

# LETTER OF UNDERSTANDING FOR THE RESTRUCTURING OF HOSTESS BRANDS

This Letter of Understanding (“LOU”), dated August \_\_\_\_\_, 2012, is entered into by and between the IBC-IBT National Negotiating Committee for the Local Unions affiliated with the International Brotherhood of Teamsters (the “IBC-IBTNNC” and, collectively, the “Unions”) covered by the October 10, 2008 IBT-IBC Modification Agreement (the “Modification Agreement”), the International Brotherhood of Teamsters (the “IBT”) (for the purposes of Sections (Q), (T), (U), (X), (BB), (FF) of this LOU) and Interstate Brands Corporation (“Hostess” or the “Company”), their successors and assigns.

This last, best final offer is subject to ratification by affected members in accordance with the provisions of the IBT constitution. In the event that this LOU is not ratified, the Company intends to pursue an immediate sale of substantially all of the assets / liquidation.

For the avoidance of doubt, any and all modifications agreed to by the Unions and the Company are part of an overall effort to address the many problems at Hostess and are made in the spirit of shared sacrifice. As a result, each of the elements of this LOU, including but not limited to the capital structure, governance and accountability proposals, are integral and inseparable elements of the LOU.

Any agreement reached on any portion of this LOU is contingent upon a ratified agreement being reached with the Unions on the entire LOU. Once agreement is reached on the entire LOU, the IBC-IBTNNC will promptly submit this LOU for membership ratification pursuant to the provisions of the Union’s respective governing documents.

The IBT collective bargaining agreements (as modified by the Modification Agreement and from time to time, the “CBA” or “CBAs”) between the Company and the Local Unions, as further modified by this LOU shall be referred to herein as the “Modified CBAs.”

## (A) The Use of Casual Transport Drivers

The Company may utilize casual transport drivers (“Casuals”) to fill in for regular full-time drivers absent due to illness or unscheduled absences, or to run extra loads. In such cases, the weekly guarantee shall not apply to such Casuals, but they shall receive a minimum eight (8) hour daily guarantee. If the Casual is paid “trip rate pay,” he or she shall be guaranteed the run or extra load available that day or eight (8) hours’ pay, whichever is greater. Further:

- (1) Casuals must be Teamsters.
- (2) The Company will not be required to provide advance layoff notices to Casuals.
- (3) Health & Welfare & Pension contributions will be made for Casuals as follows: If an employee works three (3) days or more in a week, the Company will make contributions as if the employee worked the entire week. If the employee works less than three (3) days in a week the Company will only make contributions on the days worked unless fund rules require otherwise (details to be worked out with the affected Locals).

For Casuals eligible under the Company H&W plan, the employee must average 24 hours per week or more for 3 consecutive months to be eligible for Health & Welfare benefits, as outlined in Section (P)(1) of this LOU, for the following 3 months.

- (4) Casuals’ other benefits such as vacations, holidays or personal days shall be pro-rated at years’ end based on actual time.

## (B) Trip Pay Conversion and Transport Schedules

- (1) The formula used for Trip Pay will include the following:
  - a. Trip pay to be used on 90% of posted speed limit except for major metro areas – where 30 MPH will be used within a 30 mile radius of such area (details to be worked out with the affected Locals based on time studies or mutual agreement).
  - b. Pre and post trip – 30 minutes each.
  - c. Drop & Hook – 30 minutes each.
  - d. Fueling – 15 minutes per tank.
  - e. Two 15 minute paid breaks for the first 8 hours plus one 30 minute unpaid lunch period. After the 10<sup>th</sup> hour, the driver will qualify for another 15 minute break.
  - f. Load/unload time paid at bakeries or depots will be paid at 90 minutes for full trailer and 45 minutes for half or less.
  - g. All issues regarding bid runs or any changes covered hereunder shall be resolved through the affected Local’s grievance procedures.
  - h. Bid changes of more than 2 hours will be furnished to the shop stewards and unions no less than 2 weeks prior to such changes. Bid changes of 2 hours or more shall require rebidding of runs from that driver’s seniority down.
  - i. The Company agrees to meet with the Locals involved to resolve any issues regarding the new runs or the formula used to build the runs. Any unresolved issues will be subject to the affected Local’s Grievance Procedure.

- (2) Transport schedules will be posted by 12 noon Thursday each week for the following week’s dispatch schedule. Changes are limited to no more than 2 hours.

## (C) 3<sup>rd</sup> Party Distribution

- (1) The Company may utilize distributors and wholesalers to distribute a Hybrid line of branded cake and/or bread products.
- (2) The Hybrid product distributed in this channel of business will be graphically differentiated, and shall have different bar codes so as to ensure easy visual identification as different from main-line branded product.
- (3) The customers covered by this distribution of Hybrid products shall be limited as follows:
  - a. low volume customers defined as having sales that average under \$100 per week over a thirteen (13) week period that the Company terminates DSD service to;
  - b. all Vending, Drug Stores and Dollar stores (the Company desires to keep those Drug Stores that average over \$200 per week on its Hostess DSD routes and will work with its Drug Store customer chains to allow both Hostess DSD and 3<sup>rd</sup> Party hybrid delivery);
  - c. customers who are currently not being serviced by any Teamsters covered by the Modification Agreement. (new stores from our current chain customers which fall within our DSD service area and would not otherwise fall under

(C)(3)(a) or (C)(3)(b) are not to be included in the 3<sup>rd</sup> party distribution).

- (4) Should a vending customer who is currently being serviced by a Hostess RSR, decide to discontinue DSD service and within six (6) months of the discontinuance elect to purchase Hybrid Hostess product through a distributor, the RSR so affected will receive a 26-week wage guarantee based on the last 13-week average at the time of discontinuance of DSD service.
- (5) Provided that there is sufficient available back-haul of Company products and/or equipment, all of the Hybrid product will be shipped from the bakery or designated Company facility by Teamster transport drivers and/or delivery drivers covered under the Modification Agreement. Notwithstanding the previous sentence, the Company may use other methods of delivery provided that such methods of delivery are not prohibited under the CBA. Using transport drivers other than Teamsters to deliver this Hybrid product will not result in a reduction of Teamster transport jobs.
- (6) The Company will pay 3% of the net sales on all Hybrid business done through the aforementioned customers. These funds will go into a RSR pool to be distributed equally amongst all RSRs on a quarterly basis.

Payments made into the aforementioned pool will sunset at the expiration of this LOU.

- (7) Any violation of this 3<sup>rd</sup> party distribution article will be dealt with within 72 business hours of the Union filing such grievance and a curing remedy shall follow within 1 calendar week.

#### **(D) Combo Routes**

Where currently prohibited, any restriction on allowing the Company to sell bread on its cake routes or cake on its bread routes is relaxed. Upon the Company electing to merge both cake and bread the Company will meet with the affected Local or Locals to work out all seniority issues.

#### **(E) Pull-Up Flexibility**

- (1) Where bargaining unit employees perform pull-up work, the bargaining unit employee shall perform both bread and cake pull-up work as directed. Where there is currently a separate bread and cake pull-up, seniority lists will be dovetailed for the purpose of pull-up work. Any outstanding issues will be worked out with the affected Local or Locals.
- (2) Where bargaining unit employees perform pull-up work and such work is paid at a rate higher than \$17.00 per hour, the pull-up rate will be capped at \$17.00 per hour.

#### **(F) Call-Back Flexibility**

Any restriction on allowing the Company to require RSRs to perform call-back service to a customer is relaxed.

#### **(G) Loader Flexibility**

Any restriction on allowing the Company to assign Teamster loaders to handle bread, cake or a combination of both is relaxed. All seniority issues to be worked out with the affected Local or Locals.

#### **(H) Drop N Go**

Change Appendix B Paragraphs 1 and 8 method of delivery of the Modification Agreement from \$100.00 to \$300.00 maximum weekly sales.

#### **(I) Commission Pay/Bill Back Reports**

This understanding does not affect Locals that are presently paid on gross sales.

When making commission adjustments on bill-back promotions, the Company will reflect the commission adjustments on the relevant paycheck. The RSRs will be provided a report, by route, showing his/her weekly bill-back commission adjustment.

The Company is working to develop a daily report to be accessed through the hand-held showing daily promotional bill-back activity. This project is underway and should be completed in FY 2013. Upon the Company moving to the relevant paycheck it shall forgive one week of adjustments so that the RSR is not affected by more than one week of adjustments when the project is completed and adjustments appear on the relevant paycheck.

#### **(J) Competition & Dolly Madison**

In order to compete with Little Debbie, the Company will develop a line of like items (i.e. Oatmeal Crème Cookies, Nutty Bars). The source of product ideas/design will be the Top 10 Little Debbie stock-keeping units. These products will not include any products that are direct competitors of Hostess.

The Company will have the right to immediately distribute the above products under the "warehouse delivery system" as agreed by the parties and in effect under the Long Term Extension Agreements. Immediately following the introduction of the above items, the Company will eliminate three items currently on the Dolly Madison Bakery Cake Warehouse Direct Product List.

As the sole alternatives to its warehouse delivery system, the Company may instead either: 1) utilize its Route Sales Network to deliver pre-pack displays at a drop commission of 3%, or 2) repatriate Dolly Madison products to its Route Sales Network as a value positioned alternative product line. Commission will be paid at 5% or the prevailing private label commission rate under the CBA (whichever is higher) for full service delivery.

#### **(K) Direct Deposit or Pay Card**

All employees will receive their pay via Direct Deposit or Pay Card unless prohibited by state law and provided that there is no cost to the employee.

#### **(L) Exit from Sales Markets**

The Company agrees that it will not exit any current sales market during the term of this LOU for the purpose of evading the terms and conditions of this LOU or the underlying bargaining agreements. Should the Company nonetheless decide to exit a sales market, it agrees that it will negotiate with IBC-IBTNNC over the decision and its effects if the decision is predicated on labor costs, and will negotiate with the IBC-IBTNNC over the effects of the decision if the decision is not predicated on labor costs. Any transfer of the Company's business in a sales market to a third party shall be subject to the Transfer of Title or Interest provision in this LOU unless specifically excluded.

#### **(M) Field Accounting Offices**

As part of its turnaround plan, the Company will consolidate and/or outsource its field accounting office processes. The Company will honor any request for effects bargaining from any Local Union representing employees displaced by such consolidation and/or outsourcing. In addition, for those employees affected, the Company will provide outplacement assistance through a third party provider. Additionally, for those interested, the Company will provide a list of other opportunities within the Company if available.

**(N) Daily Guarantee**

Except as described in Section (A) of this LOU, eliminate any contractual requirements for 8 hour daily guarantee.

**(O) Wages**

Effective the first Sunday following the effective date of this LOU, the wage increase provided on July 29, 2012 will be rescinded. Additionally, total wage compensation (wages and commissions) will be reduced from the pre-July 29, 2012 wage and commission rates ("baseline") by 8% in the first year of this LOU, by 5% from the baseline in the second, third and fourth year of this LOU, and by 4% from the baseline in the fifth year of this LOU.

This provision is conditioned upon the reductions being applied to all employees, including management.

**(P) Health & Welfare**

- (1) Employees currently covered under a company-administered Health and Welfare plan will be covered under the company-administered Health & Welfare plan attached as Appendix 1, which reflects a 17% savings to the Company. This plan does not include retiree coverage.
- (2) For employees currently covered under a Taft-Hartley plan, the Company's contribution will be reduced by 17%. For those Taft-Hartley plans that cannot or are otherwise unwilling to modify the benefit coverage and/or reduce the Company's cost, employees will fund the additional necessary contributions via payroll deduction. The Company agrees to increase its annual contributions, if necessary to maintain benefits, up to 9% per year for the period of this LOU.

**(Q) Pension**

The Company will work with the Unions to provide for the reentry of Hostess into the IBT multi-employer pension plans ("MEPPs" or "Funds") to which it had been contributing prior to August 2011. The re-entry for each MEPP would be conditioned upon the following:

- (1) Each MEPP would be required to adopt a New Employer Pool or amend its existing New Employer Pool (the "New Employer Amendments") consistent with the following provisions. The Pension Benefit Guaranty Corporation must approve the New Employer Amendments no later than 6 months prior to the Re-Entry Date. Each MEPP will provide an agreement stating that Hostess' discharge of withdrawal liability and delinquent contributions in bankruptcy constitutes full satisfaction of that liability and any delinquent contributions for purposes of entry into the New Employer Pool.
- (2) The New Employer Amendments, and as applicable, the Modified CBAs, will incorporate the following provisions:
  - a. In the event Hostess is included in a mass withdrawal, the MEPP will allocate mass withdrawal liability proportionate to each employer's initial withdrawal liability (*i.e.*, the mass withdrawal will not result in the re-allocation of Old Employer Pool unfunded liabilities to New Employers like Hostess).
  - b. In the event that any of the following Withdrawal Events, as defined below, occurs, Hostess shall be deemed to have withdrawn from the affected MEPP on the last date of the Plan Year prior to the Withdrawal Event's occurrence. The MEPP shall retain all amounts paid or accrued by Hostess under the Modified CBA during any period between deemed withdrawal date and the occurrence of one of the

specified Withdrawal Events. Hostess participants in such MEPP will migrate to a Fall-Back MEPP (as defined below) agreed to by Hostess and the Unions as of the date of the deemed withdrawal.

- i. Hostess is subject to an increase of 5% or more (in the aggregate) in the rate of its required annual contribution to the MEPP, as compared to the levels expressly specified in the Modified CBA, whether mandated by statute, contract, the MEPP's rehabilitation plan or otherwise, except for contemplated post-Re-Entry Date contribution rate increases as described below in this Section (Q);
  - ii. The Internal Revenue Service assesses an excise tax under 26 U.S.C. § 4971 with respect to the MEPP;
  - iii. The MEPP fails for two consecutive years to satisfy its Rehabilitation Plan;
  - iv. The MEPP is projected by its actuary to become "insolvent" within four years within the meaning of Section 4245 of ERISA;
  - v. If for any two consecutive years, the allocable New Employer Pool UVB's attributable to Hostess exceed 2 times Hostess' annual contributions to the MEPP for such years;
  - vi. UVB's from the MEPP's Old Employer Pool are allocated to the New Employer Pool;
  - vii. If funding levels (calculated in the same manner as for the MEPP's annual funding notice required by Section 101(f) of ERISA) fall below 90% in the New Employer Pool or below 35% in the Old Employer Pool;
  - viii. There is a final, non-appealable order of a court of competent jurisdiction holding that a MEPP's New Employer Amendments are substantively illegal in a material respect and such illegality cannot be corrected through reasonable measures.
- (3) A Fall-Back MEPP is one of the MEPPs that Hostess was required to contribute to before August 2011 and which has not been in critical status for the either of the two consecutive years prior to the planned migration and agrees to the changes specified in this document. Under the following circumstances, Hostess can migrate employees in a given MEPP to a mutually agreeable Fall-Back MEPP:
- a. In the event that a MEPP does not (i) make the necessary amendments (and receive PBGC approval) to adopt or modify the New Employer Pool as agreed to by the parties, and (ii) accept the protections provided in this LOU, in either event, no later than 6 months prior to the Re-Entry Date.
  - b. In the event that a MEPP elects not to accept all pension protections set forth herein.
  - c. In the event that a MEPP is amended to eliminate any of the agreed-upon protections.
  - d. In the event that a Withdrawal Event, as defined above, occurs.

The pension protections described above will have a 10-year term, provided that Hostess submits a collective bargaining agreement (or successive collective bargaining agreements,

until the agreement of a collective bargaining agreement with an expiration date the same or later than the 10<sup>th</sup> anniversary of the date upon which Hostess emerges from Chapter 11 (the "Exit Date") (i) requiring contributions to the MEPPs, (ii) complying with the requirements stated herein, (iii) otherwise conforming to the MEPP's participation rules and (iv) covering the full duration of such collective bargaining agreement, up to the 10<sup>th</sup> anniversary of the Exit Date.

From the date of Ratification through December 31, 2014, Hostess will not be required to make contributions to the MEPP. Effective January 1, 2015 (the "Re-Entry Date") the Company's contribution rate to the MEPPs will be 25% of the CBA contribution rates in effect in July 2011 per week per eligible employee. The Company shall contribute up to 30% of the CBA contribution rates in effect in July 2011 per week per eligible employee in any quarter in which the preceding four quarter period EBITDA exceeded \$150 million, calculated on a pro-forma adjusted basis assuming the greater contribution level had been paid for the entirety of the preceding four quarter period.

In the event that (i) no MEPP has approved the proposed amendments, or (ii) the PBGC does not approve the necessary amendments, in either event no later than 6 months prior to the Re-Entry Date, or there are no eligible Fall-Back MEPPs, then the Company will contribute the appropriate contributions into a Company-operated defined contribution plan (the "DC Plan"). Affected employees will participate in the DC Plan effective January 1, 2015. The DC Plan will contain a 401(k) feature to allow participating employees to make pre-tax contributions from their salary in addition to the promised Hostess contributions. Employees will be 100% vested in the their Hostess-contributed DC Plan benefits following 3 years of employment service, and all years of employment service with Hostess prior to January 1, 2015 will be taken into account under the DC Plan in determining years of vested service. All start-up costs to draft the DC Plan, establish the Plan trusts, and retain service providers will be borne by Hostess. Annual administrative and investment management fees will be paid with pension trust assets. Each DC Plan will be operated and maintained by a joint board of trustees appointed equally by Hostess and the Unions, unless the Unions indicate prior to the Re-Entry Date their unwillingness to participate in a jointly-operated arrangement, in which case the DC Plan will be operated and administered solely by Hostess.

Effective January 1, 2015 the Company's contribution rate to the new DC Plan will be 25% of the CBA contribution rates in effect in July 2011 per week per eligible employee. The Company shall contribute up to 30% of the CBA contribution rates in effect in July 2011 per week per eligible employee in any quarter in which the preceding four quarter period EBITDA exceeded \$150 million, calculated on a pro-forma adjusted basis assuming the greater contribution level had been paid for the entirety of the preceding four quarter period.

The IBT has the option to substitute the Inter-Local Pension Fund of the Graphic Communication Conference of the International Brotherhood of Teamsters (the "IBT Plan") for the DC Plan described above but only if (i) no PBGC or IRS approved amendments are required, (ii) the Company is not a plan sponsor of the IBT Plan, (iii) the Company is not a contributing employer to the IBT Plan and (iv) the Company does not have any liability or increased costs of, from or relating to

the IBT Plan if the IBT elects for its represented employees to participate in and contribute to the IBT Plan. For the avoidance of doubt, if the IBT elects for its represented employees to participate in and contribute to the IBT Plan, the Company's contribution rate obligations will become payments as wages to employees in the same amounts as the contribution rates to the DC Plan specified above in this Section (Q).

#### **(R) Shared Sacrifice**

The Unions' acceptance of the terms of this LOU is expressly conditioned upon the Company's commitment to shared sacrifice. Following emergence and subject to the provisions of Section (Y)(1) below, disagreements between the Unions' and the Company over the Company's commitment to shared sacrifice shall be subject to the grievance procedure under the Modification Agreement on an expedited basis in accordance with the Rules of the American Arbitration Association. Following emergence, if the arbitrator finds that the Company has violated its obligation, the sole remedy will be an award of liquidated damages provided that, during the term of this LOU, the aggregate amount of liquidated damages regarding violations of the "shared sacrifice" provision cannot exceed \$5,000,000. Any such damages will be paid to the IBT-represented employees. For the avoidance of doubt, the parties to this LOU (i) understand and agree that the concepts in this Section (R) will not go into effect until all the Company's unions have ratified their respective LOUs or such LOUs have been implemented pursuant to court order, and (ii) recognize that the effective dates of all the Company's unions' LOUs could vary prior to the Exit Date.

The Company's obligation regarding "shared sacrifice" is, regarding employees who are not IBT-represented, to use best efforts to seek wage and benefit cost adjustments that would be comparable to those adjustments for IBT employees under this LOU. To determine whether the adjustments sought by the Company would be "comparable," all relevant circumstances, measured in a practical manner, will be considered; for example, relevant circumstances would include the fact that the Company's unrepresented employees (including management) have experienced "shared sacrifice" in light of changes to their H&W, retirement, and pension benefits.

#### **(S) Governance**

- (1) The Company's initial post-restructuring Board will consist of 9 members – 8 non-employee directors and the CEO.
- (2) Of the 8 non-employee directors, 6 of those directors will be elected by a committee established by the existing Third Lien Term Loan lenders. 1 will be elected by the IBC-IBTNNC, and 1 will be elected by the BCTGM and/or the Company's other labor unions. The board members appointed by the IBC-IBTNNC, BCTGM and/or the Company's other labor unions, or their replacements, shall serve for the duration of the Modified CBAs described in this LOU.
- (3) One IBC-IBTNNC representative shall serve on each of the audit and compensation committees of the Board.
- (4) A shareholders' agreement shall be executed by the new shareholders containing customary terms and conditions for transactions of this type.
- (5) The chairman of the Board will be a director other than the post-restructuring chief executive officer to the extent this does not otherwise impede recruiting a new CEO.
- (6) The Company intends to recruit a new CEO contemporane-

ous with the pursuit of a plan of reorganization to run the post-emergence Company. Furthermore, the Company intends to supplement the existing management team as necessary to implement the turnaround plan.

#### **(T) Merita**

To the extent the Company in the future attempts to sell Merita or any or all associated facilities, the Unions and the IBT will (i) support such sale, and (ii) provide affirmative agreement to all contract modifications and support necessary to implement the transaction.

#### **(U) Administrative Claim Concessions**

##### **(1) Concessions by professionals**

- a. Professionals entitled to fees projected to be earned from January 11, 2012 (the "Petition Date") through the Exit Date will receive 82% of those fees in cash and 18% of those fees in new Third Lien Term Loan (assumed \$62 million of fees)

##### **(2) Concessions by 503(b)(9) claimants**

- a. Company will use commercially reasonable efforts to obtain an agreement from 503(b)(9) claimants to receive new Third Lien Term Loan for their pro-rata share of \$5 million of the total 503(b)(9) claim pool.

- (3) The IBC-IBTNNC (on behalf of itself, the Local Unions and the Company employees they represent) and the IBT (all the foregoing collectively, the "IBT Parties") shall waive any administrative expense or priority claim that the IBT Parties may have. For the avoidance of doubt, the IBT Parties are not waiving claims for ordinary course payments (*e.g.*, wages, vacation pay, medical payments, health and welfare payments and postpetition grievances *other than* grievances over payments to MEPPs or claims, if any, otherwise waived as part of this LOU) of the kind that the Company has been making from and after the Petition Date to or for the benefit of Company employees represented by the Local Unions. Further, it shall be a condition to any plan of reorganization that all pension funds and unions shall waive any administrative expense or priority claims held by them. As a condition precedent to the effectiveness of any plan of reorganization, each MEPP must waive any administrative expense or priority claim no later than the date that this LOU is ratified.

#### **(V) Capital Structure**

- (1) At exit, the Company will have the following outstanding debt:

- a. A new ABL revolver with an outstanding balance of \$42 million, which represents \$50 million pre-petition amount less \$8 million pay-down pursuant to a plan of reorganization with new ABL revolver subject to borrowing base availability;
- b. A new First Lien Term Loan in an amount equal to the outstanding amount of existing first lien claim (other than accrued default interest amounts which existing lenders will waive as part of a consensual deal), less any amounts of existing First Lien Term Loan A/B paid off pursuant to a plan of reorganization distributions (currently estimated as \$353 million new first lien loan assuming a \$59 million pay-down). New First Lien Term Loan distributed to holders of existing First Lien Term Loan A/B;
- c. A new Third Lien Term Loan in an amount equal to 90%

of the outstanding amount of existing third lien claim (other than accrued default interest amounts which existing lenders will waive as part of a consensual deal) plus concession amounts provided to 503(b)(9) claimants and professionals pursuant to Sections (U)(1) and (U)(2) plus \$100 million (currently estimated as \$282 million new third lien loan, comprised of \$165 million related to existing third lien claim plus \$5 million of 503(b)(9) claim, \$12 million professional fees, and \$100 million claim for union concessions). New Third Lien Term loan distributed to holders of existing Third Lien Term Loan A/B, 503(b)(9) claimants, professionals and \$100 million claim to be split among all unions. Note that the claim allocated to the unions, 503(b)(9) claimants and the professionals (the "Non-Institutional Holders") will have full *pari passu* economic rights with the rest of the class, but will not have voting rights or control (whether in a bankruptcy context, amendment context or otherwise, so long as the Non-Institutional Holders' claims are not materially disproportionately adversely affected). The structuring mechanic necessary to effect this is subject to continued legal discussion.

- (2) There will be no distributions to any other pre-petition creditors, including Fourth Lien Term Loan claims, any unsecured claims and any equity interests.

##### **(3) Debt terms:**

- a. The First Lien Term Loan will carry a coupon of L+700bps (cash) plus 200bps (PIK) with a LIBOR floor of 1.50%, 1% per annum amortization and a 100% excess cash flow sweep. Existing First Lien Term Loan lenders are willing to waive accrued default interest as part of this consensual deal. Other terms TBD;
- b. The Third Lien Term Loan will carry a coupon of 500 bps PIK. Existing Third Lien Loan lenders are willing to waive accrued default interest as part of this consensual deal. Other terms TBD.

##### **(4) Equity sharing:**

- a. The holders of the Third Lien Term Loan will receive 75% of the reorganized equity;
- b. The collectively bargained employees will receive 25% of the reorganized equity, to be shared among all collectively bargained employees in proportion to the concessions granted by each union in a manner to be determined by the unions; however, in no event shall any allocation of shares require the reorganized Company to become a public company under the relevant securities laws;
- c. A management incentive plan will be instituted and will dilute each of the above on a pro rata basis on terms TBD.

#### **(W) Excess Liquidity at Closing**

- (1) Liquidity at closing in excess of \$120 million to be utilized as follows:
  - a. 50% to be paid pro-rata to reduce professionals' and 503(b)(9) third lien claims not to exceed the full amount of fees or claims converted into new Third Lien Term Loan pursuant to Sections (U)(1) and (U)(2)
  - b. 50% to holders of existing First Lien Term Loan

#### **(X) Chapter 11 Plan**

The Parties agree that any plan of reorganization proposed in the

Company's Chapter 11 cases (inclusive of the disclosure statement and other plan-related documents), or otherwise supported by the Company, will contain at least the following terms:

- (1) **Assumption of Modified Agreements.** The Modified CBAs will be assumed pursuant to 11 U.S.C. § 1113 under a plan of reorganization.
- (2) **Release and Exculpation.** Any plan of reorganization will include customary release and exculpation clauses that will be at least as comprehensive for the IBC-IBTNNC, the IBT, the Local Unions, and each of their current or former members, officers, committee members, employees, advisors, attorneys, accountants, actuaries, investment bankers, consultants, agents and other representatives, in each case in their capacities as such (the "IBC-IBTNNC Exculpated Parties"), and at least as comprehensive for the DIP Lenders and the Pre-Petition Secured Parties (as such terms are defined in the debtor in possession financing entered on February 3, 2012 in the bankruptcy cases) and each of their current or former members, officers, committee members, employees, advisors, attorneys, accountants, actuaries, investment bankers, consultants, agents and other representatives, in each case in their capacities as such (the "Lender Exculpated Parties"), as such release and exculpation provisions are for the Company and its officers, directors, and advisors. The Company will propose in its plan of reorganization that the IBC-IBTNNC Exculpated Parties, the Lender Exculpated Parties and the Company and various Company-related parties (collectively, the "released parties") be released and exculpated from any and all claims, including any claims assertable by any other released parties, related to the Company's chapter 11 cases; the formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of the Modified CBAs, the disclosure statement concerning the plan of reorganization or the plan itself, or any other agreement of document created, modified, amended, terminated or entered into in connection with either the plan of reorganization or any agreement between the Company, the IBC-IBTNNC, or the Local Unions. Upon request of the IBC-IBTNNC, IBT, or a Local Union, the Company will appear and intervene, or, if intervention is not authorized, file an amicus brief (if permitted to do so), asserting and defending the application of these exculpation provisions in any relevant proceeding relating to the application of these exculpation provisions to the IBC-IBTNNC, IBT, or a Local Union.
- (3) **Professional Fee and Expense Recovery.** If Ratification takes place and the modifications described in this LOU are still in place as of confirmation of a plan of reorganization in form and substance contemplated by this LOU, the Company will pay or satisfy, in all cases in accordance with the provisions of Section (U)(1) of this LOU, the reasonable fees as agreed in their respective engagement letters, if applicable, or if not applicable, based on their usual and customary fee schedule, as follows:
  - a. Willkie, Farr & Gallagher
  - b. Cohen, Weiss & Simon
  - c. Bailey & Ehrenberg, PLLC
  - d. MAEVA Group, LLC
- (4) The chapter 11 plan to be proposed in the chapter 11 cases of the Company and its debtor affiliates shall provide that: (a) any and all (i) claims of the DIP Lenders against the Company

are allowed administrative expense claims that shall be paid in full in cash upon such plan's effective date and (ii) claims of the Pre-Petition Secured Parties against the Company, other than those relating to the fourth lien debt, are allowed secured claims; and (b) the DIP Lenders' and Pre-Petition Secured Parties' liens are valid and enforceable and no longer subject to challenge in any respect.

#### **(Y) Implementation Of Agreements**

- (1) **Effectiveness of Concessions.** On the first Sunday following the date of Ratification, the concessions granted by the Unions in this LOU will become effective. However, if (a) the effective date of a plan of reorganization for the Company has not occurred within 120 days following the date of Ratification and (b) the Company is not diligently pursuing the negotiation and confirmation of a plan of reorganization as contemplated in this LOU, then the concessions granted by the Unions in this LOU will cease, and the terms of the Modified CBAs will snap back/revert to those in existence prior to this LOU.
- (2) **Bankruptcy Court Approval.** The Company will seek Bankruptcy Court approval of this LOU at the time, and in the same pleading in which, it seeks approval of all other union LOUs (the "**Global Settlement Motion**"). The Global Settlement Motion will provide that the union LOUs will be approved as a settlement of all issues among the Debtors and their unions (including the Unions), but as set forth in Section (X) above, the Modified CBAs will be formally assumed as part of a plan of reorganization. The Company will give IBC-IBTNNC counsel advance notice of and an opportunity to comment on all pleadings filed in connection with such approval and will consider in good faith all such comments. The Company will use good faith efforts to obtain the support of the Official Committee of Unsecured Creditors, the DIP Lenders, the Secured Lenders, and other key constituencies in the Company's Chapter 11 cases of the Global Settlement Motion.

#### **(Z) Transfer Of Company Title Or Interest**

- (1) It is understood by this Section (Z) that the parties hereto shall not use any leasing device or subterfuge to a third party to evade this LOU.
- (2) The Employer shall give notice of the existence of this LOU to any heir, transferee, purchaser, lessee, assignee, etc. of the operations covered by this LOU or any party thereof. Such notice shall be in writing with a copy to the IBC-IBTNNC not less than thirty (30) days prior to the effective date of sale or transfer. No part of the work or operations covered by this LOU shall be sublet, transferred or in any other manner disposed of without at least thirty (30) days advance written notice to the Union, and opportunity for the Union to discuss the proposed action with the Employer.
- (3) **Additional Protections.** In the event of a transaction as defined above, the Company will abide by the following additional protections:
  - (a) Notify potential purchasers that the bargaining unit employees working in the affected facility(ies) are represented by the IBT and that the applicable Modified CBAs is (are) in effect;
  - (b) Provide potential purchasers with access to all Modified CBAs in effect between the Company and the IBT

- covering the affected facility(ies) that may be involved in a specific purchase;
- (c) Inform the IBC-IBTNNC of the purchaser(s)'s identity prior to closing;
  - (d) Consult with the IBC-IBTNNC regarding the effects of the sale;
  - (e) Advise potential purchasers of their obligations under the National Labor Relations Act;
  - (f) Introduce prospective purchasers to the IBC-IBTNNC;
  - (g) Provide the IBC-IBTNNC with all information given to potential purchasers; and
  - (h) require, as a condition of the closing of the Sale, that the purchaser(s):
    - i. offer employment, in plant and classification seniority order, to the former Company employees employed in the facility (or who have been laid off between the effective date of this LOU and the sale) that is the subject of the transaction; provided however, that if the purchaser intends to operate the facility with fewer employees, for a period of two years from the closing of the sale, employees not hired pursuant to this provision shall be placed on a preferential hire list and shall be offered employment as employment opportunities become available prior to the purchaser hiring new employees;
    - ii. recognize the IBT as the exclusive bargaining representative for the bargaining unit employed at the affected facility(ies), if the purchaser continues to operate the facility as a baking, depot, office or sales facility as may be the case;
    - iii. enter into a collective bargaining agreement with the IBT containing a recognition clause, a union security clause, and a dues check-off clause substantially identical to such clauses as contained in the Agreements covering the subject facility(ies);
    - iv. provide the IBT with reasonable access to employees during business hours during the transition period to the extent that such access does not interfere with business operations.
- (4) In the event of the closure of a bankruptcy-approved sale, conveyance, assignment or other transfer of the Merita brand, including the Birmingham, AL, Jacksonville, FL, Orlando, FL, Knoxville, TN, and Rocky Mount, NC facilities covered by an IBT Modification Agreement (a "Merita Sale"), this Section (Z) shall not apply to the collective bargaining agreements covering those facilities, or to any other collective bargaining agreements to the extent that they cover employees involved in the manufacturing, marketing, sale or distribution of Merita products. The Company will abide by its effects bargaining obligation with respect to any such sale, however, the purchaser(s) shall have no contractual successorship obligations and there shall be no contractual restrictions on the Company's right to close any of the facilities affected by a Merita Sale. Notwithstanding anything to the contrary in this LOU, this Section (Z) will not apply to any sale pursuant to which the purchaser does not operate the facility as a bakery, depot, office or sales facility within six months after the closing of the sale.

#### (AA) Transfer of Brands

If the Company transfers the right to produce any product under the name of any of the Company's current Brands (as defined below) or any other Brands or new Brands created after the date hereof (a "Transfer") to another person, entity, company, corporation, or firm through a lease, license or any other transaction under which product bearing the name of one of the Company's Brands is produced by such person, entity, company, corporation, or firm (excluding a sale) (a "Transferee"), in either a single transaction or series of transactions, the Company shall give written notice of the existence of the Modified CBAs to any proposed Transferee, with a copy of such notice to IBT and the affected IBT Local Union, before the Transferee executes an agreement with respect to the transaction. As used herein, the term "Brand" shall mean a name, term, design, symbol, sign or any other feature that identifies the Company's goods and products, and shall include currently owned brands as well as those developed, acquired, or joint ventured in the future; provided, however, Brand shall not include Merita.

#### (BB) Plant Closures

For a period of six months following ratification of the applicable Modified CBA, consistent with customary business considerations, including but not limited to cash reserves, plant and brand profitability, and local and national market competitiveness, the Company will seek to avoid closing any plant or facility covered by a Modified CBA with the IBT. In the event that such a plant or facility is closed, the IBT shall be permitted to arbitrate only the specific question of whether those considerations existed. If an arbitrator finds that such conditions did not exist, the remedy shall be limited to one weeks' pay for each IBT-represented employee working at the affected plant or facility, in addition to any severance or other statutory or contractual payments otherwise owed.

In the event that the Company desires to close any of its plants or facilities, the Company shall give IBT at least 30 days' prior written notice. The Company shall consult with IBT and shall use its best efforts to solicit interested parties to acquire or lease such plants and facilities or license the related Brands, in each case on terms that would allow for the continued employment of the maximum number of employees represented by IBT. The Company shall use its best efforts to cooperate with IBT in connection with any such transaction, and shall provide any information relating thereto to IBT contemporaneously with the delivery thereof by the Company to a potential acquirer, or promptly after the receipt thereof by the Company from a potential acquirer. In the event that there is a dispute over whether the Company used its best efforts, the IBT shall be permitted to arbitrate only the specific question of whether the Company used its best efforts in connection with obligations set forth in this Section (BB) an arbitrator finds that the Company failed to use its best efforts pursuant to the terms of this Section (BB), the remedy shall be limited to liquidated damages in the amount of \$25,000 or less.

This Section (BB) shall not apply to Permissibly Closed Plants, or, in the event of a Merita Sale, to the Birmingham, AL, Jacksonville, FL, or Orlando, FL plants, which the Company shall have the right to close in its sole discretion. The Company will abide by its effects bargaining and other legal obligations with respect to any Plant closings.

A Permissibly Closed Plant shall be defined for purposes of this section as those plant closures set forth in Sections (BB) (i)-(iii) below:

- i. 3 facilities between the effective date of the Modified CBAs and the first anniversary of the Modified CBAs.
- ii. an aggregate of 6 facilities between the first anniversary of the of the Modified CBAs and the second anniversary of the Modified CBAs.
- iii. an aggregate of 9 facilities between the second anniversary of the Modified CBAs and end of the term of the Modified CBAs.

**(CC) Information Sharing**

Senior national IBC-IBTNNC officers and their advisors and other representatives shall have reasonable access, subject to appropriate confidentiality restrictions, to financial and operational information regarding the historical and projected performance of the Company, including information on revenues by bread and cake product subcategory (wheat, white, single serve, etc), gross margin, operating costs, EBITDA, and plant level profitability and performance, to the extent such information exists. This information shall include, among other things, all information provided to the Company's lenders and all information relevant to the development and implementation of a Business Plan. As used herein, the term "Business Plan" shall mean the Company's short-term and long-term strategic plan and operating plan, including pricing, markets, capital spending, and cash flow forecasts, valuations, and a description of the proposed method and manner of funding or financing such Business Plan.

**(DD) 1113 Waiver**

The Parties agree that these modifications are in furtherance of the Company's efforts to successfully reorganize under Chapter 11 of the United States Bankruptcy Code. This LOU, once approved by the Bankruptcy Court, will be binding on any chapter 11 trustee appointed in these cases, or any other entity operating with the equivalent authority to a chapter 11 trustee. The Parties further agree that:

- (1) This LOU: (a) is based on the most complete and reliable information available to the Company; (b) permits the Company to avoid irreparable harm and provides for necessary modifications to the CBAs that are necessary, fair, and equitable in order to permit the successful reorganization of the Company. The balance of equities favors the Company entering into the LOU.
- (2) The Company agrees that, once the LOU is ratified ("Ratification"), and is approved by the Bankruptcy Court as part of the Global Settlement Motion, and as long as the Company is continuing to pursue a chapter 11 plan contemplating the reorganization described in this LOU rather than a sale of substantially all of its assets/liquidation: (a) neither the Company nor any Company affiliate will file or support any additional motion pursuant to 11 U.S.C. §§ 1113 or 1113(e) seeking re-

jection or modification of, or relief or interim relief from, the CBAs and Modified CBAs during the course of its chapter 11 cases and (b) the Company and its affiliates specifically waive the right to file or support such a motion.

**(EE) Accountability**

The parties agree that the Company's accountability post-bankruptcy is an important issue and agree to work together to devise a mutually agreeable solution and to achieve language reflecting that agreement.

**(FF) Miscellaneous**

- (1) The Company and the IBT shall establish a joint committee consisting of no more than three Company-designated representatives and three IBT-designated representatives. The joint committee shall meet and confer annually to discuss new products and share information on plant profitability, including but not limited to whether plan targets have been met. Any issues discussed during the joint committee meeting shall not be subject to the grievance and arbitration procedure.
- (2) The Company shall retain an industry consultant to provide an annual report on the Company and the industry with respect to distribution and route sales and the Company's competitive place in the market. The cost of the engagement shall not exceed \$150,000 per year.
- (3) *Other Modified CBAs.* If the Company has entered into new or modified collective bargaining agreement(s) with the BCTGM, the agreements shall be provided to counsel to the IBC-IBTNNC.

**(GG) Other Provisions**

Unless modified or otherwise changed herein, all provisions of the Modification Agreement and all Long-Term Extension Agreements, and Local Union CBAs shall remain intact for the respective terms of those agreements. Any and all disputes regarding the application of, or interpretation of, this LOU shall be settled through the procedures set forth in Paragraph O of the Modification Agreement.

**(HH) Definitive Documentation**

The terms contained in this LOU will supersede any contradictory language contained in the CBAs, Extension Agreements, Side Agreements or the Modification Agreement.

**(II) Term**

The Modification Agreement and the collective bargaining agreements are hereby extended for 5 years following ratification of this LOU and 10 years for all pension modifications.

Agreed to pending ratification by the affected Teamsters membership in accordance with the IBT Constitution, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

IBC-IBT National Negotiating Committee for the Local Unions  
Affiliated with the International Brotherhood of Teamsters, by:  
\_\_\_\_\_  
\_\_\_\_\_

For the Company, by:  
\_\_\_\_\_  
\_\_\_\_\_

The International Brotherhood of Teamsters, by:  
\_\_\_\_\_  
\_\_\_\_\_