

## LETTER OF UNDERSTANDING FOR THE RESTRUCTURING OF HOSTESS BRANDS

This Letter of Understanding (“LOU”), dated April \_\_\_\_\_, 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”) and Interstate Brands Corporation (“Hostess Brands” or the “Company”), their successors and assigns.

**These proposals, if accepted, are subject to ratification by affected members in accordance with the provisions of the IBT constitution.**

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

### **(A) The Use of Casual Transport Drivers**

The Company may utilize Casual Transport Drivers 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 Casual Transport Drivers, but they shall receive a minimum eight (8) hour daily guarantee. If the Casual Transport Driver is paid “trip rate pay”, they 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 casual drivers 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).
- (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 min. each.
  - c. Drop & Hook – 30 min. 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 hrs.

**(C) 3<sup>rd</sup> Party Distribution (Hybrid cake only)**

- (1) The Company may utilize distributors, wholesalers ("distributors") to distribute a Hybrid line of Hostess 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 Hostess.
- (3) The customers covered by this distribution of Hybrid products shall be limited as follows:
  - a. current low volume customers defined as having sales that average under \$100 per week, each week for thirteen (13) consecutive weeks that the Company terminates DSD service to;
  - b. all Vending and Dollar stores;
  - c. customers who are currently and in the future not within an DSD Network being serviced by any Teamsters covered by the Modification Agreement.
- (4) Quarterly, the parties will meet over the (3) a and (3) c accounts and will work to identify stops that average over that 13-week quarterly period more than \$200 per week. The Union will have the right to request the transfer of such business to the RSR operation and the Company will comply within 90 days.
- (5) 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 total compensation guarantee based on the last 13-week average at the time of discontinuance of DSD service.
- (6) 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. The parties will meet to discuss on an exceptional basis, in accordance with past practice, to address situations in which the use of Teamster transport drivers to transport Hybrid product is unreasonable. Notwithstanding the previous sentence, the Company may use other methods of delivery providing such methods of delivery are not prohibited under the Local CBA. Using transport drivers other than Teamsters to deliver this Hybrid product will not result in a reduction of Teamster transport jobs.

- (7) The Company will pay 3% of the net sales on all Hybrid Hostess business done through the aforementioned customers. These funds will go into a Cake and Combo RSR pool to be distributed equally amongst all Cake and Combo RSRs on a quarterly basis.

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

- (8) Any violation of this 3<sup>rd</sup> party distribution article will be dealt with within 72 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**

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.

**(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 early 2012. 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 4% below the main line commission rate, whichever is higher; 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 local 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 providing 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.

**(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) Wages**

Wages will be frozen for the first two years of this agreement. In each subsequent year, wages (base and hourly rates) will increase 2% each year for all classifications.

**(O) Health & Welfare**

For Employees covered under Taft-Hartley-administered Health and Welfare plans, the Company will reduce its contribution rate by 10% for each employee on the effective date of the agreement. The Company shall continue to contribute 10% less than the then established rate for each Health and Welfare plan in each subsequent year of the contract.

For employees covered under the Company-administered plan, the Company will realize a savings of 10% on its contribution or expenses to the current or similar plan on the effective date of the agreement.

**(P) Pension (See Appendix 1)**

The Company will work with the Unions to provide for the reentry of Hostess into the IBT-IBCNNC 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 within 6 months of the date of this Agreement. Each MEPP will provide an agreement stating that Hostess' discharge of withdrawal liability in bankruptcy constitutes full satisfaction of that liability for purposes of entry into the New Employer Pool.
- (2) The New Employer Amendments 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, occur, 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 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 15% or more in the rate of its required annual contribution to the MEPP, whether mandated by statute, contract or the MEPP's rehabilitation plan;
- 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 becomes "insolvent" 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 3 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 80% in the New Employer Pool or below 20% 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 Teamster MEPPs that Hostess was required to contribute to before August 2011 and which has not been in critical status for the prior two consecutive years. 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, within the later of the date by which Hostess is required to make contributions as a New Employer or 6 months after the date of this agreement, (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 the Collective Bargaining Agreement (the "CBA").
- 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, Hostess would be permitted to exist such MEPP and migrate to a Fall-Back MEPP
- d. In the event that a Withdrawal Event, as defined above, occurs, Hostess would be required to migrate from such MEPP to a Fall-Back MEPP.

The pension protections described above will have a 10-year term, provided that Hostess submits a CBA (or successive CBAs, until the agreement of a CBA 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 CBA, up to the 10<sup>th</sup> anniversary of the Exit Date.

From the Exit Date until May 31, 2013, Hostess will not be required to make contributions to the MEPPs. Beginning in June 2013, Hostess will contribute into each MEPP at 40% of the level at which it was contributing prior to August 2011. The contribution level will increase to 45% in June 2014, 50% in June 2015, and 60% in June 2016.

In the event that either all MEPPs fail to approve the proposed amendment within 6 months of the date of this Agreement, or the PBGC does not approve any such amendments, or there are no eligible Fall-Back Funds, then the Company will contribute the appropriate contributions into a third-party escrow account, and the parties will mutually agree on an acceptable alternative.

**(Q) Equal Sacrifice of Non-Bargaining Unit Employees and their Participation.**

**The Unions’ proposal of the foregoing terms is expressly conditioned upon the Company’s commitment to equality of sacrifice. Disagreements between the Unions’ and the Company over the Company’s commitment to equal 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. In the case of a proven violation of this provision, which has not been remedied by the Employer prior to the Arbitrator’s decision, the Arbitrator shall have full jurisdiction to issue any appropriate remedy which should be sufficient to deter future violations, up to and including punitive damages and declaring the union concessions set forth in this agreement null and void.**

All employees (including management, non-collectively bargained for employees and all other union employees who are represented by non-IBT affiliates) will participate equally in the Hostess Brands Restructuring Plan, and the Company will share the burden of sacrifice among all IBT bargaining units, other union bargaining units, and non-bargaining unit employees (including management) equally, in each case. The Company must reduce the total compensation (defined as wages plus health and welfare and pension or retirement benefits) of all bargaining unit employees and non-bargaining unit employees (including management) by the same percentage reduction (an “Equal Reduction”) in total compensation as is being applied to IBT bargaining unit employees. For the avoidance of doubt, in order to comply with this provision all pay increases provided by the Company to members of the management team during 2011 must be rescinded and repaid to the Company by the parties who received them and the

calculation of equal sacrifice by non-bargaining unit employees shall be determined without taking into consideration the pay raises previously provided during 2011 to members of the management team.

The Company agrees not to increase wages (including bonuses) and benefits of current non-bargaining unit employees (including management) as an overall percentage beyond the effective overall total compensation percentage increases to be received by the bargaining unit employees. If it becomes necessary to exceed this overall percentage increase limit to retain employees for the efficient continued operation of the business, the Company would request approval from the IBC-IBTNNC.

All remaining non-Teamsters union represented employees of Hostess Brands shall share equal sacrifice in total compensation as those employees covered by IBT collective bargaining agreements. To that end, it is agreed that IBC-IBTNNC's acceptance of any changes to its members' compensation and benefits will be conditioned upon satisfactory acceptance of equal sacrifice by union employees represented by non-IBT affiliates.

The Employer and IBC-IBTNNC agree to use their reasonable best efforts to achieve equal sacrifice in total compensation of the employees covered by non-Teamster and non-IBT collective bargaining agreements.

**(R) Governance**

- (1) The Company's post-restructuring Board will consist of 9 members – 8 non-employee directors and the CEO.
- (2) The 8 non-employee directors will be selected by a committee established by the primary post-exit equity holders. The selected directors will represent, as closely as possible, the equity holdings of the prospective new shareholders (i.e., a 25% shareholder would have the right to nominate two directors out of eight, but will work with the remaining shareholders to determine the most effective Board).
  - a. Under all circumstances, the IBC-IBTNNC will have the right to appoint at least one director for the full term of this agreement. All activities typically taken by a Board as opposed to a committee of the Board shall be conducted or ratified by the full Board and not by a committee.
- (3) At least one IBC-IBTNNC representative shall serve on the audit, governance, finance and compensation committees of the Board. During the first 18 months following the closing, the IBC-IBTNNC representative(s) on the Board will have the right to approve any material acquisitions or sales or mergers involving all or substantially all of the Company or its constituent assets (including through any outsourcing, licensing or similar transaction which shifts operations from the Company to a third party). During this same time period, approval of at least one IBC-IBTNNC representative shall be required with respect to the termination, replacement or hiring of the Chief Executive Officer.
- (4) At any time, at least one of the IBT-designated director(s) must approve any amendments or modifications to the certificate of incorporation and bylaws, initiation or completion of an IPO, any issuance of additional shares, including any grants or issuances to management, any change in the number of Board

members, any brand eliminations and other material decisions as may be usual and customary in these circumstances.

- (5) A shareholders' agreement shall be executed by the new shareholders containing customary terms and conditions.
- (6) The chairman of the Board will be a director other than the post-restructuring chief executive officer.

**(S) Capital Structure**

- (1) At exit, the Company will not have more than \$400 million in funded debt, including any new debt (convertible or non-convertible) as part of any exit financing.
- (2) The terms of any exit financing will be subject to the reasonable approval of the IBC-IBTNNC.
- (3) New capital raise:
  - a. Company to market a \$125 to \$175 million convertible preferred equity investment to existing stakeholders and new investors.
    - i. Simultaneous with the capital raising process, the Company, in good faith, will pursue discussions with strategic buyers for an acquisition of the entire Company.
  - b. Capital raising and strategic marketing processes will begin immediately
    - i. First round bids will be due February 27, 2012.
    - ii. Second round bids will be due April 30, 2012.
  - c. New preferred will dilute other post-restructuring equityholders on a pro rata basis.
- (4) Treatment of existing debt/equity stakes:
  - a. DIP – repaid at exit.
  - b. ABL – repaid at exit; new ABL to be placed by the Company, undrawn at close.
  - c. Rescue secured loan – rolls over at exit at a rate of LIBOR + 400, no LIBOR floor.
  - d. First lien term loan—approximately \$\_\_\_ million (amount will equal \$400 million total debt less portion of new money investment structured as debt less rescue secured loan) of first lien term loan to be rolled over at exit at a rate of LIBOR + 400, no LIBOR floor; remainder to be equitized per waterfall distribution described in (Q)(5)(ii)(1).
  - e. Third lien term loan to be equitized per waterfall distribution described in (Q)(5)(ii)(2).
  - f. Fourth lien term loan– no recovery.
  - g. Collectively bargained employees.
    - i. Equity distributions to IBT, BCT and other union members based on concessions granted (i.e., if IBT members approve 65% of the total

union concessions, IBT members will receive 65% of the equity provided for collectively bargained employees).

- (5) Pro forma equity ownership:
- a. New money convertible preferred to own \_\_\_% (based on best available bids).
  - b. Remaining equity to be allocated through a waterfall distribution.
    - i. Until 1st lien term loan is repaid:
      - a. 75% of equity proceeds (after dilution for new money convertible preferred) to first lien lenders until first lien repaid.
      - b. 20% of equity proceeds to union employees.
      - c. 5% of equity proceeds to a series of Pension Fund escrow accounts (allocated on a pro rata basis, based on Company contribution amounts in 2011).
    - ii. After 1st lien term loan is repaid and until 3rd lien term loan is repaid:
      - a. 50% of equity proceeds (after dilution for new money convertible preferred) to third lien lenders until third lien repaid.
      - b. 45% of equity proceeds to union employees.
      - c. 5% of equity proceeds to a series of Pension Fund escrow accounts.
    - iii. After 3rd lien term loan is repaid:
      - a. 95% of equity proceeds to union employees.
      - b. 5% of equity proceeds to a series of Pension Fund escrow accounts.

**(T) 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. § 365 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 (the "IBC-IBTNNC Exculpated Parties"), as it is for the Company and its officers, directors, and advisors. The Company will propose in its plan of reorganization that the IBC-IBTNNC Exculpated Parties be released and exculpated from any and all claims related to the Company's bankruptcy 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 the Effective Date takes place and the CBA Modifications are still in place as of confirmation of a plan of reorganization, the Company will pay 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

These fees and expenses shall constitute a stipulated, approved, and allowed administrative expense paid on the effective date of the plan.

**(U) Company Restructuring**

- (1) *Restructuring Path*. The Company shall either: a) confirm a plan of reorganization consistent with this LOU pursuant to which it reorganizes as a stand-alone enterprise or (b) consummate a sale of [ % - TBD] of the Company's assets to a third-party who is not an insider of the Company (as that term is defined in section 101 of the Bankruptcy Code) (a "363 Sale").
- (2) *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.

**(V) Implementation Of Agreements**

Bankruptcy Court Approval. The Company will immediately and without condition seek Bankruptcy Court approval of the amended CBAs. 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 support approval of the modified CBAs without condition and will use its best 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 amended.

**(W) Claim**

The IBC-IBTNNC (on behalf of the employees it represents) shall have an allowed administrative expense claim in an amount equal to the unpaid pension contributions since the Petition Date and an allowed general unsecured claim in an amount equal to the

present value of all the concessions agreed for the life of the collective bargaining agreement. Assuming there is a plan, allowed administrative expense claims must be paid in cash in full in order to confirm the plan.

**(X) Transfer Of Company Title Or Interest**

- (1) This Agreement and any supplemental agreements, LOUs or MOUs, hereinafter referred to collectively as “Agreement” shall be binding upon the parties hereto, their administrators, executors and assigns. In the event any operation or portion thereof, are sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceedings (a “transaction”) the Employer shall make sure that such operation or use of such rights shall continue to be subject to the terms and conditions of this Agreement for the life thereof.
- (2) It is also understood by this Section that the parties hereto shall not use any leasing device or subterfuge to a third party to evade this Agreement.
- (3) The Employer shall give notice of the existence of this Agreement to any heir, transferee, purchaser, lessee, assignee, etc. of the operations covered by this Agreement or any party thereof, and agrees that it will require as a condition of sale, transfer, lease or assignment of the operation or any part thereof, that the purchaser, transferee, lessee or assignee shall assume all of the obligations of this Agreement and shall execute a copy 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 Agreement 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.
- (4) If the minimum wage, hour and working conditions in the Company sold, leased, transferred, etc., differs from those minimums set forth in this Agreement, the higher of the two shall remain in effect for the employees involved.
  - (a) Additional protections. In the event of a transaction as defined above, the Company will abide by the following additional protections: notify potential purchasers that the bargaining unit employees working in the affected facility(ies) are represented by the IBC-IBTNNC and the Local Unions which comprise the IBC-IBTNNC and that the applicable collective bargaining agreement(s) is (are) in effect;
  - (b) Provide potential purchasers with access to all collective bargaining agreements in effect between the Company and the IBC-IBTNNC and the Local Unions which comprise the IBC-IBTNNC 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) Provide the IBC-IBTNNC with 30 days advance notice before selling facilities covered by collective bargaining agreements between the IBC-IBTNNC and the Company;
  - (e) Consult with the IBC-IBTNNC regarding the effects of the Sale;

- (f) Advise potential purchasers of their obligations under the National Labor Relations Act;
- (g) Require that the purchaser(s) provide the IBC-IBTNNC with reasonable access to employees during business hours during the transition period to the extent that such access does not interfere with business operations;
- (h) Introduce prospective purchasers to the IBC-IBTNNC; and
- (i) Provide the IBC-IBTNNC with all information given to potential purchasers.

**(Y) 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.

**(Z) 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 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 neither the Company nor any Company affiliate will file or support any additional motion pursuant to 11 U.S.C. Sections 1113 or 1113(e) or further pursue the pending Motion, seeking rejection or modification of, or relief or interim relief from, the CBAs and CBA Modifications, during the course of its Chapter 11 cases, and the Company and its affiliates specifically waive the right to file or support such a Motion.

**(AA) Accountability**

- (1) Beginning with the Company's exit from bankruptcy, the Company will be required to spend 2% of revenue each quarter on capital expenditures and 1% of revenue each quarter on advertising and marketing. The Company shall be required to furnish to the IBT Board representative(s) data necessary to calculate these metrics.
  - a. If the Company does not reach these milestones for two consecutive quarters, the Unions may grieve the Company's lack of compliance with this provision, which 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. In the case of a proven violation of this provision, which has not been remedied by the Employer prior to the Arbitrator's decision, the Arbitrator shall have full jurisdiction to issue any appropriate remedy which should be sufficient to deter future violations, up to and including punitive damages and declaring the union concessions set forth in this agreement null and void.
  
- (2) Senior management -- TBD

**(BB) Other Provisions**

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

**(CC) Term**

The Modification Agreement is hereby extended to the earlier of the earliest expiration of a BCT agreement or the five year anniversary from the effective date.

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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Appendix 1 Introduction to IBC-IBTNNC April 15, 2012 Pension Proposal**

The April 15, 2012 IBC-IBTNNC Counter proposal on Pensions has been designed to constructively address issues and concerns raised by the company in relation to continued participation in multiemployer plans.

**The New Employer Pool Amendments.** Plan amendments for multiemployer plans that already have them or plans that will adopt such amendments are designed to insulate “New Employers” like a reorganized Hostess from withdrawal liability by allocating unfunded vested benefits separately from the existing withdrawal liability pool. A “New Employer” would be defined to include a company whose prior withdrawal liability has been discharged in bankruptcy. The adoption or modification of the amendments must be approved by PBGC, which has already approved several “New Employer” pool arrangements for Teamster plans (New England Teamsters and Trucking Industry Pension Fund, 2010, New York State Teamsters Pension Fund, 2010, Central States Pension Fund, 2011).

**Mass withdrawal liability.** Mass withdrawal liability, if any, would be allocated, by plan rule, proportionate to initial withdrawal liability (which should be zero), meaning, in the case of New Employers like a reorganized Hostess, using only the New Employer’s contribution history as a New Employer, thus mitigating any risk of re-allocation liability to New Employers.

**Creation of “Deemed” Withdrawal.** To further protect Hostess, the concept of a “deemed” withdrawal was designed to eliminate or mitigate many of the risks of “re-entry” into the MEPPS identified by Hostess.

- The trigger to “Deemed Withdrawal” based on a certain level of contribution increase was designed to mitigate risks relating to contribution volatility and any potential excise tax risk including any risk related to pension plan reorganization;
- The definition of a “Withdrawal Event” as occurring : (a) the year before an excise tax is asserted and (b) if the MEPP fails to satisfy its rehabilitation plan for two consecutive years, was designed to deal with any potential excise tax risk;
- The definition of “Withdrawal Event” as occurring the year before the plan becomes insolvent within the meaning of ERISA § 4245 was designed to deal with insolvency risk and risk of mass withdrawal;
- The triggers in ¶3(a)(5) (6) and (7) (which deal with two consecutive years in which unfunded vested benefits attributable to Hostess exceed 3 times Hostess’ annual contributions in those years, or unfunded vested benefits from the Old Employer Pool are allocated to the New Employer Pool, or there is substantial decrease in the funded level of either the Old Pool or the New Pool) were designed to mitigate the risk that New Employers would be exposed to unfunded vested benefits being allocated in the New Employer pool;
- The trigger in ¶3(a)(8) (which deals with the risk that the New Employer Pool concept is determined to be illegal) was designed to mitigate the risk that the new employer pool would be adjudicated to be illegal (even after it was approved by the Pension Benefit Guaranty Corporation, the federal agency with statutory authority to provide approval ).

Upon a “deemed withdrawal,” the participants in that fund would “migrate” to another Teamster fund agreed to by the parties.

**Concern about Time Required to Obtain Necessary Approvals.** If the MEPP has not adopted and obtained PBGC approval of the Amendments or accepted other terms in the CBA, then the participants in that fund “migrate” to another fund as agreed by the parties.