

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (the “**Agreement**”) is made and entered into effective as of _____, 20____ by and between Schnuck Markets, Inc., a Missouri corporation, its subsidiaries and affiliated companies (“**Schnucks**”) with offices located at 11420 Lackland Road, St. Louis, Missouri 63146, and _____, a _____ (, *its subsidiaries and affiliated companies*) (“**Company**”), located at _____.

Recitals:

A. Company and Schnucks desire to enter into confidential discussions and negotiations with respect to potential contract and/or business relationships or opportunities (the “**Mutual Business Purpose**”).

B. In order to pursue the Mutual Business Purpose, Company and Schnucks recognize that there is a need for each party to disclose to the other party certain of its confidential information to be used only for the Mutual Business Purpose and a need for the party receiving such information (the “**Receiving Party**”) to protect the information of the party disclosing such information (the “**Disclosing Party**”) from unauthorized use and disclosure.

Agreement:

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

1. **Confidential Information.** As used herein, “**Confidential Information**” shall mean any information, technical data or know-how (or compilation of the same) of the Disclosing Party that is not generally known or that is designated or treated as confidential or proprietary to the Disclosing Party’s business, operations or prospects, including, without limitation, financial data, business and marketing plans and strategies, business operations and systems, intellectual property, databases, information concerning sales representatives, employees, customers and vendors, or technology, such as systems, discoveries, inventions, improvements, research, development, know how, designs, product specifications, software, object code, source code, flow charts, schematics, blue prints, prototypes, devices, hardware, technical documentation and manufacturing processes. Confidential Information shall also mean the negotiations of, and the existence of, this Agreement. All Confidential Information provided by the Disclosing Party to the Receiving Party shall be treated as Confidential Information irrespective of its source.
2. **Receiving Party’s Obligations.** Receiving Party represents, warrants and covenants to Disclosing Party, each of the following:
 - 2.1 Receiving Party shall hold any and all Confidential Information in the strictest confidence and will not disclose, disseminate or publish any Confidential Information to any person or entity whatsoever and will not use any Confidential Information other than in the course of and to further the Mutual Business Purpose, absent the prior express written consent of Disclosing Party. Receiving Party shall take all steps necessary to ensure that all Confidential Information is held in the strictest confidence and that the terms and conditions of this Agreement are strictly adhered to by Receiving Party and its officers, counsel, and employees. Receiving Party may provide access to the Confidential

Information to its authorized officers, counsel, and employees on, and only on, a need to know basis that is directly and solely for the authorized purposes under this Agreement. Receiving Party shall inform such authorized officers, counsel, and employees of this Agreement and shall ensure that such persons agree to be bound hereunder. Receiving Party shall be responsible for any breach of the Agreement by its officers, counsel, and employees.

- 2.2 The standard of care to be utilized by Receiving Party in the performance of its representations, warranties, covenants, and obligations set forth in this Agreement relative to its treatment of the Confidential Information shall be the standard of care utilized by the Receiving Party in treating its own proprietary, secret, and confidential information, assuming such information is not subject to any right of waiver, but in no event less than the highest standard of care utilized by prudent persons seeking to protect the value of their confidential, proprietary, and secret information.
3. **Exclusions.** Receiving Party shall have no liability to Disclosing Party under this Agreement with respect to the disclosure and/or use of any Confidential Information that it can establish:
 - 3.1 has become generally known or available to the public without breach of this Agreement by Receiving Party;
 - 3.2 was known or obtained by proper means by Receiving Party prior to receiving such information from Disclosing Party;
 - 3.3 has become known by or generally available to Receiving Party from a source other than Disclosing Party, without any breach of any obligation of confidentiality owed to Disclosing Party, subsequent to disclosure of such information to it by Disclosing Party;
 - 3.4 has been independently developed by Receiving Party without use of or reference to the Confidential Information by persons who had no access to the Confidential Information;
or
 - 3.5 has been approved for release or use by written authorization of Disclosing Party.
 4. **Required Disclosures.** Receiving Party may disclose the Confidential Information if and to the extent that such disclosure is required by applicable law or regulatory agency, provided that Receiving Party uses reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment and if permitted by law, provides Disclosing Party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure. In the event Receiving Party discloses Confidential Information as permitted by this Section 4, it shall limit its disclosure to that portion of the Confidential Information, which the Receiving Party is advised by the written opinion of its counsel is legally required to be disclosed.
 5. **Return of Confidential Information.** Upon Disclosing Party's request, Receiving Party will promptly return to Disclosing Party all tangible forms of the Confidential Information, and will destroy all notes, abstracts and other documents or any medium that contain Confidential Information. Notwithstanding the foregoing, Receiving Party shall (i) be permitted to retain a copy of the Confidential Information to the extent required to comply with applicable law or regulatory authority or written and established internal document retention policies and (ii) not be required to destroy, delete, or modify any backup tapes or other media pursuant to automated archival processes in the ordinary course of business, provided in each case (i) and (ii) herein, any such

Confidential Information retained shall remain subject to the confidentiality obligations of this Agreement for so long as such Confidential Information is retained.

6. **No Representations as to Accuracy.** Disclosing Party warrants that it has the right to make the disclosure of Confidential Information contemplated by this Agreement. In providing the Confidential Information under this Agreement, Disclosing Party makes no representation, either express or implied, as to its adequacy, sufficiency or freedom from defect of any kind.
7. **Ownership of Confidential Information and Developments.** Receiving Party acknowledges that Disclosing Party is the sole owner of the Confidential Information and that this Agreement does not grant Receiving Party a right or license to use the intellectual property of Disclosing Party. All developments, designs, improvements, and inventions made or developed by Receiving Party or its agents that are based on or incorporate the Confidential Information shall be the sole property of Disclosing Party. Disclosing Party retains all rights and remedies with respect to the Confidential Information afforded it under the patent and other laws of the United States and the States, both during and after the term of this Agreement, including, without limitation, any trade secret or other laws designed to protect proprietary or Confidential Information.
8. **Term of Agreement; Survival.** This Agreement shall terminate five (5) years after the Effective Date, or may be terminated by either Party at any time upon thirty (30) days written notice to the other Party. Each Party's obligations under this Agreement will survive termination of this Agreement and will be binding upon such Party's heirs, successors, and assigns. Receiving Party's obligations of confidentiality and non-use of Disclosing Party's Confidential information shall continue (a) for five (5) years after this Agreement is terminated or (b) if the Confidential Information is a trade secret for as long as such information is considered a trade secret under applicable law. Each Party acknowledges that the return or destruction of the Confidential Information shall not terminate the obligations of the parties hereunder.
9. **Public Announcement.** All public announcements or other statements to third parties related to the discussions referred to in the recitals of this Agreement by either of the parties shall be subject to prior approval by the other Party, except for such statements as may be necessary, in the opinion of their respective counsel, to comply with the requirements of any law or governmental order or regulation.
10. **Rights and Remedies.** Receiving Party shall notify Disclosing Party in writing promptly upon discovery by Receiving Party of any unauthorized use or disclosure of Confidential Information, and will cooperate with Disclosing Party in every reasonable way to regain possession of the Confidential Information and prevent its further unauthorized use. Receiving Party acknowledges that the unauthorized use or disclosure of the Confidential Information would cause irreparable harm to Disclosing Party. Accordingly, Receiving Party agrees that Disclosing Party will have the right to seek an immediate injunction against any breach or threatened breach of this Agreement, without the need to post any bond or other security, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.
11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of Missouri without regard to choice of law provisions that would cause the application of the law of another jurisdiction. The parties agree that any legal action or proceeding with respect to this Agreement (including any tort claims) will be brought either in the state court of St. Louis County, Missouri or the Federal District Court of the United States of America for the Eastern District of Missouri and by execution and delivery of this

Agreement, each Party hereby consents to the jurisdiction of the aforesaid courts solely for the purpose of adjudicating its rights with respect to this Agreement.

12. **Entire Agreement, Amendments, Prior Discussions.** This Agreement constitutes the final, exclusive, and complete statement of the parties' agreement respecting the subject matter addressed herein and supersedes all prior agreements between the parties with respect to Confidential Information disclosed on or after the effective date hereof. This Agreement may not subsequently be amended or modified except by a writing signed by the parties hereto.
13. **Assignment; Successors.** Neither Party may assign their rights under this Agreement. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective legal representatives, successors, and permitted assigns.
14. **Waiver.** No waiver of any obligation under this Agreement shall be effective unless in writing, and shall then be effective only for the specific instance for which such waiver was given and for no other.
15. **Severability.** If one or more of the provisions contained in this Agreement are found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not be affected and the invalid provision will be amended to achieve as nearly as possible the same economic effect as the original provision.
16. **Attorneys' Fees to Prevailing Party.** In the event any suit or other action is commenced to construe or enforce any provision of this Agreement, the prevailing Party, in addition to all other amounts such Party shall be entitled to receive from the other Party, shall be paid by the other Party a reasonable sum for attorneys' fees and costs.
17. **Headings.** The section and subsection headings have been used in this Agreement as a matter of convenience only and shall not be used in the interpretation of any provision of this Agreement.
18. **Counterparts.** This Agreement may be executed in any number of counterparts, including facsimile, PDF, or other electronic copies, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Mutual Confidentiality and Nondisclosure Agreement as of the date first set forth above.

SCHNUCK MARKETS, INC., a Missouri corporation _____,
a _____

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____
Date: _____ Date: _____