**CONFIDENTIALITY AGREEMENT**

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_, 2006 by Monterey Bay Spice Co., a California corporation located at 719 Swift Street, Santa Cruz, CA 95060 (hereinafter “MBSC”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_corporation located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”), relating to certain information the Parties desire to exchange and review regarding a Possible Transaction, as defined herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, MBSC and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agree as follows:

1. Definitions.

(a) “MBSC” includes Monterey Bay Spice Co. and its agents, representatives, employees, officers and directors as well as all subsidiary (whether or not 100% owned) and parent corporations and all affiliates and divisions of MBSC. “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ” includes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and its agents, representatives, employees, officers and directors as well as all subsidiary (whether or not 100% owned) and parent corporations and all affiliates and divisions of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(b) “Confidential Information” includes, without limitation, all of the written information and financial information, pricing sheets, business, strategic and acquisition plans, customer and house-file lists, budgets, projections, marketing and public relations plans and materials, marketing and product data, mailing lists, market evaluations, market response data, merger and acquisition agreements, letters of intent, regulatory agreements or other legal documentation, data, reports (including reports prepared for or on behalf of the Disclosing Party), documentation, spreadsheets, financial records (including ledgers and supporting journals and information), schedules of assets and liabilities, records, technical information, and other records related to the business, financial condition, prospects, products, works-in-progress, or other aspects of the Disclosing Party which the Disclosing Party has or may provide Recipient access to, whether or not such information is marked “confidential”. Confidential Information also includes, without limitation, all intellectual property (including patents, patent applications, patent disclosures, inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, trademarks, service marks, trade names, copyrights, trade secrets, know-how, and all similar or related information which relates to the Disclosing Party’s actual or anticipated business research and development of existing or future products or services whether or not such information is marked “confidential”. Confidential Information further includes, without limitation, all copies, notes, extracts, compilations, analyses or other reproductions, in whole or in part, of any of the foregoing and in any medium whatsoever prepared by the Recipient or its representatives.

(c) The Exchange Act means the United States Securities Exchange Act of 1934, as amended.

(d) “Disclosing Party” means MBSC, or any other person, when providing Confidential Information regarding the Possible Transaction to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or to any person acting on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or any other person, when providing Confidential Information regarding the Possible Transaction to MBSC or to any person acting on behalf of MBSC.

(e) “Possible Transaction” means any transaction between MBSC and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or any of their respective affiliates, including, but not limited to, any joint venture, partnership or other business transaction.

(f) “Recipient” means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is receiving the Confidential Information, or any person or entity acting on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and MBSC, who is receiving the Confidential Information, or any person or entity acting on behalf of MBSC.

2. Non-disclosure and Non-Use.

The Recipient shall maintain the strict confidentiality of all Confidential Information received from the Disclosing Party and shall only use the Confidential Information for the purpose of evaluating a Possible Transaction and for no other purpose. The Recipient shall disclose said Confidential Information only to those of its officers, directors, employees, agents and representatives who both agree to observe the terms of this Agreement and need to have access to said Confidential Information for purposes of evaluating the Possible Transaction. The Recipient shall not disclose said Confidential Information to any party other than its officers, directors, employees, agents and representatives, or use said Confidential Information for any other purpose without the prior written consent of the Disclosing Party, which consent the Disclosing Party may withhold at its sole discretion.

3. Public Information.

The obligations set forth in Section 2 above shall not apply to any Confidential Information which: (a) is, or becomes, available to the general public through no actions of the Recipient or any person receiving Confidential Information from the Recipient; or (b) was known to the Recipient prior to its disclosure by the Disclosing Party, provided that with respect to each of the foregoing the source of the Confidential Information was not known by the Recipient, after a reasonable investigation, to be bound by a confidentiality agreement with, or other contractual, legal, or fiduciary obligation of confidentiality to the Disclosing Party.

4. No Comment.

Unless required by law (in the written opinion of counsel to the Recipient) or the rules of any stock exchange on which securities issued by Recipient are traded or the rules of the National Association of Securities Dealers if the Recipient’s Securities are quoted on the NASDAQ system, without the prior written consent of the Disclosing Party, the Recipient will not and will direct its officers, directors, employees, agents and representatives not to disclose to any person or entity that any discussions or negotiations have taken or are taking place between Disclosing Party and Recipient concerning a Possible Transaction or that Recipient has received any information from Disclosing Party. If, in the written opinion of Recipient’s counsel, such disclosure is required, Recipient shall provide Disclosing Party with a reasonable opportunity to review and comment on such disclosure before any such disclosure is made.

5. Protection of Information.

If the Recipient or its representatives receive a request to disclose all or part of the Confidential Information under the terms of a subpoena or order issued by a court of competent jurisdiction or by a governmental or administrative body, the Recipient shall immediately notify the Disclosing Party in writing of the existence, terms and circumstances surrounding such a request so that the Disclosing Party may seek a protective order or other appropriate remedy (and the Recipient shall provide such cooperation in connection therewith as the Disclosing Party may reasonably request) and/or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or the Disclosing Party whose Confidential Information is to be disclosed waives compliance with the provisions of this Agreement, the Recipient shall furnish only that portion of the Confidential Information which (in the written opinion of counsel) is legally required to be disclosed and will exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the Confidential Information so furnished.

6. No License.

No license to use any of the Confidential Information is granted hereunder except in connection with the Recipient’s evaluation of a Possible Transaction.

7. No Obligation.

Unless and until a definitive agreement for a transaction between the Recipient and Disclosing Party (a “Definitive Agreement”) has been executed and delivered, neither the Disclosing Party nor the Recipient shall be under any legal obligation of any kind whatsoever with respect to any such transaction except for such matters set forth specifically herein. This Agreement shall terminate upon the execution of a Definitive Agreement. The Disclosing Party shall not be obligated to authorize or to pursue with the Recipient or its representatives or any other party any transaction contemplated by this Agreement, and shall not be prohibited from seeking to effect any of the transactions contemplated herein with any third party. The agreements set forth in this Agreement may be expressly modified or waived only by a separate writing executed by both parties.

8. Ownership and Return of Confidential Information.

All Confidential Information disclosed to either party pursuant to this Agreement shall remain the property of the disclosing Party. At the request of the Disclosing Party, or in the event that the Recipient and the Disclosing Party do not sign a Definitive Agreement within six (6) months from the date hereof, the Recipient and its representatives shall promptly redeliver to the Disclosing Party all Confidential Information and any other written material containing or reflecting any Confidential Information (whether prepared by the Recipient, its directors, officers, employees, agents, advisors or otherwise), except material destroyed or retained pursuant to this paragraph. Neither the Recipient nor its representatives shall retain any copies, notes, extracts, compilations, analyses or other reproductions, in whole or in part, of such written material existing in any form whatsoever (including, without limitation, any such information retained on any form of electronic, magnetic, or optical media). All documents, memoranda, notes, other writings, other reproductions whatsoever prepared by the Recipient or its representatives, in any form whatsoever, shall be destroyed immediately and confirmation of such destruction shall be certified in writing to the Disclosing Party by an authorized officer supervising such destruction. Notwithstanding the foregoing, outside counsel (the identity of whom shall be revealed to the Disclosing Party) may, at the Recipient’s discretion, retain copies of documents at their offices solely for the purpose of identifying Confidential Information furnished under the terms hereof, provided such counsel shall take appropriate measures to ensure that such Confidential Information remains confidential and shall not disclose such Confidential Information without the express prior written consent of the Disclosing Party.

9. Notice.

Any notice required or permitted to be given hereunder may be given in writing by facsimile, followed by depositing the same in the United States mail, postage prepaid, or by courier, prepaid, addressed as follows:

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| --- | --- |
| If to MBSC Title: President 241 Walker StreetWatsonville, CA 95076 | If to \_\_\_ : Title  |
| Phone: 831-722-3400Fax: 831-722-3405  | Phone: Fax:  |

10. No waiver.

No failure or delay by Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

11. Severability.

In case any provision in this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.

12. Governing Law.

The interpretation and construction of this Agreement, and all matters relating hereto, shall be governed by the internal laws of the State of California, without regard to principles of conflicts or choice of law.

13. Submission to Jurisdiction; Waivers.

The Parties each hereby irrevocably and unconditionally: (1) agree that any action or proceeding related to this Agreement shall be brought in, and hereby submits itself and its property to the jurisdiction of the courts of the State of California located in the City and County of Thornton, California, the courts of the United States of America for the District of California, and any appellate courts from any thereof; (2) consent to the venue of any such action or proceeding in any of said courts and waive any objection they may have, now or hereafter, that such action or proceeding was brought in an inconvenient court and agree not to plead the same; and (3) agree that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the party against whom the action or proceeding is brought at its address set forth in Paragraph 10, provided the same is permitted by the appropriate rules of the governing court.

14. Injunctive Relief.

The Recipient acknowledges that monetary damages would be an inadequate remedy for the breach of this Agreement because of the difficulty of ascertaining the amount of damages that would be suffered by the Disclosing Party in the event of such breach. Without limiting any other remedies which the Disclosing Party may pursue, the Disclosing Party shall be entitled to equitable relief, including, without limitation, specific performance of this Agreement, without having to post any bond or any other form of security, and without having to prove that monetary damages would be an inadequate remedy. If the Disclosing Party should institute proceedings to enforce any provision of this Agreement, the Disclosing Party, if successful, shall be entitled to recover all expenses relating to the enforcement of this Agreement, including reasonable attorney’s fees and costs, in addition to other remedies.

15. No warranty.

It is agreed that the disclosure of any information as well as any Confidential Information shall not constitute a warranty or representation by the Disclosing Party, its officers, agents, employees or affiliates, as to the accuracy or completeness of such Confidential Information.

16. Entire Agreement.

This is the entire agreement of the parties and supersedes all prior communications whether written or oral concerning the matters set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of \_\_\_, 2006.

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| Monterey Bay Spice Co.By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |