

## FERRARA CANDY COMPANY

### MUTUAL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of [\*\*\*] by and between Ferrara Candy Company, an Illinois corporation, having its principal place of business at One Tower Lane, Suite 2700, Oakbrook Terrace, IL 60181 (“FCC”) and [\*\*\*], having its principal place of business at [\*\*\*] (“Company”).

WHEREAS, FCC and Company may enter or have entered into a business relationship;

WHEREAS, in the course of evaluating whether to enter into a business relationship and while any such relationship continues, the parties may exchange information which is confidential and proprietary in nature. The parties desire that disclosure of such information (where the disclosing party can be either FCC or Company, hereinafter referred to as “Discloser” and where the receiving party can be either FCC or Company, hereinafter referred to as “Recipient”) be treated as confidential and proprietary under the terms of this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the provision of confidential information and/or trade secrets and/or of such other consideration, the receipt and sufficiency of which is hereby acknowledged, FCC and Company agree as follows:

1. The term "Confidential Information" means all materials and information of either party, that is proprietary or confidential in nature, whether communicated orally or in writing, including, but not limited to certain technical and financial information, marketing plans, equipment, processes, methods, operating conditions, formulas, recipes, products, raw materials, research and development activities, trade secrets, the identity of customers, cost of products, proposed or actual business information and other information that is not publicly available or designated as confidential when disclosed.
2. The parties agree:
  - (a) Recipient acknowledges and agrees that the Confidential Information is proprietary to Discloser and a valuable asset of Discloser and that Recipient has no right, title or interest in such Confidential Information (other than the right to use the Confidential Information as permitted by Discloser solely in order to pursue the business relationship and/or the possibility thereof as contemplated herein).
  - (b) Recipient agrees to maintain the absolute confidentiality of all Confidential Information, and not to directly copy, reproduce, disclose, display, use, disclose or reveal, or permit access to or use of, or make available, or obtain any benefit from, any Confidential Information, other than as permitted in advance by Discloser solely in order to pursue the business relationship and/or the possibility thereof as contemplated herein. Recipient may disclose Confidential Information to its employees who reasonably need to know the Confidential Information,

provided that it ensures that such employees comply with Recipient's obligations under this Agreement and that Recipient shall be responsible for any breach of such obligations by any such persons.

- (c) Recipient will treat Confidential Information of Discloser with the same care with which it treats its own Confidential Information.
3. It is understood and agreed that Confidential Information shall not include, and the obligations set forth in Paragraph 2 shall not apply to information which:
- (a) is or shall become public information or otherwise generally available to the public other than through a breach of the obligations set forth herein; or
  - (b) can be demonstrated by suitable written documentation to have been known by the Recipient prior to its receipt from Discloser;
  - (c) is obtained from a third party who has the lawful right to disclose the information;
  - (d) is independently developed by Recipient without use of Discloser's Confidential Information; or
  - (e) is required by governmental or judicial authority to be disclosed, provided Recipient complies with the requirements of Paragraph 9 hereof.
4. All Confidential Information disclosed or prepared pursuant to this Agreement, including all full or partial copies thereof in any media, in the possession of Recipient are the property of Discloser and shall be returned by Recipient to Discloser upon request.
5. Discloser will retain ownership of its own Confidential Information and of any inventories, designs and/or prototypes prepared or created by it in the course of the contemplated or agreed-upon business relationship between the parties.
6. Discloser will indemnify Recipient and its Associated Companies (as defined in Paragraph 7) and other affiliates in respect of any claims, costs, losses, expenses, demands and damages arising directly out of any claim by a third party of ownership or infringement of any of the Confidential Information of Discloser.
7. This Agreement shall bind, apply to and for the benefit of the parties hereto and their "Associated Companies." As used herein, "Associated Company" shall mean a corporation, limited liability company, other entity or division thereof which directly or indirectly controls, is controlled by, or is under common control with a party. For the purposes of this Agreement a corporation, limited liability company, other entity or division thereof is considered to be controlled if the ownership, directly or indirectly, of more than fifty percent (50%) of the outstanding stock or other equity interest(s) entitled to vote for election of directors or persons performing a similar function is held by the controlling entity.

8. Except as otherwise expressly provided herein, no license or conveyance of any rights to either party is granted or implied by the disclosure of Confidential Information by the other party and Discloser gives no warranty by the furnishing of such Confidential Information to Recipient.
9. If Recipient becomes legally compelled to make any disclosure that is prohibited or otherwise constrained by this Agreement, Recipient will provide Discloser with prompt notice of such legal proceedings so that it may seek an appropriate protective order or other appropriate relief or waive compliance with the provisions of this Agreement. In the absence of a protective order or Recipient's receiving such a waiver from Discloser, Recipient is permitted to disclose that portion (and only that portion) of the Confidential Information that Recipient is legally compelled to disclose, provided, however, that Recipient must use reasonable efforts (at the expense of Discloser) to obtain reasonable assurance that confidential treatment will be accorded by any person to whom any Confidential Information is so disclosed.
10. Discloser does not make any representation or warranty (express or implied) concerning the completeness or accuracy of any Confidential Information furnished under this Agreement.
11. This Agreement shall not obligate or be construed to obligate either party to enter into any other agreement with the other party for any reason.
12. Because an award of money damages would be inadequate for any breach of this Agreement by Recipient, and any such breach would cause Discloser irreparable harm, Recipient agrees that, in the event of any breach or threatened breach of this Agreement, Discloser will also be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to Discloser. In addition, if Recipient violates the confidentiality provisions of this Agreement, Discloser may cancel any and all agreements that it has with Recipient.

13. All notices to the respective parties shall be in writing and shall be sent by certified or registered mail to the following addresses:

A. To: Ferrara Candy Company  
One Tower Lane  
Oakbrook Terrace, IL 60181  
Attention: Legal Dept.

B. [To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_]

or any other address provided prior written notice is given to the other party. Notice shall be deemed effective upon receipt.

14. Nothing in this Agreement shall create or be deemed to create the relationship of partners, employer-employee, or principal-agent between the parties. No party to this Agreement is authorized to bind any other party to this Agreement and shall not have the right to act as the agent for any other party hereto without the express written consent of the other party.

15. This Agreement and the rights of confidentiality set forth herein may not be assigned in whole or in part by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon the parties and their respective successors and assigns.

16. Should any provision of this Agreement be held to be illegal or unenforceable, such holding shall not affect the validity of the remainder of the Agreement. The provisions of this Agreement shall be severable and if any provision of this Agreement is found by any court to be unenforceable, in whole or in part, the remainder of this Agreement shall nevertheless be enforceable and binding on the parties. The parties agree that a court may modify any invalid, overbroad or unenforceable term of this Agreement so that such term, as modified, is valid and enforceable under applicable law. No waiver of any breach of any provision of this Agreement by either party shall be effective unless it is in writing and no waiver shall be construed to be a waiver of any succeeding breach or as a modification of such provision.

17. This instrument sets forth the entire Agreement between the parties relating to the subject matter hereof. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by the authorized representatives of both the parties. The parties to this Agreement have not, will not and cannot rely on any representations not expressly made herein. This Agreement may be executed in counterparts, which together constitute one agreement. Facsimile signatures are binding.

18. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
19. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois as applied to agreements made between residents of Illinois for performance entirely within Illinois and without reference to Illinois conflict of law rules. The federal and state courts in Du Page County Illinois shall have jurisdiction over any claim brought under this Agreement, and the Parties hereby consent to the personal jurisdiction of such courts.
20. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect thereto.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**FERRARA CANDY COMPANY**

[\*\*\*]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_