties are discussing the Purpose, except as required by law as described in Section 4 above.

6. **No Obligation.** Nothing in this Agreement nor the disclosure of Confidential Information shall obligate either party to: i) commence or continue discussions or negotiations (and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Purpose; ii) to provide additional information; iii) to proceed with any transaction between them; iv) to refrain from engaging at any time in any business whatsoever; or, v) to refrain from entering or continuing any discussions, negotiations or agreements with any third party.

7. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, TIMELINESS, COMPLETENESS OR PERFORMANCE.

8. **Return of Materials.** All Confidential Information (i) which has been furnished by the Company to the Recipient (including notes, records, reports, copies, summaries or extracts thereof shall be and remain the property of the Company and shall be promptly destroyed or returned upon the conclusion of the Purpose or when otherwise requested by the Company in writing, and (ii) all notes, work papers, or other materials prepared in any written, electronic, or other medium by Recipient and/or its Representatives during the course of its evaluation of the Purpose based upon the Confidential Information, will be promptly destroyed and Recipient will promptly certify such destruction of Confidential Information and derivatives thereof, to the Company in writing within ten (10) days of receipt of Company's request for return or destruction. Notwithstanding the foregoing, Recipient will not be obligated to destroy or return the Company's Confidential Information to the extent it has been electronically archived by Recipient in accordance with its automated security and/or disaster recovery procedures as in effect from time to time, provided that any such Confidential information so retained will remain subject to the confidentiality provisions contained herein so long as it is retained by Recipient, irrespective of the term of this Agreement.

9. **No License.** Nothing in this Agreement is intended to grant any rights or license to the Recipient under any intellectual property or other rights of the Company, nor shall this Agreement grant Recipient any rights in or to the Confidential Information of the Company except as expressly set forth herein.

10. **Term.** The obligations of the parties hereunder shall survive until such time as all Confidential Information of the Company hereunder becomes publicly known and made generally available through no breach of this Agreement by the Recipient.

11. Remedies. Recipient agrees and acknowledges that any violation or threatened violation may cause irreparable injury to the Company and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Company shall be entitled (i) to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Recipient, without the necessity of proving actual damages, and, (ii) to be indemnified by the Recipient from any loss or harm, including attorneys' fees and costs, arising out of or in connection with any breach or enforcement of the Recipient's obligations under this Agreement or the unauthorized use or disclosure of the Company's Confidential Information.

12. Miscellaneous. This Agreement shall be governed by the laws of the State of California, without reference to conflict of law principles. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and understandings, whether oral or written. Recipient shall not assign or delegate its rights or obligations under this Agreement, in whole or in part, to any third party by operation of law or otherwise, without the prior written consent of the Company. Any attempted assignment or delegation that does not comply with this section shall be null and void and of no effect. The prevailing party in any legal action arising out of the subject matter of this Agreement shall be awarded attorneys' fees and costs. The phrase "prevailing party" shall mean the party who is determined in the proceeding to have prevailed or who prevails whether by dismissal, default or otherwise. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed. This Agreement may not be amended, nor any obligation waived, except by a writing signed by the authorized representatives of both parties hereto. Each party represents that it has the authority to enter into this Agreement and the right to disclose its Confidential Information in accordance with the terms set forth herein. This Agreement may be executed in counterparts.

Save Mart Supermarkets :

Company: _____

By: _____
Print Name: _____
Title: _____
Date: _____
Address: 1800 Standiford Ave.
Modesto, CA 95350
Phone: 209-577-1600

By: _____
Print Name: _____
Title: _____
Date: _____
Address: _____
Phone: _____