

**THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT MAY BE REVISED TO REFLECT EVENTS THAT OCCUR AFTER THE DATE HEREOF BUT PRIOR TO THE BANKRUPTCY COURT'S APPROVAL OF THE DISCLOSURE STATEMENT.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re : Chapter 11  
Hostess Brands, Inc., *et al.*, : Case No. 12-22052 (RDD)  
Debtors. : (Jointly Administered)  
-----X

---

**DISCLOSURE STATEMENT WITH RESPECT TO  
JOINT PLAN OF REORGANIZATION  
OF DEBTORS AND DEBTORS IN POSSESSION**

---

CORINNE BALL  
HEATHER LENNOX  
RYAN T. ROUTH  
JONES DAY  
222 East 41st Street  
New York, New York 10017  
Telephone: (212) 326-3939  
Facsimile: (212) 755-7306  
  
ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

Date Proposed Disclosure Statement Filed with the Bankruptcy Court: October 10, 2012



**DISCLOSURE STATEMENT, DATED OCTOBER 10, 2012  
SOLICITATION OF VOTES  
WITH RESPECT TO THE  
JOINT PLAN OF REORGANIZATION  
OF DEBTORS AND DEBTORS IN POSSESSION**

---

Hostess Brands, Inc. (referred to herein as "Hostess" and, collectively with five of its domestic direct and indirect subsidiaries, the "Debtors") believes that the Joint Plan of Reorganization of Debtors and Debtors in Possession attached as Exhibit A (the "Plan") to this Disclosure Statement with Respect to Joint Plan of Reorganization of Debtors and Debtors in Possession (this "Disclosure Statement") is in the best interests of creditors and other stakeholders. All creditors entitled to vote thereon are urged to vote in favor of the Plan. A summary of the voting instructions is set forth beginning on page 57 of this Disclosure Statement. More detailed instructions are contained on the ballots distributed to the creditors entitled to vote on the Plan. To be counted, your ballot must be duly completed, executed and received by 5:00 p.m., Eastern Time, on [\_\_\_\_], 2012 (the "Voting Deadline"), unless extended.

---

The effectiveness of the proposed Plan is subject to material conditions precedent, some of which may not be satisfied. See Sections IX.E & IX.F. There is no assurance that these conditions will be satisfied or waived.

---

All capitalized terms used in this Disclosure Statement and not otherwise defined herein shall have the meanings given to them in the Plan.

---

This Disclosure Statement and any accompanying letters are the only documents to be used in connection with the solicitation of votes on the Plan. Subject to the statutory obligations of the official committee of unsecured creditors (the "Creditors' Committee") appointed in the Chapter 11 Cases to provide access to information to creditors, no person is authorized by any of the Debtors in connection with the Plan or the solicitation of acceptances of the Plan to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference or referred to herein. If given or made, such information or representation may not be relied upon as having been authorized by any of the Debtors. Although the Debtors will make available to creditors entitled to vote on acceptance of the Plan such additional information as may be required by applicable law prior to the Voting Deadline, the delivery of this Disclosure Statement will not under any circumstances imply that the information herein is correct as of any time after the date hereof.

---

**ALL CREDITORS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING THE PLAN ATTACHED AS EXHIBIT A AND THE RISK FACTORS DESCRIBED UNDER SECTION XIV, PRIOR TO SUBMITTING BALLOTS IN RESPONSE TO THIS SOLICITATION.**

---

The summaries of the Plan and other documents contained in this Disclosure Statement are qualified by reference to the Plan itself, the exhibits thereto (the "Confirmation Exhibits") and documents described therein as Filed prior to approval of this Disclosure Statement. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control. Except as otherwise indicated, the Debtors will File all Confirmation Exhibits with the Bankruptcy Court and make them available for review on the Document Website ([www.kccllc.net/hostess](http://www.kccllc.net/hostess)) no later than seven calendar days before the Confirmation Hearing to the extent not filed earlier; *provided, however*, that (a) exhibits relating to the assumption and rejection of Executory Contracts and Unexpired Leases under the Plan will be filed no later than seven calendar days prior to the Voting Deadline and (b) other key exhibits to the Plan will be either (i) included in any solicitation materials distributed to holders of Claims in Classes entitled to vote to

accept or reject the Plan or (ii) Filed as a supplement to the Plan no later than seven calendar days prior to the Voting Deadline.

This Disclosure Statement contains, among other things, descriptions and summaries of provisions of the Plan being proposed by the Debtors. The Debtors reserve the right to modify the Plan (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) consistent with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement and there can be no assurance that the statements contained herein will be correct at any time after this date. The information contained in this Disclosure Statement, including the information regarding the history, businesses and operations of the Debtors, the financial information regarding the Debtors and the liquidation analysis relating to the Debtors, is included for purposes of soliciting acceptances of the Plan, but, as to contested matters and adversary proceedings, is not to be construed as admissions or stipulations, but rather as statements made in settlement negotiations as part of the Debtors' attempt to settle and resolve their Liabilities pursuant to the Plan. This Disclosure Statement shall not be admissible in any non-bankruptcy proceeding, nor shall it be construed to be conclusive advice on the tax, securities or other legal effects of the Plan as to holders of Claims against, or Interests in, either the Debtors or the Reorganized Debtors. Except where specifically noted, the financial information contained in this Disclosure Statement and in its Exhibits, other than the historical financial information attached as Exhibit C, has not been audited by a certified public accountant and has not been prepared in accordance with generally accepted accounting principles in the United States.

---

#### FORWARD-LOOKING STATEMENTS

This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtors and projections about future events and financial trends affecting the financial condition of the Debtors' businesses, if any, and assets. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "expect" and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described below under the caption "Risk Factors" in Section XIV. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtors do not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

**This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and not necessarily in accordance with federal or state securities laws or other non-bankruptcy laws. This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission (the "SEC"), any state securities commission or any securities exchange or association nor has the SEC, any state securities commission or any securities exchange or association passed upon the accuracy or adequacy of the statements contained herein.**

---

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	1
A. Parties Entitled to Vote on the Plan .....	1
B. Solicitation Package.....	2
C. Voting Procedures, Ballots and Voting Deadline .....	2
D. Confirmation Exhibits .....	3
E. Confirmation Hearing and Deadline for Objections to Confirmation.....	3
II. SUMMARY OF THE PLAN.....	4
A. Classification and Treatment of Claims and Interests Under the Plan.....	5
III. GENERAL INFORMATION ABOUT THE DEBTORS.....	9
A. The Debtors and Their Business .....	9
1. History and Corporate Structure.....	9
2. The Debtors' Supply Chain.....	10
3. The Debtors' Customers .....	11
B. The 2004 Bankruptcy Cases .....	11
C. The Debtors' Prepetition Capital Structure .....	12
1. Senior Secured Revolving Credit Facility .....	13
2. First Lien Term Loan Facility .....	14
3. Third Lien Term Loan Facility .....	15
4. Fourth Lien Notes.....	16
5. Additional Debt and Equity Financing In Support of the Debtors' Out-of-Court Restructuring Efforts .....	16
6. Intercreditor Agreement .....	17
7. Pension Obligations.....	18
8. Retiree Benefit Obligations .....	18
9. Workers' Compensation Liabilities .....	18
10. Lease Obligations .....	19
11. Trade Debt.....	19
12. Common Stock.....	19
IV. EVENTS LEADING UP TO THE COMMENCEMENT OF THE CHAPTER 11 CASES .....	19
A. Factors Precipitating the Filing of the Chapter 11 Cases .....	19
1. Declining Financial Performance .....	19
2. Liquidity Crisis.....	20
B. Prepetition Restructuring Initiatives .....	21
1. Reduction of Labor Costs.....	21
2. Alternative Product Delivery Methods .....	21
3. Elimination of Inefficiencies .....	21

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4. Sales Efforts .....	21
C. Prepetition Labor Negotiations and Capital Infusions .....	22
1. Negotiations with the IBT .....	22
2. Negotiations with the BCTGM.....	22
3. Negotiations with the Other Unions .....	22
D. Changes on the Hostess Brands Board of Directors .....	22
E. The Decision to Commence the Chapter 11 Cases .....	23
V. THE CHAPTER 11 CASES .....	23
A. Commencement of the Chapter 11 Cases .....	23
B. First Day Relief.....	23
C. Debtor-in-Possession Financing .....	24
D. Retention of Advisors for the Debtors .....	28
E. The Creditors' Committee.....	28
F. The Debtors' Management.....	29
G. Extension of the Automatic Stay to Certain of the Debtors' Employees .....	29
H. Extensions of Exclusivity .....	30
I. Assumption and Rejection of Certain Unexpired Executory Contracts and Leases .....	30
J. Claims Process and Bar Date.....	31
K. Alternative Dispute Resolution Process for Certain Disputed Claims.....	32
L. The Debtors' Insurance Coverage .....	32
M. Litigation Regarding the Debtors' CBAs, Pension and Retiree Benefit Obligations .....	33
1. The 1113/1114 Litigation With the IBT and BCTGM .....	33
2. The 1113/1114 Litigation With the Debtors' Other Unions .....	35
3. The Administrative Expense Claim Litigation With the MEPPs and the BCTGM.....	36
N. Miscellaneous Asset Sales .....	37
O. The Debtors' Business Performance During the Chapter 11 Cases .....	37
VI. THE GLOBAL RESOLUTION.....	37
VII. THE DEBTORS' REVISED TURNAROUND PLAN.....	39
A. Baking Plan Utilization.....	39
B. Fleet Upgrade .....	40
C. Outlet Initiatives .....	40
D. Depot Restructuring.....	40
E. SG&A Initiatives .....	40
F. Warehouse Management Systems .....	40
G. Restoration of Advertising and Marketing.....	41

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
H. Wheat Bread Initiative.....	41
I. R&D Initiative.....	41
J. Trade Spend Reduction.....	41
VIII. CONFIRMATION CASH INFUSION.....	41
A. General.....	41
B. Marketing Efforts.....	42
C. Proposed Sales Process.....	42
IX. THE PLAN.....	43
A. General.....	43
B. Classification and Treatment of Claims and Interests.....	43
1. Unclassified Claims.....	43
2. Classified Claims and Interests.....	46
3. Special Provisions Regarding the Treatment of Allowed Secondary Liability Claims; Maximum Recovery.....	49
C. Debt to be Issued Under the Plan.....	49
1. The Exit Facility.....	50
2. The New First Lien Term Loans.....	50
3. The New Third Lien Term Loans.....	51
4. The New Intercreditor Agreement.....	52
D. Treatment of Executory Contracts and Unexpired Leases.....	53
1. Executory Contracts and Unexpired Leases to Be Assumed.....	53
2. Payments Related to the Assumption of Executory Contracts or Unexpired Leases.....	53
3. Contracts and Leases Entered Into or Assumed After the Petition Date.....	53
4. Rejection of Executory Contracts and Unexpired Leases.....	54
5. Approval of Assumptions and Assignments and Related Procedures.....	54
E. Conditions Precedent to Confirmation of the Plan.....	55
F. Conditions Precedent to the Occurrence of the Effective Date.....	55
G. Waiver of Conditions to the Confirmation or Effective Date.....	56
H. Effect of Nonoccurrence of Conditions to the Effective Date.....	56
I. Retention of Jurisdiction by the Bankruptcy Court.....	57
X. VOTING REQUIREMENTS.....	58
A. Voting Deadline.....	58
B. Holders of Claims or Interests Entitled to Vote.....	58
C. Vote Required for Acceptance by a Class.....	59
D. Voting Procedures.....	59
1. Ballots.....	59

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
2. Withdrawal or Change of Votes on the Plan .....	60
3. Voting Multiple Claims .....	60
4. Voting Transferred Claims .....	60
XI. CONFIRMATION OF THE PLAN .....	60
A. Confirmation Hearing .....	60
B. Deadline to Object to Confirmation .....	61
C. Requirements for Confirmation of the Plan .....	61
1. Requirements of Section 1129(a) of the Bankruptcy Code .....	61
2. Best Interests of Creditors .....	63
3. Feasibility .....	63
4. Requirements of Section 1129(b) of the Bankruptcy Code .....	64
XII. MEANS OF IMPLEMENTATION OF THE PLAN .....	65
A. Effects of Confirmation of the Plan .....	65
1. Consolidation .....	65
2. Continued Corporate Existence and Vesting of Assets .....	67
3. No Change in Control .....	68
4. Restructuring Transactions .....	68
5. Effectuating Documents; Further Transactions .....	68
6. Exemption from Certain Transfer Taxes .....	69
7. Corporate Governance, Directors and Officers .....	69
8. Obligations to Indemnify Directors, Officers and Employees .....	70
9. Corporate Action .....	70
10. New Hostess Common Stock .....	70
11. New Stockholder Agreement .....	71
12. Implementation of Global Resolution and Non-Consenting Union 1113/1114 Orders .....	71
13. Excess Cash .....	71
14. Employment, Retirement and Other Related Agreements; Cessation of Retiree Benefits; Workers' Compensation Programs .....	72
15. Special Provisions Regarding Insured Claims .....	72
16. Cancellation and Surrender of Instruments, Securities and Other Documentation .....	73
17. Release of Liens .....	73
18. Preservation of Causes of Action by the Debtors and Reorganized Debtors .....	73
19. Creditors' Committee .....	74
20. Comprehensive Settlement of Claims and Controversies .....	74
21. Discharge of Claims and Termination of Interests .....	74
22. Releases .....	74

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
23. Exculpation.....	75
24. Injunction .....	76
25. Plan Impact on Prepetition Secured Claims .....	76
26. Termination of Certain Subordination Rights .....	77
B. Provisions Governing Distributions Under the Plan and Procedures for Resolving Disputed Claims.....	77
1. Bar Dates for Administrative Claims .....	77
2. Distributions for Claims Allowed as of the Effective Date .....	78
3. Method of Distributions and Calculation of Amounts to be Distributed.....	78
4. Compensation and Reimbursement for Services Related to Distributions .....	79
5. Distributions to Holders of Allowed Compromise Administrative Claims .....	80
6. Delivery of Distributions and Undeliverable or Unclaimed Distributions .....	80
7. Timing and Calculation of Amounts to Be Distributed.....	81
8. Distribution Record Date.....	82
9. Means of Cash Payments.....	82
10. Establishment of Reserves.....	82
11. Withholding and Reporting Requirements .....	82
12. Setoffs.....	82
13. Application of Distributions .....	83
14. Treatment of Disputed Claims.....	83
15. Prosecution of Objections to Claims .....	84
16. Distributions on Account of Disputed Claims Once Allowed.....	84
XIII. PROJECTED FINANCIAL INFORMATION .....	84
XIV. CERTAIN RISK FACTORS TO BE CONSIDERED.....	85
A. Certain Bankruptcy Considerations .....	85
1. Risk of Liquidation or Protracted Reorganization .....	85
2. Risk of Non-Confirmation of the Plan.....	86
3. Conditions to Confirmation and to Effectiveness of the Plan.....	86
4. Allowance of Claims .....	86
5. Substantive Consolidation .....	86
B. Risks Relating to the Reorganized Debtors' Financial Condition and Indebtedness.....	87
1. The Reorganized Debtors' Operations Might Not Be Profitable Post-Emergence .....	87
2. Restrictions Imposed by Indebtedness/ Availability of Further Liquidity.....	87
3. Security Interests .....	88
4. Priority of Liens.....	88
5. Value of the Collateral.....	88

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
6. Perfection of Security Interests.....	88
7. Projections.....	88
8. Reorganized Debtors' Business Plans.....	89
C. Risks Specific to the Debtors' Business and General Economic Risk Factors.....	89
1. General Business Factors .....	89
2. Potential Increases in the Cost of Raw Materials, Fuel and Utilities.....	89
3. Increased Competition.....	90
4. Consolidation in the Retail Food Industry.....	90
5. Labor and Retention Issues .....	90
6. Management Team Losses and Non-Union Employee Flight Risk Could Negatively Impact Implementation of Business Plan .....	91
7. Demand for the Debtors' Products.....	91
8. Changing Consumer Tastes.....	92
9. Obesity and Dietary Guidelines.....	92
10. Intellectual Property .....	92
11. Unexpected Costs Associated With Environmental Compliance or Liability.....	92
12. Product Liability Claims and Recalls .....	93
13. Government Regulations.....	93
14. Litigation Risk.....	93
15. Negative Publicity .....	93
16. Natural Disasters, Terrorism, Acts of War and General Economic Conditions .....	93
D. Risks Related to New Hostess Common Stock .....	94
1. Risks Associated with Receipt and Ownership of New Hostess Common Stock .....	94
2. No Established Market for New Hostess Common Stock .....	94
3. Certain Holders of New Hostess Common Stock Could Have a Significant Degree of Influence on Reorganized Hostess and Matters Presented to Shareholders .....	95
4. Future Sales of New Hostess Common Stock May Cause Holders to Incur Substantial Dilution.....	95
5. No Expectation of Dividends in Near Future .....	95
6. Change of Control .....	95
XV. FEDERAL INCOME TAX CONSEQUENCES OF CONSUMMATION OF THE PLAN .....	95
A. General.....	95
B. U.S. Federal Income Tax Consequences to the Debtors.....	96
1. Cancellation of Debt Income.....	96
2. Limitation on NOL Carryforwards.....	97
3. Alternative Minimum Tax .....	98

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4. OID.....	98
5. Restructuring Transactions.....	98
C. U.S. Federal Income Tax Consequences to Holders of Claims.....	98
1. Definition of Securities.....	98
2. Holders of Claims Constituting Tax Securities Exchanged for New Hostess Common Stock and/or New Tax Securities of the Same Issuer.....	99
3. Holders of Claims Not Constituting Tax Securities and/or Tax Securities Exchanged for Property Other than New Hostess Common Stock or New Tax Securities of the Same Issuer.....	99
D. Certain Other Tax Considerations for Holders of Claims.....	100
1. Certain Tax Consequences of Owning New Debt Issued by the Reorganized Debtors.....	100
2. Medicare Surtax.....	100
3. Accrued but Unpaid Interest.....	100
4. Post-Effective Date Distributions.....	101
5. Reinstatement of Claims.....	101
6. Bad Debt and/or Worthless Securities Deduction.....	101
7. Market Discount.....	101
8. Installment Method.....	101
9. Information Reporting and Backup Withholding.....	101
E. Importance of Obtaining Professional Tax Assistance.....	102
XVI. APPLICABILITY OF CERTAIN FEDERAL AND STATE SECURITIES LAWS.....	102
A. General.....	102
1. Initial Offer and Sale.....	102
2. Subsequent Transfers.....	102
3. Subsequent Transfers Under State Law.....	103
XVII. ADDITIONAL INFORMATION.....	104
XVIII. RECOMMENDATION AND CONCLUSION.....	105

**TABLE OF EXHIBITS**

- Exhibit A:** Plan
- Exhibit B:** Corporate Organizational Chart for the Debtors
- Exhibit C:** Historical Financial Statements
- Exhibit D:** Liquidation Analysis [**To be Filed at least seven calendar days prior to the deadline for objections to the form of the Disclosure Statement.**]
- Exhibit E:** Financial Projections [**To be Filed at least seven calendar days prior to the deadline for objections to the form of the Disclosure Statement.**]

I.

INTRODUCTION

The Debtors, as debtors and debtors-in-possession in chapter 11 cases pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), jointly administered under Case No. 12-22052 (RDD) (the "Chapter 11 Cases"), submit this Disclosure Statement pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code"), in connection with the solicitation of votes on their Joint Plan of Reorganization of Debtors and Debtors in Possession, dated October 10, 2012 (the "Plan"), proposed by the Debtors. A copy of the Plan is attached as Exhibit A to this Disclosure Statement.

This Disclosure Statement sets forth certain information regarding the Debtors' prepetition operating and financial history, the events leading up to the commencement of the Chapter 11 Cases, significant events that have occurred during the Chapter 11 Cases and the anticipated organization, operations and financing of Reorganized Hostess and its affiliates if the Plan is confirmed and becomes effective. This Disclosure Statement also describes terms and provisions of the Plan, including certain effects of Confirmation of the Plan, certain risk factors (including those associated with securities to be issued under the Plan), alternatives to the Plan and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that holders of Claims entitled to vote on the Plan must follow for their votes to be counted.

**Except as otherwise provided herein, capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan.** All dollar amounts provided in this Disclosure Statement and in the Plan are given in United States dollars.

On [\_\_\_\_], 2012, the Bankruptcy Court entered an order approving this Disclosure Statement as containing "adequate information," *i.e.*, information of a kind and in sufficient detail to enable a hypothetical reasonable investor typical of the holders of Claims or Interests to make an informed judgment about the Plan. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT CONSTITUTES NEITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN NOR AN ENDORSEMENT OF THE MERITS OF THE PLAN BY THE BANKRUPTCY COURT.

**A. Parties Entitled to Vote on the Plan**

Under the provisions of the Bankruptcy Code, not all parties in interest are entitled to vote on a chapter 11 plan. Creditors or equity interest holders whose claims or interests are not impaired by a plan are deemed to accept the plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote. In addition, creditors or equity interest holders whose claims or interests are impaired by the plan and will receive no distribution under the plan are also not entitled to vote because they are deemed to have rejected the plan under section 1126(g) of the Bankruptcy Code. For a discussion of these matters, see Section X, "Voting Requirements" and Section XI, "Confirmation of the Plan."

The following sets forth which Classes are entitled to vote on the Plan and which are not:

- The Debtors are not seeking votes from the holders of Claims and Interests in Class 1 (Priority Claims against the Debtors), Class 2A (Senior Secured Revolving Credit Claims against the Debtors), Class 2F (Other Secured Claims against the Debtors) and Class 6 (Subsidiary Debtor Equity Interests) because the Debtors believe those Claims and Interests are not impaired by the Plan. These holders will be deemed to have voted to *accept* the Plan.
- Although holders of Claims in Class 4 (Prepetition Intercompany Claims) will be impaired under the Plan, each holder of a Claim in Class 4 will be deemed to have voted to *accept* the Plan and, therefore, will not have the right to vote with respect to the Plan. Because of the insider status of the holders of Prepetition Intercompany Claims, the Debtors will not assert that Class 4's deemed acceptance satisfies the requirement of section 1129(a)(10) of the Bankruptcy Code that one impaired, non-insider class vote to accept the Plan.
- Holders of Claims in Class 3 (General Unsecured Claims) and Interests in Class 5 (Old Common Stock of Hostess Interests) will be impaired under the Plan. Because such holders will not receive any Distributions pursuant to the Plan on account of such Claims and Interests, and consistent with section

1126(g) of the Bankruptcy Code, each holder of a Class 3 Claim and Class 5 Interest will be deemed to have *rejected* the Plan. Accordingly, holders of Class 3 Claims and Class 5 Interests will not have the right to vote with respect to the Plan.

- The Debtors are seeking votes from the holders of Allowed Claims in Class 2B (First Lien Term Loan Tranche A/B Designated Claims Against the Debtors), Class 2C (First Lien Term Loan Tranche A/B Non-Designated Claims Against the Debtors), Class 2D (First Lien Term Loan Tranche C Claims against the Debtors) and Class 2E (Third Lien Term Loan Claims against the Debtors) because those Claims are impaired under the Plan, and the holders of Allowed Claims in such Classes are receiving a Distribution under the Plan on account of such Allowed Claims. The holders of such Claims will have the right to vote to accept or reject the Plan.

For a detailed description of the Classes of Claims and Interests and their treatment under the Plan, see Section IX.B, "Classification and Treatment of Claims and Interests."

## **B. Solicitation Package**

The package of materials (the "Solicitation Package") to be sent to holders of Claims and Interests entitled to vote on the Plan will contain:

1. A cover letter describing (a) the contents of the Solicitation Package, (b) the contents of any enclosed CD-ROM and instructions for use of the CD-ROM and (c) information about how to obtain, at no charge, hard copies of any materials provided on the CD-ROM;
2. A paper copy of the notice of the Confirmation Hearing (the "Confirmation Hearing Notice");
3. The Disclosure Statement together with the exhibits thereto, including the Plan, that have been Filed with the Bankruptcy Court before the date of the mailing. This Disclosure Statement and the Plan, including exhibits, total nearly [ ] pages in length. Accordingly, to reduce substantially the administrative costs associated with printing and mailing such a voluminous document, the Debtors may, but are not required to, elect to serve the Disclosure Statement and the Plan (including exhibits) via CD-ROM instead of in printed format (while reserving the right to serve printed copies of the Solicitation Packages, as described below). In addition to the service procedures outlined above (and to accommodate creditors who wish to review exhibits not included in the Solicitation Packages in the event of paper service): (a) the Plan, the Disclosure Statement and, once they are filed, all exhibits to both documents will be made available at no charge via the internet at <http://www.kccllc.net/hostess>; and (b) the Debtors will provide parties in interest (at no charge) with hard copies of the Plan and/or Disclosure Statement upon written request.
4. Paper copies of letters from (a) the Debtors, recommending acceptance of the Plan and (b) any other constituencies setting forth their recommendations with respect to the Plan; and
5. For holders of Claims in voting Classes, an appropriate form of Ballot, instructions on how to complete the Ballot and a Ballot return envelope and such other materials as the Bankruptcy Court may direct (Ballots are provided only to holders of Claims in Classes 2B, 2C, 2D and 2E, *i.e.*, the Classes of Claims that are entitled to vote on the Plan).

## **C. Voting Procedures, Ballots and Voting Deadline**

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan.

After carefully reviewing (1) the Plan, (2) this Disclosure Statement, (3) the order entered by the Bankruptcy Court (Docket No. [ ]) (the "Solicitation Procedures Order") that, among other things, established the voting procedures, scheduled a hearing to consider Confirmation of the Plan (the "Confirmation Hearing") and set the voting deadline and the deadline for objecting to Confirmation of the Plan and (4) the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan. In order for your vote to be counted, you must complete and sign your original Ballot (copies will not be accepted) and return it so that it is actually received by the Voting Deadline by Kurtzman Carson Consultants LLC (the "Solicitation and Tabulation Agent").

Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement.

In order to be counted, all Ballots must be properly completed in accordance with the voting instructions on the Ballot and received no later than the Voting Deadline (i.e., [\_\_\_\_], 2012 at [5]:00 p.m. (Eastern Time)) by the Solicitation and Tabulation Agent via regular mail, overnight courier or personal delivery at the following address: Hostess Brands, Inc. Ballot Processing Center, c/o KCC, 2335 Alaska Avenue, El Segundo, California 90245. No Ballots may be submitted by facsimile or electronic mail, and any Ballots submitted by facsimile or electronic mail will be neither accepted nor counted by the Solicitation and Tabulation Agent. Ballots should not be sent to the Debtors.

If you are a holder of a Claim who is entitled to vote on the Plan as set forth in the Solicitation Procedures Order and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the Disclosure Statement, the Plan, the Ballot or the procedures for voting on the Plan, please contact the Solicitation and Tabulation Agent (a) by telephone (i) for U.S. and Canadian callers toll-free at 877-573-3984 and (ii) for international callers at +1-310-751-1829 or (b) in writing at Hostess Brands, Inc., c/o KCC, 2335 Alaska Avenue, El Segundo, California 90245.

If you have any questions about the procedure for voting your Claim, the Solicitation Package that you have received, the amount of your Claim, or if you wish to obtain a paper copy of this Disclosure Statement and its appendices and exhibits, please contact the Solicitation and Tabulation Agent via telephone or mail at the contact information set forth above.

FOR FURTHER INFORMATION AND INSTRUCTIONS ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE SECTION X, "VOTING REQUIREMENTS."

Before voting on the Plan, each holder of a Claim in Classes 2B, 2C, 2D and 2E should read, in its entirety, this Disclosure Statement, the Plan, the Solicitation Procedures Order, the Confirmation Hearing Notice and the instructions accompanying the Ballots. These documents contain important information concerning how Claims are classified for voting purposes and how votes will be tabulated.

**D. Confirmation Exhibits**

The Debtors will separately file copies of all Confirmation Exhibits with the Bankruptcy Court no later than seven calendar days before the Confirmation Hearing to the extent not filed earlier; *provided, however*, that (1) exhibits relating to the assumption and rejection of Executory Contracts and Unexpired Leases pursuant to the Plan will be filed no later than seven calendar days prior to the Voting Deadline and (2) other key exhibits to the Plan (as detailed in the definition of "Confirmation Exhibits" in the Plan) will be either (a) included in any solicitation materials distributed to holders of Claims in Classes entitled to vote to accept or reject the Plan or (b) Filed as a supplement to the Plan no later than seven calendar days prior to the Voting Deadline. All Confirmation Exhibits will be made available on the Document Website once they are Filed. The Debtors reserve the right, in accordance with the terms of the Plan, to modify, amend, supplement, restate or withdraw any of the Confirmation Exhibits after they are Filed and shall promptly make such changes available on the Document Website.

**E. Confirmation Hearing and Deadline for Objections to Confirmation**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtors have fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing has been scheduled for [\_\_\_\_], 2012 at [10:00] [a].m., Eastern Time, before the Honorable Robert D. Drain, United States Bankruptcy Judge for the Southern District of New York, in a courtroom to be determined at the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York 10601. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

Any objection to Confirmation must (1) be in writing, (2) state the name and address of the objecting party and the nature of the Claim or Interest of such party and (3) state with particularity the basis and nature of such objection. Any such objections must be Filed and served upon the persons designated in the Confirmation Hearing Notice in the manner and by the deadline described therein.

## II.

### SUMMARY OF THE PLAN

*The following Plan summary is a general overview only, which is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere in this Disclosure Statement and the Plan.*

The Debtors have reached agreement with many of their key stakeholders regarding the means by which they can emerge from bankruptcy. This agreement has resulted in the Plan. The Plan contemplates the Debtors' emergence from chapter 11 in January 2013 and represents a crucial step toward the Debtors' emergence from reorganization proceedings.

Achieving confirmation of the Plan is only possible by addressing the billions of dollars of liabilities faced by the Debtors as of the Petition Date. The Plan and the resolutions reached (and to be reached) with other constituencies go a long way toward addressing those liabilities. It is a condition to the consummation of the Plan that the Debtors enter into a transaction or set of transactions that will generate sufficient funds to satisfy certain obligations to be paid under the Plan and provide the Debtors with a necessary cash infusion. This cash infusion, along with the financial restructuring that will occur on the Effective Date, will (A) reduce the Debtors' secured debt and de-lever the Debtors' balance sheet and (B) permit the Debtors to implement key operational restructuring initiatives and capital expenditures that are necessary to enable the Debtors to complete the operational restructuring and modernization of their businesses (the "Operational Restructuring"). Additional aspects of the Operational Restructuring include changes in work rules governing the Debtors' Unions. Other aspects of the Operational Restructuring require cash investments to be made. As such, an infusion of cash is essential to the success of the Debtors' reorganization and the Operational Restructuring and, accordingly, it is a condition precedent to the consummation of the Plan.

Addressing the billions of dollars of liabilities will require sacrifices at virtually all stakeholder levels. In some cases, the Debtors have been forced to ask the Bankruptcy Court to impose these sacrifices. The sacrifices made by the Debtors' key constituents if the Plan is confirmed by the Bankruptcy Court would include the following:

- Existing Ownership. The Debtors' equity owners will receive nothing on account of their stock. In particular, the Debtors' largest equity owners, after making over \$150 million in equity and debt investments into the Debtors since 2009, including \$40 million invested in 2011, will suffer a complete loss and receive nothing on account of these investments.
- Fourth Lien Noteholder Claims. Holders of the Debtors' Fourth Lien Notes, with a principal balance of over \$230 million as of the Petition Date, will receive nothing on account of their claims. Many of the large holders of the Debtors' First Lien Term Loan Notes and Third Lien Term Loan Notes are also holders of Fourth Lien Notes. As such, virtually all of the Debtors' secured lenders are making some level of sacrifice.
- Third Lien Term Loan Claims. Holders of the Debtors' Third Lien Term Loan Notes will receive much of their consideration in New Third Lien Term Loans, which are expected to be valued at a significant discount to their face amount.
- Professionals. The professionals being paid by the Debtors in the bankruptcy cases, including the Debtors' own advisors, the Creditors' Committees' advisors, the Unions' advisors and the advisors to the Prepetition Secured Lenders are required by the Plan to agree to have 18% of their fees incurred after the Petition Date satisfied in New Third Lien Term Loans instead of in cash.
- Union Employees. The Debtors' union employees will be subject to an immediate 8% wage cut in year one, with modest increases in the years to follow, as well as a 17% reduction in health and welfare benefits. The Debtors also will withdraw from multi-employer pension plans ("MEPPs") followed by a freeze on pension contributions for two years and reduced contributions thereafter.
- Non-Union Employees. The Debtors' non-union employees will be required to make similar sacrifices as their union employees. Accordingly, non-union employees' wages also will be reduced by 8%, with only modest increases in the years to follow and the matching contribution provided under the defined contribution plan for non-union employees that was suspended in 2011 will continue to be suspended for two years with reduced matching contributions thereafter.
- Multi Employer Pension Plans. The Debtors will withdraw from the MEPPs, with later re-entry only if certain conditions are satisfied. These conditions include a two-year contribution holiday and

significantly reduced contributions thereafter. The existing MEPPs will be required to have their postpetition and priority claims treated as unsecured claims.

- Suppliers. Many of the Debtors' suppliers hold prepetition general, unsecured claims, which are expected to receive no distribution in the Chapter 11 Cases. In addition, significant vendors are also being asked to agree to accept \$5 million worth of securities in the Reorganized Debtors in the form of New Third Lien Term Loans in lieu of the cash payment that they would otherwise be entitled to in respect of their prepetition claims entitled to priority under section 503(b)(9) of the Bankruptcy Code.
- General Unsecured Creditors. Other general unsecured creditors are expected to receive no recovery on their prepetition general unsecured claims.

The Debtors believe that the restructuring of their secured indebtedness, the shared sacrifices of all major constituencies, an infusion of cash and the implementation of the Operational Restructuring, all as embodied in the Plan, give the Debtors the best chance of successfully reorganizing and achieving their full potential as one of America's oldest and most iconic baking companies. All creditors entitled to vote are encouraged to vote in favor of the Plan.

**A. Classification and Treatment of Claims and Interests Under the Plan**

Except for DIP Lender Claims, Administrative Claims and Priority Tax Claims, which are not required to be classified, all Claims and Interests that existed on January 11, 2012 (the "Petition Date") are divided into Classes under the Plan. The following summarizes the treatment of the classified Claims and Interests under the Plan. All estimated Claims amounts that include interest assume an Effective Date of January 11, 2013.

CLASS	TREATMENT	STATUS/ RIGHT TO VOTE	ESTIMATED AGGREGATE RANGES OF AMOUNT OF ALLOWED CLAIMS	ESTIMATED PERCENTAGE RECOVERY
<p><b>Class 1</b> <b>Priority Claims</b></p>	<p>On the Effective Date, each holder of an Allowed Claim in Class 1 will receive Cash equal to the amount of such Allowed Claim, unless the holder of such Priority Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, as applicable, agree to a different treatment.</p>	<p>Unimpaired. Not entitled to vote. Deemed to have accepted the Plan.</p>	<p>\$0.2 million to 0.4 million<sup>1</sup></p>	<p>100%</p>

<sup>1</sup> This excludes Priority Tax Claims, which are not required to be classified, and the potential Claims of the MEPPs (totaling \$40 million) which must be treated as general unsecured claims as a condition to Confirmation of the Plan.

CLASS	TREATMENT	STATUS/ RIGHT TO VOTE	ESTIMATED AGGREGATE RANGES OF AMOUNT OF ALLOWED CLAIMS	ESTIMATED PERCENTAGE RECOVERY
<p><b>Class 2A</b> <b>Senior Secured Revolving Credit Claims</b></p>	<p>On the Effective Date, each holder of an Allowed Claim in Class 2A will receive Cash equal to the amount of such Allowed Claim; <i>provided that</i> any Senior Secured Revolving Credit Claims that also qualify as Compromise Administrative Claims will instead receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan.</p>	<p>Unimpaired. Not entitled to vote. Deemed to have accepted the Plan.</p>	<p>\$45 million (estimate excludes fees)</p>	<p>100%</p>
<p><b>Class 2B</b> <b>First Lien Term Loan Tranche A/B Designated Claims</b></p>	<p>On the Effective Date, each holder of an Allowed Claim in Class 2B will receive its Pro Rata share of each component of the First Lien Term Loan Tranche A/B Designated Plan Distribution Property.</p>	<p>Impaired. Entitled to vote.</p>	<p>\$80.406 million (in principal and estimated accrued but unpaid interest calculated at non-default rates; estimate excludes fees)</p>	<p>TBD<sup>2</sup></p>
<p><b>Class 2C</b> <b>First Lien Term Loan Tranche A/B Non-Designated Claims</b></p>	<p>On the Effective Date, each holder of an Allowed Claim in Class 2C will receive its Pro Rata share of the First Lien Term Loan Tranche A/B Non-Designated Plan Distribution Property; <i>provided that</i> any First Lien Term Loan Tranche A/B Non-Designated Claims that also qualify as Compromise Administrative Claims will receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan on account of such Compromise Administrative Claims.</p>	<p>Impaired. Entitled to vote.</p>	<p>\$340.371 million (in principal and estimated accrued but unpaid interest calculated at non-default rates; estimate excludes fees)</p>	<p>TBD<sup>3</sup></p>

<sup>2</sup> This amount will be determined and Filed with the Bankruptcy Court at the same time the Projections (as defined herein) are Filed, which will be no later than seven days prior to the deadline for objections to the Disclosure Statement.

<sup>3</sup> This amount will be determined and Filed with the Bankruptcy Court at the same time the Projections (as defined herein) are Filed, which will be no later than seven days prior to the deadline for objections to the Disclosure Statement.

CLASS	TREATMENT	STATUS/ RIGHT TO VOTE	ESTIMATED AGGREGATE RANGES OF AMOUNT OF ALLOWED CLAIMS	ESTIMATED PERCENTAGE RECOVERY
<p><b>Class 2D</b> <b>First Lien Term Loan Tranche C Claims</b></p>	<p>On the Effective Date, each holder of an Allowed Claim in Class 2D will receive Cash equal to the amount of such Allowed Claim, with prepetition and postpetition interest on such Allowed Claims calculated at the applicable non-default rate under the First Lien Term Loan Facility; <i>provided that</i> any First Lien Term Loan Tranche C Claims that also qualify as Compromise Administrative Claims will receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan on account of such Compromise Administrative Claims.</p>	<p>Impaired. Entitled to vote.</p>	<p>\$28.977 million (in principal and estimated accrued but unpaid interest calculated at non-default rates; estimate excludes fees)</p>	<p>100%</p>
<p><b>Class 2E</b> <b>Third Lien Term Loan Claims</b></p>	<p>On the Effective Date, each holder of an Allowed Claim in Class 2E will receive its Pro Rata share of the Third Lien Term Loan Plan Distribution Property; <i>provided that</i> any Third Lien Term Loan Claims that also qualify as Compromise Administrative Claims shall receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan on account of such Compromise Administrative Claims.</p>	<p>Impaired. Entitled to vote.</p>	<p>\$191.393 million (in principal and estimated accrued but unpaid interest calculated at non-default rates; estimate excludes fees)</p>	<p>TBD<sup>4</sup></p>

<sup>4</sup> This amount will be determined and Filed with the Bankruptcy Court at the same time the Projections (as defined herein) are Filed, which will be no later than seven days prior to the deadline for objections to the Disclosure Statement.

CLASS	TREATMENT	STATUS/ RIGHT TO VOTE	ESTIMATED AGGREGATE RANGES OF AMOUNT OF ALLOWED CLAIMS	ESTIMATED PERCENTAGE RECOVERY
<b>Class 2F Other Secured Claims</b>	On the Effective Date, each holder of an Allowed Claim in Class 2F will, at the election of the applicable Debtor, with certain exceptions as set forth in the Plan: (a) receive Cash equal to the Amount of such Allowed Claim; (b) have such Claim Reinstated; or (c) receive the collateral securing such Allowed Claim.	Unimpaired. Not entitled to vote. Deemed to have accepted the Plan.	\$0.5 million to \$1.0 million <sup>5</sup>	100%
<b>Class 3 General Unsecured Claims</b>	No property will be distributed to or retained by the holders of General Unsecured Claims, and such Claims will be extinguished on the Effective Date. Holders of Class 3 Claims will not receive any Distribution pursuant to the Plan.	Impaired. Not entitled to vote. Deemed to have rejected the Plan.	\$2.0 billion to \$2.5 billion	0% <sup>6</sup>
<b>Class 4 Prepetition Intercompany Claims</b>	All Intercompany Claims arising prior to the Petition Date will be extinguished on the Effective Date for no recovery, subject to the Restructuring Transactions.	Not entitled to vote. Deemed to have accepted the Plan.	\$920.5 million	0%
<b>Class 5 Old Common Stock of Hostess</b>	On the Effective Date, the Old Common Stock of Hostess and all Interests related thereto will be canceled, and holders of Class 5 Interests will not receive any Distribution pursuant to the Plan.	Impaired. Not entitled to vote. Deemed to have rejected the Plan.	N/A	0%
<b>Class 6 Subsidiary Debtor Equity Interests</b>	On the Effective Date, the Subsidiary Debtor Equity Interests will be Reinstated, subject to the Restructuring Transactions.	Unimpaired. Not entitled to vote. Deemed to have accepted the Plan.	N/A	100%

<sup>5</sup> This amount excludes Secured Tax Claims because such Claims are also Priority Tax Claims.

<sup>6</sup> The Debtors and the Prepetition Secured Lenders believe that all of the Debtors' assets are encumbered by liens in favor of the Prepetition Secured Lenders, and thus holders of General Unsecured Claims in Class 3 will receive no Distribution pursuant to the Plan. The Creditors' Committee has reserved its right, preserved by paragraph 22 of the Final DIP Order (as it may have been amended, modified or supplemented), to assert Causes of Action challenging the validity of such liens on or before November 19, 2012.

### III.

#### GENERAL INFORMATION ABOUT THE DEBTORS

##### A. The Debtors and Their Business

###### 1. History and Corporate Structure

Founded in 1930, Hostess is one of the largest wholesale bakers and distributors of bread and snack cakes in the United States. Today, Hostess sells an array of popular products under new and iconic brands such as Butternut®, Ding Dongs®, Dolly Madison®, Drake's®, Home Pride®, Ho Hos®, Hostess®, Merita®, Nature's Pride®, Twinkies® and Wonder®. The Debtors operate 36 bakeries, approximately 560 distribution centers, approximately 5,600 delivery routes and approximately 527 bakery outlet stores throughout the United States. The Debtors maintain their corporate headquarters at 6031 Connection Drive, Suite 600, Irving, Texas 75039, and their internet address is [www.hostessbrands.com](http://www.hostessbrands.com).

The Debtors consist of six separate legal entities, as follows: (a) Hostess; (b) Interstate Brands Corporation, a Delaware corporation ("Interstate Brands"); (c) IBC Sales Corporation, a Delaware corporation ("IBC Sales"); (d) IBC Trucking, LLC, a Delaware limited liability company ("IBC Trucking"); (e) IBC Services, LLC, a Missouri limited liability company ("IBC Services"); and (f) MCF Legacy, Inc. (f/k/a Mrs. Cubbison's Foods, Inc.), a California corporation ("MCF Legacy"). Hostess is the direct corporate parent of Debtor IBC Services and Debtor Interstate Brands and the indirect corporate parent of Debtor IBC Sales, Debtor IBC Trucking and Debtor MCF Legacy. A corporate organizational chart illustrating the affiliate relationship of each of the Debtors is attached hereto as Exhibit B.

Each of the six Debtors performs (or has performed) a specific function for the Hostess businesses. Interstate Brands conducts plant-level manufacturing operations for the Debtors and is the employer of all of the Debtors' employees. Debtor IBC Sales conducts the Debtors' wholesale distribution and retail sales operations. Debtor IBC Services performs certain limited corporate management functions in Irving, Texas. Debtor IBC Trucking operates the Debtors' in-house trucking fleet. Hostess Brands, Inc. owns, manages and promotes the Debtors' intellectual property. Debtor MCF Legacy presently conducts no active business operations, but previously operated the Mrs. Cubbison's Foods business of the Debtors, a grocery crouton and stuffing sales business, which was sold in May 2011.

With annual net revenues for the fiscal year ending June 2, 2012 of approximately \$2.5 billion, the Debtors remain one of the leading wholesale bakers and distributors of bread and snack cakes in the United States. The Debtors' expansive direct store distribution system allows them to serve a wide range of snack cakes, donuts, sweet rolls, snack pies, breads, buns, rolls and related products virtually coast-to-coast to approximately 169,400 unique customer locations. The Debtors' direct sales business, supplying products through warehouse distribution to retailers, vending suppliers and food service customers, complements this in-store presence. Finally, the Debtors' bakery outlet business, which primarily sells products returned from the direct store distribution channel as well as a selection of other bakery products and household staples, remains a strong presence throughout the United States. In recent years, route sales have accounted for more than 80% of the Debtors' net sales — approximately 87% for the fiscal year ending June 2, 2012. The Debtors' remaining revenue is derived from outlet and direct sales.

As of the Petition Date, the Debtors employed approximately 19,000 full-time and part-time employees. The Debtors currently employ approximately 18,300 full-time and part-time employees. Approximately 83% of the Debtors' employees are members of unions and are subject to 360 collective bargaining agreements (collectively, the "CBAs").<sup>7</sup> The Debtors' unionized employees belong to 12 separate unions, but the overwhelming majority (nearly 93%) of the Debtors' unionized workforce are members of the International Brotherhood of Teamsters (the "IBT") or the Bakery, Confectionery, Tobacco Workers & Grain Millers International Union (the "BCTGM").

Equity interests in Hostess Brands, Inc. are privately held. Its most significant equity holders are IBC Investors I, LLC, IBC Investors II, LLC and IBC Investors III, LLC (collectively, the "Sponsor Funds").<sup>8</sup> As described in greater detail

<sup>7</sup> As of the Petition Date, the Debtors were party to twelve additional CBAs which have since terminated, expired or merged into other CBAs.

<sup>8</sup> The current stockholders of Hostess include, in addition to the Sponsor Funds: SPCP Group, LLC; Monarch Debt Recovery Master Fund Ltd.; Monarch Opportunities Master Fund Ltd.; Monarch Income Master Fund Ltd.; McDonnell Loan Opportunity Ltd.; Arrow Distressed Securities Fund; Schultze Apex Master Fund, Ltd.; Schultze

below, as of the Petition Date, the Debtors had five tiers of secured debt totaling well over \$900 million and are subject to substantial contingent (and some matured) withdrawal liability on account of their past or current participation in various MEPPs. The ownership and debt structure of Hostess were put in place upon the emergence in 2009 of its predecessor, Interstate Bakeries Corporation ("IBC") from chapter 11 (the "2004 Bankruptcy"). The Debtors' MEPP obligations were left largely unimpaired and intact through the 2004 Bankruptcy.

## 2. The Debtors' Supply Chain

The Debtors' supply chain generally consists of two segments: (a) preproduction supply of raw materials; and (b) postproduction distribution of finished products. To operate their supply chain in an efficient and effective manner, the Debtors purchase raw materials from various vendors, engage various third-parties to provide transportation and warehousing needs and also operate their own internal supply chain transportation systems, as described below.

### a. Purchase of Raw Materials

The vast majority of the Debtors' raw material needs are purchased on "delivered" terms, whereby the cost of freight is included in the purchase price of the raw materials. The responsibility for shipment of these raw materials rests solely with the vendor. However, in situations where the Debtors have advantageous freight pricing, raw materials may be purchased "freight on board," whereby the Debtors utilize and pay a third-party shipper (collectively, the "Shippers") for the transportation of raw materials. In addition to "delivered" and "freight on board" shipments, the Debtors' internal fleet transports approximately 130 shipments of raw materials each week.

After purchase, raw materials generally are transported directly from the vendor to one of the Debtors' bakery locations. The Debtors also receive and store raw materials and other goods at various Debtor-owned warehouses or one of their third-party warehouses (collectively, the "Warehouses"), all of which are used to lessen shipping costs by consolidating raw materials and goods prior to shipment. The Warehouses typically store a variety of materials until they are shipped for use. At any given time, the Debtors store millions of dollars worth of goods in Warehouses and pay storage fees of approximately \$100,000 each month.

### b. Distribution of Finished Product

The Debtors also employ an integrated supply system in connection with the production and distribution of their finished products. The process begins with the Debtors' route sales representatives (the "RSRs"). Orders are placed by RSRs through a hand-held device, automatically notifying back office ordering centers throughout the United States. The order is then processed and incorporated with similar requests to create a baking schedule for each type of product requested for delivery. Simultaneously, the ordering center creates a shipping schedule that consolidates products and maximizes fleet space, which provides for distribution at the lowest possible cost. This ordering and logistical process is completed within 24 hours, after which the baking and delivery schedules are set.

After the baking is completed, the finished goods are consolidated at a bakery or warehouse. Thereafter, finished products are shipped to the depot associated with the RSR who originally placed the order. From the depots, the RSR delivers the finished product to the customer, normally with a Hostess vehicle. At the same time this delivery is made, the RSR places a new order for the customer. In total, the Debtors service over 171,000 unique customer addresses.

The Debtors' internal delivery fleet satisfies the vast majority of the Debtors' postproduction transportation needs. In certain instances, however, the Debtors engage Shippers to accommodate: (i) certain long distance routes; (ii) routes lacking enough trucks to deliver unusually large orders; or (iii) routes unable to meet delivery needs due to driver illness or other complications. Of these, the majority of the Debtors' need for Shippers are for long distance routes on which the Debtors cannot provide their own transportation needs because they either (i) lack double trailer licensing; or (ii) lack the infrastructure to provide long distance shipping at a comparable price to the Shipper.

---

(continued...)

Master Fund, Ltd.; Gephardt Group Labor Advisory Services; Mars & Co. Consulting, LLC; Craig D. Jung; and Brian Driscoll.

### 3. The Debtors' Customers

The Debtors sell their products to hundreds of thousands of wholesale buyers, distributors and retail customers, from approximately 171,000 unique customer locations and 527 bakery outlets. The Debtors sell the majority of their bread to mass merchandisers, supermarkets, grocers, gas stations and convenience stores throughout the United States. The Debtors' snack cake products are sold primarily through supermarkets, mass merchandisers and convenience stores. Hostess brands are top sellers in convenience stores, with Hostess Donettes ranked #1 and other Hostess sweet snacks and cakes claiming four out of the top five and nine out of the top 20 spots in convenience stores. The Debtors also market their products through various distributors and operate certain retail stores at which a portion of the Debtors' sales are made.

#### B. The 2004 Bankruptcy Cases

On September 22, 2004, many of the current Debtors and their predecessors in interest (the "2004 Debtors") filed voluntary petitions in the United States Bankruptcy Court of the Western District of Missouri (the "Missouri Bankruptcy Court") for relief under chapter 11 of the Bankruptcy Code (collectively, the "2004 Bankruptcy Cases"). The 2004 Bankruptcy Cases were jointly administered and captioned as In re Interstate Bakeries Corp. et al., Case No. 04-45814 (JWV) (Bankr. W.D. Mo.). The 2004 Debtors' plan of reorganization (the "2008 IBC Plan") was confirmed by the Missouri Bankruptcy Court on December 5, 2008 and went effective on February 3, 2009. The 2004 Bankruptcy Cases have not yet been closed due to some appellate and avoidance action litigation.

The need to commence the 2004 Bankruptcy Cases arose due to the combined effects of several liquidity and operational challenges, including declining sales, a high fixed-cost structure, excess industry capacity, rising employee healthcare and pension costs, higher costs for energy and raw materials and an approximately \$40 million charge to pretax income related to the need to increase certain workers' compensation reserves. The 2004 Debtors' worsening financial results and limited sources of available liquidity ultimately resulted in a ratings downgrade for the 2004 Debtors' senior secured credit facility and led them to pursue reorganization under chapter 11.

The 2004 Bankruptcy Cases were lengthy and relatively tumultuous. In the first several years of the cases, the 2004 Debtors (1) significantly reduced the scope of their operations through the realignment of the 2004 Debtors' 10 profit centers (i.e., geographically structured groupings of bakeries, depots, routes and bakery outlets) into eight cross-functional business units, (2) implemented various reductions in operational costs and improvements in productivity and margins, (3) increased their investment in marketing, (4) obtained certain limited concessions from their unionized employees at the IBT and the BCTGM to (a) promote flexibility in the method and manner of product distribution and (b) reduce health and welfare costs and (5) overhauled and/or rationalized the ranks of their senior and middle management.

Following the early-2008 collapse of a deal with Silver Point Finance, LLC ("Silver Point") that would have provided for the stand-alone restructuring of the 2004 Debtors, the 2004 Debtors found themselves simultaneously (1) pursuing further stand-alone restructuring options, (2) soliciting interest in potential purchases of all or a portion of the 2004 Debtors' assets on a going concern basis and (3) preparing for a potential liquidation of the 2004 Debtors' assets should their restructuring and going concern sale efforts fail. During the 2004 Bankruptcy Cases, the Debtors' financial advisor at the time contacted over 50 strategic parties regarding a going concern sale of the Debtors' business (with only one party submitting a proposal). The Debtors also considered various sale alternatives, including sales of separate business segments during the 2004 Bankruptcy Cases. Despite these efforts, however, no significant sale transaction was consummated during the 2004 Bankruptcy Cases.

Ultimately, after evaluating all of their options, the 2004 Debtors determined that their most attractive option was a stand-alone restructuring transaction proposed by Ripplewood Holdings, L.L.C. ("Ripplewood") in July 2008. The 2008 IBC Plan implemented this transaction, which included the following key elements:

- Ripplewood invested \$44.2 million in cash in exchange for slightly less than 50% of the common stock of the reorganized 2004 Debtor IBC (i.e., Hostess).
- Ripplewood purchased \$85.5 million in 5% Secured Convertible PIK-Election Series A Notes due 2019 (the "Series A Fourth Lien Notes"), secured by a fourth priority lien on most of the Debtors' assets.
- General Electric Capital Corporation ("GECC") structured, arranged and syndicated an asset-based senior secured revolving credit facility (the "Senior Secured Revolving Credit").

Facility") with a first priority lien on certain forms of collateral and a second priority lien on other collateral.

- Silver Point and/or certain of its affiliated entities, Monarch Alternative Capital L.P. and/or certain of its affiliated entities ("Monarch"), McDonnell Investment Management LLC and/or certain of its affiliated entities ("McDonnell") and certain other lenders provided a \$360.3 million term loan credit facility (the "First Lien Term Loan Facility") with a first priority lien on certain forms of collateral and a second priority lien on other collateral.
- Silver Point and/or certain of its affiliated entities, Monarch and McDonnell received slightly more than 30% of Hostess' common stock on a fully diluted basis.
- In exchange for existing indebtedness that pre-dated the 2004 Bankruptcy Cases, Silver Point and/or certain of its affiliated entities, Monarch, McDonnell and the other lenders received (1) a \$137.1 million term loan, secured by a third priority lien on most of the Debtors' assets; and (b) \$85.5 million in 5% Secured Convertible PIK-Election Series B Notes due 2019 (the "Series B Fourth Lien Notes"), secured by a fourth priority lien on most of the Debtors' assets that was *pari passu* with the Series A Fourth Lien Notes.
- Ripplewood, Silver Point and/or certain of its affiliated entities, Monarch and McDonnell received warrants to purchase additional shares of Hostess' common stock at various strike prices.

The 2008 IBC Plan cancelled and extinguished the then-existing preferred and common shares of 2004 Debtor IBC. The 2008 IBC Plan otherwise largely maintained the same organizational structure of the 2004 Debtors. After the occurrence of the effective date of the 2008 IBC Plan and in accordance with such plan, Hostess (1) dissolved 2004 Debtors Armour and Main Redevelopment Corporation and New England Bakery Distributors, L.L.C. and (2) merged 2004 Debtor Baker's Inn Quality Baked Goods, LLC into another entity. Accordingly, these three entities no longer exist and thus are not Debtors in the Chapter 11 Cases.

In addition to implementing the above transactions and transferring assets to create the reorganized entities that are the Debtors in the Chapter 11 Cases, the 2008 IBC Plan created a creditor trust (the "IBC Creditor Trust"), initially funded with \$5 million in cash, to: (1) liquidate certain assets; (2) pursue certain avoidance actions and other claims and causes of action against former directors and officers of IBC on behalf of the 2004 Debtors' estates; (3) resolve claims; and (4) make distributions to general unsecured creditors under the 2008 IBC Plan. U.S. Bank, National Association ("U.S. Bank") was named, and continues to serve as, trustee for the IBC Creditor Trust. As the IBC Creditor Trust did not receive any securities in the Debtors, and because U.S. Bank was charged with performing most of the duties necessary to wrap-up and close the 2004 Bankruptcy Cases, the Debtors themselves currently have virtually no involvement in the 2004 Bankruptcy Cases. In fact, on September 21, 2012, U.S. Bank filed a motion seeking to implement procedures to effectuate the orderly wind down of the IBC Creditor Trust, and to distribute a \$7,278,000 balance in the IBC Creditor Trust to unsecured claimants, representing a recovery for such claimants of approximately 2%. Accordingly, the Debtors do not believe that any of the few matters that remain pending in the 2004 Bankruptcy Cases were or will be impacted in any significant manner by these Chapter 11 Cases.

### **C. The Debtors' Prepetition Capital Structure**

As described above, upon the Debtors' exit from bankruptcy in early 2009, the Debtors had four separate debt facilities, with long-term debt totaling approximately \$670 million in aggregate principal amount. The Debtors also have borrowed funds since their exit from the 2004 Bankruptcy Cases to fund various of their out-of-court restructuring efforts, as set forth in Section III.C.5 below. As a result of the accrual of interest and additional borrowings, as of the Petition Date, the Debtors' total level of secured indebtedness to their prepetition secured lenders and note holders (the "Prepetition Secured Lenders") was approximately \$861 million (the "Prepetition Secured Debt"), and virtually all of the Debtors' assets were encumbered. The increases in the Debtors' prepetition debt burden are reflected in the following table:

<b>Prepetition Loan Facilities (All Amounts in 000's)</b>	<b>Secured Indebtedness as of February 3, 2009</b>	<b>Additional 2011 Secured Indebtedness<sup>9</sup></b>	<b>Accrued and PIK Interest and Fees</b>	<b>Approximate Secured Indebtedness as of Petition Date</b>
Senior Secured Revolving Credit Facility	—	—	—	\$50,000
First Lien Term Loan (Tranche A) and First Lien Term Loan (Tranche B)	\$360,304	—	\$19,397	\$379,701
Tranche C First Lien Term Loan (Issued 8/19/11)	—	\$20,507	\$8,357	\$28,864
Third Lien Term Loan	\$137,153	—	\$34,984	\$172,137
Series A Fourth Lien Notes	\$85,800	—	\$13,398	\$99,198
Series B Fourth Lien Notes	\$85,800	—	\$13,398	\$99,198
Series C Fourth Lien Notes (Issued 3/30/11)	—	\$30,000	\$2,383	\$32,383
<b>TOTALS</b>	<b>\$669,057</b>	<b>\$50,507</b>	<b>\$91,917</b>	<b>\$861,481</b>

While the impact of this debt burden was somewhat ameliorated in the initial years after the Debtors' emergence from the 2004 Bankruptcy Cases in 2009 by the carefully constructed payment-in-kind ("PIK") features, it was incompatible in the longer term with achieving a competitive cost structure, funding sorely needed capital improvements and long term viability. Moreover, the Debtors' highly levered capital structure and lack of unencumbered assets made it infeasible for the Debtors to obtain significant additional debt financing or additional capital infusions in the period immediately prior to the commencement of the Chapter 11 Cases.

**1. Senior Secured Revolving Credit Facility**

Debtors Interstate Brands and Hostess are borrowers under the asset-based senior secured revolving credit facility (as amended, the "Senior Secured Revolving Credit Facility") evidenced by that certain Credit Agreement, dated as of February 3, 2009, among: (a) Interstate Brands and Hostess as borrowers; (b) Debtors IBC Sales, IBC Trucking and IBC Services, as guarantors (Interstate Brands, Hostess, IBC Sales, IBC Trucking and IBC Services, collectively, the "Credit Parties"); (c) the lenders party thereto (collectively, the "Senior Secured Revolving Credit Lenders"); and (d) GECC, as administrative agent and collateral agent (in such capacities, the "Senior Secured Revolving Credit Agent").

The Senior Secured Revolving Credit Facility permitted Hostess and Interstate Brands to obtain, subject to a borrowing base, revolving credit loans up to \$105 million ("Revolving Loans"), with a \$75 million sublimit for letters of credit ("Letters of Credit"). Notwithstanding the fact that the Senior Secured Revolving Credit Facility provides for up to \$105 million in Revolving Loans and a \$75 million subfacility for Letters of Credit, given the borrowing base and other restrictions under the terms of the Senior Secured Revolving Credit Facility, the Debtors borrowed less than 50% of the available amount thereunder, or \$50 million, prior to the Petition Date. No Letters of Credit were ever issued under the Senior Secured Revolving Credit Facility.

Revolving Loans presently bear interest at a rate per annum equal to, at the option of the borrowers, the sum of (a) either (i) the London Interbank Offered Rate ("LIBO Rate"), based on a 1, 2, 3 or 6 month (or to the extent available to all Senior Secured Revolving Credit Lenders, 9 or 12 month) interest period as selected by Interstate Brands and Hostess or

<sup>9</sup> Does not include the \$10 million equity infusion made in June 2011.

(ii) the "Base Rate";<sup>10</sup> plus (a) the "Applicable Margin";<sup>11</sup> plus (c) default interest of 2.00%. In addition, the borrowers must pay a letter of credit fee on the undrawn amount of all Letters of Credit in an amount equal to the Applicable Margin for LIBO Rate loans and an unused line fee equal to 0.75% of the average daily amount by which the Senior Secured Revolving Credit Lenders' commitments exceed the sum of the Revolving Loans and the face amount of all Letters of Credit. The Senior Secured Revolving Credit Facility terminates by its terms on February 3, 2014, and all Revolving Loans are scheduled to mature on such date; however, the commitments terminated and all Revolving Loans became due as a result of the commencement of the Chapter 11 Cases.

The obligations under the Senior Secured Revolving Credit Facility are secured by security interests in substantially all of the Debtors' tangible and intangible personal property (subject to certain exceptions including, among other things, an exception for cash posted as collateral in support of (i) existing letters of credit that were initially outstanding under certain of the Debtors' legacy credit facilities and other letters of credit used for a similar purpose and (ii) certain insurance obligations similar to those in respect of such letters of credit) (collectively, the "Revolving Loan Collateral"). The Revolving Loan Collateral includes first priority liens on accounts, inventory, instruments, guarantees, letters of credit, security and other credit enhancements and supporting obligations, documents of title for any inventory, claims and causes of action in any way relating to receivables or inventory, deposits, securities and other accounts into which any proceeds of receivables or inventory are deposited and any substitutions, replacements, accessions, products or proceeds of the foregoing (*i.e.*, largely so-called "working capital" of the Debtors) (together with the Revolving Loan Mortgaged Facilities (as defined below), the "Revolver Priority Collateral"). Moreover, to further secure the obligations under the Senior Secured Revolving Credit Facility, the Senior Secured Revolving Credit Agent, as agent and for the benefit of the Senior Secured Revolving Credit Lenders and certain other secured parties, obtained a first-priority mortgage upon approximately 18 parcels of real property (the "Revolving Loan Mortgaged Facilities") and a second-priority mortgage upon approximately 202 additional parcels of real property (the "Shared Mortgaged Facilities"). The Intercreditor Agreement (as defined below) governs the relative priorities of the Senior Secured Revolving Credit Facility obligations and the Credit Parties' other secured debt with respect to the Revolving Loan Collateral, the Revolving Loan Mortgaged Facilities and the Shared Mortgaged Facilities.

## 2. First Lien Term Loan Facility

Pursuant to a first lien term loan facility, Interstate Brands and Hostess are the borrowers under a tranche A term loan in the initial principal amount of approximately \$201 million (the "First Lien Term Loan (Tranche A)"), and IBC Sales is the borrower under a tranche B term loan (the "First Lien Term Loan (Tranche B)") in the initial principal amount of approximately \$158 million (together with the First Lien Term Loan (Tranche A) and the Tranche C First Lien Term Loan (as defined below), the "First Lien Term Loans"). The First Lien Term Loans also included capital issuance fees in the amount of approximately \$1.2 million. In addition, Interstate Brands and Hostess are the borrowers under a tranche C term loan in the initial principal amount of approximately \$20.5 million (the "Tranche C First Lien Term Loan"). Information regarding the Tranche C First Lien Term Loan is set forth in Section III.C.5 below. In each case, these facilities are evidenced by that certain Credit and Guaranty Agreement, dated as of February 3, 2009 (as amended, the "First Lien Term Loan Facility"), among: (a) Interstate Brands and Hostess, as tranche A and tranche C borrowers; (b) IBC Sales, as tranche B borrower; (c) IBC Trucking and IBC Services, as guarantors; (d) the lenders party thereto (the "First Lien Term Loan Lenders"); and (e) Silver Point, as administrative agent and collateral agent (in such capacities, the "First Lien Term Loan Agent"). The obligations of each Credit Party under the First Lien Term Loan Facility are guaranteed by all other Credit Parties.

The First Lien Term Loan (Tranche A) and the First Lien Term Loan (Tranche B) (the "2009 First Lien Term Loans") mature on February 3, 2014; however, the 2009 First Lien Term Loans and the other indebtedness outstanding under the First Lien Term Loan Facility became due prior to the maturity date as a result of the commencement of the Chapter 11 Cases.

The 2009 First Lien Term Loans presently bear interest at a rate per annum equal to, at the option of Hostess, the sum of (a) either (i) the LIBO Rate (subject to a 2.7% floor), based on a 1, 2 or 3 month (or to the extent available to all First Lien Term Loan Lenders, 6 month) interest period as selected by Hostess plus 8.25% or (ii) the "Base Rate" (*i.e.*, the greater of (A) the prime rate and (B) the federal funds rate plus 0.5%) plus 7.25%, plus (b) an additional 2.00% in respect of

<sup>10</sup> The Base Rate is the greatest of (a) the prime rate, (b) the federal funds rate plus 0.5% or (c) the three-month LIBO Rate plus 1.0%.

<sup>11</sup> The Applicable Margin for LIBO Rate loans ranges from 3.50% to 4.00% depending upon the leverage ratio of the borrowers and is currently 4%. The "Applicable Margin" for Base Rate loans ranges from 2.50% to 3.00% depending upon the leverage ratio of the borrowers and is currently 3%.

the default rate. So long as the principal amount of the 2009 First Lien Term Loans exceeds \$320 million and the borrowers do not elect otherwise, a portion of any interest payment owing with respect to the 2009 First Lien Term Loans may be paid in kind. The percentage of any interest payment that is payable in kind is equal to the percentage obtained by dividing (x) the amount by which the outstanding principal amount of 2009 First Lien Term Loans exceeds \$320 million by (y) the total outstanding principal amount of the 2009 First Lien Term Loans. In addition, the interest payment that was due on September 30, 2011 in respect of the 2009 First Lien Term Loan to each First Lien Term Loan Lender that also provided a Tranche C First Lien Term Loan was paid in kind by being added to the outstanding principal of such First Lien Term Loan Lender's Tranche C First Lien Term Loan.

Pursuant to the First Lien Term Loan Security Agreement, dated as of February 3, 2009 (as amended, and together with any ancillary collateral documents, the "First Lien Term Loan Security Agreement"), the First Lien Term Loans are secured by, among other things, security interests in (a) the Revolving Loan Collateral and (b) certain cash posted as collateral in support of (i) existing letters of credit that were initially outstanding under certain of the Debtors' legacy credit facilities and other letters of credit used for a similar purpose and (ii) certain obligations in respect of insurance obtained to support obligations similar to those supported by such letters of credit (collectively, the "First Lien Term Loan Collateral"). Moreover, to further secure the obligations under the First Lien Term Loan Facility, the First Lien Term Loan Agent, as agent and for the benefit of the First Lien Term Loan Lenders and certain other secured parties, obtained (a) a first-priority mortgage upon the Shared Mortgaged Facilities and upon nine other parcels of real property (the "Term Loan Mortgaged Facilities," and collectively with the Revolving Loan Mortgaged Facilities and the Shared Mortgaged Facilities, the "Mortgaged Facilities") and (b) a second priority mortgage on the Revolving Loan Mortgaged Facilities. The Intercreditor Agreement (as such term is defined below) governs the relative priorities of the First Lien Term Loan Facility obligations, liens and security interests (the "First Lien Term Loan Liens") and the Credit Parties' other secured debt with respect to the First Lien Term Loan Collateral and the Mortgaged Facilities.

### **3. Third Lien Term Loan Facility**

Interstate Brands and Hostess are also the borrowers under a term loan in the initial principal amount of approximately \$137 million (the "Third Lien Term Loan"), evidenced by that certain Third Lien Credit and Guaranty Agreement, dated as of February 3, 2009 (as amended, the "Third Lien Term Loan Facility"), among: (a) Interstate Brands and Hostess, as borrowers; (b) IBC Sales, IBC Trucking and IBC Services, as guarantors; (c) the lender parties thereto (the "Third Lien Term Loan Lenders"); and (d) Silver Point, as administrative agent and collateral agent (in such capacities, the "Third Lien Term Loan Agent"). The obligations of each Credit Party (as defined under the Third Lien Term Loan Facility) under the Third Lien Term Loan Facility are guaranteed by all other Credit Parties thereto.

The Third Lien Term Loan was issued in connection with the confirmation of the 2008 IBC Plan to satisfy certain claims of creditors of the Credit Parties. The Third Lien Term Loan matures on February 3, 2015; however, the Third Lien Term Loan became due prior to the maturity date as a result of the commencement of the Chapter 11 Cases. The Third Lien Term Loan bears interest at a rate per annum (the "Third Lien PIK Rate") equal to the sum of (a) an initial rate of 8.0%, which increased to 11.0% on February 3, 2012 and would increase to 13.0% on February 3, 2013, plus (b) an additional 2% in respect of the default rate. All interest that accrues prior to February 3, 2014 is payable in kind at the Third Lien PIK Rate by adding the interest to the outstanding principal amount of the Third Lien Term Loan and all interest that accrues after February 3, 2014 is payable in cash at the Cash Rate (as defined below). In addition, beginning on February 3, 2012, Hostess was entitled to elect, prior to the beginning of any interest period, to pay interest for such interest period in cash, in which case the Third Lien Term Loan would bear interest during such cash election period at a rate per annum (the "Cash Rate") equal to the sum of (a) an initial rate of 10.0% for any interest period occurring after February 3, 2012, which would increase to 12.0% on February 3, 2013 and 13.3724% on February 3, 2014, plus (b) an additional 2% in respect of the default rate.

The Third Lien Term Loan is secured by security interests in the First Lien Term Loan Collateral and a mortgage upon the Mortgaged Facilities. The Intercreditor Agreement (as such term is defined below) governs the relative priorities of the Third Lien Term Loan Facility obligations and the Credit Parties' other secured debt with respect to the First Lien Term Loan Collateral and the Mortgaged Facilities. The security for the Third Lien Term Loan is memorialized by a Third Lien Term Security Agreement dated February 3, 2009, and various other collateral documents, pursuant to which the Credit Parties granted the Third Lien Term Loan Agent, as agent and for the benefit of the Third Lien Term Loan Lenders and certain other secured parties, liens on and security interests in the First Lien Term Loan Collateral and the Mortgaged Facilities.

**4. Fourth Lien Notes**

Prior to 2011, Interstate Brands had issued (a) \$85.8 million of 5% Secured Convertible PIK-Election Series A Notes due 2019 (the "Series A Fourth Lien Notes") and (b) \$85.8 million of 5% Secured Convertible PIK-Election Series B Notes due 2019 (the "Series B Fourth Lien Notes") (collectively with the Series A Fourth Lien Notes and the Series C Fourth Lien Notes (as defined below), the "Fourth Lien Notes"). The Fourth Lien Notes were issued pursuant to the Indenture, dated as of February 3, 2009 (as supplemented, the "Fourth Lien Notes Indenture"), among: (a) Hostess, as issuer; (b) Interstate Brands, IBC Sales, IBC Trucking and IBC Services, as guarantors; and (c) The Bank of New York Mellon Trust Company, N.A. ("BONY"), as trustee and collateral trustee (in such capacity, the "Fourth Lien Notes Indenture Trustee"). Additional Fourth Lien Notes were issued in March 2011 as set forth in Section III.C.5 below.

The Fourth Lien Notes mature on February 3, 2019; however, the Fourth Lien Notes became due prior to the maturity date as a result of the commencement of the Chapter 11 Cases. The Series A Fourth Lien Notes and Series B Fourth Lien Notes presently bear interest at 5% per annum, and the Series C Fourth Lien Notes presently bear interest at 10% per annum, plus, in each case, additional default interest of 2% per annum. Interest may, at the election of Hostess, be paid in Cash or in kind by adding the interest to the principal balance of the Fourth Lien Notes.

The Fourth Lien Notes are secured by security interests in the First Lien Term Loan Collateral and a mortgage upon the Mortgaged Facilities. The Intercreditor Agreement (as such term is defined below) governs the relative priorities of the Fourth Lien Notes and the Credit Parties' other secured debt with respect to the First Lien Term Loan Collateral and these Mortgaged Facilities. The Fourth Lien Notes Indenture Trustee and the holders of the Fourth Lien Notes are sometimes referred to as the "Fourth Lien Secured Parties." The security interests of the Fourth Lien Secured Parties are memorialized in a Fourth Lien Security Agreement, dated February 3, 2009, pursuant to which the Credit Parties granted the Fourth Lien Notes Indenture Trustee, as collateral trustee for the benefit of the holders of the Fourth Lien Notes, liens on and security interests in the First Lien Term Loan Collateral and the Mortgaged Facilities.

**5. Additional Debt and Equity Financing In Support of the Debtors' Out-of-Court Restructuring Efforts**

Prior to commencing these Chapter 11 Cases, the Debtors made significant efforts to achieve an out-of-court restructuring pursuant to a comprehensive business plan developed by the Debtors' management. This comprehensive business plan required negotiations with the Debtors' lenders, unions and the trustees for various pension plans. However, during 2011, the Debtors required additional liquidity to allow these discussions and negotiations to occur outside of chapter 11. Accordingly, the Debtors began active discussions with their lenders regarding additional financing.

As a result of those discussions, in March 2011, Hostess issued \$30 million of 10% Secured Convertible PIK-Election Series C Notes, due 2019 (the "Series C Fourth Lien Notes") which were purchased by the Sponsor Funds. Additionally, in June 2011, the Sponsor Funds invested an additional \$10 million in the form of equity. Finally, in late August 2011, the Debtors were able to obtain an additional \$20.5 million of financing from certain of their First Lien Term Loan Lenders in the form of the Tranche C First Lien Term Loan and relief in respect of approximately \$8 million of interest that was payable in cash in September 2011 in respect of the First Lien Term Loan (Tranche A) and First Lien Term Loan (Tranche B), which interest was capitalized and added to the balance of the Tranche C First Lien Term Loan rather than being paid in cash, resulting in a total Tranche C First Lien Term Loan financing of approximately \$29 million. These financings provided the Debtors with additional liquidity to continue their negotiations with their unions outside of bankruptcy.

As a condition to the Tranche C First Lien Term Loan, the Credit Parties were required to mortgage approximately 125 additional parcels of real estate that were not previously encumbered to the First Lien Term Loan Agent (the "Additional Mortgaged Facilities"). These mortgages were executed and filed largely in August and September 2012. In addition, pursuant to the Intercreditor Agreement, the Credit Parties were required to also grant mortgages on the Additional Mortgaged Facilities to the other Prepetition Agents (as defined below). The Intercreditor Agreement governs the relative priorities of the First Lien Term Loan Facility obligations (including the obligations with respect to the Tranche C First Lien Term Loan) and the Credit Parties' other secured debt with respect to such Additional Mortgaged Facilities.

Further, under the terms of the First Lien Term Loan Facility, principal and interest on the Tranche C First Lien Term Loan is to be paid prior to the repayment of the First Lien Term Loan (Tranche A) and the First Lien Term Loan (Tranche B). In addition, the First Lien Term Loan Lenders that participated in the Tranche C First Lien Term Loan had a portion of their First Lien Term Loan (Tranche A) loans and First Lien Term Loan (Tranche B) loans "designated," giving such First Lien Term Loan Lenders priority of payment over the First Lien Term Loan Lenders that did not participate in

the Tranche C First Lien Term Loans and other "undesignated" portions of their loans. This structure is reflected in the Plan by the creation of two separate Classes of Claims for the First Lien Term Loan Lenders: one class for such lenders holding First Lien Term Loan Tranche A/B Designated Claims; and a separate class for the such lenders holding First Lien Term Loan Tranche A/B Non-Designated Claims.

The Tranche C First Lien Term Loan matured on December 30, 2011; however, the Debtors obtained a forbearance of the enforcement of this maturity through January 31, 2012 and commenced the Chapter 11 Cases prior to the expiration of the forbearance. The Tranche C First Lien Term Loan became due as a result of the commencement of the Chapter 11 Cases. The Tranche C First Lien Term Loan presently bears interest at a rate per annum equal to, at the option of Hostess, the sum of (a) either (i) the LIBO Rate (subject to a 3% floor), based on a one month interest period plus 10% or (ii) the "Base Rate" (i.e., the greater of (A) the Prime Rate, (B) the Federal Funds Rate plus 0.5% and (C) 4%) plus 9%, plus (b) an additional 2.00% in respect of the default rate. A portion of the proceeds of the Tranche C First Lien Term Loan was used to pay cash interest owing on September 30, 2011 to the First Lien Term Loan Lenders that did not participate in the Tranche C First Lien Term Loan. The remaining portion of the proceeds were deposited into a deposit account that was subject to the exclusive control of the First Lien Term Loan Agent (the "Tranche C Loan Proceeds Account") and could only be disbursed to Interstate Brands and Hostess to pay certain costs and expenses of the Credit Parties specified in a budget and then only if certain conditions had been satisfied. As of the Petition Date, the entire remaining portion of such proceeds had been disbursed to Interstate Brands and Hostess.

## **6. Intercreditor Agreement**

In connection with the Credit Parties' entry into the Senior Secured Revolving Credit Facility, the First Lien Term Loan Facility, the Third Lien Term Loan Facility and the Fourth Lien Notes Indenture (collectively, the "Prepetition Loan Facilities"), and to establish their relative rights and priorities, the various prepetition secured lenders and agents described above entered into that certain Intercreditor and Subordination Agreement, dated February 3, 2009 (as amended, the "Intercreditor Agreement"), among the Senior Secured Revolving Credit Agent, the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the Fourth Lien Notes Indenture Trustee in their respective capacities as set forth above (together, the "Prepetition Agents," and collectively with the Senior Secured Revolving Credit Lenders, the First Lien Term Loan Lenders, the Third Lien Term Loan Lenders and the holders of the Fourth Lien Notes, the "Prepetition Secured Lenders"), and acknowledged by the Credit Parties.

Pursuant to the Intercreditor Agreement:

- the Senior Secured Revolving Credit Agent was granted (a) first priority in all Revolving Loan Mortgaged Facilities and all Revolving Loan Collateral that constitutes accounts, inventory, instruments, guarantees, letters of credit, security and other credit enhancements and supporting obligations, documents of title for any inventory, claims and causes of action in any way relating to receivables or inventory, deposits, securities and other accounts into which any proceeds of receivables or inventory are deposited and any substitutions, replacements, accessions, products or proceeds of the foregoing ("Revolver First Lien Priority Collateral") and (b) second priority in the Shared Mortgaged Facilities and all other Revolving Loan Collateral;
- the First Lien Term Loan Agent was granted (a) first priority in all Shared Mortgaged Facilities and Term Loan Mortgaged Facilities and all First Lien Term Loan Collateral that does not constitute Revolver First Lien Priority Collateral (e.g., equipment, intellectual property and equity interests) and (b) second priority in all Revolver First Lien Priority Collateral;
- the Third Term Loan Agent was granted (a) third lien priority in all Revolving Loan Collateral that also constitutes First Lien Term Loan Collateral and in all Revolving Loan Mortgaged Facilities and Shared Mortgaged Facilities and (b) second lien priority in all Term Loan Mortgaged Facilities and all First Lien Term Loan Collateral that does not also constitute Revolving Loan Collateral; and
- the Fourth Lien Notes Indenture Trustee was granted (a) fourth lien priority in all Revolving Loan Collateral that also constitutes First Lien Term Loan Collateral and in all Revolving Loan Mortgaged Facilities and Shared Mortgaged Facilities and (b) third lien priority in all Term Loan Mortgaged Facilities and all First Lien Term Loan Collateral that does not also constitute Revolving Loan Collateral.

In addition, pursuant to the Intercreditor Agreement, the Fourth Lien Notes are subordinated in right of payment to prior payment of the obligations owing under the Senior Secured Revolving Credit Facility, the First Lien Term Loan Facility and the Third Lien Term Loan Facility.

**7. Pension Obligations**

Under the Debtors' CBAs, as of the Petition Date, the Debtors were required to provide their employees with defined benefit pensions via 42 different MEPPs. The Debtors also maintain the single-employer IBC Defined Benefit Plan (collectively with the 42 MEPPs, the "Pension Plans").

For the IBC Defined Benefit Plan, the Debtors' funding policy is to contribute quarterly in an amount based upon an actuarial cost method. As reported in the Debtors' financial statements for fiscal year end June 2, 2012, the IBC Defined Benefit Plan had assets with market values of approximately \$56 million and liabilities on an actuarial basis of approximately \$84 million. On October 15, 2011, the Debtors made a quarterly contribution of approximately \$826,000. The Debtors have not made any further contributions since that date. The Debtors still owe approximately \$1.04 million for the plan year that ended September 30, 2011 and approximately \$6.5 million for the plan year that ended September 30, 2012.

The Debtors contribute to the MEPPs pursuant to the terms of their CBAs. As stated above, the Debtors' contribution obligations to the MEPPs go beyond amounts attributable to the Debtors' own workforce; they also encompass the contributions attributable to other employers who have failed or have otherwise withdrawn from the MEPPs. Typically, the Debtors will contribute to the MEPPs on a monthly basis according to various negotiated algorithms. Such algorithms can provide for, for instance, a specific amount per employee per week, a specific amount for each hour worked or a percentage of compensation. The Debtors' aggregate average monthly cost for the MEPPs prior to August 2011 was approximately \$8 million. The Debtors failed to satisfy their contribution obligations to the MEPPs in August 2011 and have not satisfied any subsequent contribution obligations. See Section V.M.3 below for a discussion of MEPP-related litigation during the Chapter 11 Cases.

**8. Retiree Benefit Obligations**

The Debtors currently provide various retiree benefits to both retirees that were union members while employed by the Debtors and retirees that were not members of a union when employed by the Debtors. The Debtors currently sponsor two different retiree medical benefit plans and two supplemental medical insurance plans (collectively, "Retiree Medical Benefits"), as well as a post-retirement life and health benefit plan (the "Retiree Life Insurance Benefits").

Approximately 45 BCTGM retirees, 122 IBT retirees, 148 other union retirees and 15 non-union retirees are currently receiving Retiree Medical Benefits (including spouses). In addition, approximately 21 active BCTGM employees, 1,412 active IBT employees and 138 active other union employees were governed, prior to the Debtors' modification of their CBAs in these Chapter 11 Cases, by CBAs that provided that they would receive Retiree Medical Benefits from the Debtors upon retirement. No active non-union employees are entitled to receive Retiree Medical Benefits from the Debtors upon their retirement.

With respect to the Retiree Life Insurance Benefits, there are approximately 236 union retirees and 781 non-union retirees receiving Retiree Life Insurance Benefits. Approximately 88 active union employees were entitled, prior to the Debtors' modification of their CBAs in these Chapter 11 Cases, to receive Retiree Life Insurance Benefits from the Debtors upon their retirement. No active non-union employees are entitled to receive Retiree Life Insurance Benefits from the Debtors upon their retirement.

For the period of June 3, 2012 to June 1, 2013, the projected cost to the Debtors of providing retiree benefits to retirees is approximately \$1,130,225. As of June 2, 2012, the present value of the Debtors' accumulated benefit obligation for retiree benefits, based on an actuarial calculation prepared in connection with the Debtors' financial reporting obligations, was approximately \$29.3 million.

**9. Workers' Compensation Liabilities**

Due to the nature of the Debtors' businesses, the Debtors have substantial liabilities on account of workers' compensation claims. In some states, the Debtors self-insure for workers' compensation claims, but may maintain excess insurance coverage for losses above certain thresholds. In other states, the Debtors maintain third-party insurance. Prior to

the Petition Date, the Debtors maintained third-party insurance coverage with significant deductibles or self-insured retentions.

The Debtors expensed approximately \$65 million in workers' compensation claims and insurance premiums for the fiscal year ended June 2, 2012. The Debtors' books and records reflect accrued Liabilities for workers' compensation claims in the amount of \$188 million. In light of these substantial Liabilities, approximately \$231 million of the Debtors' Cash is restricted and serves as collateral for the Debtors' workers' compensation obligations (either to insurers or state governmental agencies) in the form of irrevocable letters of credit, surety bonds or Cash in trust.

**10. Lease Obligations**

In the ordinary course of business, the Debtors are party to various operating leases for various forms of equipment, retail outlets, depots and warehouses. The Debtors estimate that they will spend approximately \$14 million on lease expenses for the fiscal year-ending 2013. Many of their lease obligations are month-to-month in nature and, thus, the Debtors' overall operating lease exposure is limited.

The Debtors have certain real property leases classified as capital leases for accounting purposes. These leases have remaining payment obligations of approximately \$641,000. The Debtors intend to treat these leases as operating leases under the Plan.

**11. Trade Debt**

The Debtors' trade debt consists of, among other things, amounts owed to utilities, suppliers of commodities and ingredients used in the baking of the Debtors' products and Shippers and warehousemen that transport and store the Debtors' raw materials and finished products. The majority of the Debtors' vendors are paid on negotiated terms, which have historically ranged from 15 to 40 days from the date of delivery. However, due to vendor contraction leading up to the Petition Date, the vast majority of the Debtors' vendors were on terms of 21 days or less as of the Petition Date. The Debtors estimate that approximately \$38-45 million<sup>12</sup> was owed to their vendors as of the Petition Date. Further, the Debtors estimate that within that universe of Claims, approximately \$12-13 million relate to goods received by the Debtors within 20 days of the Petition Date, which Claims would be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

**12. Common Stock**

The Debtors are privately-held companies; none of the Debtors' equity securities have been publicly-traded since the February 3, 2009 effective date of the 2008 IBC Plan. The Debtors have no preferred stock and one class of common stock. There are 90,000,000 shares of common stock authorized and 9,281,000 shares of common stock outstanding. The Debtors have five series of warrants to purchase common stock outstanding from the 2008 IBC Plan.

**IV.**

**EVENTS LEADING UP TO THE COMMENCEMENT OF THE CHAPTER 11 CASES**

**A. Factors Precipitating the Filing of the Chapter 11 Cases**

These Chapter 11 Cases were commenced to effect the fundamental operational and financial changes that the Debtors' businesses require in light of their declining performance, aging infrastructure, strained liquidity levels and high levels of debt, and the significant challenges facing the Debtors, including, but not limited to, uncompetitive and unsustainable labor and legacy costs. These factors (and others) are described in greater detail below.

**1. Declining Financial Performance**

As non-public companies, the Debtors are not required to file annual or quarterly reports with the SEC. The Debtors do, however, prepare audited financial statements as one of the terms and conditions of their long-term debt agreements. According to the Debtors' most recent audited financial statements, for the 2012 fiscal year, the Debtors

<sup>12</sup> This amount does not take into account (a) payments made to essential vendors after the Petition Date in accordance with the authority granted to the Debtors by the Court or (b) any litigation with vendors or other disputed Claims.

recorded annual net revenue of approximately \$2.5 billion. As of June 2, 2012, utilizing book values, the Debtors had assets of approximately \$1.0 billion and liabilities of approximately \$2.5 billion, which figure includes over \$1.0 billion in pension and MEPP liabilities.

After their February 2009 emergence from the 2004 Bankruptcy Cases, the Debtors' financial performance did not keep pace with the projections set forth as part of the 2008 IBC Plan and deteriorated significantly prior to the Petition Date. For the fiscal year ended May 29, 2010 — the first full year after emergence from chapter 11 — the Debtors experienced a net loss of approximately \$138 million. For the fiscal year ended May 28, 2011, the Debtors' audited books and records indicate that the Debtors' net loss was approximately \$341 million, reflecting \$132 million in write-off of deferred debt issuance costs and debt discount which occurred when long term debt was reclassified as current debt. For the fiscal year ended June 2, 2012, the Debtors' audited books and records indicate that the Debtors' net loss was \$1.1 billion, of which approximately \$932 million of the loss is attributable to certain asserted MEPP withdrawal liabilities. The Debtors' historical financial statements covering the periods since their emergence from the 2004 Bankruptcy Cases are attached hereto as Exhibit C.

The Debtors believe that three main factors are responsible for their recent economic troubles: (a) high legacy pension and benefit costs; (b) inflexible labor work rules and structures; and (c) unsustainable debt levels that prohibit the Debtors from adapting their business to current competitive conditions. As a consequence, the Debtors did not have a competitive cost structure and could not achieve viability on a long-term sustainable basis in their industry.

a. Crippling Legacy Costs

As stated above, as of the Petition Date, the Debtors were required to contribute to 42 MEPPs under the terms of their CBAs. MEPPs pool the assets of many employers into a single plan that provides benefits to the retirees of all of the employers. The MEPPs are structured to place the financial burdens of all of the retirees under the plans upon the remaining companies in the plans that have active union employees. Over the last several decades, the number of companies supporting the MEPPs has shrunk significantly as a result of the voluntary and involuntary withdrawal of many employers and the fact that virtually no new employers join multiemployer plans today. This significantly increases the burden on the companies, such as the Debtors, that remain. Prior to the Debtors' suspension of contributions to the MEPPs in August 2011, their annual Cash pension contributions associated with the MEPPs were approximately \$103 million. Additionally, the Debtors have annual retiree medical and life insurance obligations of approximately \$1.1 million.

b. Uncompetitive CBAs

As of the Petition Date, the Debtors were party to 372 separate CBAs. The CBAs collectively mandated maintenance of 80 different health and welfare benefit plans, the sheer number of which impose excessive administrative and cost burdens on the Debtors. The CBAs mandated increases in wages and medical and other benefits for the fiscal year ending June 2, 2012 that totaled \$31 million. In addition, the CBAs contained a variety of different work rules that hamstrung operations and made the CBAs uncompetitive as well as extremely difficult to administer.

c. Unsustainable Debt Levels Preventing Modernization

As set forth above, the Debtors have several tranches of secured debt that totaled approximately \$860 million as of the Petition Date. While the impact of this debt burden was somewhat ameliorated in the near term by the payment-in-kind interest features, it was incompatible with achieving a competitive cost structure. This has meant that the Debtors have for many years lacked the Cash to fund sorely needed capital improvements, including modernizing their vehicle fleet and taking the other steps described in Sections IV.B.3 and VII below.

**2. Liquidity Crisis**

The challenges faced by the Debtors, as well as their recent financial performance, led to an increasingly severe liquidity crisis. As of May 2009, shortly after their emergence from the 2004 Bankruptcy Cases, the Debtors had more than \$115 million in Cash, and the Senior Secured Revolving Credit Facility was undrawn. One year later, in May 2010, the Debtors still had more than \$82 million in Cash and the Senior Secured Revolving Credit Facility remained undrawn. By May 2011, however, the Debtors had only \$35 million Cash on hand and had drawn \$50 million in principal from the Senior Secured Revolving Credit Facility. In addition, in March 2011, although there was a modest amount of additional availability under the Senior Secured Revolving Credit Facility, the Debtors determined that they could not satisfy the conditions for further borrowing under the facility. Adjusting for one-off receipts, such as tax refunds and the proceeds

from asset sales, the Debtors consumed approaching \$250 million in Cash from the time of their emergence in early 2009 from the 2004 Bankruptcy Cases until the end of 2011.

## **B. Prepetition Restructuring Initiatives**

Prior to the Petition Date, the Debtors recognized that they required systemic changes to regain their competitive posture. Management developed a business plan to achieve these systemic changes and position the Debtors for long-term viability. The Debtors formulated a turnaround plan that encompassed several initiatives that they believed would bring long term benefits and increased EBITDA (the "Prepetition Turnaround Plan"). The Prepetition Turnaround Plan included various cost-saving and revenue-generating restructuring initiatives that would allow the Debtors to maximize the profitability of their enterprise and to resolve many of the operational inefficiencies described above. As outlined below, however, the Debtors were not able to effectuate the Prepetition Turnaround Plan because of their inability to reach a deal with their labor unions outside of bankruptcy and a lack of liquidity.

### **1. Reduction of Labor Costs**

Several of the Prepetition Turnaround Plan's restructuring initiatives aimed to reduce costs associated with the compensation packages (including pension) provided to Debtors' union work force and to eliminate restrictive "work rule" requirements that had prevented the Debtors from running their businesses efficiently and pursuing potentially profitable revenue sources. Many of these initiatives required modification of the Debtors' CBAs, which the Debtors were unsuccessful in achieving prepetition as discussed in greater detail below.

### **2. Alternative Product Delivery Methods**

The key revenue-generating initiative in the Prepetition Turnaround Plan involved the implementation of alternative product delivery methods. Many of the Debtors' CBAs mandate that only RSRs distribute products directly to the customer locations. Because of fixed costs associated with RSRs, including their compensation and gasoline and truck maintenance expenses, other delivery stops by the RSRs are not profitable. Moreover, many potential customers refuse to allow products to be delivered directly to customer store locations. As a result, the Debtors were not able to profit from many of their existing delivery stops and were unable to enter potentially profitable markets, such as dollar stores, vending services and movie theatres that are not currently serviced by the Debtors. Under the Prepetition Turnaround Plan, the Debtors sought to outsource these low revenue and other delivery stops to third party distribution operators who could profitably deliver the Debtors' products. The Debtors developed products based on their best-selling cake items that have a longer shelf-life and can withstand freezing en route to customers over longer transportation hauls. These products could not be rolled out unless the Debtors obtained the modifications to their existing CBAs, which the Debtors were unsuccessful in achieving prepetition as discussed in greater detail below.

### **3. Elimination of Inefficiencies**

The remaining restructuring initiatives included in the Prepetition Turnaround Plan did not require any modification of the Debtors' CBAs but did require additional capital. These initiatives would primarily have eliminated inefficiencies throughout the Debtors' operations by reducing excess baking capacity and increasing the efficiency of their remaining capacity. The Debtors planned to upgrade their aging vehicle fleet and to consolidate a number of their distribution centers in order to increase the efficiency and profitability of their distribution network. In addition, the Debtors believed they could improve their ability to manage inventory by installing tracking software at many of their distribution centers. The Debtors also planned to close unprofitable bakery outlet stores and modify their pricing strategy and inventory to increase store profitability. Lastly, while the Debtors realized that there were areas where they would have to re-invest, the Prepetition Turnaround Plan also included a plan to substantially reduce other costs associated with selling, general and administrative expenses. Finally, under the Prepetition Turnaround Plan, the Debtors intended to seek to increase their advertising and marketing budget so that they would be able to (a) research and develop new products and (b) effectively market their products, thus maintaining existing customers and attracting new ones. None of these initiatives could be rolled out, however, because of the Debtors' liquidity restraints.

### **4. Sales Efforts**

In addition to focusing on areas to improve profitability and reduce costs, the Debtors also spent considerable time exploring opportunities to sell their businesses. In recent years, the Debtors explored, with little success, various strategic M & A alternatives, including a large-scale merger or acquisition of the entire company and sales of large and small parts of discrete businesses. In 2010, the Debtors retained Goldman Sachs and JPMorgan to explore going concern sale

opportunities. Goldman Sachs and JPMorgan contacted a variety of potential strategic buyers and financial sponsors, including Grupo Bimbo, Flowers Foods, Hershey, Smuckers, Kraft, B&G Foods, Pepperidge Farm, Blackstone and KKR, but did not obtain any offers to purchase any portion of the Debtors' businesses. In 2011, the Debtors retained Houlihan Lokey to explore sales of the Debtors' smaller assets and individual brands. Houlihan Lokey oversaw the Debtors' sale of Mrs. Cubbison's to Sugar Foods Corporation for approximately \$15 million in gross proceeds, but was unable to arrange a sale of any of the Debtors' other assets.

### **C. Prepetition Labor Negotiations and Capital Infusions**

#### **1. Negotiations with the IBT**

The worse-than-expected post-bankruptcy performance of the Debtors in 2009 and 2010 led them to engage the IBT regarding potential modifications to the existing CBAs. Ultimately, in April 2011, after various negotiations, Hostess and the IBT international leadership agreed to certain modifications to the IBT's CBAs, subject to ratification by the IBT membership. These modifications were contained in a Letter of Understanding.

In part due to these positive developments with the IBT, in late March 2011, two of the Sponsor Funds and Hostess, with the required approval of the lenders in the other debt tranches, agreed to have such Sponsor Funds make an additional investment of \$30 million through the purchase of the Series C Fourth Lien Notes, the proceeds of which were received in March 2011. These proceeds provided the Debtors with additional time while they awaited the vote of the IBT membership on the terms of the IBT Letter of Understanding. In May 2011, the IBT membership voted down the proposed modifications by a vote of 52% to 48%.

Despite this setback, as noted above, the Debtors obtained the following liquidity infusions in 2011 to permit the Debtors additional time to negotiate with their unions outside of chapter 11: (a) in June 2011, two of the Sponsor Funds invested an additional \$10 million in the form of equity; and (b) in late August 2011, the Debtors obtained an additional \$20.5 million of financing from certain of their First Lien Term Loan Lenders, and relief in respect of approximately \$8 million of interest that was payable in cash in September 2011 to the First Lien Term Loan Lenders, which interest was instead capitalized rather than being paid in cash.

On September 23, 2011, the Debtors presented the IBT with a new proposal. After submitting the revised proposal, the Debtors met in person with IBT representatives in person at least eight separate times and had numerous additional communications by email and telephone. The Debtors presented the IBT with further proposals on December 6, and December 14, 2011 and January 9, 2012. The Debtors provided the IBT with access to an online data room (the "Data Room") and responded to significant information requests from the IBT.

#### **2. Negotiations with the BCTGM**

On June 29, 2011, the Debtors met with the BCTGM to discuss modifications to the BCTGM CBAs, and on July 6, 2011, the Debtors presented the BCTGM with a detailed set of proposed modifications thereto. The Debtors made further proposals to the BCTGM on September 22, December 8, December 14, December 19 and December 22, 2011. After delivery of the initial proposal, the Debtors met in person with BCTGM representatives to discuss those proposed modifications at least 11 times, and had numerous additional communications by email and telephone. The Debtors provided the BCTGM with access to the Data Room. Additionally, the Debtors responded to numerous information requests from the BCTGM.

#### **3. Negotiations with the Other Unions**

Additionally, beginning in October 2011, the Debtors provided proposals for modifications to their CBAs to each of their other 10 unions (collectively, the "Other Unions"). Each of the Other Unions was offered access to the Data Room. Prior to the Petition Date, the Debtors met with, or attempted to meet with, each of the Other Unions.

### **D. Changes on the Hostess Brands Board of Directors**

In the months leading up to the Petition Date, several of the members of the board of directors of Hostess Brands resigned from their positions. Specifically, in November 2011, the board chairman resigned from the Hostess Brands board of directors. In addition, in January 2012, before the occurrence of the Petition Date and the decision to authorize the Debtors' entry into the DIP Credit Agreement (as described below) was made, two individuals associated with the DIP Lenders (as defined below) resigned from the Hostess Brands board of directors.

**E. The Decision to Commence the Chapter 11 Cases**

In light of the above, Hostess Brands and its board of directors examined their restructuring alternatives. While the Debtors continued the negotiations with the labor unions and obtained several additional infusions of liquidity through debt and equity offerings, these efforts did not solve the Debtors' fundamental liquidity problems. Notwithstanding every effort to preserve Cash, the Debtors' Cash position continued to deteriorate. It became clear that additional liquidity was urgently needed. However, given the Debtors' highly levered capital structure, significant indebtedness and continued uncertainty over the outcome of labor negotiations, additional financing was unavailable to the Debtors outside of the chapter 11 process. Accordingly, after consultation with their advisors, the boards of directors of the Debtors authorized them to commence these Chapter 11 Cases in order to permit the Debtors to continue to negotiate with their unions, pension funds and lenders, and to use the tools available to them in chapter 11 to effect the systemic changes that their businesses require.

**V.**

**THE CHAPTER 11 CASES**

**A. Commencement of the Chapter 11 Cases**

On January 11, 2012, the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The Debtors have continued, and will continue until the Effective Date, to manage their properties as debtors-in-possession, subject to the supervision of the Bankruptcy Court and in accordance with the provisions of the Bankruptcy Code. An immediate effect of the filing of the Chapter 11 Cases was the imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoined the commencement or continuation of: (1) all collection efforts by creditors; (2) enforcement of liens against any assets of the Debtors; and (3) litigation against the Debtors.

**B. First Day Relief**

On the Petition Date, the Debtors filed a number of motions and other pleadings (the "First Day Motions"), the most significant of which are described below. The First Day Motions were proposed to ensure the Debtors' orderly transition into chapter 11.

The First Day Motions included:

- a motion to obtain debtor-in-possession financing and the use of cash collateral;
- a motion relating to the continued use of the Debtors' existing cash management system, bank accounts, business forms and investment and deposit guidelines;
- motions relating to case administration, joint administration and the use of Kurtzman Carson Consultants LLC as the Debtors' claims and noticing agent;
- motions seeking to honor and pay various prepetition obligations, including (1) certain employee wage and benefit obligations, (2) certain insurance and workers' compensation obligations, (3) certain sales, use, trust fund and other tax obligations, (4) claims of certain critical suppliers, (5) claims of PACA vendors, (6) certain obligations to customers and (7) certain potential lienholders;
- a motion to establish procedures for determining adequate assurance for the provision of utility services;
- a motion to establish procedures for addressing reclamation claims; and
- a motion to establish the scheduling of a process under sections 1113 and 1114 of the Bankruptcy Code for the modification or rejection of the Debtors' CBAs and obligations to retirees.

The First Day Motions were granted with certain adjustments or modifications to accommodate the concerns of the Bankruptcy Court, the United States Trustee and other parties in interest.

In the months after the First Day Motions were granted, the Debtors moved to implement the relief approved thereunder. Accordingly, the Debtors entered into agreements with various essential suppliers, freight carriers and warehousemen that obligated those parties to continue to do business with the Debtors during the Chapter 11 Cases in exchange for a partial or full payment of their prepetition claims. The Debtors negotiated adequate assurance deposit agreements with over 150 of their utilities, with deposits totalling over \$3 million. The Debtors utilized the relief granted with respect to reclamation claims and PACA vendors and fully resolved those claims. And the Debtors made various payments to employees and honored various obligations to their customers that they would have been barred from paying or honoring absent the First Day Motions. All of these items helped the Debtors achieve a relatively smooth landing in chapter 11.

### C. Debtor-in-Possession Financing<sup>13</sup>

In connection with their preparations for the commencement of the Chapter 11 Cases, the Debtors determined that they would need to obtain debtor-in-possession financing to ensure sufficient liquidity to meet their ongoing operating needs. After discussing postpetition financing with their existing prepetition lenders, the IBT and BCTGM and other potential third party lenders, the only financing the Debtors were able to obtain was financing from a group of their existing lenders (collectively, the "DIP Financing"), as follows:

- senior secured, super-priority debtor-in-possession financing with commitments in the aggregate principal amount of up to \$75 million pursuant to the terms of the Debtor-in-Possession Credit, Guaranty and Security Agreement (the "DIP Credit Agreement"), between Hostess Brands and Interstate Brands, as borrowers, the other Credit Parties, as guarantors, the lenders from time to time party thereto (collectively, the "DIP Lenders") and Silver Point, as administrative agent and collateral agent (in such capacities, the "DIP Lender Agent"); and
- the consensual use of the cash collateral of the Prepetition Secured Lenders pursuant to the terms negotiated with the Prepetition Secured Lenders and set forth in the interim order (Docket No. 63) (the "Interim DIP Order") and final order (Docket No. 254) (as amended, the "Final DIP Order") approving the DIP Financing.

The DIP Financing was approved on an interim basis pursuant to the Interim DIP Order on January 12, 2012 and on a final basis pursuant to the Final DIP Order on February 3, 2012.

Pursuant to Paragraph 10(a) of the Final DIP Order, the DIP Lender Agent, for its own benefit and the benefit of the DIP Lenders, was granted senior, superpriority priming security interests and liens (the "DIP Liens") on all tangible and intangible prepetition and postpetition property and interests in property of the Debtors, whether existing on or as of the Petition Date or thereafter acquired, including, without limitation, (1) all accounts, chattel paper, deposit accounts, documents, equipment, general intangibles, intellectual property, instruments, insurance, inventory, investment property, letter-of-credit rights, money and any supporting obligations related thereto; (2) all commercial tort claims; (3) all books and records pertaining to the Collateral (as defined below); (4) all property of any Credit Party held by the DIP Lender Agent, the DIP Lenders, or any Pre-Petition Secured Party (as defined in the Final DIP Order), including all property of every description, in the custody of or in transit to the DIP Lender Agent, the DIP Lenders or any Pre-Petition Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Loan Party (as defined in the Final DIP Order) or as to which such Loan Party may have any right or power, including, but not limited to Cash; (5) all other goods (including, but not limited to fixtures) and personal property, whether tangible or intangible and wherever located; (6) all owned or leased real estate and real property leaseholds; and (7) all proceeds of the foregoing (the "Postpetition Collateral"), plus all Pre-Petition Collateral (collectively, the "Collateral"). With respect to the DIP Liens only, the Postpetition Collateral included any Loan Proceeds Account (as defined in the DIP Credit Agreement) and the contents thereof, and, for all purposes, the Postpetition Collateral excluded the Debtors' claims and causes of action arising under sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code (collectively, "Avoidance Actions"), but included any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise (collectively, "Avoidance Action Proceeds"), other than successful Avoidance Actions with respect to the Prepetition Secured Debt (the "Excluded Avoidance Action Proceeds"). Notwithstanding the foregoing, the DIP Liens are subordinate to the Carve Out, the Existing ABL Priority Liens and the ABL Adequate Protection Liens on the Revolving Priority Collateral and the Revolving Priority Real Property Collateral and, as provided in the DIP Credit Agreement, to certain liens on cash, cash equivalents, securities accounts and deposit accounts granted in connection with the Debtors' insurance programs that are permitted to be senior to the DIP Liens pursuant to the DIP Documents.

<sup>13</sup> All capitalized terms used in this section and not otherwise defined in this Disclosure Statement have the meanings given to them in either the Final DIP Order or the Intercreditor Agreement.

Similarly, as adequate protection for any diminution in the value of their respective interests in the Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value or actual consumption) of Cash Collateral and any other Pre-Petition Collateral, the priming liens on the Pre-Petition Collateral granted to the DIP Lender Agent and the DIP Lenders pursuant to the DIP Documents and the Final DIP Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and in each case to the extent required by the Bankruptcy Code (each, a "Diminution Claim"), pursuant to Paragraph 15(a) of the Final DIP Order:

- For their Diminution Claims, the First Lien Term Loan Agent, for itself and for the benefit of the First Lien Term Loan Lenders, was granted valid and perfected replacement security interests in and liens on (the "First Lien Adequate Protection Liens") the Postpetition Collateral, subject to the Carve-Out (the allocation of which among the Senior Secured Revolving Credit Agent, the First Lien Term Loan Agent and the DIP Lender Agent and their respective priority collateral is pro rata based on the Prepetition Debt that was outstanding under the Senior Secured Revolving Credit Facility and First Lien Term Loan Facility and the loans outstanding under the DIP Credit Agreement, in each case, as of the Final Funding Date), the DIP Liens and any Senior Permitted Liens, the First Lien Adequate Protection Liens as follows: (1) first priority, senior and perfected liens upon any Postpetition Collateral constituting First Lien Term Loan Priority Collateral and (2) perfected liens upon any Postpetition Collateral constituting Revolving Priority Collateral and Revolving Priority Real Property Collateral, which liens are junior to the Existing ABL Priority Liens and the ABL Adequate Protection Liens (as defined below) thereon;
- For their Diminution Claims, the Senior Secured Revolving Credit Agent, for itself and for the benefit of the Senior Secured Revolving Credit Lenders, was granted, subject and subordinate to the Carve-Out, valid and perfected replacement security interests in and liens on the Postpetition Collateral (the "ABL Adequate Protection Liens") as follows: (1) first priority, senior and perfected liens upon the Postpetition Collateral constituting Revolving Priority Collateral and Revolving Priority Real Property Collateral and (2) junior perfected liens upon all other Postpetition Collateral constituting First Lien Term Loan Priority Collateral, junior in priority to the DIP Liens, the First Lien Term Loan Liens, the First Lien Adequate Protection Liens and any Senior Permitted Liens, and, in the case of Postpetition Collateral that constitutes Excluded Property, the First Lien Term Loan Liens, the First Lien Adequate Protection Liens, the Third Lien Second Priority Liens, the Third Lien Adequate Protection Liens, the Fourth Lien Secured Liens, and the Fourth Lien Adequate Protection Liens;
- For their Diminution Claims, the Third Lien Term Loan Agent was granted, for itself and for the benefit of the Third Lien Term Loan Lenders, valid and perfected replacement security interests in, and liens on, the Postpetition Collateral (the "Third Lien Adequate Protection Liens"), subject and subordinate to the Carve-Out, the DIP Liens, the First Lien Adequate Protection Liens, the ABL Adequate Protection Liens (other than with respect to Excluded Property), the First Lien Term Loan Liens, any Senior Permitted Liens, the Existing ABL Priority Liens and the Existing ABL Junior Liens; and
- the Fourth Lien Notes Indenture Trustee was granted, for itself and for the benefit of holders of the Fourth Lien Notes, valid, perfected and silent subordinated replacement security interests in, and liens on, the Postpetition Collateral (the "Fourth Lien Adequate Protection Liens"), subject and subordinate to the Carve-Out, the DIP Liens, the First Lien Adequate Protection Liens, the ABL Adequate Protection Liens (other than with respect to Excluded Property), the Third Lien Adequate Protection Liens, the First Lien Term Loan Liens, the Existing ABL Priority Liens, the Third Lien Third Priority Liens, the Third Lien Second Priority Liens, any Senior Permitted Liens and the Existing ABL Junior Liens; provided that, in no event do such replacement liens confer on the Fourth Lien Notes Indenture Trustee, or any Pre-Petition Fourth Lien Party, any right not otherwise expressly provided for in the Intercreditor Agreement or entitle the Fourth Lien Notes Indenture Trustee or any Pre-Petition Fourth Lien Party to a Superpriority Claim or other administrative claim under sections 503(b) or 507(b) of the Bankruptcy Code or otherwise with respect the Diminution Claim or any other amount; provided further that if the Fourth Lien Notes Indenture Trustee or any Pre-Petition Fourth Lien Party asserts any such right, then the Fourth Lien Adequate Protection Liens will be void ab initio.

As further adequate protection for the Prepetition Secured Lenders, the Debtors were authorized to pay certain interest, fees and expenses of the Prepetition Secured Lenders as follows:

- all accrued and unpaid interest through the Petition Date owed under the Senior Secured Revolving Credit Agreement and under the First Lien Term Loan Facility with respect to the Tranche C Loans (as defined

under the First Lien Term Loan Facility) (including, without limitation, payment of all outstanding default interest);

- all accrued and unpaid fees and disbursements owed to the First Lien Term Loan Agent, the Senior Secured Revolving Credit Agent and the Third Lien Term Loan Agent, including all reasonable and documented out-of-pocket fees and expenses of counsel and other professionals of such agents, under the applicable existing prepetition lending agreements and, in each case, incurred prior to the Petition Date;
- current monthly payment of all accrued but unpaid interest on the Tranche C Loans at the applicable non-default contract rate; provided, however, that all claims by holders of First Lien Term Loan Tranche C Claims for default interest were fully preserved;
- after the Petition Date, current monthly payment of all accrued but unpaid interest due under the Senior Secured Revolving Credit Facility at the applicable default contract rate; provided, however, that the Debtors and other parties-in-interest reserved all rights to challenge and recover or recharacterize as principal payment of interest accruing after the Petition Date at the default contract rate;
- subject to the provisions of paragraph 16 of the Final DIP Order, reasonable postpetition professional fees and expenses incurred by the Prepetition Agents during the Chapter 11 Cases and required to be paid by the Debtors under the existing prepetition lending agreements; and
- reasonable agency, trustee or similar fees that were required to be paid by the Debtors to the Prepetition Agents during the Chapter 11 Cases under the existing prepetition lending agreements or the Fourth Lien Notes Indenture.

In addition, the Final DIP Order also established a deadline for the Creditors' Committee (or the Debtors) to commence actions against the Prepetition Secured Lenders pursuant to sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code in connection with the Prepetition Secured Debt and limited the kinds of actions that could be brought. Such deadline was subsequently extended until November 1, 2012 by multiple amendments to the Final DIP Order. In the event that this litigation is resolved prior to or after its commencement, the Debtors reserve the right to amend the Plan and this Disclosure Statement to reflect any such resolution.

On a separate motion by the Debtors (but in connection with the final approval of the DIP Credit Agreement), the Bankruptcy Court also approved a Letter of Credit and Cash Collateral Agreement (the "L/C Agreement"), by and between Hostess Brands and Silver Point Finance, LLC (the "L/C Arranger"), permitting the Debtors to obtain up to \$18 million in Letters of Credit (as defined in the L/C Agreement) in support of certain of the Debtors' obligations in respect of insurance programs (including workers' compensation, auto and general liability insurance) and utilities, which Letters of Credit would be used solely to replace existing letters of credit (unless otherwise agreed to by the L/C Arranger).<sup>14</sup> As of the date of this Disclosure Statement, the Debtors were in negotiations to increase the upper limit of this facility.

Loans under the DIP Credit Agreement mature on the earliest of: (1) the first anniversary of the closing date of the DIP Credit Agreement, (2) the date that all loans become due and payable in full under the DIP Documents (as defined in the Final DIP Order), whether by acceleration or otherwise, and (3) the effective date of a chapter 11 plan in the Chapter 11 Cases. Under the initial terms of the Final DIP Order, the Debtors' ability to use cash collateral expired on the earliest to occur of (1) July 31, 2012 or (2) the occurrence of a Cash Collateral Termination Event (as defined in the Final DIP Order). Pursuant to a Third Stipulation and Agreed Order Between the Debtors, the Pre-Petition Revolving Agent, the DIP Lender Agent and the Pre-Petition First Lien Agent (Docket No. 1405) (the "Third Cash Collateral Stipulation"), the Debtors' ability to use cash collateral was extended to the earliest to occur of (1) November 30, 2012 or (2) the occurrence of a Cash Collateral Termination Event (as such term was amended by the Third Cash Collateral Stipulation).

Among other standard terms of conditions for postpetition financing arrangements like the DIP Financing, the Debtors are required to operate within a budget (the "DIP Budget") (subject to certain permitted variances) as approved by the DIP Lender Agent and the Senior Secured Revolving Credit Agent. The Debtors also were required to achieve a set of milestones with respect to certain significant events in these Chapter 11 Cases pursuant to terms of the DIP Credit Agreement. As originally contemplated, the Debtors were required to: (1) make proposals to certain of their major unions

<sup>14</sup> Prior to the entry of the Final DIP Order, on January 25, 2012, the Debtors filed a notice of the first amendment to the DIP Credit Agreement which effectuated certain non-material modifications to the DIP Credit Agreement to clarify the operation of the L/C Agreement in connection with the DIP Credit Agreement.

and commence and prosecute section 1113 litigation, with various milestones relating to such litigation, including obtaining a satisfactory result in such litigation no later than 75 days from the Petition Date; (2) complete marketing and sale materials, including bid procedures, that were reasonably acceptable to the DIP Lender Agent that could be used to seek to sell the Debtors' assets in the event a decision to sell was made; (3) achieve various milestones with respect to the preparation, filing and obtaining confirmation of a chapter 11 plan, including going effective with a plan of reorganization by July 27, 2012.

Subsequently, pursuant to a second amendment to the DIP Credit Agreement that was filed with the Bankruptcy Court on March 12, 2012, the deadline for the milestones relating to the resolution of the section 1113 litigation was extended. On March 21, 2012, the Debtors provided notice of a third amendment to the DIP Credit Agreement extending the milestones relating to obtaining favorable results in the section 1113 litigation and filing a plan of reorganization. As the Debtors continued negotiations with their unions (and the IBT in particular), the DIP Lenders granted the Debtors a series of waivers of defaults caused by the Debtors' failure to comply with various of their chapter 11 milestones.

On September 11, 2012, the Bankruptcy Court entered the Stipulation and Agreed Order With Respect to Fourth Amendment to DIP Credit Agreement (Docket No. 1442) that evidenced the effectiveness of a fourth amendment to the DIP Credit Agreement. Among other things, the fourth amendment to the DIP Credit Agreement revised various of the Chapter 11 milestones. The Chapter 11 milestones were further adjusted by a fifth amendment to the DIP Credit Agreement such that, as of the date of this Disclosure Statement, the Debtors:

- were required to reach agreement in principle on modified CBAs with the IBT and BCTGM, which agreement was acceptable to the DIP Lender Agent and the First Lien Term Loan Agent (the "Agreement in Principle") by no later than August 22, 2012;
- were required to have the IBT ratify the Agreement in Principle by no later than September 20, 2012;
- were required to have the Bankruptcy Court enter an order (which order was not stayed) approving the Motion of Debtors and Debtors in Possession Pursuant to Sections 1113(c), 1113(e) and 1114 of the Bankruptcy Code and Bankruptcy Rule 9024, dated September 20, 2012 by no later than October 10, 2012;
- were required to file a chapter 11 plan, with an accompanying disclosure statement, which embodies the Agreement in Principle and is otherwise reasonably acceptable to the DIP Lender Agent and the Prepetition Agent (an "Acceptable Plan") by October 10, 2012;
- are required to file a motion, in form and substance reasonably acceptable to the DIP Lender Agent, seeking approval of the Agreement in Principle and similar agreements with all of the Company's other unions (the "Global Settlement Motion") by no later than October 15, 2012;
- are required to obtain an order of the Bankruptcy Court, in form and substance reasonably acceptable to the DIP Lender Agent approving the Global Settlement Motion by no later than November 16, 2012;
- are required to obtain an order approving a disclosure statement accompanying an Acceptable Plan by no later than November 16, 2012;
- are required to obtain confirmation of an Acceptable Plan by no later than December 27, 2012; and
- are required to have the effective date of an Acceptable Plan occur by no later than January 11, 2013.

#### **D. Retention of Advisors for the Debtors**

Soon after the commencement of the Chapter 11 Cases, the Debtors obtained Bankruptcy Court approval of the retention of (1) Perella Weinberg Partners LP ("Perella Weinberg") as their investment bankers, (2) FTI Consulting, Inc. ("FTI") to provide the Debtors with an interim treasurer and additional financial advisory personnel, (3) Jones Day as their primary bankruptcy counsel, (4) Stinson Morrison Hecker LLP as general corporate and conflicts counsel, (5) Venable LLP as special employee benefits counsel and (6) KPMG LLP as auditors and to provide tax compliance, tax consulting and tax provision services. The Debtors also sought and obtained approval to employ certain professionals not involved in the administration of the Chapter 11 Cases in the ordinary course of business.

**E. The Creditors' Committee**

The United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed the Creditors' Committee on January 18, 2012. Such appointments were subsequently amended on January 30, 2012. The current members of the Creditors' Committee are:

Bakery & Confectionary Union & Industry International Pension Fund 10401 Connecticut Avenue Kensington, Maryland 20895 Attention: Robert J. Bergin, Executive Director	Central States, Southeast & Southwest Areas Pension Fund 9377 West Higgins Road Rosemont, Illinois 60018 Attention: Brad R. Berliner, Associate General Counsel
Interstate Brands Corporation-International Brotherhood of Teamsters National Negotiating Committee 25 Louisiana Avenue, N.W. Washington, D.C. 20001 Attention: Iain Gold	NYS Teamsters Benefit Funds 151 Northern Concourse P.O. Box 4928 Syracuse, New York 13221-4928 Attention: Kenneth R. Stilwell, Executive Administer
Stationary Engineers Union, Local 39 c/o Christian L. Raisner/Ezekiel D. Carder Weinberg, Roger & Rosenfeld 1001 Marina Village Parkway, Suite 200 Alameda, California 94501	I.A.M. National Pension Fund 1300 Connecticut Avenue Suite 300 Washington, D.C. 20036 Attention: Joseph P. Martocci, Jr., Manager
Caravan Ingredients Inc. 7905 Quivira Road Lenexa, Kansas 66215 Attention: Curtis Landherr, Esq., Vice-President	Bakery, Confectionery, Tobacco Workers & Grain Millers International Union 10401 Connecticut Avenue Kensington, Maryland 20895 Attention: Franklin R. Hurt, President
New England Teamsters and Trucking Industry Pension Fund One Wall Street Burlington, Massachusetts 01803 Attention: Edward F. Groden, Executive Director	

Primary counsel to the Creditors' Committee is Kramer Levin Naftalis & Frankel LLP. The Creditors' Committee also has retained (1) Curtis, Mallet-Prevost & Mosle LLP as conflicts counsel, (2) Blackstone Advisory Partners L.P. as a financial advisor and (3) the Garden City Group, Inc. as a communications services agent.

Since their appointment, the Debtors have consulted with the Creditors' Committee on matters material to the administration of the Chapter 11 Cases. On motion of the Creditors' Committee, the Bankruptcy Court entered an order confirming that the Creditors' Committee is not required to provide access to its non-member constituents to (1) confidential information of the Debtors or (2) privileged information. The Debtors have also discussed their business operations with the Creditors' Committee and their advisors and have sought concurrence of the Creditors' Committee for actions and transactions outside of the ordinary course of business. The Creditors' Committee has participated actively in reviewing the Debtors' business operations, operating performance and business plan.

**F. The Debtors' Management**

Effective on March 9, 2012, the Debtors' then-current Chief Executive Officer, Brian Driscoll, resigned his position with the Debtors. The Debtors had already identified and were in the process of seeking Bankruptcy Court approval of the retention of a chief restructuring officer, Gregory F. Rayburn, at the time of Mr. Driscoll's resignation. Mr. Rayburn was subsequently appointed as the chief executive officer of Hostess and appointed to the Hostess board of directors. Mr. Rayburn's appointment was approved by the Bankruptcy Court nunc pro tunc to February 22, 2012 on March 14, 2012.

In addition, the Debtors have had significant attrition from their management ranks during the Chapter 11 Cases. In March 2012, Kent Magill, Executive Vice President, General Counsel and Corporate Secretary for the Debtors, resigned from his position. In April 2012, David Loeser, Executive Vice President of Human Resources for the Debtors, resigned from his position. In May 2012, Gary Wandschneider, Executive Vice President of Operations for the Debtors, took a leave of absence. In September 2012, the following executives resigned: Steven Birgfeld, Senior Vice President and Chief Information Officer for the Debtors; Martha Ross, Senior Vice President, Controller & Corporate Audit; Leonard Singer, Senior Vice President and Assistant General Counsel; and Christopher Knipp, Senior Vice President of Corporate Human Resources. The responsibilities of these individuals have been performed by existing Hostess employees or third-party consultants (including FTI) since their respective resignations. Outside employees have not been hired to replace these individuals.

Like many privately held companies, as of the commencement of the Chapter 11 Cases, the Hostess board of directors (the "Hostess Board") consisted solely of representatives of investors in Hostess and its Chief Executive Officer. Since the commencement of the Chapter 11 Cases, the Debtors have publicly stated that their emergence from chapter 11 would be dependent on obtaining additional capital, either through one or more investments, the sale of certain of the Debtors' assets or a combination of those options. Accordingly, in furtherance of the fulfillment of their fiduciary duties to stakeholders, the Debtors sought to ensure that any such transaction was subject to review by a committee composed by individuals who were not affiliated with Hostess' existing investors ("Independent Directors"). In early 2012, the Debtors began a process to identify individuals who could serve as Independent Directors on the Hostess Board. On March 2, 2012 and March 16, 2012, respectively, in consultation with their professionals, Hostess selected Matthew Gephardt and Anthony J. Dowd to serve as Independent Directors.

On March 23, 2012, the Hostess Board established a transaction committee (the "Transaction Committee") tasked with overseeing the possible divestiture of certain of the Debtors' brands and reviewing proposals from third parties for investments to recapitalize the company (a "Transaction"). Specifically, the Transaction Committee was formed to: (a) establish, approve, modify and direct the process and procedures relating to review and evaluation of any Transaction, including the authority to not proceed with such process, procedures, review or evaluation; (b) evaluate, negotiate and make recommendations to the Board in connection with any Transaction; (c) direct the solicitation of expressions of interest or other proposals related to any Transaction; and (d) take any other necessary actions in connection with any Transaction. The Hostess Board, to better serve the interests of all stakeholders in these Chapter 11 Cases, deemed it necessary to populate the Transaction Committee exclusively with Independent Directors. Accordingly, on March 23, 2012, the Hostess Board appointed Mr. Dowd and Mr. Gephardt to the Transaction Committee.

The Hostess Board approved the payment of director fees to each Independent Director in the amount of \$25,000 per quarter. This fee covers both service on the Hostess Board generally, as well as service on the Transaction Committee. The payment of such fees to the Independent Directors was approved by order of the Bankruptcy Court on June 1, 2012. In contrast, none of the individuals serving on the Hostess Board who were members of the Hostess Board at the time of the commencement of the Chapter 11 Cases receive any compensation for their service on the Hostess Board.

In addition, four members of the Hostess Board have resigned during the Chapter 11 Cases.

#### **G. Extension of the Automatic Stay to Certain of the Debtors' Employees**

On February 8, 2012, the Debtors filed a motion seeking an order from the Bankruptcy Court extending the automatic stay to claims against certain of the Debtors' current or former agents, representatives or employees, or any party required to be indemnified by a Debtor (collectively, "Covered Employees"), where the alleged conduct giving rise to the claim against such Covered Employees arose out of the course and within the scope of such Covered Employees' employment by the Debtors.

As a result of the Debtors' operations, the Debtors were (and are) parties to several litigation actions related to various personal injury and tort claims that arose prior to the Petition Date. In many instances, such claims assert liability against the Debtors and/or a Covered Employee. Even though the Debtors are generally obligated to defend and indemnify the Covered Employees, such claims against the Covered Employees are not automatically subject to the automatic stay, and claimants continued to seek to prosecute such claims against the Covered Employees after the Petition Date. Because of the impact on the Debtors of continuing to be involved in the litigation against such Covered Employees, as well as the potential liabilities that could be imposed on the Debtors as a result of such litigation, on February 23, 2012, the Bankruptcy Court entered an order extending the automatic stay to claims against the Covered Employees.

#### **H. Extensions of Exclusivity**

Pursuant to section 1121 of the Bankruptcy Code, a debtor has the exclusive right to (1) file a plan of reorganization during the first 120 days of its chapter 11 case (the "Exclusive Filing Period") and (2) solicit acceptances of the plan during the first 180 days of the case (the "Exclusive Solicitation Period"). These periods (the "Exclusive Periods") may be extended for "cause" up to a date that is 18 months after the Petition Date.

On April 3, 2012, the Debtors filed a motion seeking the extension of the Exclusive Filing Period by 90 days (until August 8, 2012) and the Exclusive Solicitation Period by 60 days (until October 7, 2012), which motion was granted by the Bankruptcy Court on April 30, 2012. On July 24, 2012, the Debtors filed a motion seeking a further extension of the Exclusive Periods, which motion was granted on August 8, 2012. The Exclusive Filing Period was extended through and including November 6, 2012. The Exclusive Solicitation Period was extended through and including January 7, 2013. The Plan that is the subject of this Disclosure Statement has been Filed and the Debtors currently anticipate that acceptances of the Plan will be solicited, within the Exclusive Periods, as extended by order of the Bankruptcy Court.

#### **I. Assumption and Rejection of Certain Unexpired Executory Contracts and Leases**

As debtors in possession, the Debtors have the right under section 365 of the Bankruptcy Code, subject to the approval of the Bankruptcy Court, to assume, assume and assign or reject Executory Contracts and Unexpired Leases. Section 365 of the Bankruptcy Code provides generally that a debtor must decide within 120 days after commencement of its bankruptcy case to decide whether to assume, assume and assign or reject an unexpired lease of nonresidential real property. Under applicable bankruptcy law, a debtor may obtain one 90-day extension of this period. On April 20, 2012, the Bankruptcy Court approved a 90-day extension for the Debtors, extending their deadline to assume, assume and assign or reject nonresidential real property leases until August 8, 2012. Under applicable bankruptcy law, the Debtors have until Confirmation of the Plan to decide whether to reject their other Executory Contracts and Unexpired Leases.

Since the Petition Date, the Debtors have obtained eight orders from the Bankruptcy Court authorizing the rejection of certain Executory Contracts and Unexpired Leases (including various unexpired nonresidential real property leases).

On July 24, 2012, faced with (1) the August 8, 2012 deadline to assume or reject their unexpired leases of non-residential real property, (2) uncertainties in their Chapter 11 Cases that forced them to make decisions with respect to their leased portfolio at a time that was sooner than optimal and (3) the unique short term character of such portfolio, the Debtors filed a motion to assume 590 unexpired leases of non-residential real property the Debtors required to continue to operate their businesses. The Bankruptcy Court approved the motion on August 8, 2012 (Docket No. 1338). Of the 590 assumed real property leases, 104 leases were assumed as amended, *i.e.*, with an extension of the lease term of, on average, one year. However, if a chapter 11 plan is not confirmed and does not become effective prior to December 31, 2012, the Debtors may provide notice to the applicable landlords that such extension agreements are null and void.

The Debtors also negotiated additional time to determine whether to assume or reject the leases for their (1) corporate headquarters location in Irving, Texas (the "Irving Lease"); (2) warehouse in Riverview, Florida (the "Riverview Lease"); and (3) regional office in Irvine, California (the "Irvine Lease"). Specifically, the assumption/rejection deadline for the Irving Lease was extended until September 7, 2012. The Debtors have since obtained Bankruptcy Court approval of the assumption of the Irving Lease, as amended, *i.e.*, with a reduced term, reduced rent and the landlord's right to terminate the Irving Lease upon 90-days written notice. The assumption/rejection deadline for the Riverview Lease and the Irvine Lease were extended until the earlier of: (1) December 31, 2012, or (2) the date on which the Debtors confirm a chapter 11 plan. All extensions of the assumption/rejection deadline were approved by the Bankruptcy Court on August 8, 2012 (Docket No. 1335).

The Debtors are continuing to review their remaining Executory Contracts and Unexpired Leases. As discussed in Section IX.D below, unless assumed, assumed and assigned or rejected prior to the Confirmation of the Plan, the Debtors' various remaining Executory Contracts and Unexpired Leases will be assumed, assumed and assigned or rejected pursuant to the Plan. The Plan establishes certain procedures for the assumption, assumption and assignment, and rejection of Executory Contracts and Unexpired Leases (as described in greater detail in Section IX.D below).

#### **J. Claims Process and Bar Date**

On February 24, 2012, the Debtors Filed their Schedules identifying the assets and liabilities of their Estates. The Debtors' Schedules were subsequently amended on June 11, 2012 and August 9, 2012.

Pursuant to an order dated March 14, 2012 (the "Bar Date Order"), the Bankruptcy Court established the following bar dates for filing proofs of Claim in the Chapter 11 Cases:

- April 24, 2012 at 5:00 p.m. (ET) as the general bar date for all Claims (the "General Bar Date"), except as noted below;
- July 9, 2012 at 5:00 p.m. (ET) as the bar date for government units holding Claims against the Debtors;
- the later of (1) the General Bar Date or (2) 5:00 p.m. (ET) on the date that is 30 days after the date of entry of the applicable rejection order of an Executory Contract or Unexpired Lease as the bar date for any Claims arising from the rejection of an Executory Contract or Unexpired Lease;
- the later of (1) the General Bar Date or (2) 5:00 p.m. (ET) on the date that is 30 days after the date that a notice of an amendment to the Schedules is served on a claimant as the bar date for Claims relating to such amendment to the Schedules.

As of the date of this Disclosure Statement, approximately 5,200 Claims had been Filed against the Debtors totaling approximately \$11.9 billion. In addition, the Debtors have scheduled approximately 34,000 Claims, of which approximately 5,600 were scheduled as undisputed, liquidated or non-contingent. The Debtors and their advisors have undertaken to review the Claims to determine the aggregate amount of Claims that might ultimately be allowed against their Estates and have concluded on a preliminary basis as follows:

- 503(b)(9) Claims are estimated to be allowed in an amount greater than \$12.0 million and less than \$13.0 million.
- Priority Tax Claims (including those claims that are also Secured Tax Claims) are estimated to be allowed in an amount greater than \$10.5 million and less than \$15.0 million.
- Priority Claims (which definition excludes Priority Tax Claims or any Claims that are asserted by a MEPP) are estimated to be allowed in an amount greater than \$200,000 and less than \$400,000.
- Other Secured Claims (not including Priority Tax Claims or claims of the Prepetition Secured Lenders) are estimated to be allowed in an amount greater than \$500,000 and less than \$1.0 million.
- General Unsecured Claims are estimated to be allowed in an amount greater than \$2.0 billion and less than \$2.5 billion. This estimate includes the following categories:
  - General Unsecured Claims of trade vendors and utilities of between \$26 million and \$32 million.
  - An Allowed Fourth Lien Noteholder Claim classified as a General Unsecured Claim in the amount of \$230.8 million.
  - General Unsecured Claims for MEPP withdrawal liability and missed contributions in the amount of \$1.7 billion to \$2.1 billion.
  - Other General Unsecured Claims, comprised of litigation and other Claims (excluding amounts to be paid by insurance, which will not be General Unsecured Claims), in the amount of \$5 million to \$75 million.

The estimates above are far less than the Filed amounts of the Claims. The Debtors believe that they have valid objections to many of the Claims that have been Filed and, thus, the ultimate allowed amount of such Claims will be significantly less than the asserted amounts. The Debtors have begun to File objections to Claims and have Filed or intend to File objections to Claims on a number of grounds, including, among others, that such Claims: (1) are duplicative of other Claims asserted against the Debtors; (2) were Filed after the applicable bar date; (3) have been amended and superseded by subsequently Filed Claims; (4) were Filed against the wrong Debtor; (5) overstate the Debtors' liability; (6) do not represent a valid obligation of the Debtors; (7) were asserted with the improper priority, administrative or secured status; (8) have been paid; or (9) were discharged in the 2004 Bankruptcy Cases. The Debtors began filing

omnibus objections to proofs of Claim in August 2012, and orders sustaining objections have been entered by the Bankruptcy Court.

**K. Alternative Dispute Resolution Process for Certain Disputed Claims**

The Debtors sought and obtained approval of a set of mandatory alternative dispute resolution procedures (the "ADR Procedures") to promote the resolution of Designated Claims (as defined in the ADR Procedures). The implementation of the ADR Procedures was necessary to assist the Debtors in efficiently and cost effectively resolving Designated Claims through an alternative dispute resolution process instead of through potentially costly litigation. Moreover, the ADR Procedures were designed to limit the number of lift stay motions filed in the Chapter 11 Cases with respect to Designated Claims, approximately 10 of which had been Filed in the Chapter 11 Cases and which had begun to distract the Debtors from their reorganization activities.

The ADR Procedures generally provide for the exchange of settlement offers followed, to the extent such settlement offers do not lead to a settlement agreement, by binding arbitration to resolve Designated Claims or, if the applicable claimant does not agree to binding arbitration, by mediation. To date, no claims have been settled pursuant to the ADR Procedures.

**L. The Debtors' Insurance Coverage**

Under the laws of the states in which the Debtors operate, or as a general matter of prudence, the Debtors are required to maintain various workers' compensation, general liability and automobile liability insurance policies. In December 2011, ACE American Insurance Company (together with certain of its affiliates, "ACE") and the Debtors entered into agreements (collectively with all related agreements, the "ACE Amendment") with respect to the Debtors' workers' compensation, general liability and automobile liability insurance provided by ACE (collectively, the "Initial ACE Insurance Policies"). The Initial ACE Insurance Policies were effective as of January 1, 2012 and expired on April 1, 2012. On the Petition Date, the Debtors filed a motion seeking approval of the ACE Amendment from the Bankruptcy Court and related relief. As security for the Debtors' obligation to pay various amounts to ACE in connection with the Initial ACE Insurance Policies, the Debtors pledged, assigned and granted to ACE a continuing first priority security interest in and liens on: (1) a letter of credit issued by Comerica Bank to ACE in the amount of approximately \$50,677,141.00 as of the Petition Date; (2) collateral in a pledged securities account controlled by ACE in the approximate amount of \$63,268,226.10 as of the Petition Date; (3) a paid loss deposit fund in the amount of \$580,298.00 as of the Petition Date; and (4) a paid loss deposit fund held by an ACE-affiliate company (collectively, the "ACE Collateral"). In connection with entering into the ACE Amendment, the Debtors were required to provide ACE with an additional \$6,240,423 in cash collateral.

On January 13, 2012, the Bankruptcy Court entered an order (the "First ACE Order") approving the ACE Amendment and granting related relief in connection with the Initial ACE Insurance Policies, including affirming ACE's first priority security interest in the ACE Collateral. Pursuant to the authority granted to the Debtors in the First ACE Order, the Initial ACE Insurance Policies were subsequently extended for an additional three-month period, from April 1, 2012 until July 1, 2012 (later extended to July 7, 2012).

After negotiations, ACE determined that it would not renew the Initial ACE Insurance Policies upon their expiration under their existing terms. Instead, ACE and the Debtors entered into new workers' compensation, automobile and general liability policies (collectively, the "New ACE 3-Month Policies") to provide the Debtors with insurance coverage for the period July 7, 2012 through October 7, 2012.<sup>15</sup> The New ACE 3-Month Policies provided a different coverage structure than the Initial ACE Insurance Policies. Specifically, as to the automobile liability and workers' compensation liability coverages, the premiums for the New ACE 3-Month Policies were determined by application of retrospective incurred loss rating and were not subject to deductible reimbursement. The premiums for the New ACE 3-Month Policies totaled \$14,531,108. The DIP Budget was amended with the consent of the DIP Lender Agent and the Senior Secured Revolving Credit Agent to provide for the payment of the premiums for the New ACE 3-Month Policies. On June 21, 2012, the Bankruptcy Court entered an order approving the Debtors' entry into the New ACE 3-Month Policies.

<sup>15</sup> Because of a delay in being able to obtain an order from the Bankruptcy Court approving the New ACE 3-Month Policies, ACE agreed to extend the Initial ACE Insurance Policies from July 1, 2012 until July 7, 2012 to prevent a lapse in the Debtors' insurance coverage.

On September 11, 2012, the Debtors filed a motion seeking authorization to enter into new insurance policy arrangements with XL Group ("XL Group"). Like ACE, XL Group agreed to provide the Debtors with workers' compensation, general liability and automobile liability insurance coverage (collectively, the "XL Policies"). The forms of coverage provided by the XL Policies are substantially similar to the coverage under the ACE policies that were previously in effect. The Debtors' workers' compensation policy is an incurred loss retro policy under which the minimum retro premium and maximum retro premium will be equal to the standard premium, effectively ensuring a fixed premium, regardless of loss experience, for the period October 7, 2012 to January 7, 2013. The Debtors' general liability insurance is a self-insured retention policy with a general aggregate limit of \$5 million, a per occurrence limit of \$1.5 million and a self-insured retention of \$1.5 million. The Debtors' automobile liability insurance is a guaranteed cost policy with a \$3.5 million per accident limit. The XL Policies provide the Debtors with coverage for the three month period from October 7, 2012 at 12:01 a.m. until January 7, 2013 at 12:00 a.m. The premiums for the XL Policies total \$17,220,042. The DIP Budget was amended with the consent of the DIP Lender Agent and the Senior Secured Revolving Credit Agent to provide for the payment of the premiums for the XL Policies. On September 26, 2012, the Bankruptcy Court entered an order approving the Debtors' entry into the XL Policies and granting related relief.

**M. Litigation Regarding the Debtors' CBAs, Pension and Retiree Benefit Obligations**

**1. The 1113/1114 Litigation With the IBT and BCTGM**

On the Petition Date, as required to meet the milestones in the DIP Financing, the Debtors filed a motion seeking the approval of a schedule governing the process by which the Debtors intended to seek (a) the rejection of their various CBAs with the IBT and the BCTGM pursuant to section 1113 of the Bankruptcy Code and (b) the modification of certain related retiree benefits pursuant to section 1114 of the Bankruptcy Code (the "1113/1114 Process"). On January 19, 2012, the Bankruptcy Court entered its initial order setting a schedule for the 1113/1114 Process (the "Initial Scheduling Order"), which established a discovery schedule and set trial dates for the various relief requested by the Debtors in connection with the 1113/1114 Process. The Initial Scheduling Order was subsequently adjusted on two occasions.

On January 25, 2012, the Debtors filed a motion to commence section 1113(c) and 1114(g) proceedings with respect to the IBT and the BCTGM (the "IBT/BCTGM 1113/1114 Motion"). By the IBT/BCTGM 1113/1114 Motion, the Debtors sought to, among other things, eliminate the risks associated with the Debtors' obligation to participate in multiemployer pension plans, reduce the costs associated with non-pension benefits offered to union employees by standardizing the level of health and welfare benefits offered to union employees and eliminate work rules that create operational inefficiencies and prevent the Debtors from entering new and potentially profitable markets.

Pursuant to an Initial Scheduling Order, the Debtors engaged in an extensive discovery process with the IBT. At the same time, the Debtors continued to negotiate with the IBT and the BCTGM in an attempt to reach a consensual agreement on modifications to the IBT and BCTGM CBAs. The Debtors did not reach a consensual agreement with either the IBT or the BCTGM, and the Bankruptcy Court held a hearing on the IBT/BCTGM 1113/1114 Motion on April 17-19, 2012 (the "IBT/BCTGM 1113/1114 Hearing").

a. The Bankruptcy Court's Ruling With Respect to the BCTGM

On February 8, 2012, the BCTGM filed a notice with the Bankruptcy Court stating that the BCTGM would not oppose entry of an order authorizing the rejection of the BCTGM CBAs in the event that the Debtors and the BCTGM were unable to negotiate a mutually-acceptable agreement by the hearing date of the IBT/BCTGM 1113/1114 Motion. On March 5, 2012, the BCTGM filed a motion seeking to dismiss the IBT/BCTGM 1113/1114 Motion with respect to thirty BCTGM CBAs that allegedly terminated as of March 3, 2012 (the "Terminated BCTGM CBAs").

On May 4, 2012, the Bankruptcy Court entered an order: (a) granting the IBT/BCTGM 1113/1114 Motion with respect to the BCTGM CBAs that the Debtors and the BCTGM agreed were not Terminated BCTGM CBAs, (b) dismissing the IBT/BCTGM 1113/1114 Motion with respect to six CBAs that the Debtors and the BCTGM agreed were Terminated BCTGM CBAs and (c) scheduling a hearing to determine whether the remaining allegedly Terminated BCTGM CBAs had, in fact, terminated. Subsequently, after additional briefing from the Debtors and the BCTGM, the Bankruptcy Court issued an oral ruling at a hearing on May 14, 2012 holding that 28 of the 30 remaining allegedly Terminated BCTGM CBAs had not, in fact, terminated and could, therefore, be rejected by the Debtors. On May 24 and May 31, 2012, the Bankruptcy Court entered orders (Docket Nos. 1016 and 1058) authorizing the rejection of such non-terminated CBAs. The Debtors did not use their authority granted by the Bankruptcy Court to reject these CBAs.

b. The Bankruptcy Court's Ruling With Respect to the IBT

At the IBT/BCTGM 1113/1114 Hearing, the principal point of contention with respect to the rejection of the IBT CBAs was the Debtors' obligation to participate in the MEPPs affiliated with the IBT (the "IBT MEPPs"). The IBT argued that the Debtors' proposals went beyond what was "necessary" for the Debtors' reorganization under section 1113 of the Bankruptcy Code, and that certain of the IBT's counterproposals were reasonable and provided "good cause" for the IBT's rejection of the Debtors' proposals.

At a hearing on May 14, 2012, the Bankruptcy Court made an oral ruling on the IBT/BCTGM 1113/1114 Motion with respect to the IBT. The Bankruptcy Court held that the Debtors had satisfied the procedural requirements for relief under section 1113 of the Bankruptcy Code and that, with one exception, the Debtors' pension proposal was necessary and in good faith for the purposes of section 1113 of the Bankruptcy Code. The Bankruptcy Court ultimately denied the IBT/BCTGM 1113/1114 Motion with respect to the IBT, however, because it found that the IBT had rejected the Debtors' proposal to modify the IBT CBAs with good cause and that certain of the Debtors' proposals were not necessary for the Debtors' reorganization. Specifically, the Bankruptcy Court relied on testimony from the IBT's expert witness that the Debtors could achieve a 9% EBITDA margin by implementing the IBT's proposals in finding that the IBT's proposals were not materially different than the Debtors' proposals, which would have allowed the Debtors to achieve a 10-11% EBITDA margin. At that time, the Bankruptcy Court also outlined a number of changes to the Debtors' proposal that, if made, likely would allow the Debtors' proposal to successfully meet the criteria in section 1113 of the Bankruptcy Code.

c. Negotiations With the IBT and BCTGM Following the IBT/BCTGM 1113/1114 Hearing

Following the Bankruptcy Court's ruling with respect to the IBT/BCTGM 1113/1114 Motion, the Debtors held discussions on an expedited basis with the IBT, certain of their key lenders and the only potential outside equity investor that had made a viable proposal with respect to investing in the Debtors to fund an exit from bankruptcy. During these discussions, the IBT indicated that, notwithstanding the Bankruptcy Court's May 14, 2012 ruling, its participation in any reorganization plan was conditioned upon Hostess remaining in all of the IBT MEPPs. In response, Hostess' only viable outside investor indicated that it was no longer willing to invest.

As a result, it became clear that, absent an unanticipated change in circumstances, no outside investors were interested in funding the Debtors' reorganization. Nonetheless, Hostess and certain of its key lenders contacted the IBT and the BCTGM to see if it would be possible to reach an alternative comprehensive plan that would allow the Debtors to emerge from bankruptcy as a going concern.

The IBT agreed to reconvene negotiations immediately. The BCTGM, on the other hand, declined to do so, choosing instead to wait until the Debtors' negotiations with the IBT had concluded. On August 11, 2012, following three additional months of negotiations, the IBT agreed to submit the Debtors' revised last, best, final proposal (the "IBT LBFO") to its members for ratification. On September 14, 2012, the Debtors' IBT-represented employees ratified the IBT LBFO.

After completing negotiations with the IBT, Hostess presented the BCTGM with a proposal to modify the BCTGM CBAs. The terms of the proposal to the BCTGM mirrored those of the IBT LBFO, with a few exceptions to account for, among other things, differences between the terms of the IBT CBAs and BCTGM CBAs. On August 14, 2012, representatives of Hostess, including Hostess' CEO and Vice President of Human Resources and Labor Relations, and certain of its lenders met with BCTGM leadership to discuss Hostess' proposal. At that meeting, Hostess explained why the proposal was critical to the Debtors' survival as a going concern. In addition, Hostess provided the BCTGM with updated information necessary to understand the proposal, as well as all information upon which the proposal was based. That information included analyses performed by Hostess' financial advisors, which showed that implementation of the BCTGM proposal (together with the relief the Debtors are seeking from their other constituents as part of the Global Resolution (as defined below)) would allow the Debtors to reorganize as competitive entities with long-term viability. On August 29, 2012, Hostess made its last, best final offer to the BCTGM (the "BCTGM LBFO"), which incorporated several modifications proposed by the BCTGM. Later that day, the BCTGM notified Hostess that it would submit the BCTGM LBFO to its local affiliates for a membership vote. BCTGM employees covered by 112 of the 115 BCTGM CBAs voted to reject the BCTGM LBFO.

On September 20, 2012, the Debtors filed a new motion (the "New BCTGM 1113/1114 Motion") seeking, among other things, authorization under sections 1113(c) and 1114(g) of the Bankruptcy Code to reject their CBAs with those local affiliates of the BCTGM that voted against ratification of the BCTGM LBFO and to implement the terms thereof. To the extent necessary, the Debtors sought relief under Bankruptcy Rule 9024 from the Bankruptcy Court's May 4, 2012 order granting the IBT/BCTGM 1113/1114 Motion. The Debtors also sought, pursuant to section 1113(e) of the Bankruptcy

Code, to modify their obligations to continue to perform pursuant to the terms and conditions of eighteen BCTGM CBAs that had been deemed terminated (the "Terminated BCTGM CBAs"). A hearing on the New BCTGM 1113/1114 Motion was held on October 3, 2012.

On October 4, 2012, the Bankruptcy Court entered an order granting the New BCTGM 1113/1114 Motion authorizing the Debtors to reject all of their CBAs with the local affiliates of the BCTGM that voted against ratification of the BCTGM LBFO and to implement the terms thereof, with the exception of the Terminated BCTGM CBAs. With respect to the Terminated BCTGM CBAs, the Bankruptcy Court authorized the Debtors to modify their obligations to continue to perform pursuant to the terms and conditions of the Terminated BCTGM CBAs and to implement the terms of the BCTGM LBFO until such time as the Debtors and the authorized representatives for each such Terminated BCTGM CBA bargain to impasse within the meaning of the National Labor Relations Act.

## **2. The 1113/1114 Litigation With the Debtors' Other Unions**

On April 23, 2012, the Debtors filed a motion to commence section 1113(c) proceedings with respect to the Other Unions (the "Other Unions 1113 Motion"). By the Other Unions 1113 Motion, the Debtors sought to, among other things, eliminate the risks associated with the Debtors' obligation to participate in multiemployer pension plans, reduce the costs associated with non-pension benefits offered to union employees by standardizing the level of health and welfare benefits offered to union employees, and eliminate work rules that create operational inefficiencies and prevent the Debtors from entering new and potentially profitable markets.

Pursuant to a pre-trial scheduling order, which was subsequently amended on two occasions, the Debtors engaged in an extensive discovery process with the Other Unions. At the same time, the Debtors continued to negotiate with the Other Unions in an attempt to reach consensual agreements on modifications to the Other Unions' CBAs. Ultimately, the Glass, Molders, Pottery, Plastics & Allied Workers International Union (the "GMP"), the United Brotherhood of Carpenters and Joiners of America (the "UBCJA") and the International Brotherhood of Firemen & Oilers (the "IBFO") agreed not to contest the Other Unions 1113 Motion.

Between September 7 and September 13, 2012, the Debtors made revised proposals to each of the Other Unions modeled on the IBT LBFO and the BCTGM LBFO. Between September 20 and October 1, 2012, the Debtors submitted their last, best, final offers to the Other Unions (the "Other Unions LBFOs"), which incorporated revisions requested by the Other Unions. An initial hearing on the Other Unions 1113 Motion was held on September 25, 2012, and a further hearing on the Other Unions 1113 Motion was held on October 3, 2012. Prior to the completion of the hearing on October 3, 2012, seven of the Other Unions submitted their respective Other Union LBFO to their membership for a ratification vote. As of October 3, 2012, the United Steelworkers (the "USW") and the United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") had ratified their respective Other Union LBFO; the International Association of Machinists and Aerospace Workers (the "IAM") and the International Union of Operating Engineers & Service Employees (the "IUOE") failed to ratify their respective Other Union LBFO; and the Office & Professional Employees International Union (the "OPEIU"), the Retail, Wholesale and Department Store Union (the "RWDSU") and the United Food and Commercial Workers Union (the "UFCW") were still in the process of voting on whether to ratify their respective Other Union LBFO.

On October 4, 2012, the Bankruptcy Court entered an order authorizing the Debtors to reject all of their Other Union CBAs with the IAM, the IUOE, the GMP, the UBCJA and the IBFO. The Bankruptcy Court postponed its ruling until October 11, 2012 with respect to the OPEIU, the RWDSU and the UFCW to allow those Other Unions to complete their voting processes. On October 5, 2012, the OPEIU ratified its agreement. On October 10, 2012, the GMP ratified its agreement. Also, on October 10, 2012, the Debtors were informed that (a) the RWDSU had completed its voting process and employees covered by five of the eight RWDSU CBAs voted to ratify their respective agreements while employees covered by three of the eight RWDSU CBAs failed to ratify their respective agreements and (b) the UFCW had completed its voting process and all of the UFCW's applicable local unions voted to ratify their respective agreements. Accordingly, the Debtors will be seeking a supplemental order from the Court granting the Other Unions 1113 Motion with respect to the RWDSU employees that failed to ratify their respective agreements.

## **3. The Administrative Expense Claim Litigation With the MEPPs and the BCTGM**

On May 9, 2012, the BCTGM filed a motion seeking administrative expense priority and immediate payment of contributions allegedly owed by the Debtors to the BCTGM MEPPs after the Petition Date. Among other things, the BCTGM claimed that the Debtors were contractually obligated under the BCTGM CBAs to continue making pension contributions to one of the Debtors' MEPPs, the Bakery and Confectionary Union and International Health Benefits and

Pension Fund (the "B&C Fund"), even though the B&C Fund had terminated the Debtors' participation in the B&C Fund and assessed withdrawal liability prior to the Petition Date. On July 15, 2012, the B&C Fund filed a memorandum of law in support of the BCTGM's administrative expense motion.

Between April 2, 2012 and May 11, 2012, nine MEPPs, including two annuity plans, filed motions seeking administrative expense priority and immediate payment of contributions allegedly owed by the Debtors after the Petition Date.

On May 23, 2012, the Debtors filed an omnibus objection to the ten administrative expense motions filed by the BCTGM and the nine MEPPs. On June 27, 2012, after several rounds of briefing and two oral arguments, the Bankruptcy Court entered an order (Docket No. 1168) denying the BCTGM's motion and ruling that the Debtors had no obligation to make postpetition contributions to the B&C Fund because the B&C Fund had terminated the Debtors' participation prepetition. With respect to the other movants, the Bankruptcy Court entered orders (Docket Nos. 1166, 1169, 1170, 1171, 1172, 1173, 1175, 1199 and 1284) (collectively, the "MEPP Orders") granting the administrative expense motions and directing the Debtors to pay the claims if and when the DIP Lender Agent and the Senior Secured Revolving Credit Agent approved the payments, as required under Paragraph 12 of the Final DIP Order.

On June 28, 2012, the BCTGM filed a notice of appeal from the Bankruptcy Court's decision that the Debtors had no contractual obligation to make postpetition contributions to the B&C Fund. The appeal is currently pending before the United States District Court for the Southern District of New York.

On July 9, 2012, the Debtors filed an omnibus motion to amend the Bankruptcy Court's orders granting the administrative expense motions of the MEPPs (other than the B&C Fund) because the DIP Lender Agent had informed the Debtors that the DIP Lenders were not in a position to consider making additional advances for purposes of funding the MEPPs' administrative expense claims. The Bankruptcy Court, however, found that there was no need to amend the terms of its original orders, which made payment of the MEPPs' administrative expense claims subject to the approvals required under the Final DIP Order, and, therefore, denied the Debtors' omnibus motion to amend on August 8, 2012. On August 14, 2012, the Bankruptcy Court entered an order (Docket No. 1350) denying the requests which had been made by the MEPPs for immediate payment of their administrative expense claims. On August 22, 2012, the Debtors filed notices of appeal from certain MEPP Orders and the order allowing the administrative expense claim of a tenth MEPP, the Bakery Drivers Local 550 and Industry Pension Fund. Subsequently, two of those MEPPs filed notices of appeal from the August 14, 2012 order. The appeals of both the Debtors and the MEPPs remain pending before the United States District Court for the Southern District of New York.

On September 5, 2012, the UFCW-Northern California Joint Pension Trust Fund filed a motion seeking administrative expense priority and immediate payment of contributions allegedly owed by the Debtors after the Petition Date. By agreement of the parties, the deadline for the Debtors' response to the UFCW-Northern California Joint Pension Trust Fund's motion was extended to October 19, 2012. The hearing on the motion has been adjourned to October 31, 2012.

#### **N. Miscellaneous Asset Sales**

On February 22, 2012, the Bankruptcy Court entered an order approving procedures pursuant to which the Debtors could sell certain de minimis assets (the "De Minimis Asset Sale Order"). Generally, under the De Minimis Asset Sale Order, the Debtors are permitted to sell real and personal property outside the ordinary course of business and without further Bankruptcy Court approval where the purchase price is \$4 million or less. Since the entry of the De Minimis Asset Sale Order, and in accordance with the terms of the De Minimis Asset Sale Order, the Debtors have proceeded with three reportable sales: (1) a piece of real property in Illinois for a purchase price of \$505,000 (the "Illinois Sale"); (2) a piece of real property in Utah for a purchase price of \$225,000 (the "Utah Sale"); and (3) a piece of real property in New York for a purchase price of \$3,750,000 (the "New York Sale").

The Debtors have consummated approximately three other sales under the De Minimis Asset Sale Order that fell below the minimum reporting requirement threshold (the "Miscellaneous Sales"). The net proceeds from such Miscellaneous Sales have totaled approximately \$825,000.

All of the net proceeds from the Illinois Sale, the Utah Sale and the Miscellaneous Sales were used to pay amounts due and owing under the terms of the DIP Credit Agreement. Pursuant to an agreement with the DIP Lender Agent and the Requisite DIP Lenders (as defined in the DIP Credit Agreement), the net proceeds from the New York Sale were deposited

into the Loan Proceeds Account (as defined in the DIP Credit Agreement) and made subject to withdrawal by the Debtors solely on the terms and conditions set forth in Section 2.1(c) of the DIP Credit Agreement.

**O. The Debtors' Business Performance During the Chapter 11 Cases**

Due to a number of factors, the Debtors' business performance during the Chapter 11 Cases has suffered, particularly in recent months. During the last few months, the Debtors' businesses have suffered significant revenue and margin deterioration. For example, the prices of commodities that the Debtors use to make their products have spiked, and the Debtors had been unable to significantly hedge their exposure to these price spikes. Moreover, due to the Debtors' longer than expected stay in bankruptcy, a significant portion of their key "private label" customers (for whom the Debtors produce baked goods to be sold under generic brands) and vending customers failed to renew their contracts, harming revenue. Moreover, in June 2012, the Debtors incurred an unanticipated \$30 million increase in insurance costs for the six months ended December 31, 2012. As a result of these and other events, many of which first arose during the Summer of 2012, the Debtors' financial condition has deteriorated, requiring the Debtors to revise their April 2012 proposals to the IBT, BCTGM and other major unions and modify their operational turnaround plan, as described in Section VII below.

**VI.**

**THE GLOBAL RESOLUTION**

Pursuant to consensual agreements with certain of their Unions and certain orders of the Bankruptcy Court, the Debtors have resolved the Union-related litigation initiated pursuant to sections 1113 and 1114 of the Bankruptcy Code at the outset of these Chapter 11 Cases (such resolution, the "Global Resolution"). The Global Resolution permits the Debtors to implement substantial modifications to their obligations under the CBAs and is vital to their successful reorganization. The various complementary efforts through which the Debtors intend to effect the Global Resolution are as follows: (1) the letter of agreement documenting the terms of the IBT LBFO between the Debtors and the IBT (such letter of agreement, the "IBT LOU"); (2) the letter of agreement documenting the terms of the BCTGM LBFO between the Debtors and three local affiliates of the BCTGM that voted to ratify the BCTGM LBFO (such letter of agreement, the "BCTGM LOU"); (3) the Bankruptcy Court's October 4, 2012 order granting the New BCTGM 1113/1114 Motion, which order permits the Debtors to implement the terms of the BCTGM LOU with respect to those local affiliates of the BCTGM that did not ratify the BCTGM LBFO (the "BCTGM 1113/1114 Order"); (4) the letters of agreement documenting the terms of the Other Union LBFOs between the Debtors and, respectively, the Other Unions that voted to ratify the terms of the respective Other Union LBFO (such letters of agreement, collectively, the "Other Union LOUs"); and (5) the Bankruptcy Court's October 4, 2012 order granting the Other Unions 1113 Motion, which order permits the Debtors to implement the terms of the Other Union LOUs with respect to certain Other Unions that did not ratify the respective Other Union LBFO (the "Initial Other Unions 1113 Order") and (6) an anticipated order further granting the Other Unions 1113 Motion with respect to certain Other Unions that voted to reject the Other Union LBFO after the entry of the Initial Other Unions 1113 Order (the "Supplemental Other Unions 1113 Order" and, together with the IBT LOU, the BCTGM LOU, the BCTGM 1113/1114 Order, the Other Unions LOUs and the Initial Other Unions 1113 Order, the "1113/1114 Resolutions"). The 1113/1114 Resolutions resolve all issues between the Debtors and each of the IBT, the BCTGM and the Other Unions.

The Debtors expect implementation of the 1113/1114 Resolutions to generate annual cost savings in excess of \$171.1 million by fiscal year 2014. The terms of the 1113/1114 Resolutions provide for, among other things:

- Extension of the Debtors' obligations with respect to the IBT, BCTGM and Other Union CBAs, as modified by the 1113/1114 Resolutions, to five years after the implementation of the 1113/1114 Resolutions and a further five-year extension of the pension provisions in the IBT, BCTGM and Other Union CBAs to ten years after such date;
- Reduction of wages and benefits provided to IBT-, BCTGM- and Other Union-represented employees, with best efforts to be made by the Debtors to obtain comparable wage and benefit cost adjustments from all other employees (including management personnel);
- The Debtors' withdrawal and possible reentry into the IBT MEPPs, BCTGM MEPPs and Other Union MEPPs under new conditions designed to limit the Debtors' exposure to potentially crippling withdrawal and contribution liabilities, which conditions include (but are not limited to) the adoption by each MEPP of a new employer pool or amendment to an existing new employer pool consistent with the terms provided in the 1113/1114 Resolutions;

- Implementation of more flexible work rules to reduce operating costs and expand potential sources of revenue;
- Waiver of any administrative expense or priority Claims that the IBT, BCTGM, Other Unions (or any employees represented thereby) may have, other than 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, of the kind the Debtors have been making from and after the Petition Date to or for the benefit of the Debtors' employees otherwise waived as part of the 1113/1114 Resolutions);
- Union participation in the corporate governance of the Reorganized Debtors, which includes seats for representatives of the IBT and BCTGM on the Reorganized Hostess board of directors as well as each of the audit and compensation committees thereof;
- The receipt by the Unions of 25% of the Reorganized Hostess' equity (which amount may be diluted upon implementation of a management incentive plan);
- An agreed upon capital structure to be implemented by the Debtors upon emergence from bankruptcy, including the apportionment of \$100 million in the initial aggregate principal amount of New Third Lien Tranche B Term Loans among the Unions; and
- Shared sacrifice by the Debtors' professionals, lenders and other stakeholders.

To satisfy certain conditions precedent to Confirmation of the Plan, as of the date of this Disclosure Statement, the Debtors have reached agreements in principle with several of the MEPPs regarding certain stipulated, agreed orders among the Debtors and such agreeing MEPPs (individually and collectively, "MEPP Settlement Agreements"). To the extent the Debtors have not yet reached agreements in principle with the remaining MEPPs, the Debtors are working to convince such MEPPs of the value to be achieved by entering into, and the necessity of, MEPP Settlement Agreements. The Debtors are seeking to have entered into MEPP Settlement Agreements with all of the MEPPs prior to the Effective Date of the Plan. The MEPP Settlement Agreements will provide that: (1) any administrative expense or unsecured priority Claims held or asserted by the MEPPs against the Debtors will be treated as general unsecured non-priority Claims under the Plan; and (2) to the extent that the Debtors have not previously withdrawn from a given MEPP, the Debtors shall be deemed to have withdrawn from such MEPP no later than December 31, 2012.

## VII.

### THE DEBTORS' REVISED TURNAROUND PLAN

Upon his appointment as the CEO of the Debtors, Gregory Rayburn undertook an evaluation of the initiatives contained in the Debtors' Prepetition Turnaround Plan (as described above). In connection with that review, on March 9, 2012, Mr. Rayburn directed FTI to perform a comprehensive review of the Prepetition Turnaround Plan.

Over the course of the next several weeks, an FTI team led by J. Robert Medlin and Charles Carroll met with 22 operations-level employees and senior management personnel to review the assumptions underlying the Prepetition Turnaround Plan. In total, the FTI team spent over 660 hours meeting with the Debtors' personnel and reviewing the Prepetition Turnaround Plan. The analysis revealed that, due to changes in circumstances since the development of the Prepetition Turnaround Plan, it was appropriate to include new initiatives, revise certain spending assumptions and modify certain initiatives in the Prepetition Turnaround Plan to create a revised turnaround plan (as updated and refreshed, the "Revised Turnaround Plan").

To emerge from bankruptcy as a competitive entity with long-term viability, the Debtors must implement the restructuring initiatives set forth in the Revised Turnaround Plan. Some of the restructuring initiatives set forth in the Revised Turnaround Plan (the "Non-Labor Initiatives") are not dependent upon the Debtors' achieving modifications to their CBAs and retiree benefit obligations. These initiatives have not been put in place during the Chapter 11 Cases because many of these initiatives require capital investments. The Cash on hand as of the Effective Date (from operations and from the Confirmation Cash Infusion (as defined below)) and liquidity from the Exit Financing Facility is anticipated to provide the Debtors with sufficient capital to implement the Non-Labor Initiatives after the Effective Date.

Other restructuring initiatives in the Revised Turnaround Plan (the "Labor and Legacy Initiatives") require, as described in Section V.M above, modification of the Debtors' CBAs through the consensual modification or rejection of the Debtors' existing CBAs before they can be implemented, and thus have not been implemented as of the date of this Disclosure Statement.

Due to the deterioration in the Debtors' financial performance described in Section V.O above, in July, August and September 2012, the Debtors and FTI worked to update and refresh the Revised Turnaround Plan to account for these changes, the modified cost structure reflected in the Global Resolution (which differed in significant ways from the offers made by the Debtors to their Unions that were the basis for the April 2012 version of the turnaround plan) and the possible sale of certain of the Debtors' discrete assets.

Summarized below are the key Non-Labor Initiatives of the Revised Turnaround Plan, as refreshed by the Debtors and FTI.

#### **A. Baking Plan Utilization**

Due to, among other things, significant overcapacity in the baking industry, the Debtors' baking facilities currently operate at only 65% of baking capacity (compared with a "best in class" 85% target utilization). Additionally, as a result of the Debtors' inability to invest in information technology and automated baking systems, the Debtors' plants fall far short of industry benchmarks for efficiency. As part of the Revised Turnaround Plan, the Debtors have identified a number of initiatives to reduce excess baking capacity and improve efficiency (collectively, the "Baking Plant Initiatives"). The Baking Plant Initiatives include:

- Closing five bakeries that operate at low baking capacity;
- Outsourcing the production of low volume and seasonal products, such as hamburger buns, to third-party bakeries;
- Investing in new information technology capabilities that will streamline baking processes;
- Automating certain product lines; and
- Upgrading packaging equipment to improve line efficiency and enable new package configurations.

#### **B. Fleet Upgrade**

With an average age of 18 years, the vehicles the Debtors use to transport and deliver their products are rapidly deteriorating. As a result, in recent years the Debtors have faced increasing costs related to the maintenance and performance of these vehicles. For example, while high fuel prices affect all competitors, the Debtors have been uniquely impacted by recent oil price spikes because their vehicle fleet operates at particularly low fuel efficiency rates.

As part of the Revised Turnaround Plan, the Debtors now contemplate that they will replace a portion of their owned vehicle fleet with a leased vehicle fleet. The Debtors will reduce costs associated with the vehicle fleet by, among other things, increasing the frequency and effectiveness of maintenance inspections and engine replacements and increasing fuel efficiency by replacing older vehicles. Over the next four years, the Company plans to lease 600 route vehicles, 200 tractors, and 300 trailers.

#### **C. Outlet Initiatives**

The Debtors operate approximately 527 retail outlet stores throughout the United States. Currently, in addition to selling Hostess products that are approaching their expiration dates, these stores also sell fresh products (i.e., Hostess products not yet approaching their expiration dates) and products produced by third parties.<sup>16</sup> As part of the Revised Turnaround Plan, the Debtors will close many unprofitable retail outlet stores and will focus the remaining retail outlet stores on the sale of Hostess brand products approaching their expiration dates. The Debtors are reducing requirements that the retail outlet stores carry fresh products and products produced by third parties. The Debtors will also upgrade their

<sup>16</sup> The products approaching expiration dates include both unsold products recovered from customers, as well as products shipped from the Debtors' bakeries or depots. The Debtors' products have extremely short shelf lives. For example, the shelf life of Twinkies is approximately two weeks.

information technology systems to optimize their ability to identify and recover products nearing expiration. Finally, the Debtors will modify their pricing strategy to increase retail outlet store margins.

**D. Depot Restructuring**

The Debtors deliver products to their customers via a "hub and spoke" delivery system. Under this system, the Debtors' products are transported from bakeries to distribution hubs (i.e., depots or other bakeries), from which delivery personnel collect the products and deliver them to customers. Under the Revised Turnaround Plan, the Debtors will close and/or consolidate numerous depots to maximize the efficiency of their distribution network.

**E. SG&A Initiatives**

The Debtors have identified several ways to reduce their selling, general and administrative expenses (collectively, the "SG&A Initiatives"). During the first phase of the SG&A Initiatives, which began during fiscal year 2011, the Debtors instituted a 10% across-the-board reduction in the number of management and non-union employees through layoffs and attrition. During the second phase of the SG&A Initiatives, the Debtors will address inefficiencies in their cost structure. Specifically, the Debtors will: (1) reduce the number of regional accounting offices from 23 to five by centralizing and standardizing accounting functions; (2) reduce the number of business units from four to three; (3) outsource certain functions currently performed by the Debtors' human resources department; and (4) consolidate the offices of upper management personnel. Finally, as part of the SG&A Initiatives, the Debtors will increase middle management headcount to provide the human capital necessary to compete as a viable long-term entity in the baking industry.

**F. Warehouse Management Systems**

In recent years, the Debtors have installed certain warehouse management systems software ("WMS Software") at several of their baking plants and distribution centers. WMS Software allows users to manage inventory effectively throughout the distribution network and to automate tasks associated with product distribution. As part of the Revised Turnaround Plan, the Debtors will install WMS Software at several of their remaining baking plants and distribution centers.

**G. Restoration of Advertising and Marketing**

In recent years, the Debtors have under spent on marketing and advertising. As a result, the Debtors have been unable to address all aspects of their base-level marketing. For example, the Debtors have been unable to advertise broadly the new products in their successful Nature's Pride® brand. In an industry as competitive as baking, where consumer preferences are ever-evolving, effective advertising and marketing are critical both to maintaining existing customers and to attracting new ones. Thus, the Debtors must restore their advertising and marketing budget to competitive levels or risk losing existing as well as new sources of revenue. The Revised Turnaround Plan calls for the Debtors to increase their annual advertising and marketing budget to make them more competitive with their peers.

**H. Wheat Bread Initiative**

The Debtors have developed three new wheat bread products introduced at the beginning of fiscal year 2013 across four of their brands (the "Wheat Bread Initiative"). The Wheat Bread Initiative will allow the Debtors to attract and retain health-conscious consumers.

**I. R&D Initiative**

Previous iterations of the Prepetition Turnaround Plan assumed that the Debtors would not increase their existing \$3 million annual research and development budget. However, as part of the Revised Turnaround Plan, the Debtors have determined to increase the Debtors' research and development budget by \$2 million annually to a total of \$5 million annually (the "R&D Initiative"). The R&D Initiative will provide the Debtors' marketing team with the resources necessary to develop new products that will allow the Debtors to remain competitive in the long term.

**J. Trade Spend Reduction**

Under the previous iterations of the Prepetition Turnaround Plan, the Debtors budgeted between \$720 and \$730 million annually to support "trade spend." Trade spend is an industry term that describes spending on discounts and promotions, such as coupons, displays and rebates. An analysis of the Debtors' trade spend budget revealed that the

Debtors could reduce their trade spend budget while still efficiently and effectively implementing trade spend activities. Accordingly, the Debtors' annual trade spend budget in the Revised Turnaround Plan was reduced by between \$12 and \$16 million annually.

## VIII.

### CONFIRMATION CASH INFUSION

#### A. General

In order to fund certain of the costs associated with restructuring their businesses, including the various initiatives set forth in the Revised Turnaround Plan and the Cash payments that are to be made on the Effective Date under the Plan, the Debtors have determined that it will be necessary to obtain a cash infusion into their businesses (the "Confirmation Cash Infusion"). One means by which this could occur is through a transaction or set of transactions for the sale of certain of the Debtors' assets that generate(s) sufficient value to effectuate the reorganization contemplated by the Plan (any such transaction or set of transactions, a "Confirmation Asset Transaction"). Alternatively, existing lenders could provide a cash infusion. The proceeds from the Confirmation Cash Infusion, coupled with the Debtors' existing Cash, will be used, among other things, to (1) pay holders of Allowed Claims in Class 2C Cash on the Effective Date of the Plan in the approximate total amount of \$29 million, (2) pay holders of Allowed Claims in Class 2B on the Effective Date of the Plan up to \$59 million in Cash and (3) pay the outstanding balance under the DIP Financing. Because the DIP Lenders and the Prepetition Secured Lenders have liens on all of the Debtors' assets, they are entitled to be paid 100% of the proceeds of any Confirmation Asset Transaction. Thus, the Plan provides that the DIP Financing and holders of Allowed Claims in Class 2C be paid in full. Holders of First Lien Term Loan Tranche A/B Claims, however, have indicated their willingness to let the Debtors retain certain of the remaining proceeds to fund the post-Effective Date initiatives under the Revised Turnaround Plan and to provide the Reorganized Debtors with needed working capital after the Effective Date.

As set forth in greater detail below, it is a condition precedent to the Confirmation of the Plan that all material agreements effecting any transaction constituting the Confirmation Cash Infusion will have been executed by the applicable Debtor(s) and any counterparty thereto. Further, it is a condition precedent to the Effective Date that all transactions constituting the Confirmation Cash Infusion shall have closed in all material respects in accordance with the terms of any agreements effecting such transactions on or prior to the Effective Date.

While the Debtors have not yet entered into any definitive agreements with respect to a Confirmation Asset Transaction or a Confirmation Cash Infusion transaction, as described in greater detail immediately below, the Debtors have undertaken significant marketing and sales efforts. The Debtors believe that these efforts will permit them to move quickly to enter into definitive agreements to, and close upon, a Confirmation Asset Transaction, if that is the path chosen to obtain the Confirmation Cash Infusion.

#### B. Marketing Efforts

Over the past eight years — since the commencement of the 2004 Bankruptcy Cases — the Debtors have been engaged in a longstanding effort to explore potential sales of various portions of their businesses. During the 2004 Bankruptcy Cases, the Debtors' financial advisor at the time contacted over 50 strategic parties regarding a going concern sale of the Debtors' business. The Debtors also considered various sale alternatives, including sales of separate business segments during the 2004 Bankruptcy Cases. Ultimately, no significant sale transaction was consummated during the 2004 Bankruptcy Cases.

After the end of the 2004 Bankruptcy Cases in 2009, the Debtors continued to explore various sale transactions, and worked by turns with Houlihan Lokey Howard & Zukin, Goldman Sachs and JPMorgan to market their entire business or various portions of their business for sale. Ultimately, however, only the sale of the minor Mrs. Cubbison's brand for approximately \$15 million in gross proceeds resulted from these processes.

In response to media reports of the Debtors' struggles and the efforts of Perella Weinberg, the Debtors have received a heightened level of inquiries about possible M&A opportunities since September 2011. Perella Weinberg has maintained information regarding of all such inquiries and made informal inquiries in the market at various times during and prior to the commencement of the Chapter 11 Cases to gauge parties' interest in potential asset sales. In addition, as required under the terms of the DIP Credit Agreement, early in the Chapter 11 Cases, the Debtors and their advisors prepared marketing materials and developed bidding procedures for asset sales in consultation with certain of the Prepetition Secured Lenders. The Debtors have also spent significant time and resources populating a data room with

information related to their businesses as a whole, as well as a separate data room with information related to the Debtors' individual brands. Interested parties had the opportunity to sign confidentiality agreements and received access to these data rooms. To the extent these parties had additional requests, the Debtors and their advisors fulfilled those requests to the extent practicable. As such, because the entirety of the Debtors' businesses as well as individual brands and certain of the Debtors' discrete assets have been extensively marketed to both strategic and financial buyers in recent years, and information regarding all of the Debtors' businesses, including various individual brands, has been made available in data rooms during the process, any potential purchaser will have had significant opportunities to perform diligence on the Debtors' assets and businesses. As such, the Debtors believe that it will be feasible to negotiate, execute and consummate definitive purchase agreements for a Confirmation Asset Transaction prior to the Confirmation Hearing.

In order to achieve the Confirmation Cash Infusion targets, Perella Weinberg has implemented an aggressive, formalized marketing process for the Debtors' various assets. In August 2012, Perella Weinberg reached out to various strategic and financial parties that might be potentially interested in purchasing some of the Debtors' discrete assets and requested that formal indications of interest be received in late September 2012. As a result of this process, to date, Perella Weinberg has contacted 142 potential strategic and financial buyers, granted data room access to 46 such potential buyers and, as of the date of this Disclosure Statement, has received 11 indications of interest for various of the Debtors' discrete assets. Based upon those indications of interest and the other discussions that Perella Weinberg and Hostess management have had with parties in interest, it should be possible to consummate a Confirmation Asset Sale to generate sufficient funds to effectuate the restructuring contemplated by the Plan.

### **C. Proposed Sales Process**

If the Debtors choose to obtain the Confirmation Cash Infusion via a Confirmation Asset Transaction, the Debtors would anticipate filing one or more stand-alone motions seeking authority to enter into one or more sale transactions pursuant to section 363 of the Bankruptcy Code. The Debtors would expect to undertake such sales with a stalking horse bidder in place, and then proceed with additional marketing efforts and an auction, if appropriate. The Debtors would anticipate that approval of the Confirmation Asset Transaction, to the extent there is one, will proceed on a parallel timeline to that proposed for soliciting votes and obtaining approval of the Plan. The Debtors would anticipate closing such sale(s) on, or shortly before, the Effective Date.

## **IX.**

### **THE PLAN**

#### **A. General**

THE FOLLOWING SUMMARY HIGHLIGHTS CERTAIN OF THE SUBSTANTIVE PROVISIONS OF THE PLAN, AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR A SUBSTITUTE FOR A FULL AND COMPLETE REVIEW OF THE PLAN. THE DEBTORS URGE ALL HOLDERS OF CLAIMS AND INTERESTS TO READ AND STUDY CAREFULLY THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A.

Section 1123 of the Bankruptcy Code provides that, except for Administrative Claims and Priority Tax Claims, a plan of reorganization must categorize claims against and equity interests in a debtor into individual classes. Although the Bankruptcy Code gives a debtor significant flexibility in classifying claims and interests, section 1122 of the Bankruptcy Code dictates that a plan of reorganization may only place a claim or an equity interest into a class containing claims or equity interests that are substantially similar.

The Plan creates nine Classes of Claims and two Classes of Interests. These Classes take into account the differing nature and priority of Claims against and Interests in the Debtors. Administrative Claims and Priority Tax Claims are not classified for purposes of voting or receiving Distributions under the Plan (as is permitted by section 1123(a)(1) of the Bankruptcy Code) but are treated separately as unclassified Claims.

The Plan provides specific treatment for each Class of Claims and Interests. Only holders of Claims that are impaired under the Plan and who will receive Distributions under the Plan are entitled to vote on the Plan.

Unless otherwise provided in the Plan or the Confirmation Order, the treatment of any Claim or Interest under the Plan will be in full satisfaction, settlement, release and discharge of, and in exchange for, such Claim or Interest.

The following discussion sets forth the classification and treatment of all Claims against, or Interests in, the Debtors. It is qualified in its entirety by the terms of the Plan, which is attached hereto as Exhibit A, and which should be read carefully by you in considering whether to vote to accept or reject the Plan.

**B. Classification and Treatment of Claims and Interests**

If the Plan is confirmed by the Bankruptcy Court, (1) each Allowed Claim in a particular Class will receive the same treatment as the other Allowed Claims in such Class, whether or not the holder of such Claim voted to accept the Plan and (2) each Allowed Interest in a particular Class will receive the same treatment as the other Allowed Interests in such Class. Such treatment will be in exchange for and in full satisfaction, release and discharge of, the holder's respective Claims against or Interests in a Debtor, except as otherwise provided in the Plan. Moreover, upon Confirmation, the Plan will be binding on (1) all holders of a Claim regardless of whether such holders voted to accept the Plan and (2) all holders of an Interest.

**1. Unclassified Claims**

**a. Administrative Claims in General**

Except as otherwise specified in Section II.A.1 of the Plan (including, but not limited to, with respect to Compromise Administrative Claims and Intercompany Claims arising on or after the Petition Date), and subject to the Bar Date provisions herein, unless otherwise agreed by the holder of an Administrative Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, or unless a Final Order of the Bankruptcy Court provides otherwise, each holder of an Allowed Administrative Claim will receive, in full satisfaction of its Allowed Administrative Claim, Cash equal to the amount of such Allowed Administrative Claim either (i) on the Effective Date or (ii) if the Administrative Claim is not allowed as of the Effective Date, 60 days after the date on which such Administrative Claim becomes an Allowed Administrative Claim. Any holder of an Allowed Administrative Claim for which multiple Debtors are liable shall be entitled to only one Distribution in respect of such Administrative Claim. No multiple recovery on account of any Allowed Administrative Claim will be provided or permitted.

**b. Compromise Administrative Claims and Excess Cash**

Unless otherwise agreed by a holder of a Compromise Administrative Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, or unless a Final Order of the Bankruptcy Court provides otherwise, each holder of an Allowed Compromise Administrative Claim will receive, in accordance with Section V.D.2 of the Plan and in full satisfaction of its Compromise Administrative Claim, an initial principal amount of New Third Lien Tranche C Term Loans in the allowed amount of such Compromise Administrative Claim (and will be deemed to have loaned such amount to the Reorganized Debtors under the New Third Lien Term Loan Facility), plus a Pro Rata share of any Reserved Cash held by the Disbursing Agent on account of such principal amount; provided that, in the event that Excess Cash is determined to exist pursuant to Section III.G of the Plan, then (i) holders of Compromise Administrative Claims as of the Excess Cash Record Date will be entitled to their Pro Rata share of 50% of such Excess Cash and (ii) the initial principal amount of New Third Lien Tranche C Term Loans deemed to have been loaned by the holders of Compromise Administrative Claims will be reduced on a dollar-for-dollar basis for each dollar of Excess Cash paid on account of such claims (and in the event promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility have been delivered to such holders, such promissory notes or other instruments shall be returned to the New Third Lien Term Loan Agent for cancellation and replaced with promissory notes or other instruments reflecting the correct initial principal amount) and additional principal will be deemed to have accreted (or, if such loans bear interest, interest will be deemed to have accrued) only on the correct initial principal amount from the Effective Date.

**c. Overpayment of Professionals' Fees**

Upon the determination of the Total Compromise Fee Claim and the Compromise Professional Fee Claim for a particular Compromise Fee Professional, the Reorganized Debtors shall determine whether an Excess Professional Fee Payment was made to that Compromise Fee Professional. To the extent an Excess Professional Fee Payment was made, the Reorganized Debtors will notify the Compromise Fee Professional and the Compromise Fee Professional will, within five Business Days of receiving such notice, return the amount of the Excess Professional Fee Payment to the Reorganized Debtors.

d. Notice Procedures Governing Certain Holders of Compromise Administrative Claims

Within 30 days of the Effective Date, the following Compromise Fee Professionals will each submit a report to the DIP Notice Parties identifying all fees earned and expenses incurred during the Chapter 11 Cases (and any amounts paid by the Debtors as of the Effective Date): (i) Union Professionals, (ii) Compromise Fee Professionals that rendered services to the DIP Lenders or the Prepetition Secured Lenders, (iii) Debevoise & Plimpton LLP and (iv) FTI Consulting, Inc. If none of the DIP Notice Parties Files an objection to the calculation of fees and expenses identified on any such report within 10 days of receipt, the Compromise Administrative Claim held by such Compromise Fee Professional shall be deemed allowed; *provided, however, that* all fees and expenses of the Compromise Fee Professionals that have rendered services to the DIP Lenders shall be deemed allowed to the extent they have been previously paid by the Debtors. If an objection to the calculation of fees and expenses identified on such report is Filed within 10 days of receipt, then the amount of the Compromise Administrative Claim held by such Compromise Fee Professional shall be determined by the Bankruptcy Court after notice and a hearing.

e. Statutory Fees

On or before the Effective Date, Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing or in the Confirmation Order, will be paid in Cash equal to the amount of such Administrative Claims by the Debtors. All fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid by the applicable Reorganized Debtor in accordance therewith until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code, or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

f. Ordinary Course Postpetition Administrative Liabilities

Allowed Administrative Claims based upon liabilities incurred by a Debtor on or after the Petition Date in the ordinary course of the Debtor's business (including but not limited to (i) postpetition Administrative Claims arising from or with respect to the sale of goods or provisions of services (but not including Professional Fee Claims); (ii) postpetition customer credits under a Debtor's existing customer program; (iii) postpetition Administrative Claims of governmental units for Taxes (including Tax audit Claims related to Tax years or portions thereof ending after the Petition Date), (iv) Administrative Claims arising under contracts and leases that are assumed and have not been rejected and (v) Administrative Claims arising under post-Petition Date contracts and leases) will be paid by the applicable Reorganized Debtor, pursuant to the terms and conditions of the particular transaction giving rise to those Administrative Claims, without further action by the holders of such Administrative Claims or further approval by the Bankruptcy Court. Administrative Claims held by MEPPs shall not be considered Administrative Claims incurred in the ordinary course of the Debtor's business. 503(b)(9) Claims and Compromise Administrative Claims shall be payable under Sections II.A.1.a and II.A.1.b of the Plan and not under Section II.A.1.f of the Plan.

g. Claims Under the DIP Credit Agreement

On or before the Effective Date, Allowed DIP Lender Claims will be paid in Cash in an amount equal to the full amount of those Claims; *provided that* any DIP Lender Claims that also qualify as Compromise Administrative Claims shall receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan. Any Restricted DIP Cash will be first used to satisfy Allowed DIP Lender Claims pursuant to Section II.A.1.g of the Plan, with the balance paid from the Debtors' Cash or other sources. Any DIP Lender Claims liquidated and allowed after the Effective Date will be paid in full in Cash by the Reorganized Debtors promptly upon liquidation; *provided that* any DIP Lender Claims that also qualify as Compromise Administrative Claims shall receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan.

h. Postpetition Intercompany Claims

Intercompany Claims arising on or after the Petition Date will be extinguished on the Effective Date for no recovery, subject to the Restructuring Transactions.

i. Priority Tax Claims

Priority Tax Claims are Claims entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Priority Tax Claim, Cash equal to the amount of such Allowed Priority Tax Claim, at the election of the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, (i) either (A) on the Effective Date or (B) if the Priority Tax Claim is not allowed as of the Effective Date, 60 days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim or (ii) in equal annual installment payments, payable on the anniversary of the Petition Date (*provided that* the first such payment shall be made on the later of the first anniversary of the Petition Date and the Effective Date) and concluding on the fifth anniversary of the Petition Date, in Cash the present value of which (calculated in accordance with section 511 of the Bankruptcy Code), as of the Effective Date, is equal to the amount of such Allowed Priority Tax Claim, *provided that* the Reorganized Debtors shall retain the option, to be exercised in their sole discretion, to fully satisfy such Allowed Priority Tax Claim at any time after the Effective Date and prior to the fifth anniversary of the Petition Date through a Cash payment in an amount sufficient to render the present value of all Cash payments received by the holder of such Allowed Priority Tax Claim on account of such Allowed Priority Tax Claim (calculated in accordance with section 511 of the Bankruptcy Code), as of the Effective Date, equal to the amount of such Allowed Priority Tax Claim.

Notwithstanding the provisions of Section II.A.2.a of the Plan or Section I.A.172 of the Plan, the holder of an Allowed Priority Tax Claim will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any such Claim or demand for any such penalty will be classified in Class 3. The holder of an Allowed Priority Tax Claim will not assess or attempt to collect such penalty from the Debtors, the Reorganized Debtors or their respective property or any reserves established pursuant to the Plan (other than as a holder of a Class 3 Claim).

**2. Classified Claims and Interests**

a. Class 1 Claims – Priority Claims Against the Debtors

Priority Claims are Claims that are entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim. On the Effective Date, each holder of an Allowed Claim in Class 1 will receive Cash equal to the amount of such Allowed Claim, unless the holder of such Priority Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, as applicable, agree to a different treatment. Priority Claims against the Debtors are unimpaired and holders of Allowed Claims in Class 1 are not entitled to vote on the Plan.

b. Class 2A Claims – Senior Secured Revolving Credit Claims Against the Debtors

On the Effective Date, each holder of an Allowed Claim in Class 2A will receive Cash equal to the amount of such Allowed Claim; *provided that* any Senior Secured Revolving Credit Claims that also qualify as Compromise Administrative Claims will instead receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan. Senior Secured Revolving Credit Claims against the Debtors are unimpaired and holders of Allowed Claims in Class 2A are not entitled to vote on the Plan.

c. Class 2B Claims – First Lien Term Loan Tranche A/B Designated Claims Against the Debtors

On the Effective Date, each holder of an Allowed Claim in Class 2B will receive its Pro Rata share of each component of the First Lien Term Loan Tranche A/B Designated Plan Distribution Property.

Holders of First Lien Term Loan Tranche A/B Designated Claims are (i) foregoing approximately \$1.5 million in default rate interest that should have accrued from the Petition Date through January 11, 2013 and (ii) not being paid in full, in Cash as they would be entitled to under the terms of the First Lien Term Loan Facility. Moreover, the Debtors are not paying First Lien Term Loan Tranche A/B Designated Claims in accordance with the terms of the applicable underlying documents. Accordingly, First Lien Term Loan Tranche A/B Designated Claims against the Debtors are impaired and holders of Allowed Claims in Class 2B are entitled to vote on the Plan.

d. Class 2C Claims – First Lien Term Loan Tranche A/B Non-Designated Claims Against the Debtors

On the Effective Date, each holder of an Allowed Claim in Class 2C will receive its Pro Rata share of the First Lien Term Loan Tranche A/B Non-Designated Plan Distribution Property; *provided that* any First Lien Term Loan Tranche

A/B Non-Designated Claims that also qualify as Compromise Administrative Claims will receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan on account of such Compromise Administrative Claims.

Holders of First Lien Term Loan Tranche A/B Non-Designated Claims are (i) foregoing approximately \$6.2 million in default rate interest that should have accrued from the Petition Date through January 11, 2013 and (ii) not being paid in full, in Cash as they would be entitled to under the terms of the First Lien Term Loan Facility. Moreover, the Debtors are not paying First Lien Term Loan Tranche A/B Non-Designated Claims in accordance with the terms of the applicable underlying documents. Accordingly, First Lien Term Loan Tranche A/B Non-Designated Claims against the Debtors are impaired and holders of Allowed Claims in Class 2C are entitled to vote on the Plan.

e. Class 2D – First Lien Term Loan Tranche C Claims Against the Debtors

On the Effective Date, each holder of an Allowed Claim in Class 2D will receive Cash equal to the amount of such Allowed Claim, with prepetition and postpetition interest on such Allowed Claims calculated at the applicable non-default rate under the First Lien Term Loan Facility; *provided that* any First Lien Term Loan Tranche C Claims that also qualify as Compromise Administrative Claims will receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan on account of such Compromise Administrative Claims.

From the Petition Date through January 11, 2013, holders of the First Lien Term Loan Tranche C Claims will have forgone approximately \$583,000 in default rate interest. Moreover, the Debtors are not paying First Lien Term Loan Tranche C Claims in accordance with the terms of the applicable underlying documents. Accordingly, the First Lien Term Loan Tranche C Claims are impaired and holders of Allowed Claims in Class 2D are entitled to vote on the Plan.

f. Class 2E – Third Lien Term Loan Claims Against the Debtors

On the Effective Date, each holder of an Allowed Claim in Class 2E will receive its Pro Rata share of the Third Lien Term Loan Plan Distribution Property; *provided that* any Third Lien Term Loan Claims that also qualify as Compromise Administrative Claims shall receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b of the Plan on account of such Compromise Administrative Claims.

The Debtors believe that the value of the securities being provided to holders of Third Lien Term Loan Claims in exchange for their Claims is less than the amount of the Third Lien Term Loan Claims, calculated at default interest rates. Moreover, the Debtors are not paying Third Lien Term Loan Claims in accordance with the terms of the applicable underlying documents. Accordingly, Third Lien Term Loan Claims against the Debtors are impaired and holders of Allowed Claims in Class 2E are entitled to vote on the Plan.

g. Class 2F – Other Secured Claims Against the Debtors

Other Secured Claims are Claims that are secured by a lien on property in which an Estate has an interest or that are subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to sections 506(a) and, if applicable, 1129(b) of the Bankruptcy Code, other than Senior Secured Revolving Credit Claims, First Lien Term Loan Tranche A/B Designated Claims, First Lien Term Loan Tranche A/B Non-Designated Claims, First Lien Term Loan Tranche C Claims and Third Lien Term Loan Claims.

On the Effective Date, unless otherwise agreed by a Claim holder and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, each holder of an Allowed Claim in Class 2F will receive treatment on account of such Allowed Secured Claim in the manner set forth in Option A, B or C below, at the election of the applicable Debtor. The applicable Debtor will be deemed to have elected Option B except with respect to (i) any Allowed Secured Claim as to which the applicable Debtor elects either Option A or Option C in one or more certifications Filed prior to the conclusion of the Confirmation Hearing and (ii) any Allowed Secured Tax Claim, with respect to which the applicable Debtor will be deemed to have elected Option A.

- Option A: On the Effective Date, Allowed Claims in Class 2F with respect to which the applicable Debtor elects Option A will receive Cash equal to the amount of such Allowed Claim.
- Option B: On the Effective Date, Allowed Claims in Class 2F with respect to which the applicable Debtor elects or is deemed to have elected Option B will be Reinstated.

- Option C: On the Effective Date, a holder of an Allowed Claim in Class 2F with respect to which the applicable Debtor elects Option C will be entitled to receive (and the applicable Debtor or Reorganized Debtor shall release and transfer to such holder) the collateral securing such Allowed Claim, provided that such holder shall not be entitled to receive collateral of a value in excess of such Allowed Class 2F Claim.

Notwithstanding either the foregoing or Section I.A.172 of the Plan, the holder of an Allowed Secured Tax Claim in Class 2F will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with such Allowed Secured Tax Claim. Any such Claim or demand for any such penalty will be subject to treatment in Class 3, if not subordinated to Class 3 Claims pursuant to an order of the Bankruptcy Court. The holder of an Allowed Secured Tax Claim will not assess or attempt to collect such penalty from the Debtors, Reorganized Debtors or their respective property (other than as a holder of a Class 3 Claim).

Other Secured Claims against the Debtors are unimpaired and holders of Allowed Claims in Class 2F are not entitled to vote on the Plan.

h. Class 3 – General Unsecured Claims Against the Debtors

General Unsecured Claims are any Claims (including, but not limited to, any Deficiency Claim) that are not Administrative Claims, Secured Claims, Cure Amount Claims, Priority Claims, Priority Tax Claims or Intercompany Claims.

For purposes of the Plan, pursuant to section 506(a)(1) of the Bankruptcy Code, all Allowed Fourth Lien Noteholder Claims are Deficiency Claims that will be considered General Unsecured Claims. The Debtors believe that the value of the Collateral is significantly less than the value of the liens granted to the Debtors' various secured lenders. Further, pursuant to the terms of the Intercreditor Agreement, holders of Allowed Fourth Lien Noteholder Claims are last in priority with respect to the Collateral. Confirmation of the Plan will serve as a determination that the Fourth Lien Noteholder Claims (i) have been satisfied in part through payments made to Professionals rendering services to the Fourth Lien Notes Indenture Trustee and distributions made on account of Allowed Compromise Claims held by Compromise Fee Professionals rendering services to the Fourth Lien Notes Indenture Trustee and (ii) are otherwise General Unsecured Claims properly classified in Class 3 under the Plan.

Further, the Plan requires that each of the MEPPs agree that any claims they may have for missed prepetition MEPP contributions are unsecured claims. Therefore, missed prepetition MEPP contributions, totaling more than \$40 million, are treated as General Unsecured Claims under the Plan.

The Creditors' Committee presently retains the right, pursuant to paragraph 22 of the Final DIP Order, to assert that unencumbered Debtor property may exist. Neither the Debtors nor the Prepetition Secured Lenders believe that there is any unencumbered Debtor property. Accordingly, no property will be distributed to or retained by the holders of General Unsecured Claims, and such Claims will be extinguished on the Effective Date. Holders of Class 3 Claims will not receive any Distribution pursuant to the Plan. Consistent with the language of section 1126(g) of the Bankruptcy Code, each of the holders of General Unsecured Claims in Class 3 will be deemed to have rejected the Plan..

For holders of Claims (or portion of any Claim(s)) arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtors or their businesses (each, an "Insured Claim"), Distributions under the Plan will be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. For a more detailed description of the treatment of Insured Claims under the Plan, see Section XII.A.15 below.

i. Class 4 – Prepetition Intercompany Claims

All Intercompany Claims arising prior to the Petition Date will be extinguished on the Effective Date for no recovery, subject to the Restructuring Transactions. Notwithstanding this treatment of Class 4 Claims, each of the holders of such Intercompany Claims will be deemed to have accepted the Plan. Prepetition Intercompany Claims are impaired, but each holder of a Class 4 Claim will be deemed to have accepted the Plan because the Debtors are the sole holders of Prepetition Intercompany Claims.

j. Class 5 – Old Common Stock of Hostess

Old Common Stock of Hostess is the common stock of Hostess outstanding immediately prior to the Petition Date, and any options, warrants or other rights with respect thereto. On the Effective Date, the Old Common Stock of Hostess and all Interests related thereto will be canceled, and holders of Class 5 Interests will not receive any Distribution pursuant to the Plan. Consistent with the language of section 1126(g) of the Bankruptcy Code, each holder of a Class 5 Interest will be deemed to have rejected the Plan.

k. Class 6 – Subsidiary Debtor Equity Interests

Subsidiary Debtor Equity Interests are the equity interests in any Debtor other than Hostess. On the Effective Date, the Subsidiary Debtor Equity Interests will be Reinstated, subject to the Restructuring Transactions. Subsidiary Debtor Equity Interests are unimpaired and holders of Subsidiary Debtor Equity Interests are not entitled to vote on the Plan.

**3. Special Provisions Regarding the Treatment of Allowed Secondary Liability Claims; Maximum Recovery**

The classification and treatment of Allowed Claims under the Plan take into consideration all Allowed Claims arising from a Debtor being liable as a guarantor of, or otherwise being jointly, severally or secondarily liable for, any contractual, tort, guaranty or other obligation of another Debtor, including any Claim based on: (a) vicarious liability; (b) liabilities arising out of piercing the corporate veil, alter ego liability or similar legal theories; (c) guaranties of collection, payments or performance; (d) indemnity bonds, obligations to indemnify or obligations to hold harmless; (e) performance bonds; (f) contingent liabilities arising out of contractual obligations or out of undertakings (including any assignment or transfer) with respect to leases, operating agreements or other similar obligations made or given by a Debtor or relating to the obligations or performance of another Debtor; (g) liability of a member of an affiliated, consolidated, combined or unitary group for Taxes of other members of the group or of the entire group; or (h) any other joint or several liability, including Claims for contribution, that any Debtor may have in respect of any obligation that is the basis of a Claim (collectively, "Secondary Liability Claims").

On the Effective Date, Allowed Secondary Liability Claims will be treated as follows:

- The Allowed Secondary Liability Claims arising from or related to any Debtor's joint or several liability for the obligations under any Executory Contract or Unexpired Lease that is being assumed or deemed assumed by another Debtor or under any Executory Contract or Unexpired Lease that is being assumed by and assigned to another Debtor will be Reinstated.
- Except as provided in Section II.C.1 of the Plan, holders of Allowed Secondary Liability Claims against any Debtor will be entitled to only one Distribution in respect of the Liabilities related to such Allowed Secondary Liability Claim and will be deemed satisfied in full by the Distributions on account of the related underlying Allowed Claim. Notwithstanding the existence of a Secondary Liability Claim, no multiple recovery on account of any Allowed Claim against any Debtor in excess of 100 cents on the dollar will be provided or permitted.

**C. Debt to be Issued Under the Plan**

Upon the Effective Date, the Debtors will have three principal levels of secured indebtedness: (1) the Exit Facility; (2) the New First Lien Term Loans (within which there will be one level with payment priority over a second level); and (3) the New Third Lien Term Loans (collectively, the "Effective Date Debt"). The relative rights and priorities of the Exit Facility Lenders (as defined below), the New First Lien Term Loan Lenders (as defined below) and the New Third Lien Term Loan Lenders (as defined below) will be set forth in a new intercreditor agreement (the "New Intercreditor Agreement"). As further described below, it is estimated that the Debtors' Effective Date Debt will be approximately \$697 million, assuming an Effective Date of January 11, 2013, estimated as follows:

<b>Postpetition Secured Loan Facilities</b>	<b>Coupon Interest</b>	<b>PIK Interest</b>	<b>Estimated Secured Indebtedness after the Effective Date (All Amounts in 000's)</b>
Exit Facility	To be negotiated	—	\$45,000 <sup>17</sup>
New First Lien Term Loan	The sum of (a) the higher of LIBOR or 1.5% and (b) 7%	2%	at least \$361,777 <sup>18</sup>
New Third Lien Tranche A Term Loans	None	5%	\$172,254 <sup>19</sup>
New Third Lien Tranche B Term Loans	None	5%	\$100,000
New Third Lien Tranche C Term Loans	None	5%	\$17,700 <sup>20</sup>
<b>TOTALS</b>			at least \$696,731

**1. The Exit Facility**

On the Effective Date, the Debtors will enter into the Exit Facility to replace the Senior Secured Revolving Credit Facility and provide the Reorganized Debtors with access to post-emergence liquidity. The Exit Facility will be a revolving credit facility evidenced by a credit agreement among: (a) Reorganized Interstate Brands and Reorganized Hostess as borrowers; (b) Reorganized IBC Sales, Reorganized IBC Trucking and Reorganized IBC Services, as guarantors; (c) the lenders party thereto (collectively, the "Exit Facility Lenders"); and (d) an administrative agent (the "Exit Facility Agent").

Under the terms of the Exit Facility, the Debtors expect to be able to obtain, subject to a borrowing base, revolving credit loans ("Exit Facility Loans"). As of the Effective Date, it is expected that \$45 million of the available borrowings under the Exit Facility will be borrowed to satisfy all outstanding obligations under the existing Senior Secured Revolving Credit Facility.

The Reorganized Debtors' obligations under the Exit Facility will be secured by security interests in substantially all of the Debtors' tangible and intangible personal property (collectively, the "Exit Facility Collateral"). The Exit Facility Collateral will consist of (a) a first priority lien upon the Reorganized Debtors' accounts, inventory, instruments, guarantees, letters of credit, security and other credit enhancements and supporting obligations, documents of title for any inventory, claims and causes of action in any way relating to receivables or inventory, deposits, securities and other accounts into which any proceeds of receivables or inventory are deposited and any substitutions, replacements, accessions, products or proceeds of the foregoing (*i.e.*, largely so-called "working capital" of the Reorganized Debtors) (such collateral, the "Working Capital Collateral") and (b) a second priority lien on substantially all of the Reorganized Debtors' other assets. The New Intercreditor Agreement will govern the relative priorities of the security interests granted to the Exit Facility Lenders and the security interests of the Debtors' other postpetition secured lenders with respect to the Exit Facility Collateral.

<sup>17</sup> See Section IX.C.1 *infra* for details regarding the estimated aggregate principal amount of the Exit Facility.

<sup>18</sup> Assumes \$59 million paydown on First Lien Term Loan at exit; actual amount paid down could be less. See Section IX.C.2 *infra* for details regarding the estimated aggregate principal amount of New First Lien Term Loans.

<sup>19</sup> See Section IX.C.3 *infra* for details regarding the estimated aggregate principal amount of the New Third Lien Tranche A Term Loans.

<sup>20</sup> See Section IX.C.3 *infra* for details regarding the estimated aggregate principal amount of New Third Lien Tranche C Term Loans.

## **2. The New First Lien Term Loans**

The New First Lien Term Loans will be a five-year term loan facility. The New First Lien Term Loans will be evidenced by a credit and guaranty agreement among: (a) Reorganized Interstate Brands and Reorganized Hostess as borrowers; (b) Reorganized IBC Sales, Reorganized IBC Trucking and Reorganized IBC Services, as guarantors; (c) the lenders party thereto (the "New First Lien Term Loan Lenders"); and (e) an administrative agent and collateral agent (in such capacities, the "New First Lien Term Loan Agent"). The New First Lien Term Loans will bear interest at a rate per annum equal to the sum of the LIBO Rate (subject to a 1.50% floor) plus 7.00%, in addition to 2.00% PIK interest. The New First Lien Term Loans will also have a 1% per annum amortization and a 100% excess cash flow sweep.

To account for the priority of payment of certain of the First Lien Term Loan Lenders that had their First Lien Term Loan (Tranche A) loans and First Lien Term Loan (Tranche B) loans "designated" in connection with the issuance of the Tranche C First Lien Term Loans, there will be two tranches of loans issued by the Reorganized Debtors in connection with the New First Lien Term Loans. The New First Lien Tranche A Term Loans will be issued to holders of Allowed Claims in Class 2B. The New First Lien Tranche B Term Loans will be issued to holders of Allowed Claims in Class 2C. The New First Lien Tranche A Term Loans will have payment priority over the New First Lien Tranche B Term Loans, thus preserving the payment priorities currently in place under the First Lien Term Loan Facility for holders of First Lien Term Loan Tranche A/B Designated Claims and holders of First Lien Term Loan Tranche A/B Non-Designated Claims.

The aggregate principal amount of the New First Lien Term Loans to be deemed to have been incurred by the Reorganized Debtors shall be (a) determined by the Debtors and the First Lien Term Loan Lenders on the day before the Effective Date and (b) equal to the difference of (i) the aggregate amount of First Lien Term Loan Tranche A/B Claims (including accrued interest at the non-default rate) as of the Effective Date (as determined by the Debtors and the First Lien Term Loan Lenders) minus (ii) the sum of (A) any Cash to be distributed to holders of First Lien Term Loan Tranche A/B Designated Claims and (B) the aggregate total of Professional Fee Claims held by any Professionals rendering services to the holders of First Lien Term Loan Tranche A/B Claims (to the extent that such claims are included in the First Lien Term Loan Tranche A/B Claims). The amount of Cash to be distributed on account of the First Lien Term Loan Tranche A/B Designated Claims will be determined by the First Lien Term Loan Agent prior to the Effective Date, but will not exceed \$59 million.

As of the date of this Disclosure Statement, the Debtors estimate that the aggregate principal amount of the New First Lien Term Loans to be deemed to have been incurred by the Reorganized Debtors will be at least \$361.8 million, calculated by (a) subtracting \$59 million (i.e., the maximum amount of Cash estimated to be received by holders of First Lien Term Loan Tranche A/B Designated Claims pursuant to the Plan on account of such Claims) from the estimated total amount of First Lien Term Loan Tranche A/B Designated Claims and First Lien Term Loan Tranche A/B Non-Designated Claims as of the Effective Date (i.e., approximately \$420.8 million as of January 11, 2013, including accrued interest at the non-default rate) and (b) assuming (i) as the Debtors currently anticipate, that there will be no Excess Cash available for distribution pursuant to the Plan on the Effective Date and (ii) Compromise Professional Fee Claim(s) held by Professionals rendering services to the holders of First Lien Term Loan Tranche A/B Designated Claims and First Lien Term Loan Tranche A/B Non-Designated Claims will be otherwise satisfied with Cash or New Third Lien Term Loans in accordance with the Plan.

Pursuant to a New First Lien Term Loan Security Agreement (and together with any ancillary collateral documents, the "New First Lien Term Loan Security Agreement"), the New First Lien Term Loans will be secured by (a) first priority security interests on substantially all of the Reorganized Debtors' assets other than the Working Capital Collateral and (b) second priority security interests in the Working Capital Collateral (collectively, the "New First Lien Term Loan Collateral"). The New Intercreditor Agreement will govern the relative priorities of the security interests granted to the New First Lien Term Loan Lenders and the security interests of the Debtors' other postpetition secured lenders with respect to the New First Lien Term Loan Collateral.

## **3. The New Third Lien Term Loans**

The New Third Lien Term Loans will be evidenced by a credit and guaranty agreement among: (a) Reorganized Interstate Brands and Reorganized Hostess as borrowers; (b) Reorganized IBC Sales, Reorganized IBC Trucking and Reorganized IBC Services, as guarantors; (c) the lenders party thereto; and (e) an administrative agent and collateral agent (in such capacities, the "New Third Lien Term Loan Agent"). Assuming a January 11, 2013 Effective Date, Reorganized Hostess and Reorganized Interstate Brands will be deemed to have incurred (a) estimated \$172.3 million in initial principal amount of New Third Lien Tranche A Term Loans under loans made by the holders of Third Lien Term Loan Claims, (b) \$100 million in initial principal amount of New Third Lien Tranche B Term Loans under loans made by the Unions and

(c) estimated \$17.7 million in initial principal amount of New Third Lien Tranche C Term Loans under loans made by the holders of Consenting 503(b)(9) Claims and Compromise Professional Fee Claims (together with the holders of Third Lien Term Loan Claims and the Unions, the "New Third Lien Term Loan Lenders") and the New Third Lien Term Loan Lenders will be deemed to loan those initial principal amounts of the New Third Lien Term Loans to Reorganized Interstate Brands and Reorganized Hostess under the New Third Lien Term Loan Facility. The New Third Lien Term Loans will have a five-and-one-half year term and will bear interest at a rate of 5%, payable in kind.

The New Third Lien Tranche A Term Loans will be deemed to have been incurred on the Effective Date. The Debtors' current estimate of the initial principal amount of the New Third Lien Tranche A Term Loans to be deemed to have been incurred on the Effective Date is \$172.3 million. The actual aggregate initial principal amount of the New Third Lien Tranche A Term Loans will be (a) determined by the Reorganized Debtors and the Third Lien Term Loan Agent on the day before the Effective Date and (b) equal to 90% of the difference of (i) the aggregate amount of Third Lien Term Loan Claims (including accrued interest at the non-default rate) as of the Effective Date (as determined by the Reorganized Debtors) minus (ii) the aggregate total of Professional Fee Claims held by any Professionals rendering services to Third Lien Term Loan Lenders (to the extent that such claims are included in the Third Lien Term Loan Claims).

The New Third Lien Tranche B Term Loans will be deemed to have been incurred on the Effective Date. The initial principal amount of the New Third Lien Tranche B Term Loans to be deemed to have been incurred on the Effective Date is \$100 million. The New Third Lien Tranche B Term Loans may be made or deemed to have been made by, and all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to, a trust or other appropriate entity established for the benefit of the Unions to the extent necessary or appropriate to comply with applicable non-bankruptcy laws.

The total initial principal amount of New Third Lien Tranche C Term Loans will be deemed to have been incurred on the Effective Date but all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility will not be distributed immediately upon the Effective Date. The New Third Lien Tranche C Term Loans may be made or deemed to have been made by, and all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to, a trust or other appropriate entity established for the benefit of holders of Consenting 503(b)(9) Claims and Compromise Professional Fee Claims to the extent necessary or appropriate to comply with applicable non-bankruptcy laws. The estimated initial principal amount of the New Third Lien Tranche C Term Loans assumes a distribution of \$5 million to Consenting 503(b)(9) Claimants and \$12.7 million to Compromise Fee Professionals (based on an 18% distribution to such professionals in accordance with the Plan on an estimated \$70.6 million in Compromise Professional Fee Claims). Therefore, it is anticipated that the full initial principal amount will be known (and issued) only after all Compromise Fee Professionals have their final fee applications approved by the Bankruptcy Court.

Pursuant to a New Third Lien Term Loan Security Agreement (and together with any ancillary collateral documents, the "New Third Lien Term Loan Security Agreement"), the New Third Lien Term Loans will be secured by third priority security interests in substantially all of the Reorganized Debtors' assets (collectively, the "New Third Lien Term Loan Collateral"). The New Intercreditor Agreement will govern the relative priorities of the security interests granted to the lenders under the New Third Lien Term Loan Facility and the security interests of the Debtors' other postpetition secured lenders with respect to the New Third Lien Term Loan Collateral.

It is anticipated that New Third Lien Term Loans will trade at less than par due to various features of the security. In addition, the New Third Lien Tranche B Term Loans and the New Third Lien Tranche C Term Loans will not have any voting or control rights (whether in a bankruptcy context, amendment context or otherwise).

#### **4. The New Intercreditor Agreement**

To establish the relative rights and priorities of the various secured lenders and agents under the Exit Facility, the New First Lien Term Loans and the New Third Lien Term Loans, the parties intend to enter into an Intercreditor and Subordination Agreement among the Exit Facility Agent, the New First Lien Term Loan Agent and the New Third Lien Term Loan Agent, and acknowledged by the Reorganized Debtors.

Pursuant to the New Intercreditor Agreement:

- the Exit Facility Agent will have (a) a first priority lien upon the Working Capital Collateral and (b) a second priority lien on substantially all of the Reorganized Debtors' other assets;

- the New First Lien Term Loan Agent will have (a) first priority security interests on substantially all of the Reorganized Debtors' assets other than the Working Capital Collateral and (b) second priority security interests in the Working Capital Collateral; and
- the New Third Lien Term Loan Agent will have third priority security interests in substantially all of the Reorganized Debtors' assets.

**D. Treatment of Executory Contracts and Unexpired Leases**

**1. Executory Contracts and Unexpired Leases to Be Assumed**

a. Assumption and Assignment, Generally

On the Effective Date, the following Executory Contracts or Unexpired Leases of the Debtors shall be assumed or assumed and assigned (as applicable): (i) all contracts and leases identified on Exhibit IV.A.1 to the Plan; and (ii) all Executory Contracts or Unexpired Leases entered into by a Debtor prior to the Petition Date that are not identified on either Exhibit IV.A.1 to the Plan or Exhibit IV.D.1 to the Plan (as it may be modified pursuant to Section IV.D.1 of the Plan), except for Executory Contracts or Unexpired Leases that (A) have been rejected pursuant to a Final Order of the Bankruptcy Court, (B) are subject to a pending motion for reconsideration or appeal of an order authorizing the rejection of such Executory Contract or Unexpired Lease, (C) are subject to a motion to reject such Executory Contract or Unexpired Lease Filed on or prior to the Effective Date, (D) have terminated or expired by their respective terms; or (E) are designated for rejection in accordance with Section IV.F.6 of the Plan. Each contract and lease assumed pursuant to Section IV.A.1 of the Plan will be assumed only to the extent that such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit IV.A.1 to the Plan will not constitute an admission by a Debtor or Reorganized Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that a Debtor or Reorganized Debtor has any liability thereunder. The Confirmation Order will constitute an order of the Bankruptcy Court approving such assumptions or assumptions and assignments, pursuant to section 365 of the Bankruptcy Code, as of the later of (i) the Effective Date or (ii) the resolution of any objection to the proposed assumption or assumption and assignment of an Executory Contract or Unexpired Lease. As of the effective time of an applicable Restructuring Transaction, any Executory Contract or Unexpired Lease to be held by any Debtor or Reorganized Debtor and assumed pursuant to the Plan or otherwise in the Chapter 11 Cases, if not expressly assigned to a third party previously in the Chapter 11 Cases or assigned to a particular Reorganized Debtor, will be deemed assigned to the surviving, resulting or acquiring corporation in the applicable Restructuring Transaction, pursuant to section 365 of the Bankruptcy Code.

b. Assumptions and Assignments of Ancillary Agreements

Each Executory Contract or Unexpired Lease assumed pursuant to Section IV.A.1 of the Plan will include any modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such contract or lease, unless any such modification, amendment, supplement, restatement or other agreement is expressly identified on Exhibit IV.D.1 to the Plan.

**2. Payments Related to the Assumption of Executory Contracts or Unexpired Leases**

To the extent that such Claims constitute monetary defaults, the Cure Amount Claims associated with each Executory Contract or Unexpired Lease to be assumed pursuant to the Plan will be (a) identified on Exhibit IV.A.1 to the Plan, if such Executory Contract or Unexpired Lease is included thereon and (b) satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Amount Claim in Cash on the Effective Date or on such other terms as are agreed to by the Debtors (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) or Reorganized Debtors and the other parties to such Executory Contract or Unexpired Lease. If an objection to a proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served in accordance with Section IV.F of the Plan, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code will be made within 60 days following the entry of a Final Order or the execution of a Stipulation of Amount and Nature of Claim resolving the dispute and approving the assumption, subject to the Debtors' (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) or Reorganized Debtors' right to designate the contract or lease in question for rejection in accordance with Section IV.F.6 of the Plan.

**3. Contracts and Leases Entered Into or Assumed After the Petition Date**

To the extent not later rejected pursuant to an order of the Bankruptcy Court or by inclusion on Exhibit IV.D.1 to the Plan, contracts, leases and other agreements entered into after the Petition Date by a Debtor and any Executory Contracts or Unexpired Leases assumed by a Debtor prior to the Effective Date will survive and remain unaffected by entry of the Confirmation Order. Such contracts and leases may be assigned from a Debtor to a Reorganized Debtor by operation of law pursuant to the Restructuring Transactions.

**4. Rejection of Executory Contracts and Unexpired Leases**

a. Agreements to Be Rejected.

On the Effective Date, each Executory Contract and Unexpired Lease identified on Exhibit IV.D.1 to the Plan will be rejected pursuant to section 365 of the Bankruptcy Code; *provided, however*, that the Debtors (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) and the Reorganized Debtors reserve the right, at any time on or prior to the Effective Date, to amend Exhibit IV.D.1 to the Plan to: (i) delete any Executory Contract or Unexpired Lease listed therein, thus providing for its assumption or assumption and assignment pursuant to Section IV.A of the Plan; or (ii) add any Executory Contract or Unexpired Lease thereto, thus providing for its rejection pursuant to Section IV.D.1 of the Plan. Each contract and lease listed on Exhibit IV.D.1 to the Plan will be rejected only to the extent that such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit IV.D.1 to the Plan will not constitute an admission by a Debtor or Reorganized Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that a Debtor or Reorganized Debtor has any liability thereunder. The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as of the later of (i) the Effective Date or (ii) the resolution of any objection to the proposed rejection of an Executory Contract or Unexpired Lease. Any Claim arising from the rejection of any Executory Contract or Unexpired Lease will be treated as a Class 3 Claim (General Unsecured Claims) and shall be subject to the provisions of section 502 of the Bankruptcy Code.

b. Procedures Relating to Rejection

The Debtors will serve a notice on all counterparties identified on Exhibit IV.D.1 to the Plan. The notice shall provide parties in interest with the following information: (i) the identity of the contract or lease being rejected and (ii) the procedures and bar date for asserting any claims arising from the rejection of the Executory Contract or Unexpired Lease. The failure of a non-Debtor counterparty to an Executory Contract or Unexpired Lease to receive a notice served by the Debtors will not prevent the rejection of the Executory Contract or Unexpired Lease. Parties that desire to object to the rejection of a specific Executory Contract or Unexpired Lease must File an objection to the Plan by the deadline for Filing objections thereto.

c. Bar Date for Rejection Damages

Except as otherwise provided in a Final Order of the Bankruptcy Court approving the rejection of an Executory Contract or Unexpired Lease, Claims arising out of the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court on or before the later of: (i) 30 days after the Effective Date or (ii) 30 days after such Executory Contract or Unexpired Lease is rejected pursuant to an order of the Bankruptcy Court. Any Claims not Filed within such applicable time periods will be forever barred from receiving a distribution from the Debtors or the Reorganized Debtors.

**5. Approval of Assumptions and Assignments and Related Procedures**

The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions or assignments described in Section IV.A of the Plan, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date, subject to parties' ability to object as set forth below. The procedures for assumption of an Executory Contract or Unexpired Lease, which shall be included in the Confirmation Order proposed by the Debtors, shall be as follows:

- After the entry of the Confirmation Order, but prior to the Effective Date, the Debtors shall serve upon each party to an Executory Contract or Unexpired Lease being assumed pursuant to the Plan notice of: (a) the contract or lease being assumed or assumed and assigned; (b) the Cure Amount Claim, if any, that the applicable Debtor believes it would be obligated to pay in connection with such assumption; and

(c) the procedures set forth in the Plan, including how such party can object to the assumption or assumption and assignment of the applicable contract or lease or the amount of the proposed Cure Amount Claim.

- Any entity wishing to object to (a) the proposed assumption or assumption and assignment of an Executory Contract or Unexpired Lease under the Plan or (b) the proposed amount of the related Cure Amount Claim must File and serve on counsel to the Debtors or the Reorganized Debtors (as applicable) a written objection setting forth the basis for the objection within 20 days of service of the notice described in Section IV.F.1 of the Plan.
- If no objection to the proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease: (a) the proposed assumption or assumption and assignment of the Executory Contract or Unexpired Lease shall be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court; and (b) the Cure Amount Claim identified by the Debtors in the notice shall be fixed and shall be paid to the appropriate contract or lease party identified on the notice on the Effective Date in accordance with Section IV.B of the Plan.
- If an objection to the proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtors (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or the Reorganized Debtors (as applicable) and the objecting party may resolve such objection by Stipulation of Amount and Nature of Claim, without further action of the Bankruptcy Court.
- If an objection to the proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection then: (a) either party may notice the dispute for hearing by Filing a notice of hearing in the Bankruptcy Court no later than 21 days prior to the hearing date; and (b) the Debtors or the Reorganized Debtors (as applicable) may File a reply to such objection no later than seven days prior to the proposed hearing date.
- If, at a hearing scheduled pursuant to Section IV.F.5 of the Plan, the Bankruptcy Court imposes requirements upon the Debtors or the Reorganized Debtors as a condition to assuming an Executory Contract or Unexpired Lease, or if the Bankruptcy Court determines that the Cure Amount Claim for a particular Executory Contract or Unexpired Lease is in excess of the amount proposed by the Debtors or the Reorganized Debtors, the Debtors (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) or the Reorganized Debtors, in their discretion, may choose to designate such Executory Contract or Unexpired Lease for rejection within five Business Days of the entry of the order of the Bankruptcy Court resolving the matter against the Debtors by Filing a supplement to Exhibit IV.D.1 to the Plan with the Bankruptcy Court. Such rejection shall be deemed effective as of the Effective Date.

#### **E. Conditions Precedent to Confirmation of the Plan**

The following are conditions to the entry of the Confirmation Order unless such conditions, or any of them, have been satisfied or duly waived pursuant to Section VIII.C of the Plan:

- The Confirmation Order will be reasonably acceptable in form and substance to (1) the Debtors, (2) the First Lien Term Loan Agent, (3) the Third Lien Term Loan Agent and (4) the DIP Lender Agent.
- All Confirmation Exhibits (including any amendments or modifications thereto) are in form and substance reasonably satisfactory to (1) the Debtors, (2) the First Lien Term Loan Agent, (3) the Third Lien Term Loan Agent and (4) the DIP Lender Agent.
- All material agreements relating to the Confirmation Cash Infusion, which shall be in form and substance reasonably satisfactory to the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the DIP Lender Agent, will have been executed by the applicable Debtor(s) and any counterparty thereto.

- The Global Settlement Order shall have been entered by the Bankruptcy Court.

**F. Conditions Precedent to the Occurrence of the Effective Date**

The Effective Date will not occur, and the Plan will not be consummated, unless and until the following conditions have been satisfied or duly waived pursuant to Section VIII.C of the Plan:

- The Bankruptcy Court shall have entered the Confirmation Order on or before December 27, 2012.
- The Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) approving and authorizing the Debtors and the Reorganized Debtors to take all actions necessary or appropriate to implement the Plan, including completion of the Restructuring Transactions and the other transactions contemplated by the Plan and the implementation and consummation of the contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan.
- The documents evidencing the New First Lien Term Loan Facility, the New Third Lien Term Loan Facility and any trust(s) or other entity(ies) that may be established to hold the New Third Lien Tranche B Term Loans, the New Third Lien Tranche C Term Loans and/or the New Hostess Common Stock to be distributed to the Unions shall be in form and substance reasonably satisfactory to the Debtors, the New First Lien Term Loan Agent and the New Third Lien Term Loan Agent and shall have been executed and delivered by the applicable Reorganized Debtors, the New First Lien Term Loan Agent and the New Third Lien Term Loan Agent.
- The documents evidencing the Exit Facility shall be in form and substance reasonably satisfactory to the Debtors and the Exit Facility Agent and shall have been executed and delivered by the applicable Reorganized Debtors, the Exit Facility Agent and each of the lenders under the Exit Facility.
- The final forms of the Confirmation Exhibits shall be in form and substance reasonably satisfactory to the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the DIP Lender Agent.
- All agreements and other instruments required to be executed by the applicable Unions as of the Effective Date under the Union Settlement Agreements have been executed.
- The Effective Date shall occur on or before January 11, 2013.
- All transactions relating to the Confirmation Cash Infusion shall have closed in all material respects in accordance with the terms of any agreements effecting such transactions on or prior to the Effective Date.
- Each MEPP and each of the Unions shall have provided Hostess with written waivers of any Administrative Claims and/or Priority Claims held by such MEPPs or Unions, other than Claims expressly permitted in the Global Resolution and/or the Plan.

**G. Waiver of Conditions to the Confirmation or Effective Date**

The conditions to Confirmation set forth in Section VIII.A of the Plan and the conditions to the Effective Date set forth in Section VIII.B of the Plan may be waived in whole or in part at any time by the Debtors, with the consent of the DIP Lender Agent, the First Lien Term Loan Agent and the Third Lien Term Loan Agent without an order of the Bankruptcy Court.

**H. Effect of Nonoccurrence of Conditions to the Effective Date**

If each of the conditions to the Effective Date set forth in Section VIII.B of the Plan is not satisfied or duly waived in accordance with Section VIII.C of the Plan, then upon motion by the Debtors made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to Section VIII.D of

the Plan: (1) the Plan will be null and void in all respects, including with respect to (a) the discharge of Claims and termination of Interests pursuant to section 1141 of the Bankruptcy Code, (b) the assumptions, assignments or rejections of Executory Contracts and Unexpired Leases pursuant to Section IV.A of the Plan and (c) the releases described in Section X.E of the Plan; and (2) nothing contained in the Plan will (a) constitute a waiver or release of any Claims by or against, or any Interest in, any Debtor or (b) prejudice in any manner the rights of the Debtors or any other party in interest.

#### **I. Retention of Jurisdiction by the Bankruptcy Court**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such exclusive jurisdiction over the Chapter 11 Cases after the Effective Date as is legally permissible. As part of its jurisdiction, the Bankruptcy Court will have jurisdiction to:

- Allow, disallow, determine, liquidate, reduce, classify, re-classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the amount, allowance, priority or classification of Claims or Interests;
- Either grant or deny any applications for allowance of compensation or reimbursement of expenses for periods ending on or before the Effective Date, including requests by Professionals addressed in Section II.A.1.d of the Plan;
- Resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which any Debtor or Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;
- Ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
- Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and either grant or deny any applications involving any Debtor or any Reorganized Debtor that may be pending on the Effective Date or brought thereafter;
- Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, this Disclosure Statement or the Confirmation Order;
- Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;
- Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify this Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, this Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, this Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, this Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;
- Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order or issued earlier in the Chapter 11 Cases, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

- Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, or vacated or Distributions pursuant to the Plan are enjoined or stayed;
- Determine any other matters that may arise in connection with or relate to the Plan, this Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, this Disclosure Statement or the Confirmation Order;
- Consider and approve the compromise and settlement of any Claim by, on behalf of or against the Debtors' Estates, to the extent that Bankruptcy Court approval is required or permitted;
- Enforce or clarify any orders previously entered by the Bankruptcy Court in the Chapter 11 Cases;
- Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes;
- Hear matters and enter orders for the recovery or turnover of all assets of the Debtors and their Estates, wherever located;
- Enter a final decree or decrees closing the Chapter 11 Cases; and
- Hear any other matter not inconsistent with the Bankruptcy Code.

To the extent that it is not legally permissible for the Bankruptcy Court to have exclusive jurisdiction over any of the foregoing matters, the Bankruptcy Court shall have non-exclusive jurisdiction over such matters.

## X.

### VOTING REQUIREMENTS

The Solicitation Procedures Order, the Confirmation Hearing Notice, and the instructions attached to your Ballot should be read in connection with this section of this Disclosure Statement as they set forth in detail, among other things, procedures governing voting deadlines and objection deadlines.

If you have any questions about the procedure for voting your Claim or the Solicitation Package you received, or if you wish to obtain a paper copy of the Plan, this Disclosure Statement or any Exhibits to such documents, please contact the Solicitation and Tabulation Agent (A) by telephone (1) for U.S. and Canadian callers toll-free at 877-573-3984 and (2) for international callers at +1-310-751-1829 or (B) in writing at Hostess Brands, Inc., c/o KCC, 2335 Alaska Avenue, El Segundo, California 90245.

#### A. Voting Deadline

This Disclosure Statement and the appropriate Ballot(s) are being distributed to all holders of Claims that are entitled to vote on the Plan. In order to facilitate vote tabulation, there is a separate Ballot designated for each impaired voting Class; however, all Ballots are substantially similar in form and substance, and the term "Ballot" is used without intended reference to the Ballot of any specific Class of Claims.

**IN ACCORDANCE WITH THE SOLICITATION PROCEDURES ORDER, IN ORDER TO BE CONSIDERED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN, ALL BALLOTS MUST BE RECEIVED BY THE SOLICITATION AND TABULATION AGENT NO LATER THAN 5:00 P.M. (EASTERN TIME) ON THE VOTING DEADLINE OF [\_\_\_\_], 2012. ONLY THOSE BALLOTS ACTUALLY RECEIVED BY THE SOLICITATION AND TABULATION AGENT BEFORE THE VOTING DEADLINE WILL BE COUNTED AS EITHER ACCEPTING OR REJECTING THE PLAN. NO BALLOTS MAY BE SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL, AND ANY BALLOTS SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL BE NEITHER ACCEPTED NOR COUNTED BY THE SOLICITATION AND TABULATION AGENT. BALLOTS SHOULD NOT BE SENT TO THE DEBTORS.**

**B. Holders of Claims or Interests Entitled to Vote**

Under section 1124 of the Bankruptcy Code, a class of claims or equity interests is deemed to be "impaired" under a plan unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or equity interest entitles the holder thereof; or (2) notwithstanding any legal right to an accelerated payment of such claim or equity interest, the plan (a) cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy), (b) reinstates the maturity of such claim or equity interest as it existed before the default, (c) compensates the holder of such claim or equity interest for any damages resulting from such holder's reasonable reliance on such legal right to an accelerated payment and (d) does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

In general, a holder of a claim or equity interest may vote to accept or reject a plan if (1) the claim or equity interest is "allowed," which means generally that it is not disputed, contingent or unliquidated, and (2) the claim or equity interest is impaired by a plan. However, if the holder of an impaired claim or equity interest will not receive any distribution under the plan on account of such claim or equity interest, the Bankruptcy Code deems such holder to have rejected the plan and provides that the holder of such claim or equity interest is not entitled to vote on the plan. If the claim or equity interest is not impaired, the Bankruptcy Code conclusively presumes that the holder of such claim or equity interest has accepted the plan and provides that the holder is not entitled to vote on the plan.

Except as otherwise provided in the Solicitation Procedures Order, the holder of a Claim against one or more Debtors that is "impaired" under the Plan is entitled to vote to accept or reject the Plan if (1) the Plan provides a distribution in respect of such Claim; and (2) the Claim has been scheduled by the appropriate Debtor (and is not scheduled as disputed, contingent, or unliquidated), the holder of such Claim has timely filed a proof of claim or a proof of claim was deemed timely filed by an order of the Bankruptcy Court prior to the Voting Deadline.

AS SET FORTH IN THE CONFIRMATION HEARING NOTICE AND IN THE SOLICITATION PROCEDURES ORDER, OTHER HOLDERS OF CLAIMS MUST FILE MOTIONS TO HAVE THEIR CLAIMS TEMPORARILY ALLOWED FOR VOTING PURPOSES ON OR BEFORE [\_\_\_\_\_] , 2012.

A vote on the Plan may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Solicitation Procedures Order also sets forth assumptions and procedures for determining the amount of Claims that each creditor is entitled to vote in these Chapter 11 Cases and how votes will be counted under various scenarios.

**C. Vote Required for Acceptance by a Class**

A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have voted on the Plan in accordance with the Solicitation Procedures Order.

**D. Voting Procedures**

**1. Ballots**

All votes to accept or reject the Plan with respect to any Class of Claims must be cast by properly submitting the duly completed and executed form of Ballot designated for such Class. Holders of impaired Claims voting on the Plan should complete and sign the Ballot in accordance with the instructions thereon, being sure to check the appropriate box indicating either acceptance or rejection of the Plan.

ANY BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN OR THAT INDICATES BOTH ACCEPTANCE AND REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF DETERMINING ACCEPTANCE OR REJECTION OF THE PLAN.

ANY BALLOT RECEIVED THAT IS NOT SIGNED WILL BE AN INVALID BALLOT AND WILL NOT BE COUNTED FOR PURPOSES OF DETERMINING ACCEPTANCE OR REJECTION OF THE PLAN.

Ballots must be delivered to the Solicitation and Tabulation Agent at the address set forth upon the Ballot or the envelope enclosed therewith, and received by the Voting Deadline. THE METHOD OF SUCH DELIVERY IS AT THE ELECTION AND RISK OF THE VOTER. If such delivery is by mail, it is recommended that voters use an air courier

with a guaranteed next day delivery or registered mail, properly insured, with return receipt requested. In all cases, sufficient time should be allowed to ensure timely delivery.

In accordance with Bankruptcy Rule 3018(c), the Ballots are based on Official Form No. 14, but have been modified to meet the particular needs of these Chapter 11 Cases. PLEASE CAREFULLY FOLLOW THE DIRECTIONS CONTAINED ON EACH ENCLOSED BALLOT.

In most cases, each Ballot enclosed with this Disclosure Statement has been encoded with the amount of the Allowed Claim for voting purposes (if the Claim is a Disputed Claim, this amount may not be the amount ultimately allowed for purposes of distribution) and the Class into which the Claim has been placed under the Plan.

**2. Withdrawal or Change of Votes on the Plan**

A Ballot may be withdrawn by delivering a written notice of withdrawal to the Solicitation and Tabulation Agent, so that the Solicitation and Tabulation Agent receives the notice prior to the Voting Deadline. In order to be valid, a notice of withdrawal must (a) specify the name of the creditor who submitted the Ballot to be withdrawn, (b) contain a description of the Claim(s) to which it relates and (c) be signed by the creditor in the same manner as on the Ballot.

If a creditor casts more than one Ballot voting the same Claim prior to the Voting Deadline, the last properly executed Ballot received by the Solicitation and Tabulation Agent before the Voting Deadline (as determined by the Solicitation and Tabulation Agent) will be deemed to reflect that creditor's intent either to accept or reject the Plan.

**3. Voting Multiple Claims**

Separate forms of Ballots are provided for voting the various Classes of Claims. A SEPARATE BALLOT MUST BE USED FOR EACH CLAIM. Any Person who holds Claims in more than one voting Class or holds multiple Claims within the same voting Class is required to vote separately with respect to each Claim. Please sign, and return in accordance with the instructions in this section, a separate Ballot with respect to each such Claim. In the event that a Ballot or a group of Ballots within a Class received from a single creditor partially rejects and partially accepts the Plan, such Ballots will NOT be accepted or counted. That is, any Person who holds multiple Claims in a single Class is required to vote all of his or her Claims within that Class either to accept or reject the Plan. Ballots partially accepting and partially rejecting the Plan may be objected to by the Debtors as Ballots not cast in good faith.

**4. Voting Transferred Claims**

The transferee of a transferred Claim is entitled to receive a Solicitation Package and cast a Ballot on account of such transferred Claim only if: (a) all actions necessary to effect the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the [\_\_\_\_], 2012 (the "Voting Record Date"); or (b) the transferee files by the Voting Record Date (i) documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. Where any portion of a single Claim has been transferred to a transferee, all holders of any portion of such single Claim will be (a) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth in the Solicitation Procedures Order) and (b) required to vote every portion of such Claim collectively to either accept or reject the Plan. In the event that a group of Ballots received from the various holders of multiple portions of a single Claim partially rejects and partially accepts the Plan, such Ballots will NOT be counted.

**XI.**

**CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing.**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to conduct a Confirmation Hearing at which it will hear objections (if any) and consider evidence with respect to whether the Plan should be confirmed. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code described below are met.

The Confirmation Hearing has been scheduled to begin on [\_\_\_\_], 2012, at [10:00] [a].m. Eastern Time before the Honorable Robert D. Drain, United States Bankruptcy Judge for the Southern District of New York, in a

courtroom to be determined at the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York 10601. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing.

**B. Deadline to Object to Confirmation**

Objections, if any, to the Confirmation of the Plan must: (1) be in writing; (2) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (3) state with particularity the basis and nature of any objection; and (4) be filed with the Bankruptcy Court, and served on the following parties so that they are received no later than [12]:00 [p].m., Eastern Time, on [\_\_\_\_], 2012: (a) the Debtors, Hostess Brands, Inc., 12 East Armour Boulevard, Kansas City, Missouri 64111 (Attn: Jolyn Sebree, Esq.); (b) counsel to the Debtors, Jones Day, 222 East 41st Street, New York, New York 10017 (Attn: Corinne Ball, Esq. and Heather Lennox, Esq.); (c) counsel to the Creditors' Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Thomas Moers Mayer, Esq.); (d) counsel to the DIP Lender Agent, the First Lien Term Loan Agent and the Third Lien Term Loan Agent, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 (Attn: Alan Kornberg, Esq. and Brian Hermann, Esq.); (e) counsel to the Senior Secured Revolving Credit Agent, Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor, Atlanta, Georgia 30308 (Attn: Jesse Austin, III, Esq.) and Park Avenue Tower, 75 East 55th Street, New York, New York 10022 (Attn: Leslie Plaskon, Esq.); (f) the Office of the United States Trustee, Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Paul Schwartzberg, Esq.); (g) counsel to the IBT, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Matthew A. Feldman, Esq.) and Cohen, Weiss & Simon LLP, 330 West 42nd Street, 25th Floor, New York, New York 10036-6976 (Attn: Richard M. Seltzer Esq.); and (h) counsel to the BCTGM, Bredhoff & Kaiser, P.L.L.C., 805 Fifteenth Street N.W., Suite 1000, Washington, DC 20005 (Attn: Jeffrey R. Freund, Esq.).

**C. Requirements for Confirmation of the Plan**

Among the requirements for Confirmation of the Plan are that the Plan (1) is accepted by all impaired Classes of Claims and Interests or, if rejected by an impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class; (2) is feasible; and (3) is in the "best interests" of creditors and stockholders that are impaired under the Plan.

**1. Requirements of Section 1129(a) of the Bankruptcy Code**

A moneyed, business or commercial corporation or trust must satisfy the following requirements pursuant to section 1129(a) of the Bankruptcy Code before the Bankruptcy Court may confirm its reorganization plan:

- The plan complies with the applicable provisions of the Bankruptcy Code.
- The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.
- The plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under a plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable.
- The proponent of a plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor or a successor to the debtor under the plan, and the appointment to, or continuance in, such office of such individual must be consistent with the interests of creditors and equity security holders and with public policy.
- The proponent of the plan has disclosed the identity of any insider (as defined in section 101 of the Bankruptcy Code) that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

- Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.
- With respect to each impaired class of claims or interests —
  - each holder of a claim or interest of such class (a) has accepted the plan; or (b) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date; or
  - if section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim, property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.
- With respect to each class of claims or interests, such class has (a) accepted the plan; or (b) such class is not impaired under the plan (subject to the "cramdown" provisions discussed below; see "Confirmation of the Plan — Requirements of Section 1129(b) of the Bankruptcy Code").
- Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that:
  - with respect to a claim of a kind specified in sections 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of the claim will receive on account of such claim cash equal to the allowed amount of such claim, unless such holder consents to a different treatment;
  - with respect to a class of claim of the kind specified in sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive (a) if such class has accepted the plan, deferred cash payments of a value, on the effective date of the plan, equal to the allowed amount of such claim; or (b) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim, unless such holder consents to a different treatment; and
  - with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, unless the holder of such a claim consents to a different treatment, the holder of such claim will receive on account of such claim, regular installment payments in cash,
    - of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
    - over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303 of the Bankruptcy Code; and
    - in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b) of the Bankruptcy Code); and
  - with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code, but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in the bullet points above.
- If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider (as defined in section 101 of the Bankruptcy Code).
- Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

- All fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.
- The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

The Debtors believe that the Plan meets all the applicable requirements of section 1129(a) of the Bankruptcy Code other than those pertaining to voting, which has not yet taken place.

## **2. Best Interests of Creditors**

Section 1129(a)(7) of the Bankruptcy Code requires that any holder of an impaired claim or interest voting against a proposed plan of reorganization must be provided in the plan with a value, as of the effective date of the plan, at least equal to the value that the holder would receive if the debtor's operations were terminated and its assets liquidated under chapter 7 of the Bankruptcy Code. To determine what the holders of claims and interests in each impaired class would receive if the debtors were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from a liquidation of each debtor's assets in the context of a hypothetical liquidation. Such a determination must take into account the fact that secured claims, and any administrative claims resulting from the original chapter 11 cases and from the chapter 7 cases, would have to be paid in full from the liquidation proceeds before the balance of those proceeds were made available to pay unsecured creditors and make distributions to holders of interests.

Annexed to this Disclosure Statement as Exhibit D is a liquidation analysis prepared by the Debtors with the assistance of FTI as well as other professionals of the Debtors (the "Liquidation Analysis") that assumes that the Chapter 11 Cases were converted to chapter 7 cases and each Debtor's assets are liquidated under the direction of a Bankruptcy Court-appointed chapter 7 trustee.<sup>21</sup> THESE LIQUIDATION VALUATIONS HAVE BEEN PREPARED SOLELY FOR USE IN THIS DISCLOSURE STATEMENT AND DO NOT REPRESENT VALUES THAT ARE APPROPRIATE FOR ANY OTHER PURPOSE. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION BY OR ADMISSION OF ANY DEBTOR FOR ANY PURPOSE. The assumptions used in developing the Liquidation Analysis are inherently subject to significant uncertainties and contingencies, many of which would be beyond the control of the Debtors or a chapter 7 trustee. Accordingly, there can be no assurances that the values assumed in the Liquidation Analysis would be realized if the Debtors were actually liquidated. In addition, any liquidation would take place in the future at which time circumstances may exist that cannot presently be predicted. A description of the procedures followed and the assumptions and qualifications made by the Debtors in connection with the Liquidation Analysis are set forth in the notes thereto.

## **3. Feasibility**

The Debtors believe that the Reorganized Debtors will be able to perform their obligations under the Plan and continue to operate their businesses without further financial reorganization or liquidation. In connection with Confirmation of the Plan, the Bankruptcy Court will have to determine that the Plan is feasible in accordance with section 1129(a)(11) of the Bankruptcy Code (which section requires that the Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors).

To support their belief in the Plan's feasibility, the Debtors have prepared the Projections (as hereinafter defined) for the Reorganized Debtors, as set forth in Exhibit E to this Disclosure Statement and discussed in greater detail in Section XIII below.

## **4. Requirements of Section 1129(b) of the Bankruptcy Code**

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all impaired classes, as long as (a) the plan otherwise satisfies the requirements for confirmation, (b) at least one impaired class of claims has accepted the plan without taking into consideration the votes of any insiders in such class and (c) the plan is "fair and equitable" and

<sup>21</sup> The Liquidation Analysis will be Filed with the Bankruptcy Court no later than seven days prior to the deadline for objections to the Disclosure Statement and will be included as Exhibit D when this Disclosure Statement is provided to holders of Claims in Classes entitled to vote on the Plan as part of the Solicitation Package.

does not "discriminate unfairly" as to any impaired class that has not accepted the plan. These so-called "cramdown" provisions are set forth in section 1129(b) of the Bankruptcy Code.

*"Fair and Equitable"*

The Bankruptcy Code establishes different "cramdown" tests for determining whether a plan is "fair and equitable" to dissenting impaired classes of secured creditors, unsecured creditors and equity interest holders as follows:

- (a) Secured Creditors. A plan is fair and equitable to a class of secured claims that rejects the plan if the plan provides: (i) that each holder of a secured claim included in the rejecting class (A) retains the liens securing its claim to the extent of the allowed amount of such claim, whether the property subject to those liens is retained by the debtor or transferred to another entity, and (B) receives on account of its secured claim deferred cash payments having a present value, as of the effective date of the plan, at least equal to such holder's interest in the estate's interest in such property; (ii) that each holder of a secured claim included in the rejecting class realizes the "indubitable equivalent" of its allowed secured claim; or (iii) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing the claims included in the rejecting class, free and clear of such liens with such liens to attach to the proceeds of the sale, and the treatment of such liens on proceeds in accordance with clause (i) or (ii) of this paragraph.
- (b) Unsecured Creditors. A plan is fair and equitable as to a class of unsecured claims that rejects the plan if the plan provides that: (i) each holder of a claim included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the amount of its allowed claim; or (ii) the holders of claims and interests that are junior to the claims of the rejecting class will not receive or retain any property under the plan on account of such junior claims or interests.
- (c) Holders of Interests. A plan is fair and equitable as to a class of interests that rejects the plan if the plan provides that: (i) each holder of an equity interest included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of (A) any fixed liquidation preference to which such holder is entitled, (B) any fixed redemption price to which such holder is entitled or (C) the value of the interest; or (ii) the holder of any interest that is junior to the interests of the rejecting class will not receive or retain any property under the plan on account of such junior interest.

The Debtors believe the Plan is fair and equitable as to unsecured creditors and holders of Interests because no holders of Claims or Interests junior to such parties are receiving any distributions under the Plan.

*"Unfair Discrimination"*

A plan of reorganization does not "discriminate unfairly" if a dissenting class is treated substantially equally with respect to other classes similarly situated. The Debtors do not believe that the Plan discriminates unfairly against any impaired Class of Claims or Interests.

The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation of the Plan.

**XII.**

**MEANS OF IMPLEMENTATION OF THE PLAN**

**A. Effects of Confirmation of the Plan**

**1. Consolidation**

Pursuant to the Confirmation Order, the Bankruptcy Court will approve the substantive consolidation of the Debtors for purposes of implementing the Plan, voting, assessing whether Confirmation standards have been met,

calculating and making Distributions under the Plan and filing post-Confirmation reports and paying quarterly fees to the Office of the United States Trustee. Pursuant to such order, as of the Effective Date: (a) all assets and liabilities of the Debtors will be deemed merged; (b) all guarantees by one Debtor of the obligations of any other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors will be deemed to be one obligation of the consolidated Debtors; (c) each and every Claim Filed or to be Filed in the Chapter 11 Case of any Debtors will be deemed Filed against the consolidated Debtors and will be deemed one Claim against and a single obligation of the consolidated Debtors, and the Debtors may file and the Bankruptcy Court will sustain objections to Claims for the same liability that are Filed against multiple Debtors; and (d) Intercompany Claims between Debtors will be eliminated and extinguished. Such substantive consolidation will not affect (a) the legal and corporate structures of the Debtors, subject to the right of the Debtors to effect restructurings as provided in Section III.B of the Plan; (b) the vesting of assets in the Reorganized Debtors; (c) the right to distributions from any insurance policies or proceeds of such policies; or (d) the rights of the Debtors or the Reorganized Debtors to contest alleged setoff or recoupment efforts by creditors on the grounds of lack of mutuality under section 553 of the Bankruptcy Code and otherwise applicable law.

The Plan will serve as a motion seeking entry of an order substantively consolidating the Debtors, as described and to the extent set forth in Section VII.A of the Plan. Unless an objection to such substantive consolidation is made in writing by any creditor or claimant affected by the Plan, Filed with the Bankruptcy Court and served on the parties listed in Section XII.E of the Plan on or before the Voting Deadline, or such other date as may be fixed by the Bankruptcy Court, the substantive consolidation order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. In the event any such objections are timely Filed, a hearing with respect thereto will occur at the Confirmation Hearing.

a. Factors Supporting Substantive Consolidation

Under Second Circuit Court of Appeals legal precedent, whether substantive consolidation is appropriate is based upon a review of two critical factors: "(i) whether creditors dealt with the entities as a single economic unit and 'did not rely on their separate identity in extending credit' or (ii) whether the affairs of the Debtors are so entangled that consolidation will benefit all creditors." See In re Augie/Restivo Banking Co., Ltd., 860 F.2d 515, 518 (2d Cir. 1988). The Debtors are proposing substantive consolidation here because they have concluded that (i) many of the Debtors' creditors treated the Debtors as a single, consolidated entity and (ii) substantive consolidation will be beneficial to all creditors by avoiding the costs of disentangling the affairs of the Debtors to the extent necessary to propose plans of reorganization for the individual Debtors.

In particular, when formulating the Plan, the Debtors and their professionals considered whether separate plans could be proposed for each of the Debtors or whether the creditors of each Debtor could be separately classified under the Plan. Multiple internal meetings were held by the Debtors and their professionals to discuss the ability of the Debtors to disentangle their affairs. Ultimately, as a result of this activity, the Debtors concluded that substantive consolidation was warranted in the Chapter 11 Cases for, among others, the following reasons:

- Historical Accounting Practices. Debtor Hostess has historically provided consolidated financial information on behalf of all Debtors – the Debtors' Prepetition Loan Facilities required the Debtors to provide only consolidated financial statements. While the Debtors prepared separate corporate entity annual unaudited, non-GAAP financial statements for tax return compliance purposes as required, they did not prepare individual Debtor financial statements. Assets and liabilities were assigned to each entity by making reasonable estimated assignments and allocations of each line item on the consolidated balance sheet. Moreover, the Debtors did not maintain full, separate, stand-alone accounting records for each Debtor in their general ledger, and the Debtors' accounting systems were not designed to produce financial information on such a basis. Accordingly, absent substantive consolidation, the information underlying the Debtors' historical financial statements would need to be examined, reformulated and allocated/disaggregated, and assets and liabilities would need to be assigned to individual Debtor entities. This would be difficult for many reasons, including those explained in the sections below.
- Uncertainty in Assignment of Assets and Liabilities. The Debtors' assets are identifiable as a general proposition, but with an unknown number of exceptions. Moreover, the identification of liabilities to a particular Debtor raises further uncertainties. Interstate Brands owns or leases the real estate associated with the Debtors' bakeries, bakery site depots and bakery site retail outlet stores, and IBC Sales owns or leases the real estate associated with the non-bakery site depots in addition to non-bakery site retail outlet stores. However, certain properties continue to have their predecessors in interest listed as the holder. As a general principal, Interstate Brands was the legal entity that entered into contracts relating to

manufacturing activities, while IBC Sales was the legal entity that entered into contracts relating to customer sales activities. However, many contracts and leases may be with the wrong Debtor entity, and, to this date, confusion continues to exist among both creditors and the Debtors' employees. As a result, certain agreements and leases have been executed by, and liabilities may be owed by, entities other than what was intended by the Debtors. As noted above, the Debtors did not maintain full, separate, stand-alone accounting records for each Debtor in their general ledger to account for assets and liabilities on a Debtor by Debtor basis. The only way to untangle these issues would be to review each of the terms of thousands of purchase orders, invoices, leases, contracts and other agreements.

- Expectations of Creditors. While a limited number of creditors may have been aware of the Debtors' legal structure, the Debtors believe that the vast majority of their creditors treated the Debtors as a single legal entity and did not rely upon the corporate separateness of the Debtors. In particular, third-parties often referred to the Debtors based on the bakery or product with which they interacted, e.g., "Wonder Bread," "Hostess," "Merita," etc. Such usage is particularly prevalent with regard to the Debtors' retail outlet stores. Similarly, telephone books and online directories often reference the Debtors in this fashion. Moreover, as a result of the Debtors' various corporate restructuring initiatives, confusion exists among both creditors and the Debtors' field level employees as to the appropriate usage of the Debtors' legal names. As a result, creditor accounts often would not list the correct entity paying such account. Accordingly, it is often unclear with which entity creditors believed themselves to be conducting business. As such, the Debtors believe that substantive consolidation will not frustrate or upset the reasonable expectations of the vast majority of their creditors.
- Credit Agreements and Guarantees. As described more fully in Section III.C above, each Debtor, excluding MCF Legacy (which has essentially no assets), was either a borrower or guarantor with regard to the Prepetition Secured Debt.
- Cash Management System. As of the Petition Date, the majority of the Debtors' cash flowed through a main concentration account, maintained by Interstate Brands, which made disbursements to satisfy the obligations of all of the Debtors, including vendor and supplier payables, employee payroll, healthcare and other benefit obligations. Disbursements to creditors were made by Interstate Brands either via checks, which listed each Debtor, with the exclusion of MCF Legacy, by name or by electronic funds transfer or wire transfer funded through the main concentration account. No Debtor maintained a bank account other than Interstate Brands. The Debtors did not maintain full, separate, stand-alone accounting records for each Debtor in their general ledger with regard to the cash management system, although intercompany amounts were determined on a yearly basis as described below. As a result, the Debtors' cash has been commingled.
- Intercompany Claims. The Debtors, excluding MCF Legacy, were parties to a revolving credit agreement whereby Debtors regularly made loans to other Debtors. This credit agreement was used to transact and account for certain intercompany transactions. The Debtors did not immediately record such intercompany transactions at the exact time that one Debtor transacted with another; however, at the end of each fiscal year, the Debtors reviewed such records, made a number of simplifying assumptions and estimated the amounts owed amongst the Debtors. After all records were reviewed, any mutual balances between Debtors were netted against one another, with the remaining intercompany balance carried over into the following year. Such Intercompany Claims may date back as far as the Debtors' emergence from the 2004 Bankruptcy Cases. Because of the Debtors' consolidated accounting system, doing more than estimating intercompany claims would be essentially impossible.
- Governance and Corporate Structure. The Debtors were collectively managed as one entity with the Debtors sharing facilities and employees, and the vast majority of each Debtor's corporate functions were performed at the Debtors' headquarters in Irving, Texas or their operations center in Kansas City, Missouri. Moreover, with the exception of the directors of Hostess, substantial overlap of directors and officers existed among the Debtors. Each Debtor (other than Hostess) is ultimately 100% directly or indirectly owned by Hostess.
- Reconstruction of Financial Affairs. The Debtors' estimated books and records reflect hundreds of millions of dollars of Intercompany Claims as of the Petition Date, many of which date back to the Debtors' emergence from the 2004 Bankruptcy Cases. Moreover, the Debtors did not maintain full,

separate, stand-alone accounting records for each Debtor in their general ledger that would allow for their financial affairs to be reconstructed with ease. To further complicate matters, many of the Debtors' employees who possessed key institutional knowledge regarding the Debtors' financial affairs have recently left the Debtors' employment before or during the Chapter 11 Cases. As a result, the Debtors estimate that it would take thousands of hours of work to reconstruct the Debtors' financial affairs on a Debtor-by-Debtor basis, and, even after the completion of such work, it is uncertain whether such information would be entirely accurate or useful. Ultimately, such a process would be difficult, time consuming, expensive and taxing on the Debtors' limited resources with doubtful resulting benefit to the Debtors' creditors.

For the purposes of this Disclosure Statement, the Debtors evaluated whether they could prepare an analysis of estimated recoveries to creditors of individual Debtors absent substantive consolidation. Such an evaluation would demonstrate whether any creditors would be harmed by the proposed substantive consolidation. The Debtors and their professionals, however, concluded that this would be impossible without incurring excessive time and expense in resolving the issues described above — *i.e.*, the very issues that the Debtors believe justify the substantive consolidation requested by the Plan. In light of this, the Debtors carefully considered whether there were reasons for not seeking to substantively consolidate the Debtors' Estates. In doing so, the Debtors considered their experience in preparing their Schedules and the necessary good faith assumptions made by the Debtors in doing so in light of the entangling factors discussed above. The Debtors concluded that making good faith assumptions in the preparation of the Schedules, however, is substantially different than proving actual asset and liability allocations for separate Debtor legal entities. The Debtors believed that proving such allocations would be impossible without substantial further factual investigation by the Debtors and the incurrence of excessive costs associated therewith. Ultimately, the Debtors concluded that seeking to untangle their affairs could — through legal, financial advisory, accounting and additional employee costs — easily consume a significant amount of cash reserves that are essential to funding the Debtors' exit from bankruptcy. Accordingly, the Debtors concluded that substantive consolidation was appropriate in these Chapter 11 Cases.

## **2. Continued Corporate Existence and Vesting of Assets**

Except as otherwise provided in the Plan (including with respect to the Restructuring Transactions described in Section III.B of the Plan): (a) as of the Effective Date, Reorganized Hostess will exist as a separate corporate entity, with all corporate powers in accordance with the laws of the state of Delaware and the certificates of incorporation and bylaws attached as Exhibits III.D.1.a and III.D.1.b to the Plan; (b) subject to the Restructuring Transactions, each of the Debtors will, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, with all of the powers of such a legal entity under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, conversion, dissolution or otherwise) under applicable state law; and (c) on the Effective Date, all property of the Estate of a Debtor, and any property acquired by a Debtor or Reorganized Debtor under the Plan, will vest, subject to the Restructuring Transactions, in such Reorganized Debtor free and clear of all Claims, liens, charges, other encumbrances, Interests and other interests. On and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, each Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for appropriate Professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Bankruptcy Court.

## **3. No Change in Control**

The consummation of the Plan, the implementation of the Restructuring Transactions or the assumption or assignment of any Executory Contract or Unexpired Lease to a Reorganized Debtor is not intended to, and shall not, constitute a change in ownership or change in control under any employee benefit plan or program, financial instrument, loan or financing agreement, Executory Contract or Unexpired Lease or contract, lease or agreement in existence on the Effective Date to which a Debtor is a party; *provided, however, that* nothing in Section IV.H of the Plan shall be deemed to override or render unenforceable any "Change in Control" provisions in any policies of insurance, including, without limitation, the "Change in Control" provisions in the Directors, Officers & Organization Liability Policy, No. 14-MGU-11-A23242, issued to Hostess by US Specialty Insurance Company and any policies that are excess to or follow form to that policy.

**4. Restructuring Transactions**

a. Restructuring Transactions Generally

On or after the Confirmation Date, consistent with the terms of the Plan, the applicable Debtors or Reorganized Debtors may enter into any Restructuring Transactions and may take such actions as the Debtors or Reorganized Debtors may determine to be necessary or appropriate to effect, in accordance with applicable non-bankruptcy law, a corporate restructuring of their respective businesses or simplify the overall corporate structure of the Reorganized Debtors, including but not limited to the Restructuring Transactions identified on Exhibit III.B.1 to the Plan and any other transactions as necessary as a means to accomplish the Restructuring Transactions identified on such Exhibit. Unless otherwise provided by the terms of a Restructuring Transaction, all such Restructuring Transactions will be deemed to occur on the Effective Date and may include one or more mergers, consolidations, restructurings, conversions, dispositions, liquidations or dissolutions, as may be determined by the Debtors or the Reorganized Debtors to be necessary or appropriate. The actions to effect these transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, conversion, dissolution or change in corporate form pursuant to applicable state law; and (iv) the taking of all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions. Any such transactions may be effected on or subsequent to the Effective Date without any further action by the stockholders or directors of any of the Debtors or the Reorganized Debtors.

b. Obligations of Any Successor Corporation in a Restructuring Transaction

The Restructuring Transactions may result in substantially all of the respective assets, properties, rights, liabilities, duties and obligations of certain of the Reorganized Debtors vesting in one or more surviving, resulting or acquiring corporations. In each case in which the surviving, resulting or acquiring corporation in any such transaction is a successor to a Reorganized Debtor, such surviving, resulting or acquiring corporation will perform the obligations of the applicable Reorganized Debtor arising under or pursuant to the Plan to pay or otherwise satisfy the Allowed Claims against such Reorganized Debtor, except as provided in the Plan or in any contract, instrument or other agreement or document effecting a disposition to such surviving, resulting or acquiring corporation, which may provide that another Reorganized Debtor will perform such obligations.

**5. Effectuating Documents; Further Transactions**

The president, chief executive officer, chief financial officer, treasurer or any vice president of each Debtor or Reorganized Debtor, as applicable, shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The secretary or any assistant secretary of each Debtor or Reorganized Debtor will be authorized to certify or attest to any of the foregoing actions.

**6. Exemption from Certain Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax, filing fee, sales or use Tax or similar Tax: (a) the issuance, transfer or exchange of New Hostess Common Stock; (b) the creation of any mortgage, deed of trust, lien or other security interest; (c) the making or assignment of any lease or sublease; (d) the execution and delivery of the Exit Facility, the New First Lien Term Loan Facility or the New Third Lien Term Loan Facility; (e) any Restructuring Transaction; (f) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, conversion, disposition, liquidation or dissolution, deeds, bills of sale or assignments, applications, certificates or statements executed or filed in connection with any of the foregoing or pursuant to the Plan; or (g) any transaction related to the Confirmation Cash Infusion. The Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such Tax and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Tax.

**7. Corporate Governance, Directors and Officers**

a. Certificates of Incorporation and Bylaws of the Reorganized Debtors

As of the Effective Date, the certificates of incorporation and the bylaws (or comparable constituent documents) of each Reorganized Debtor will be substantially in the forms set forth in Exhibits III.D.1.a and III.D.1.b to the Plan, respectively. The certificates of incorporation and bylaws (or comparable constituent documents) of each Reorganized Debtor, among other things, will: (i) prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code; and (ii) authorize the issuance of New Hostess Common Stock in amounts not less than the amounts necessary to permit the Distributions required or contemplated by the Plan. After the Effective Date, the Reorganized Debtor may amend and restate their respective articles of incorporation or bylaws (or comparable constituent documents) as permitted by applicable state law, subject to the terms and conditions of such constituent documents. On the Effective Date, or as soon thereafter as is practicable, the Reorganized Debtors shall file their certificates of incorporation (or comparable constituent documents) with the respective secretaries of state of the states in which they are incorporated or organized, to the extent required by and in accordance with the applicable corporate law of such states.

b. Directors and Officers of the Reorganized Debtors

Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, from and after the Effective Date: (i) the initial officers of each of the Reorganized Debtors will consist of the individuals identified on Exhibit III.D.2 to the Plan; (ii) the initial board of directors of Reorganized Hostess will be comprised of nine members (to be identified on Exhibit III.D.2 to the Plan), as follows: (A) six directors selected by a committee established by the existing Third Lien Term Loan Lenders, (B) one director selected by the IBC-IBTNNC, (C) one director selected by the BCTGM and (D) the chief executive officer of Reorganized Hostess; and (iii) the initial boards of directors of each of the other Reorganized Debtors will consist of the individuals identified, or to be designated pursuant to the procedures specified, on Exhibit III.D.2 to the Plan; *provided that* (x) Reorganized Hostess, as applicable, shall recruit and appoint a new chief executive officer as soon as practicable and (y) the chief executive officer of Reorganized Hostess shall not serve as the chairman of Reorganized Hostess's board of directors, *provided that* such restriction does not unreasonably impede Hostess's recruitment efforts. Each of the six directors selected by a committee established by the existing Third Lien Term Loan Lenders and the initial officers of the Reorganized Debtors will serve from and after the Effective Date until his or her successor is duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the terms of the certificates of incorporation and bylaws (or comparable constituent documents) of the Reorganized Debtors and state law. The directors selected by the IBC-IBTNNC and the BCTGM shall serve from and after the Effective Date until the expiration of the Assumed Collective Bargaining Agreements and, during such period, the IBC-IBTNNC and the BCTGM (as applicable) shall have the right to select any successor to such directors. The directors selected by the IBC-IBTNNC and the BCTGM shall serve on each of the audit and compensation committees of Reorganized Hostess's board of directors until the expiration of the Assumed Collective Bargaining Agreements with the IBT and BCTGM, respectively.

**8. Obligations to Indemnify Directors, Officers and Employees**

Prior to the Effective Date, the Debtors (a) shall make arrangements to continue liability and fiduciary (including ERISA) insurance, or purchase a tail policy or policies, for the benefit of their directors, officers and employees for the period from and after the Effective Date and (b) may fully pay the premium for such insurance. Any and all directors and officers liability and fiduciary (including ERISA) insurance or tail policies in existence as of the Effective Date shall be continued in accordance with their terms and, to the extent applicable, shall be deemed assumed or assumed and assigned by the applicable Debtor pursuant to section 365 of the Bankruptcy Code.

The obligations of each Debtor or Reorganized Debtor to indemnify any person who was serving as one of its directors, officers or employees on or after the Petition Date by reason of such person's prior or future service in such a capacity, or as a director, officer or employee of another corporation, partnership or other legal entity at the applicable Debtor's request, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor or Reorganized Debtor, will be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification obligations will survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

The obligations of each Debtor or Reorganized Debtor to indemnify any person who was serving as one of its directors, officers or employees prior to but not after the Petition Date by reason of such person's prior service in such a capacity, or as a director, officer or employee of another corporation, partnership or other legal entity at the applicable Debtor's request, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor or otherwise, will terminate and be discharged pursuant to section 502(e) of the Bankruptcy Code or otherwise as of the Effective Date; *provided, however*, that to the extent that such indemnification obligations no longer give rise to contingent Claims that can be disallowed pursuant to section 502(e) of the Bankruptcy Code, such indemnification obligations will be deemed and treated as Executory Contracts that are rejected by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date, and any Claims arising from such indemnification obligations (including any rejection damage claims) will be subject to the Bar Date provisions of Section IV.E of the Plan.

**9. Corporate Action**

The Restructuring Transactions; the adoption of new or amended and restated certificates of incorporation and bylaws (or comparable constituent documents) for the Reorganized Debtors; the initial selection of directors and officers for each Reorganized Debtor; the entry into the Exit Facility and receipt of the proceeds thereof; the issuance of the New Hostess Common Stock; the deemed incurrence of the New First Lien Term Loans and New Third Lien Term Loans; the Distribution of the New Hostess Common Stock and Cash pursuant to the Plan; the issuance and Distribution of the Union Concession Distribution Property; the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or documents related to any of the foregoing; the adoption, execution and implementation of employment, retirement and indemnification agreements, incentive compensation programs (including the Equity Incentive Plan), retirement income plans, welfare benefit plans and other employee plans and related agreements; the assumption of the Company Pension Plan (as amended) by a Reorganized Debtor or other entity created in connection with the Restructuring Transactions; and the other matters provided for under the Plan involving the corporate structure of the Debtors and the Reorganized Debtors or corporate action to be taken by or required of a Debtor or a Reorganized Debtor will be deemed to occur and be effective as of the Effective Date, if no such other date is specified in such other documents, and will be authorized and approved in all respects and for all purposes without any requirement of further action by the stockholders or directors of the Debtors or the Reorganized Debtors.

**10. New Hostess Common Stock**

The New Hostess Common Stock, when issued as provided in the Plan, will be duly authorized, validly issued and, if applicable, fully paid and nonassessable. Each issuance under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such issuance and by the terms and conditions of the instruments evidencing or relating to such issuance, which terms and conditions shall bind each person or entity receiving such issuance.

To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of the New Hostess Common Stock under the Plan will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder.

**11. New Stockholder Agreement**

On the Effective Date, Reorganized Hostess and the recipients of the New Hostess Common Stock will become parties to the New Stockholder Agreement. Each recipient of New Hostess Common Stock, by virtue of such receipt, will be bound to the terms and conditions of the New Stockholder Agreement even if such recipient has not executed the New Stockholder Agreement.

**12. Implementation of Global Resolution and Non-Consenting Union 1113/1114 Orders**

a. Assumption and Assignment of CBAs

On the Effective Date, the applicable Debtor or Debtors will assume and assign to the applicable Reorganized Debtor (a) any Assumed Collective Bargaining Agreements and (b) any Imposed Collective Bargaining Agreements and (c) any and all other related agreements necessary to effect the Union Settlement Agreements and the relief granted by the Non-Consenting Union 1113/1114 Orders. Upon assumption, any and all Claims held by the Unions (whether prepetition or postpetition), and any and all Claims asserted by current or former members of the Unions (whether prepetition or postpetition) relating to matters addressed by either the Union Settlement Agreements (for Consenting Unions) or the proposal approved by the Non-Consenting Union 1113/1114 Orders (for Non-Consenting Unions) shall be deemed waived,

discharged and extinguished. The Reorganized Debtors shall to the extent necessary object to proofs of Claim or requests for payment of an Administrative Claim Filed in respect of such obligations. Ordinary course obligations arising under Assumed Collective Bargaining Agreements, specifically including wages, vacation pay, medical payments, health and welfare payments and postpetition grievances (other than grievances over payments to MEPPs) of the kind that the Debtors have been making from and after the Petition Date to or for the benefit of the Debtors' employees represented by the Unions shall not be waived, discharged and extinguished but shall be unaltered by the Plan and shall be satisfied in the ordinary course of business.

b. Withdrawal From and Re-Entry Into MEPPs

To the extent that the Debtors have not previously withdrawn from a MEPP, the Debtors shall be deemed to have withdrawn from all MEPPs no later than December 31, 2012.

c. Union Concession Distribution Property

In accordance with the terms of the Union Settlement Agreements and the Non-Consenting Union 1113/1114 Orders, the Disbursing Agent will reserve the Union Concession Distribution Property to be distributed to the Unions in accordance with Section III.F.4 of the Plan; *provided that* in no event shall any allocation of shares pursuant to the Plan require Reorganized Hostess to become obligated to register the New Hostess Common Stock pursuant to Section 12(g) of the Exchange Act or otherwise become obligated to file reports pursuant to Section 13 or 15(d) of the Exchange Act.

d. Distribution and Allocation of Union Concession Distribution Property

In accordance with the terms of the Union Settlement Agreements and the Non-Consenting Union 1113/1114 Orders, the Unions shall determine the allocation of the Union Concession Distribution Property among themselves. The Unions shall provide the Debtors with the details of the proposed allocation of the Union Concession Distribution Property in writing no later than 10 calendar days after the Effective Date; provided that if the Unions do not provide the Debtors with such writing by such date, the Disbursing Agent will retain the Union Concession Distribution Property pending a determination of the allocation of the Union Concession Distribution Property by the Bankruptcy Court pursuant to a Final Order. The Union Concession Distribution Property shall be distributed to each Union or its applicable employees in accordance with Section V.B.5 of the Plan.

**13. Excess Cash**

No later than three days prior to the Effective Date, the Debtors shall (a) estimate the amount of Excess Cash that will be either held by or available to the Reorganized Debtors as of the Effective Date after completion of the transactions that are to occur on the Effective Date and (b) report such estimate to the Notice Parties. Any Excess Cash shall be distributed or allocated as follows: (a) 50% to the holders of First Lien Term Loan Tranche A/B Designated Claims, in accordance with Section II.B.3 of the Plan, and (b) 50% to the Compromise Administrative Claim Reserve, in accordance with Section V.D of the Plan.

**14. Employment, Retirement and Other Related Agreements;  
Cessation of Retiree Benefits; Workers' Compensation Programs**

a. Employment-Related Agreements

As of the Effective Date, the Reorganized Debtors will have authority to: (i) maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification and other agreements with its active directors, officers and employees, subject to the terms and conditions of any such agreement; and (ii) enter into new employment, retirement, welfare, incentive, severance, indemnification and other agreements for active employees.

b. Retiree Benefits

Except as provided in any modifications under the Union Settlement Agreements or the Non-Consenting Union 1113/1114 Orders, as applicable, obligations to pay or provide retiree benefits (as defined in section 1114(a) of the Bankruptcy Code) for all retirees will be assumed by the applicable Reorganized Debtor and paid after the Effective Date in the ordinary course of business.

c. Company Pension Plan

In accordance with the Union Settlement Agreements (for Consenting Unions) and the Non-Consenting Union 1113/1114 Orders (for Non-Consenting Unions), benefit accrual for all participating employees under the Company Pension Plan will be frozen, and the Company Pension Plan shall be amended accordingly. The Company Pension Plan (as amended) will be assumed by the applicable Reorganized Debtor on the Effective Date.

d. Continuation of Workers' Compensation Programs

From and after the Effective Date, (i) the Reorganized Debtors will continue to administer and pay or cause to be paid all valid claims for benefits and liabilities arising under the Debtors' workers' compensation programs for which the Debtors or the Reorganized Debtors are responsible under applicable state workers' compensation law, regardless of when the applicable injuries occurred, in accordance with the Debtors' prepetition practices and procedures, applicable plan documents and governing state workers' compensation law, (ii) any restricted Cash held by the Reorganized Debtors or third parties (as determined in accordance with GAAP) that secures, or letters of credit issued to a governmental entity or insurance company that provide assurances of payment of, the Debtors' workers' compensation obligations will remain in place, if applicable, may be used to satisfy workers' compensation claims in accordance with the Debtors' existing workers' compensation practices and procedures, applicable plan documents and governing state workers' compensation laws and (iii) nothing in the Plan shall discharge, release, or relieve the Debtors or the Reorganized Debtors from any current or future liability under applicable state workers' compensation law in the jurisdictions where the Debtors or the Reorganized Debtors participate in workers' compensation programs. The Debtors expressly reserve the right to challenge the validity of any claim for benefits or liabilities arising under any workers' compensation program.

e. Equity Incentive Plan

After the Effective Date, the Reorganized Debtors will implement the Equity Incentive Plan.

**15. Special Provisions Regarding Insured Claims**

a. Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims

Distributions, if any, under the Plan to each holder of an Allowed Insured Claim will be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in Section III.K of the Plan will constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any entity may hold against any other entity, including the Debtors' insurance carriers.

b. Assumption and Continuation of Insurance Policies

From and after the Effective Date, each of the Insurance Contracts will be assumed by the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code or continued in accordance with its terms, with rights and obligations under such policy such that each of the parties' contractual, legal and equitable rights under each Insurance Contract shall remain unaltered, and the successors to the Debtor parties to each Insurance Contract will continue to be bound by such Insurance Contract as if the Chapter 11 Cases had not occurred. Nothing in the Plan shall affect, impair or prejudice the rights and defenses of the Insurers or the Reorganized Debtors under the Insurance Contracts in any manner, and such Insurers and Reorganized Debtors shall retain all rights and defenses under the Insurance Contracts, and the Insurance Contracts shall apply to, and be enforceable by and against, the Reorganized Debtors and the applicable Insurer(s) as if the Chapter 11 Cases had not occurred. In addition, notwithstanding anything to the contrary in the Plan, nothing in the Plan (including any other provision that purports to be preemptory or supervening), shall in any way operate to, or have the effect of, impairing any party's legal, equitable or contractual rights and/or obligations under any Insurance Contract, if any, in any respect. Any such rights and obligations shall be determined under the Insurance Contracts, any agreement of the parties and applicable law.

**16. Cancellation and Surrender of Instruments, Securities and Other Documentation**

Except as provided in any contract, instrument or other agreement or document entered into or delivered in connection with the Plan or as otherwise provided for herein, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article V of the Plan: (a) the Senior Secured Revolving Credit Facility, the First Lien Term

Loan Facility, the Third Lien Term Loan Facility, the Fourth Lien Notes Indenture, the First Lien Term Loan Notes, the Third Lien Term Loan Notes, the Fourth Lien Notes and the Old Common Stock of Hostess will be deemed canceled and of no further force and effect against the Debtors, without any further action on the part of any Debtor, (b) the obligations of the Debtors, the Senior Secured Revolving Credit Agent, the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the Fourth Lien Notes Indenture Trustee, if applicable, under such canceled agreements, contracts, instruments, securities and other documents shall be discharged, *provided, however, that* (a) the Senior Secured Revolving Credit Facility, the First Lien Term Loan Facility and the Third Lien Term Loan Facility shall continue to survive and be in full force and effect only for the purposes of (i) making Distributions under the Plan, (ii) permitting the Senior Secured Revolving Credit Agent, the First Lien Term Loan Agent and the Third Lien Term Loan Agent to appear in the Chapter 11 Cases and (iii) any function necessary in connection with the foregoing clauses (a)(i)-(ii) and (b) the Fourth Lien Notes shall continue to survive and be in full force and effect only for the purposes of (i) making Distributions under the Plan, (ii) asserting any charging lien thereunder, (iii) permitting the Fourth Lien Notes Indenture Trustee to appear in the Chapter 11 Cases and (iv) any function necessary in connection with the foregoing clauses (b)(i)-(iii); and (c) the holders of or parties to such canceled agreements, contracts, instruments, securities and other documents will have no rights arising therefrom or relating thereto or the cancellation thereof, except the rights provided pursuant to the Plan.

**17. Release of Liens**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and except as specified in the treatment provided for Claims and Interests in Article II of the Plan, all mortgages, deeds of trust, liens or other security interests against the property of any Estate will be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, will revert to the applicable Reorganized Debtors and their successors and assigns. As of the Effective Date, the Reorganized Debtors shall be authorized to execute and file on behalf of all applicable creditors who have had their liens released and discharged pursuant to the foregoing such Uniform Commercial Code termination statements, mortgage or deed of trust releases or such other forms, releases or terminations as may be necessary or appropriate to implement the provisions of Section III.N of the Plan.

**18. Preservation of Causes of Action by the Debtors and Reorganized Debtors**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors will retain and may enforce any Causes of Action that the Debtors or the Estates may hold against any entity (including, but not limited to, all Retained Actions) to the extent not expressly released under the Plan or by any Final Order of the Bankruptcy Court.

**19. Creditors' Committee**

As of the Effective Date, the Creditors' Committee shall dissolve, and the members of the Creditors' Committee and its Professionals shall cease to have any role arising from or relating to the Chapter 11 Cases. The Professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to assert any Professional Fee Claim for any services rendered or expenses incurred after the Effective Date, except for reasonable fees for services rendered, and actual and necessary expenses incurred, in connection with any final applications for allowance of compensation and reimbursement of expenses of the members of or Professionals to the Creditors' Committee Filed and served after the Effective Date in accordance with the Plan.

**20. Comprehensive Settlement of Claims and Controversies**

Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the rights (including any subordination rights) that a holder of a Claim may have with respect to any Allowed Claim or any Distribution to be made pursuant to the Plan on account of any Allowed Claim. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that all such compromises or settlements are in the best interests of the Debtors, the Reorganized Debtors, the Estates and their respective property and Claim holders and are fair, equitable and reasonable.

**21. Discharge of Claims and Termination of Interests**

a. Complete Satisfaction, Discharge and Release

Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims and termination of all Interests arising on or before the Effective Date, including any interest accrued on Claims from and after the Petition Date. Except as provided in the Plan or in the Confirmation Order, Confirmation will, as of the Effective Date and immediately after cancellation of the Old Common Stock of Hostess: (i) discharge the Debtors from all Claims or other debts that arose on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (A) a proof of claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (B) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (C) the holder of a Claim based on such debt has accepted the Plan; and (ii) terminate all Interests and other rights of holders of Interests in Hostess.

b. Discharge and Termination

In accordance with the foregoing, except as provided in the Plan, the Confirmation Order will be a judicial determination, as of the Effective Date and immediately after the cancellation of the Old Common Stock of Hostess, but prior to the issuance of the New Hostess Common Stock, of a discharge of all Claims and other debts and Liabilities against the Debtors and a termination of all Interests and other rights of the holders of Interests in Hostess, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge will void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.

**22. Releases**

a. General Releases by the Debtors and the Reorganized Debtors

Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their affiliates, the Estates and their respective successors, assigns and any and all entities who may purport to claim by, through, for or because of them, will forever release, waive and discharge all Liabilities that they have, had or may have against any Released Party except with respect to obligations arising under the Plan or the obligations assumed thereunder; *provided, however, that* the foregoing provisions shall not affect (i) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted gross negligence or willful misconduct, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or previously, entered into or delivered in connection with the Plan, (iii) any objections by the Debtors or the Reorganized Debtors to Claims or Interests filed by any Person or entity against any Debtor and/or the Estates, including rights of setoff, refund or other adjustments, (iv) the rights of the Debtors to assert any applicable defenses in litigation or other proceedings with their employees (including the rights to seek sanctions, fees and other costs), (v) amounts owed by employees for benefit costs or regularly deducted from employee wages in the ordinary course of the Debtors' businesses or (vi) any claim of the Debtors or Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other causes of action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party.

b. General Releases by Holders of Claims or Interests

Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan and the consideration and other contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, each holder of a Claim that votes in favor of the Plan will be deemed to forever release, waive and discharge all Liabilities in any way relating to a Debtor, the Chapter 11 Cases, the Estates, the Plan, the Confirmation Exhibits or this Disclosure Statement that such entity has, had or may have against any Released Party (which release will be in addition to the discharge of Claims and termination of Interests provided in the Plan and under the Confirmation Order and the Bankruptcy Code); *provided, however, that* the foregoing provisions shall not affect any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or previously, entered into or delivered in connection with the Plan.

c. Release of Released Parties by Other Released Parties

From and after the Effective Date, except with respect to obligations arising under the Plan or assumed hereunder, to the fullest extent permitted by applicable law, the Released Parties shall release each other from any and all Liabilities that any Released Party is entitled to assert against any other Released Party in any way relating to any Debtor; the Chapter 11 Cases; the Estates; the formulation, preparation, negotiation, dissemination, implementation, administration, Confirmation or consummation of any of the Plan (or the property to be distributed under the Plan), the Confirmation Exhibits, this Disclosure Statement, the Assumed Collective Bargaining Agreements, any contract, employee pension or other benefit plan, instrument, release or other agreement or document related to any Debtor, the Chapter 11 Cases or the Estates created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtors and any Released Party; or any other act taken or omitted to be taken in connection with the Chapter 11 Cases; *provided, however, that* the foregoing provisions shall not affect (i) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted gross negligence or willful misconduct, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or previously, entered into or delivered in connection with the Plan, (iii) the rights of the Released Party to assert any applicable defenses in litigation or other proceedings (including the rights to seek sanctions, fees and other costs) or (iv) any claim of a Released Party, including (but not limited to) cross-claims or counterclaims or other causes of action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors and the Released Party are each a party.

**23. Exculpation**

From and after the Effective Date, the Released Parties shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with the Debtors' restructuring, including the formulation, negotiation, preparation, dissemination, implementation, Confirmation or approval of the Plan (or the property to be distributed under the Plan), the Global Resolution, the Confirmation Exhibits, this Disclosure Statement, the Assumed Collective Bargaining Agreements or any contract, employee pension or other benefit plan, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; *provided, however, that* Section X.F of the Plan shall not apply to the obligations arising under the Plan or the obligations assumed thereunder; and *provided further, however, that* the foregoing provisions in the Plan shall not affect the liability of any Person that otherwise would result from any act or omission to the extent that act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**24. Injunction**

**On the Effective Date, except as otherwise provided under the Plan or in the Confirmation Order, all Persons who have been, are or may be holders of Claims against or Interests in a Debtor shall be enjoined from taking any of the following actions against or affecting a Debtor, its Estate or its Assets with respect to such Claims or Interests (other than actions brought to enforce any rights or obligations granted under or Reinstated by the Plan and appeals, if any, from the Confirmation Order):**

- **commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor (including, without limitation, all suits, actions and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);**
- **enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order against a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor;**
- **creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien against a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor, other than as contemplated by the Plan;**

- except as provided under the Plan, asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor; and
- proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan or the settlements set forth therein to the extent such settlements have been approved by the Bankruptcy Court in connection with Confirmation of the Plan.

All Persons that have held, currently hold or may hold any Liabilities released or exculpated pursuant to Sections X.E and X.F of the Plan, respectively, will be permanently enjoined from taking any of the following actions against any Released Party or its property on account of such Liabilities: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien; (d) except as provided in the Plan, asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due a Released Party; and (e) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan.

#### **25. Plan Impact on Prepetition Secured Claims**

Confirmation of the Plan will serve as a determination that the First Lien Term Loan Tranche A/B Claims are allowed Secured Claims in the principal amount of \$373.765 million plus accrued prepetition interest at applicable rates and postpetition interest at the non-default rate. Confirmation of the Plan will serve as a determination that the First Lien Term Loan Tranche C Claims are allowed Secured Claims in the principal amount of \$28.864 million plus accrued prepetition and postpetition interest at the non-default rate.

Confirmation of the Plan will serve as a determination that the Third Lien Term Loan Claims are (a) allowed Secured Claims in the principal amount of \$171.573 million plus accrued prepetition interest at applicable rates and postpetition interest at the non-default rate and (b) not oversecured Claims. In exchange for the other consideration granted under the Plan, any Deficiency Claim that is a Third Lien Term Loan Claim shall be deemed waived, discharged and released by the holders of Third Lien Term Loan Claims.

Confirmation of the Plan will serve as a determination that the Fourth Lien Noteholder Claims (a) have been satisfied in part through payments made to Professionals rendering services to the Fourth Lien Notes Indenture Trustee and distributions made on account of Allowed Compromise Claims held by Compromise Fee Professionals rendering services to the Fourth Lien Notes Indenture Trustee and (b) are otherwise General Unsecured Claims properly classified in Class 3 of the Plan.

#### **26. Termination of Certain Subordination Rights**

The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise, that a holder of a Claim or Interest may have against other Claim or Interest holders with respect to any Distribution made pursuant to the Plan. All subordination rights that a holder of a Claim may have with respect to any Distribution to be made pursuant to the Plan will be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined. Accordingly, Distributions pursuant to the Plan to holders of Allowed Claims will not be subject to payment to a beneficiary of such terminated subordination rights or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights.

### **B. Provisions Governing Distributions Under the Plan and Procedures for Resolving Disputed Claims**

#### **1. Bar Dates for Administrative Claims**

##### **a. General Bar Date Provisions**

Except as otherwise provided for in the Plan or in a Bar Date Order or other order of the Bankruptcy Court, unless previously Filed, requests for payment of Administrative Claims must be Filed no later than 60 days after the Effective Date and served on the Notice Parties pursuant to the procedures specified in the Confirmation Order. Holders of

Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors, their respective property and any reserves established pursuant to the terms of the Plan, and such Administrative Claims will be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the Notice Parties and the requesting party by 120 days after the Effective Date. Holders of 503(b)(9) Claims that have asserted such claims as part of a proof of claim filed in accordance with the Bar Date Order shall not be required to File additional requests for payment of Administrative Claims under Section II.A.1.h of the Plan. The General Bar Date shall continue to apply to 503(b)(9) Claims and nothing in Section II.A.1.h of the Plan shall waive, extend or lengthen the General Bar Date for the holder of any prepetition Claim, including 503(b)(9) Claims.

b. Bar Dates for Certain Administrative Claims

Professionals or other entities asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the Notice Parties and such other entities who are designated by the Bankruptcy Rules, the Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Professional Fee Claim no later than 60 days after the Effective Date; *provided, however*, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval (except as provided in the Ordinary Course Professionals Order). Objections to any Professional Fee Claim must be Filed and served on the Notice Parties and the requesting party by the later of (i) 90 days after the Effective Date, (ii) 30 days after the Filing of the applicable request for payment of the Professional Fee Claim or (iii) such other period of limitation as may be specifically fixed by a Final Order for objecting to such Professional Fee Claims. To the extent necessary, the Confirmation Order will amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Professional Fee Claims.

Holders of Allowed Administrative Claims based upon liabilities incurred by a Debtor on or after the Petition Date but prior to the Effective Date in the ordinary course of the Debtor's business (including but not limited to (i) postpetition Administrative Claims arising from or with respect to the sale of goods or provisions of services (but not including Professional Fee Claims); (ii) postpetition customer credits under a Debtor's existing customer program; (iii) postpetition Administrative Claims of governmental units for Taxes (including Tax audit Claims related to Tax years or portions thereof ending after the Petition Date), (iv) Administrative Claims arising under contracts and leases that are assumed and have not been rejected (including Assumed Collective Bargaining Agreements) and (v) Administrative Claims arising under post-Petition Date contracts and leases) will not be required to File or serve any request for payment of such Administrative Claims. If an Administrative Claim is not one of the types of postpetition Administrative Claims explicitly identified in the parenthetical above and is not paid within 45 days of the Effective Date, the holder of such claim must File its Administrative Claim in the Bankruptcy Court in accordance with Section II.A.1.h.i of the Plan or such holder shall be forever barred from asserting such claims against the Reorganized Debtors or their property.

Holders of Administrative Claims that are DIP Lender Claims will not be required to File or serve any request for payment or application for allowance of such Claims. Such Administrative Claims will be satisfied pursuant to Section II.A.1.g of the Plan.

**2. Distributions for Claims Allowed as of the Effective Date**

Distributions on Allowed Claims described in Section V.B.1 of the Plan will be made at the times designated in that section. Distributions with respect to Allowed DIP Lender Claims and Allowed Senior Secured Revolving Credit Claims (Class 2A Claims) will be made on the Effective Date. Distributions to be made on the Effective Date to holders of other Claims that are allowed as of the Effective Date shall be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (a) 60 days after the Effective Date; or (b) with respect to any particular Claim, such later date when the applicable conditions of Section IV.B of the Plan (regarding cure payments for Executory Contracts and Unexpired Leases being assumed), Section V.E of the Plan (regarding undeliverable Distributions) and Section V.J of the Plan (regarding compliance with Tax requirements), as applicable, are satisfied. Distributions on account of Claims that become Allowed Claims after the Effective Date will be made in accordance with Article V of the Plan.

**3. Method of Distributions and Calculation of Amounts to be Distributed**

a. Determination of Aggregate Amount of New First Lien Term Loans

The Cash component of the First Lien Term Loan Tranche A/B Designated Plan Distribution Property (other than Excess Cash) shall be determined by the First Lien Term Loan Agent, in consultation with the Debtors, no later than three Business Days prior to the Effective Date and shall not exceed \$59,000,000. The aggregate principal amount of the New First Lien Term Loans to be deemed incurred by the Reorganized Debtors in favor of the holders of First Lien Term Loan Tranche A/B Claims shall be (i) determined by the Debtors and the First Lien Term Loan Agent on the day before the Effective Date and (ii) equal to the difference of (A) the aggregate amount of First Lien Term Loan Tranche A/B Claims (including accrued interest at the non-default rate) as of the Effective Date (as determined by the Debtors and the First Lien Term Loan Agent) minus (B) the sum of (1) any Cash to be distributed to holders of First Lien Term Loan Tranche A/B Designated Claims and (2) the aggregate total of Professional Fee Claims held by any Professionals rendering services to the holders of First Lien Term Loan Tranche A/B Claims (to the extent that such claims are included in the First Lien Term Loan Tranche A/B Claims).

b. Distributions of First Lien Term Loan Tranche A/B Designated Plan Distribution Property and Distribution on Allowed First Lien Term Loan Tranche C Claims

On the Effective Date and in accordance with the terms of the Plan and the New First Lien Term Loan Facility, the Reorganized Debtors shall be deemed to have incurred New First Lien Tranche A Term Loans in favor of the holders of Allowed First Lien Term Loan Tranche A/B Designated Claims and shall deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New First Lien Term Loan Facility.

On the Effective Date, the Disbursing Agent shall make Distributions of Cash and Excess Cash, if any, to holders of Allowed First Lien Term Loan Tranche A/B Designated Claims and Allowed First Lien Term Loan Tranche C Claims to the First Lien Term Loan Agent and otherwise in accordance with Section V.A of the Plan.

c. Distributions of First Lien Term Loan Tranche A/B Non-Designated Plan Distribution Property

On the Effective Date and in accordance with the terms of the Plan and the New First Lien Term Loan Facility, the Reorganized Debtors shall be deemed to have incurred New First Lien Tranche B Term Loans in favor of the holders of Allowed First Lien Term Loan Tranche A/B Non-Designated Claims and shall deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New First Lien Term Loan Facility.

d. Distribution of Third Lien Term Loan Plan Distribution Property

On the Effective Date and in accordance with the terms of the Plan and the New Third Lien Term Loan Facility, the Reorganized Debtors shall be deemed to have incurred New Third Lien Tranche A Term Loans in favor of the holders of Allowed Third Lien Term Loan Claims and shall deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility. The initial aggregate principal amount of the New Third Lien Tranche A Term Loans to be deemed to have been incurred by the Reorganized Debtors shall be (i) determined by the Debtors and the Third Lien Term Loan Agent on the day before the Effective Date and (ii) equal to 90% of the difference of (A) the aggregate amount of Third Lien Term Loan Claims (including accrued interest at the non-default rate) as of the Effective Date (as determined by the Debtors and the Third Lien Term Loan Agent) minus (B) the aggregate total of Professional Fee Claims held by any Professionals rendering services to the Third Lien Term Loan Agent (to the extent that such claims are included in the Third Lien Term Loan Claims).

On the Effective Date and in accordance with the terms of the Plan, the Reorganized Debtors shall deliver to each holder of an Allowed Third Lien Term Loan Claim its Pro Rata share of 75% of the New Hostess Common Stock (subject to dilution pursuant to the Equity Incentive Plan); *provided that*, as set forth in Section V.F.4 of the Plan, no fractional shares of New Hostess Common Stock shall be issued; and *provided, further, that* in no event shall any allocation of shares pursuant to the Plan require Reorganized Hostess to become obligated to register the New Hostess Common Stock pursuant to Section 12(g) of the Exchange Act or otherwise become obligated to file reports pursuant to Section 13 or 15(d) of the Exchange Act.

e. Distribution of Union Concession Distribution Property

No later than 60 days after the Effective Date, the Disbursing Agent shall deliver the Union Concession Distribution Property to the Unions or their designee, as provided under the allocation timely delivered to the Debtors in accordance with Section III.F.4 of the Plan; *provided that*, if the Unions have not timely delivered such an allocation to the Debtors, the Disbursing Agent shall deliver the Union Concession Distribution Property to the Unions within 60 days of the entry of a Final Order determining the allocation of the Union Concession Distribution Property or, if the matter is arbitrated, a final award of an arbitrator not subject to further appellate review. The New Hostess Common Stock may be delivered to, and the New Third Lien Tranche B Term Loans may be made or deemed to have been made by (and the related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to) a trust or other appropriate entity established for the benefit of the Unions to the extent necessary or appropriate to comply with applicable non-bankruptcy laws. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of any security representing an interest in any such trust or other appropriate entity under the Plan will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder.

f. Distributions for Claims and Interests Allowed as of the Effective Date

The Reorganized Debtors, or such Third Party Disbursing Agents as the Reorganized Debtors may employ in their sole discretion, will make all distributions of Cash, New Third Lien Tranche B Term Loans, New Third Lien Tranche C Term Loans, New Hostess Common Stock and other instruments or documents required under the Plan.

**4. Compensation and Reimbursement for Services Related to Distributions**

Each Third Party Disbursing Agent providing services related to Distributions pursuant to the Plan will receive from the Reorganized Debtors, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services. These payments will be made by the Reorganized Debtors and will not be deducted from Distributions to be made pursuant to the Plan to holders of Allowed Claims receiving Distributions from a Third Party Disbursing Agent. For purposes of reviewing the reasonableness of the fees and expenses of any Third Party Disbursing Agent, the Reorganized Debtors shall be provided with copies of invoices from each Third Party Disbursing Agent employed by them in the form typically rendered in the regular course of the applicable Third Party Disbursing Agent's business but with sufficient detail that reasonableness may be assessed. To the extent that there are any disputes that the Reorganized Debtors are unable to resolve with a Third Party Disbursing Agent, the Reorganized Debtors may submit such dispute to the Bankruptcy Court for resolution. Each Disbursing Agent serving in connection with the Plan will serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the Distributions required by the Plan. The duties of any Third Party Disbursing Agent shall be set forth in the applicable agreement retaining such Third Party Disbursing Agent.

**5. Distributions to Holders of Allowed Compromise Administrative Claims**

a. Funding of the Compromise Administrative Claim Reserve

On the Effective Date, the Compromise Administrative Claim Reserve will be established by the Disbursing Agent and the Compromise Administrative Claim Reserve Assets will be placed in the Compromise Administrative Claim Reserve by the Disbursing Agent for the benefit of holders of Allowed Compromise Administrative Claims.

b. Distributions to Holders of Compromise Administrative Claims

The Disbursing Agent shall make Distributions of Excess Cash, if any, to holders of Allowed Compromise Administrative Claims in accordance with Section V.A of the Plan; *provided, however*, that if a Compromise Fee Professional has not returned an Excess Professional Fee Payment, that professional's Excess Cash may be applied to satisfy as much as possible of the Compromise Fee Professional's obligation to return the Excess Professional Fee Payment.

Within (i) five Business Days after the Effective Date for Compromise Administrative Claims allowed as of such date or (ii) five Business Days after the allowance of a Compromise Administrative Claim, as applicable, the Reorganized Debtors will provide the New Third Lien Term Loan Agent with a notice identifying the aggregate initial principal amount of New Third Lien Tranche C Term Loans to be deemed to have been incurred by the Reorganized Debtors and loaned by holders of such Allowed Compromise Administrative Claim(s) (subject to Section II.A.1.b of the Plan) and will deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New Third

Lien Term Loan Facility; *provided that* no New Third Lien Tranche C Term Loans will be distributed to a Compromise Fee Professional to the extent any Excess Professional Fee Payment owed by such Compromise Fee Professional in accordance with Section II.A.1.d of the Plan remains outstanding. The New Third Lien Tranche C Term Loans may be made or deemed to have been made by (and the related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to) a trust or other appropriate entity established for the benefit of the holders of Compromise Administrative Claims to the extent necessary or appropriate to comply with applicable non-bankruptcy laws. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of any security representing an interest in any such trust or other appropriate entity under the Plan will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder.

c. Cash Receipts and Distributions

Any Cash Investment Yield on Cash held in the Compromise Administrative Claim Reserve will (i) be deposited in a segregated bank account in the name of the Disbursing Agent for the benefit of holders of Allowed Compromise Administrative Claims, (ii) will be accounted for separately and (iii) will not constitute property of the Reorganized Debtors. The Disbursing Agent will invest any Cash held in the Compromise Administrative Claim Reserve in a manner consistent with the Debtors' investment and deposit guidelines.

d. Recourse

Each holder of (i) an Allowed Compromise Administrative Claim and (ii) a Disputed Compromise Administrative Claim that ultimately becomes an Allowed Compromise Administrative Claim will have recourse only to the Compromise Administrative Claim Reserve Assets and not to any other assets held by the Reorganized Debtors, their property or any assets previously distributed on account of any Allowed Claim.

**6. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

a. Delivery of Distributions

Distributions to holders of Allowed Claims will be made by a Disbursing Agent: (i) at the addresses set forth on the respective proofs of Claim Filed by holders of such Claims; (ii) at the addresses set forth in any written certification of address change delivered to the Claims and Noticing Agent or the applicable Disbursing Agent, as applicable, after the date of Filing of any related proof of claim; (iii) at the addresses reflected in the applicable Debtor's Schedules if no proof of claim has been Filed and neither the Claims and Noticing Agent nor the applicable Disbursing Agent has received a written notice of a change of address; or (iv) if clauses (i) through (iii) are not applicable, at the last address directed by such holder in a Filing made after such Claim becomes an Allowed Claim.

b. Undeliverable Distributions Held by Disbursing Agents

If any Distribution to a holder of an Allowed Claim is returned to a Disbursing Agent as undeliverable, no further Distributions will be made to such holder unless and until the applicable Disbursing Agent is notified by written certification of such holder's then-current address. Subject to Section V.E.2.c of the Plan, Distributions returned to a Disbursing Agent or otherwise undeliverable will remain in the possession of the applicable Disbursing Agent pursuant to Section V.E.2.a of the Plan until such time as a Distribution becomes deliverable. Subject to Section V.E.2.c of the Plan, while remaining in the possession of the applicable Disbursing Agent, undeliverable Distributions will be held for the benefit of the potential claimants of such Distributions.

On each Distribution Date, the applicable Disbursing Agent will make all Distributions that became deliverable to holders of Allowed Claims after the most recent Distribution Date; *provided, however*, that the applicable Disbursing Agent may, in its sole discretion, establish a record date prior to each Distribution Date, such that only Claims allowed as of the record date will participate in such periodic Distribution. Notwithstanding the foregoing, the applicable Disbursing Agent reserves the right, if it determines a Distribution on any Distribution Date is uneconomical or unfeasible, or is otherwise unadvisable, to postpone a Distribution Date.

Any holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable Distribution to be made by a Disbursing Agent within one year after the later of (i) the Effective Date and (ii) the last date on which a Distribution was deliverable to such holder will have its claim for such undeliverable Distribution discharged and will be forever barred from asserting any such claim against the Debtors or the Reorganized Debtors. Unclaimed Distributions otherwise deliverable to holders of Allowed Claims shall be retained by, or, if held by a Third Party Disbursing Agent,

returned to, Reorganized Hostess and shall become the property of Reorganized Hostess, free of any restrictions thereon. Nothing contained in the Plan will require any Debtor, any Reorganized Debtor or any Disbursing Agent to attempt to locate any holder of an Allowed Claim.

**7. Timing and Calculation of Amounts to Be Distributed**

a. Distributions to Holders of Allowed Claims

Subject to Section V.A of the Plan, on the Effective Date, each holder of an Allowed Claim will receive the full amount of the Distributions that the Plan provides for Allowed Claims in the applicable Class. On each Distribution Date, Distributions also will be made, pursuant to Section VI.C of the Plan, to holders of Claims that previously were Disputed Claims that were allowed after the most recent Distribution Date. Such periodic Distributions also shall be in the full amount that the Plan provides for Allowed Claims in the applicable Class. Distribution Dates shall occur no less frequently than once per year.

b. Interest on Claims

Except as expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, interest shall not accrue on account of any Claim.

c. De Minimis Distributions

A Disbursing Agent need not distribute Cash to the holder of an Allowed Claim if the amount of Cash to be distributed on any Distribution Date (other than the Final Distribution Date) is less than \$100. On the Final Distribution Date, a Disbursing Agent will not distribute Cash to the holder of an Allowed Claims if the amount of Cash to be distributed on such Final Distribution Date is less than \$25.

d. Distributions of New Hostess Common Stock – No Fractional Shares; Rounding

Notwithstanding any other provisions of the Plan, only whole numbers of shares of New Hostess Common Stock will be distributed. Fractional shares of New Hostess Common Stock will be rounded up or down to the nearest whole number or zero, as applicable. No New Hostess Common Stock will be distributed on account of fractional shares that are rounded down.

**8. Distribution Record Date**

A Disbursing Agent will have no obligation to, and will not, recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the Distribution Record Date and will be entitled for all purposes under the Plan to recognize and make Distributions only to those holders of Allowed Claims that are holders of such Claims, or participants therein, as of the Distribution Record Date.

Except as otherwise provided in a Final Order, the transferees of Claims that are transferred and noticed pursuant to Bankruptcy Rule 3001 prior to the Distribution Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

**9. Means of Cash Payments**

Except as otherwise specified in the Plan, Cash payments made pursuant to the Plan will be in U.S. currency by checks drawn on a domestic bank selected by the applicable Disbursing Agent or, at the option of the applicable Disbursing Agent, by wire or automated clearinghouse transfer from a domestic bank; *provided, however*, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the applicable Disbursing Agent, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**10. Establishment of Reserves**

The Reorganized Debtors may establish any reserves that they deem necessary or advisable to make Distributions to holders of Allowed Claims or otherwise to satisfy their obligations under the Plan, including the creation of one or more

reserves for Disputed Claims, which may be treated (in the discretion of the Reorganized Debtors), for U.S. federal income Tax purposes, as one or more disputed ownership funds within the meaning of Treasury Regulations section 1.468B-9(b)(1).

**11. Withholding and Reporting Requirements**

In connection with the Plan, to the extent applicable, each Disbursing Agent will comply with all applicable Tax withholding and reporting requirements imposed by any governmental unit, and all Distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, each Disbursing Agent will be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, liquidating a portion of the Distribution to be made under the Plan to generate sufficient funds to pay applicable withholding Taxes or establishing any other mechanisms the Disbursing Agent believes are reasonable and appropriate, including requiring Claim holders to submit appropriate Tax and withholding certifications and/or requiring Claim holders to pay the Tax withholding amount to the Disbursing Agent in Cash as a condition of receiving any non-Cash Distributions under the Plan. To the extent any Claim holder fails to submit appropriate Tax and withholding certifications as required by the Disbursing Agent, such Claim holder's Distribution may, in the Disbursing Agent's reasonable discretion, be deemed undeliverable and subject to Section V.E of the Plan.

Notwithstanding any other provision of the Plan, each entity receiving a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of the Distribution, including income, withholding and other Tax obligations.

The Debtors reserve, and the Reorganized Debtors shall have, the right to allocate and distribute all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, liens and similar encumbrances.

**12. Setoffs**

Except with respect to claims of a Debtor or a Reorganized Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, each Reorganized Debtor or a Third Party Disbursing Agent (as instructed by a Reorganized Debtor), as applicable, may, pursuant to sections 553 or 558 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of the Claim (before any Distribution is made on account of the Claim) the claims, rights and Causes of Action of any nature that the applicable Debtor or Reorganized Debtor may hold against the holder of the Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim under the Plan will constitute a waiver or release by the applicable Debtor or Reorganized Debtor of any claims, rights and Causes of Action that they may possess against the Claim holder.

**13. Application of Distributions.**

To the extent applicable, all Distributions to a holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount is paid in full, then to any interest accrued on such Claim prior to the Petition Date and then to any interest accrued on such Claim after the Petition Date, with the remainder allocated to fees and costs.

**14. Treatment of Disputed Claims**

a. ADR Procedures

At the Debtors' or, after the Effective Date, the Reorganized Debtors' option, any Tort Claim eligible to be designated for resolution through the ADR Procedures may be so designated in accordance with the terms thereof and the ADR Order. For the avoidance of doubt, the designation of a Disputed Claim for resolution through the ADR Procedures, either prior to or after the Effective Date, will not modify, and will not be deemed to have modified, the terms of the ADR Injunction imposed pursuant to the ADR Order. Disputed Claims not resolved through the ADR Procedures will be resolved pursuant to the Plan.

b. Tort Claims

At the Debtors' or, after the Effective Date, the Reorganized Debtors' option, any unliquidated Tort Claim (as to which a proof of claim was timely Filed in the Chapter 11 Cases) not resolved through the ADR Procedures or

pursuant to a Final Order of the Bankruptcy Court will be determined and liquidated in the administrative or judicial tribunal(s) in which it is pending on the Effective Date (subject to the Debtors' or Reorganized Debtors' right to seek removal or transfer of venue) or, if no action was pending on the Effective Date, in an administrative or judicial tribunal of appropriate jurisdiction selected by the Debtors or the Reorganized Debtors that (i) has personal jurisdiction over the parties, (ii) has subject matter jurisdiction over the Tort Claim, (iii) has *in rem* jurisdiction over the property involved in the Tort Claim (if applicable) and (iv) is a proper venue. The Debtors or the Reorganized Debtors may exercise the above option by service upon the holder of the applicable Tort Claim (and, if prior to the Effective Date, the First Lien Term Loan Agent, the Third Lien Term Loan Agent, or the Creditors' Committee) of a notice informing such holder that the Debtors or the Reorganized Debtors have exercised such option (which notice shall be deemed to satisfy the notice requirements of Section II.F.4 of the ADR Procedures). Upon a Debtor's or Reorganized Debtor's service of such notice, the automatic stay imposed pursuant to section 362 of the Bankruptcy Code (along with the extension of such stay to employees of the Debtors pursuant to the terms of the Stay Extension Order) or, after the Effective Date, the discharge injunction, will be deemed modified, without the necessity for further Bankruptcy Court approval or any further action by the Debtors or Reorganized Debtors, solely to the extent necessary to allow the parties to determine or liquidate the Tort Claim in the applicable administrative or judicial tribunal(s); *provided that* nothing contained in Section VI.A.2 of the Plan will modify, or will be deemed to have modified, the terms of the Stay Extension Order with respect to any Tort Claim prior to the Debtors or Reorganized Debtors having served notice of their intent to determine and liquidate such Tort Claim pursuant to Section VI.A.2 of the Plan. If the Debtors or the Reorganized Debtors do not serve such a notice upon a holder of a Tort Claim by the Claims Objection Bar Date, such holder may file a motion with the Bankruptcy Court seeking relief from the discharge injunction imposed pursuant to Section X.D of the Plan in order to liquidate and determine its Claim.

Any Tort Claim determined and liquidated pursuant to a judgment obtained in accordance with Section VI.A.2 of the Plan and applicable non-bankruptcy law that is no longer appealable or subject to review will be deemed an Allowed Claim, as applicable, in Class 3 against the applicable Debtor in such liquidated amount, *provided that* only the amount of such Allowed Tort Claim that is not satisfied from proceeds of insurance payable to the holder of such Allowed Tort Claim will be treated as an Allowed Claim for the purposes of distributions under the Plan. Nothing contained in Section VI.A.2 of the Plan will constitute or be deemed a waiver of any claim, right or cause of action that a Debtor may have against any Person in connection with or arising out of any Tort Claim, including but not limited to any rights under section 157(b)(5) of title 28 of the United States Code. All claims, demands, rights, defenses and Causes of Action that the Debtors or the Reorganized Debtors may have against any Person in connection with or arising out of any Tort Claim are expressly retained and preserved.

c. Disputed Insured Claims

The resolution of Disputed Insured Claims, including Tort Claims, pursuant to Article VI of the Plan shall be subject to the provisions of Section III.K of the Plan.

d. No Distributions Until Allowance

Notwithstanding any other provision of the Plan, no payments or Distributions will be made on account of a Disputed Claim until such Claim (or a portion of such Claim) becomes an Allowed Claim, if ever.

**15. Prosecution of Objections to Claims**

a. Objections to Claims

All objections to Claims must be Filed and served on the holders of such Claims, and any amendment to the Schedules to reduce the scheduled Claim of such holder, must be made by the Debtors or the Reorganized Debtors by the Claims Objection Bar Date. If an objection has not been Filed to a Claim or an amendment has not been made to the Schedules with respect to a scheduled Claim by the Claims Objection Bar Date, the particular Claim will be treated as an Allowed Claim in the amount specified in a timely filed proof of claim or the amount scheduled, as applicable, if such Claim has not been allowed earlier.

b. Extension of Claims Objection Bar Date

The Reorganized Debtors may seek authorization to extend the Claims Objection Bar Date for some or all Disputed Claims for cause through the Filing of a motion with the Bankruptcy Court.

c. Authority to Prosecute Objections

On or after the Effective Date, only the Reorganized Debtors will have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, including pursuant to the ADR Procedures or similar procedures approved by the Bankruptcy Court. On or after the Effective Date, the Reorganized Debtors, and only the Reorganized Debtors, may settle or compromise any Disputed Claim or any objection or controversy relating to any Claim without approval of the Bankruptcy Court.

d. Authority to Amend Schedules

The Debtors or the Reorganized Debtors, as applicable, will have the authority to amend the Schedules with respect to any Claim and to make Distributions based on such amended Schedules without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Debtors or the Reorganized Debtors will provide the holder of such Claim with notice of such amendment and parties in interest will have 30 days to File an objection to such amendment with the Bankruptcy Court. If no such objection is Filed, the applicable Disbursing Agent may proceed with Distributions based on such amended Schedules without approval of the Bankruptcy Court.

**16. Distributions on Account of Disputed Claims Once Allowed**

Distributions on account of Disputed Claims that become Allowed Claims after the Effective Date shall be made in accordance with Article V of the Plan.

**XIII.**

**PROJECTED FINANCIAL INFORMATION**

The Debtors' management has developed a four-year business plan and prepared consolidated projected operating and financial results (the "Projections") for the four fiscal years ending May 28, 2016, which are attached to this Disclosure Statement as Exhibit E.<sup>22</sup> The Projections will include projected income statements for the Debtors' fiscal years 2013 through 2016.

THE PROJECTIONS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT E WERE NOT PREPARED WITH A VIEW TOWARD COMPLIANCE WITH THE GUIDELINES ESTABLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTS, THE FINANCIAL ACCOUNTING SERVICES BOARD OR THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION. FURTHERMORE, THE PROJECTIONS HAVE NOT BEEN AUDITED, REVIEWED OR SUBJECTED TO ANY PROCEDURES DESIGNED TO PROVIDE ANY LEVEL OF ASSURANCE BY THE DEBTORS' INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, KPMG LLP. ACCORDINGLY, THE PROJECTIONS HAVE NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. EXCEPT FOR PURPOSES OF THIS DISCLOSURE STATEMENT, THE DEBTORS DO NOT, AS A MATTER OF COURSE, PUBLISH THEIR BUSINESS PLANS AND STRATEGIES OR FORWARD-LOOKING PROJECTIONS OF FINANCIAL POSITION RESULTS FROM OPERATIONS, AND CASH FLOWS. ACCORDINGLY, AFTER BANKRUPTCY COURT APPROVAL OF THIS DISCLOSURE STATEMENT, NEITHER THE DEBTORS NOR THE REORGANIZED DEBTORS INTEND TO UPDATE OR OTHERWISE REVISE THE PROJECTIONS OR TO REFLECT EVENTS OR CIRCUMSTANCES EXISTING OR ARISING AFTER THE DATE OF THE PROJECTIONS OR TO REFLECT THE OCCURRENCE OF UNANTICIPATED EVENTS NOR OTHERWISE MAKE SUCH INFORMATION PUBLIC.

WHILE PRESENTED WITH NUMERICAL SPECIFICITY, THE PROJECTIONS ARE BASED UPON A VARIETY OF ESTIMATES AND ASSUMPTIONS, WHICH, WHILE CONSIDERED REASONABLE BY MANAGEMENT, MAY NOT BE REALIZED, AND ARE SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC AND COMPETITIVE UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH ARE BEYOND THE CONTROL OF THE DEBTORS' MANAGEMENT. MANY OF THESE UNCERTAINTIES AND CONTINGENCIES ARE DESCRIBED IN THIS DISCLOSURE STATEMENT IN ARTICLE XIV: RISK FACTORS. CONSEQUENTLY,

<sup>22</sup> The Projections will be Filed with the Bankruptcy Court no later than seven days prior to the deadline for objections to the Disclosure Statement and will be included as Exhibit E when this Disclosure Statement is provided to holders of Claims in Classes entitled to vote on the Plan as part of the Solicitation Package.

THE PROJECTIONS SHOULD NOT BE REGARDED AS A REPRESENTATION OR WARRANTY BY THE DEBTORS, THEIR PROFESSIONALS OR ANY OTHER PERSON, AS TO THE ACCURACY OF THE PROJECTIONS, OR THAT THE PROJECTIONS WILL BE REALIZED. ACTUAL RESULTS MAY VARY MATERIALLY FROM THOSE PRESENTED IN THE PROJECTIONS. FOR FURTHER INFORMATION ON THE ASSUMPTIONS UNDERLYING THE PROJECTIONS, PLEASE REFER TO THE NARRATIVE AND NOTES TO EXHIBIT E TO THIS DISCLOSURE STATEMENT.

#### XIV.

#### **CERTAIN RISK FACTORS TO BE CONSIDERED**

The implementation of the Plan is subject to a number of material risks, including those described below. Prior to voting on the Plan, each party entitled to vote should carefully consider these risks, as well as all of the information contained in this Disclosure Statement, including the Exhibits hereto. If any of these risks actually occurs, the Debtors and the Reorganized Debtors may not be able to conduct their business as currently planned, and their financial condition and operating results could be seriously harmed. In addition to the risks set forth below, risks and uncertainties not presently known to the Debtors, or risks that the Debtors currently consider immaterial, may also impair the business, financial condition, cash flows or results of operations of the Debtors and the Reorganized Debtors.

#### **A. Certain Bankruptcy Considerations**

##### **1. Risk of Liquidation or Protracted Reorganization**

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to chapter 7 liquidation cases, or that any alternative plan of reorganization would be on terms as favorable to holders of Claims as the terms of the Plan. If a liquidation or protracted reorganization were to occur, the distributions to holders of Allowed Claims could be drastically reduced. The Debtors believe that, as set forth in the Liquidation Analysis, in a liquidation under chapter 7, holders of Allowed Claims would receive substantially less because of the inability in a liquidation to realize the greater going-concern value of the Debtors' assets. In addition, administrative expenses of a chapter 7 trustee and the trustee's attorneys, accountants and other professionals would cause a substantial erosion of the value of the Debtors' estates. Furthermore, substantial additional Claims would arise by reason of the liquidation and from the rejection of previously assumed unexpired leases and other executory contracts.

##### **2. Risk of Non-Confirmation of the Plan**

The Debtors anticipate that certain parties in interest may file objections to the Plan in an effort to persuade the Bankruptcy Court that the Debtors have not satisfied the confirmation requirements under sections 1129(a) and (b) of the Bankruptcy Code. Even if (a) no objections are filed, (b) all impaired Classes of Claims accept or are deemed to have accepted the Plan or (c) with respect to any Class that rejects or is deemed to reject the Plan, the requirements for "cramdown" are met, the Bankruptcy Court, which can exercise substantial discretion, may determine that the Plan does not meet the requirements for confirmation under sections 1129(a) and (b) of the Bankruptcy Code. Section 1129(a) of the Bankruptcy Code requires, among other things, (a) a demonstration that the Confirmation of the Plan will not be followed by liquidation or need for further financial reorganization of the Debtors, except as contemplated by the Plan, and (b) that the value of distributions to parties entitled to vote on the Plan who vote to reject the Plan not be less than the value of distributions such creditors would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe that the Plan will meet the requirements for Confirmation, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court determines that the Plan violates section 1129 of the Bankruptcy Code in any manner, including, among other things, the cramdown requirements under section 1129(b) of the Bankruptcy Code, the Debtors have reserved the right to amend the Plan in such a manner so as to satisfy the requirements of section 1129 of the Bankruptcy Code.

##### **3. Conditions to Confirmation and to Effectiveness of the Plan**

Sections VIII.A and VIII.B of the Plan provide for certain conditions that must be satisfied (or waived) prior to the Confirmation Date and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. Many of the conditions are outside of the control of the Debtors. As of the date of this Disclosure Statement, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated and the restructuring

completed. See Sections IX.E & IX.F to this Disclosure Statement for a description of the conditions to the Confirmation and effectiveness of the Plan, respectively.

**4. Allowance of Claims**

The estimates of Allowed Claims in this Disclosure Statement are based on the Debtors' review of the proofs of claim Filed in the Chapter 11 Cases and their books and records, as well as the results of Claims objections prosecuted to completion to date. Upon the passage of all applicable Bar Dates, the completion of further analyses of the proofs of claim, the completion of Claims litigation and related matters, the total amount of Claims that ultimately become Allowed Claims in the Chapter 11 Cases may differ from the Debtors' estimates, and such difference could be material. For example, the amount of any Disputed Claim that ultimately is allowed may be significantly more or less than the estimated amount of such Claim used herein. Particular risks exist with respect to those Claims such as Priority Claims, Priority Tax Claims and other Secured Claims, which must be paid in Cash by the Reorganized Debtors under the Plan. If estimates of such Claims are inaccurate, it would directly impact the Reorganized Debtors' finances.

**5. Substantive Consolidation**

Pursuant to Section VII.B of the Plan, the Plan serves as a motion seeking Bankruptcy Court approval of the substantive consolidation of the Debtors' Estates. The Plan, as proposed, classifies Claims and Interests for the substantively consolidated Debtors. If the Bankruptcy Court fails to approve the proposed substantive consolidation, certain parties in interest might assert that the Plan as currently constituted could not be confirmed (although the Debtors reserve their rights to assert otherwise). If the Bankruptcy Court determines that the Plan could not be confirmed, the Debtors would have to modify and potentially re-solicit rejections and acceptances of the Plan, which would serve to prolong the Chapter 11 Cases, or it is possible that the Chapter 11 Cases could be converted to cases under chapter 7 of the Bankruptcy Code. In addition, in the event that substantive consolidation is not approved, it is likely that many creditors holding claims entitled to distributions under the terms of the Plan would receive reduced recoveries in respect of their Allowed Claims compared to the recoveries anticipated under the Plan due to, among other things, the fact that the Debtors anticipate that substantial resources would need to be expended to attempt to establish the assets and liabilities of each individual Debtor and to attempt to reconcile Intercompany Claims. Funds to attempt to allocate assets and liabilities among the Debtors would be paid from funds that otherwise would be available for distribution to creditors.

**B. Risks Relating to the Reorganized Debtors' Financial Condition and Indebtedness**

**1. The Reorganized Debtors' Operations Might Not Be Profitable Post-Emergence**

The Reorganized Debtors' operating performance will be tied to, among other things, their ability to (a) accurately anticipate the costs and the availability of ingredients and other raw materials, fuel, utilities and other expenses; (b) successfully hedge against fluctuations in costs and the availability of raw materials and other input costs; (c) properly manage labor and employee benefits costs; (d) retain the value of their brands and trademarks; (e) successfully implement business strategies and otherwise execute planned changes in various aspects of their business; (f) attract, motivate and retain key executives and employees; (g) attract and retain customers; and (h) maintain favorable terms with their vendors and suppliers. Any one of the above-referenced factors, many of which may be affected by circumstances outside the Debtors' and Reorganized Debtors' control, could have an impact on the Reorganized Debtors' business, financial condition, cash flows and results of operations.

The Debtors' operations have generated losses before income taxes since their emergence from the 2004 Bankruptcy Cases in February 2009 aggregating more than \$1.6 billion. Notwithstanding significant restructuring actions undertaken by the Debtors since emergence from the 2004 Bankruptcy Cases in an effort to improve their profitability, these actions have been insufficient to offset the downward profit pressures, in large part due to the factors cited above. For the fiscal year ended May 29, 2010 — *i.e.*, the first full year after emergence from the 2004 Chapter 11 Cases — the Debtors experienced an operating loss of more than \$55 million. For the fiscal year ended May 28, 2011, the Debtors' audited books and records indicate that the Debtors' operating loss was approximately \$186 million, and the Debtors had a net loss of approximately \$341 million. For the fiscal year ended June 2, 2012, the Debtors' audited financial statements indicate that the Debtors' operating loss was approximately \$1.1 billion, and the Debtors had a net loss of approximately \$1.1 billion (although much of this related to MEPP withdrawal liability).

Although the implementation of the restructuring and other changes contemplated by the Plan and the Revised Turnaround Plan are anticipated to have a positive effect on the Reorganized Debtors' business, the Reorganized Debtors may not be able to meet their Projections or other results that the Reorganized Debtors have assumed in projecting their

future business prospects. If the Reorganized Debtors do not achieve the Projections or other assumed results, compliance with financial covenants may be affected and the Reorganized Debtors may lack sufficient liquidity to continue operating as planned after the Effective Date or to pay in full all distributions required under the Plan. The Projections and other assumed results represent management's current view of the Reorganized Debtors' future operations based on currently known facts and various hypothetical assumptions. The Projections and other assumed results do not, however, guarantee the Reorganized Debtors' future financial performance.

**2. Restrictions Imposed by Indebtedness/ Availability of Further Liquidity**

The various debt instruments contemplated by the Reorganized Debtors' post-emergence capital structure are expected to contain covenants that, among other things and subject to certain exceptions, will require the Reorganized Debtors to satisfy certain financial covenants and will limit the ability of the Reorganized Debtors to (a) incur additional indebtedness, (b) pay dividends or make other restricted payments, (c) sell their assets, (d) enter into transactions with certain affiliates, and (e) create liens. The ability of the Reorganized Debtors to comply with the covenants contained in agreements governing their indebtedness may be affected by events beyond their control. The breach of any of these covenants could result in a default or event of default under the New First Lien Term Loans, New Third Lien Term Loans and/or the Exit Facility, which may result in the entire principal balance of such debt becoming immediately due and payable. Accordingly, these anticipated covenants and the potential for adverse affects upon the Reorganized Debtors' ability to finance future operations, potential acquisitions, capital needs or to engage in business activities that may be in their interest, may, among other things, hinder or prevent the Reorganized Debtors from (a) responding to changing business and economic conditions, (b) engaging in transactions that might otherwise be considered beneficial and (c) implementing the Revised Turnaround Plan.

Moreover, if the Reorganized Debtors require working capital and trade financing greater than that provided by projected operating cash flow, the Exit Facility and trade financing, they may be required either to (a) obtain other sources of financing or (b) curtail their operations. No assurance can be given, however, that any additional replacement financing will be available on terms that are favorable or acceptable to the Reorganized Debtors.

**3. Security Interests**

Substantially all of the Reorganized Debtors' assets will be subject to liens in favor of the Reorganized Debtors' secured lenders, including liens in favor of the lenders that have provided the commitments under the Exit Facility, lenders under the New First Lien Term Loans and New Third Lien Term Loans. If a holder of a security interest becomes entitled to exercise its rights as a secured party, it would have the right to foreclose upon and sell or otherwise transfer the collateral subject to its security interest, and the collateral accordingly would be unavailable to the Reorganized Debtors and to other creditors of the Reorganized Debtors, except to the extent, if any, that such other creditors have a superior or equal security interest in the affected collateral or the value of the affected collateral exceeds the amount of indebtedness in respect of which such foreclosure rights are exercised.

**4. Priority of Liens**

The liens granted to the lenders under the Exit Facility, the New First Lien Term Loans and the New Third Lien Term Loans will be subject to intercreditor arrangements that determine the priority of the liens on the collateral in favor of such lenders. Any rights to payment and claims by lenders will, therefore, be subject to the rights to payment or claims of the other lenders who have superior or equal priority claims with respect to distribution of the collateral and proceeds thereof. Lenders holding priority liens are under no obligation to take into account the interests of lenders holding junior liens when determining whether and how to exercise their rights with respect to the collateral, and the priority lien holders interests may be significantly different from or adverse to the interests of the junior lien holders.

**5. Value of the Collateral**

The value of the collateral securing the Reorganized Debtors' secured indebtedness is subject to fluctuations based on factors that include the condition of the markets and sectors in which the Reorganized Debtors' operate, the ability to sell the collateral in an orderly sale, the condition of the national and local economies, the availability of buyers and other similar factors. The value of the collateral could be impaired in the future as a result of the Reorganized Debtors' failure to implement their business strategy, competition or other future trends. In the event of foreclosure, no assurance can be given that the proceeds from any sale or liquidation of the collateral will be sufficient to satisfy in full the Reorganized Debtors' obligations under the Exit Facility, the New First Lien Term Loans, the New Third Lien Term Loans and any additional indebtedness secured by liens on the collateral. There also can be no assurance that the collateral will be saleable and, even

if saleable, the timing of its liquidation would be uncertain. In addition, governmental or other priority lien lenders may exercise rights and remedies with respect to the collateral that could adversely affect the value of the collateral and the ability of the junior lien lenders to realize or foreclose on the collateral. Consequently, liquidating the collateral may not result in amounts sufficient to pay junior lien lenders after satisfying obligations with senior priority. If the proceeds of any sale of collateral are not sufficient to repay all secured creditors, the secured creditors that are not paid in full would have only unsecured, unsubordinated claims against the Reorganized Debtors' remaining assets.

**6. Perfection of Security Interests**

Liens on certain property and rights to property, such as real property, equipment subject to a state certificate of title statutes and certain proceeds, cannot be perfected by filing a financing statement under and in accordance with the Uniform Commercial Code, as in effect in the applicable jurisdiction and may only be perfected by filings or recordings required to be made under applicable local, state and/or federal law. If any such necessary filings or recordings are not made, liens on such property and property rights will not be perfected and the secured creditors may lose their security interest or priority thereof in favor of third parties.

**7. Projections**

The Projections attached to this Disclosure Statement as Exhibit E are inherently uncertain and are dependent upon the successful implementation of the Debtors' Revised Turnaround Plan and the reliability of certain assumptions regarding general economic conditions, particularly in the United States economy and the baking industry. The Projections reflect numerous assumptions, including Confirmation and consummation of the Plan in accordance with its terms, the anticipated future performance of the Reorganized Debtors, industry performance, general business and economic conditions and other matters (e.g., commodity costs, interest rates, inflation, unemployment rates, consumer spending and other factors), and are subject to many risks, most of which are beyond the control of the Reorganized Debtors. Unanticipated events and circumstances occurring subsequent to the preparation of the Projections may affect the actual financial results of the Reorganized Debtors. Additionally, the Reorganized Debtors may not be able to realize the anticipated benefits of the Revised Turnaround Plan within the time frames currently expected. Therefore, the actual results achieved throughout the periods covered by the Projections may vary from the projected results. These variations may be material and may adversely affect the ability of the Reorganized Debtors to make payments with respect to their obligations following the Effective Date. In addition, this Disclosure Statement does not reflect any events that may occur subsequent to the date of this Disclosure Statement. Any failure to successfully implement the Revised Turnaround Plan business strategy or the Projections within the time frames currently expected, or at all, may have a material impact on the information contained in this Disclosure Statement, and on the Reorganized Debtors' business, financial condition, cash flows or results of operations.

**8. Reorganized Debtors' Business Plans**

The Reorganized Debtors may make changes to their business, operations and current business plans, including the Revised Turnaround Plan, that may have a material impact on the Reorganized Debtors' future results of operations.

**C. Risks Specific to the Debtors' Business and General Economic Risk Factors**

**1. General Business Factors**

The Debtors' operating performance is tied to, among other things, the Debtors' ability to (a) accurately anticipate the costs, availability of ingredients and other raw materials, fuel, utilities and other expenses; (b) successfully hedge against fluctuations in costs and the availability of raw materials and other input costs; (c) properly manage labor and employee benefits costs; (d) retain the value in their brands and trademarks; (e) successfully implement business strategies and otherwise execute planned changes in various aspects of the business; (f) attract, motivate and retain key executives and employees; and (g) attract and retain customers.

Any one of the above-referenced factors, many of which may be affected by circumstances outside the Debtors' control, could have an impact on the Reorganized Debtors' operating performance. In addition, should the Reorganized Debtors experience a significant disruption of terms with vendors and suppliers, or should margins fail to improve, or the availability of capital is affected, compliance with financial covenants and cash resources could be affected.

In addition, there are risks that the goals of the Revised Turnaround Plan will not be achieved. In such event, the Debtors may be forced to sell all or parts of their business or develop and implement further restructuring plans not contemplated in the Plan.

The Reorganized Debtors' business, financial condition, cash flows and operating results may be affected by changes in national or global economic conditions, including inflation, interest rates, the capital markets, consumer spending rates, and governmental initiatives to manage economic conditions. Volatility in financial markets and any deterioration of national and global economic conditions could impact the Reorganized Debtors' business and operations in a variety of ways, including decreased demand, increased volatility in commodity markets and higher raw material and other input costs, changes in consumer sentiment, and an inability to access capital to fund operations or investment opportunities.

## **2. Potential Increases in the Cost of Raw Materials, Fuel and Utilities**

The principal raw materials used to bake the Debtors' fresh bread and sweet goods, including flour (the Debtors' largest single ingredient cost), sugar, corn sweetener, vital wheat gluten, eggs and edible oils, and the paper, films and plastics used to package the Debtors' products, are subject to substantial price fluctuations. The Debtors' distribution operations use substantial amounts of gasoline and diesel fuel to deliver their products. The Debtors also rely on utilities to operate their business. For example, the Debtors' bakeries and other facilities use natural gas, propane and electricity to operate. The prices for raw materials, fuel and utilities are influenced by a number of factors, including: weather, crop production, transportation and processing costs, government regulation and policies, worldwide market supply and demand and alternative demand for raw materials, such as the demand for corn for use in the production of ethanol. Over the past few years, and particularly recently, prices in many of these items have surged. Many commodities have recently been at record levels, and commodity markets are experiencing unprecedented volatility.

High prices for input costs may continue, particularly if crop yield is negatively impacted by adverse weather. Any substantial increase in the prices for, or shortage of, these raw materials, fuel and utilities may adversely affect the Reorganized Debtors' financial condition, results of operations, margins and cash flows, and the Reorganized Debtors may not be able to pass these higher costs on to customers in full or at all. In addition, due to the Chapter 11 Cases, the Debtors have a limited ability to hedge commodities forward to insulate the company from inflation risk. This puts the Debtors at a disadvantage versus their competition. As a result, the Reorganized Debtors may be forced to try to pass on higher costs to customers while competitors may be able to undercut the Reorganized Debtors' pricing, thus harming the Reorganized Debtors' competitiveness.

## **3. Increased Competition**

The baking industry is extremely competitive. Competition is based on product quality, price, customer service, brand recognition and loyalty, effective promotional activities, access to retail outlets and sufficient shelf space and the ability to identify and satisfy consumer preferences. The Debtors compete with large national bakeries, smaller regional operators, small retail bakeries, supermarket chains with their own bakeries, grocery stores with their own in-store bakery departments or private label products and diversified food companies. Some of these competitors are more diversified and many have greater financial resources than the Debtors. From time to time, this competition and the pricing actions of the Debtors' competitors create extreme pricing pressure in certain of their markets. Excess industry capacity could also result in price pressure in certain markets. As a result, the Reorganized Debtors may need to reduce the prices for some of their products to respond to competitive pressures and to maintain market share. Such pressures also may restrict the Reorganized Debtors' ability to pass through costs of raw material, fuel, energy and other inputs. Any reduction in prices as a result of competitive pressures, or any inability to increase prices when raw material, fuel or energy costs increase, would harm profit margins and, if the Reorganized Debtors' sales volumes fail to grow sufficiently to offset any reduction in margins, the Reorganized Debtors' financial condition, results of operations and cash flow would suffer.

With the goals of protecting their existing market share, capturing increased market share and maintaining the value of their brands in this highly competitive environment, the Reorganized Debtors will work to implement the Revised Turnaround Plan and promote their products, advertise and introduce and establish new products. Due to inherent risks in the marketplace associated with advertising and new product introductions, including uncertainties about trade and consumer acceptance, the Reorganized Debtors' actions may not prove successful in maintaining or enhancing their market share or consumer awareness of their brands and could result in lower sales and profits. In addition, the Reorganized Debtors may incur increased costs and other business risks as a result of competing for customers in a highly competitive retail environment.

**4. Consolidation in the Retail Food Industry**

As retail customers (e.g., Wal-Mart) continue to consolidate and gain scale, the Reorganized Debtors' larger customers may seek more favorable terms for their purchases of the Reorganized Debtors' products, including increased spending on promotional programs. In fiscal 2012, Wal-Mart accounted for approximately 14% of the Debtors' net revenue. These consolidations and increases in scale have produced sophisticated customers with increased buying power. These retailers are capable of operating with reduced inventories and can resist price increases and demand lower pricing, all of which could pressure the Reorganized Debtors' margins. In addition, certain retail customers can develop and market their own brands to replace the Debtors' products. The consolidation of retail customers also increases the risk that a severe adverse impact on the customers' business operations could have a corresponding material adverse effect on the Reorganized Debtors. If the Reorganized Debtors were to lose one or more of their significant customers or if a significant customer were to reduce purchases, the Reorganized Debtors' business, financial condition, cash flows or results of operations could be materially and adversely affected.

**5. Labor and Retention Issues**

The Debtors currently employ approximately 18,300 people, of which approximately 83% belong to one of 12 separate unions. The Reorganized Debtors may also become subject to additional collective bargaining agreements in the future as non-unionized workers may unionize. Failure to extend or renew any collective bargaining agreements or a prolonged work stoppage or strike at any facility with union employees could have a material adverse effect on the Reorganized Debtors' business, financial condition, cash flows or results of operations. In addition, the Reorganized Debtors cannot be sure that upon the expiration of existing modified collective bargaining agreements, new agreements will be reached without any union action, if at all, or that any such new agreements will be on terms satisfactory to the Reorganized Debtors.

The Debtors have taken significant cost-reduction actions during the past few years, including actions related to employee compensation and benefits. The impact of these cost-reduction actions may result in a decline in employee morale, retention challenges and the inability to meet production targets due to the loss of employees. A significant portion of the Debtors' non-unionized and management employees have received limited increases in compensation and have seen increases in benefits costs over the last several years, such that their compensation may not be at market levels. Also, as discussed immediately below, further reductions in the form of an 8% wage decrease are required in accordance with the terms of the Debtors' modified CBAs. This could impair the Reorganized Debtors' ability to retain and motivate employees. Turnover, particularly among the management team and highly-skilled personnel, may also create distractions as the Reorganized Debtors search for replacement personnel, which could result in significant recruiting, relocation, training and other costs, and can cause operational inefficiencies as replacement personnel become familiar with the Debtors' business and operations. The Reorganized Debtors may need to provide higher compensation to attract replacement personnel, which could further damage morale among continuing employees. In addition, vacancies in certain areas may be prolonged, which could lead to disruptions over time. If the Reorganized Debtors are unable to attract, hire, retain or motivate personnel or to address vacancies, the Reorganized Debtors' business, financial condition, cash flows or results of operations could be materially and adversely affected.

**6. Management Team Losses and Non-Union Employee Flight Risk Could Negatively Impact Implementation of Business Plan**

The success of the Reorganized Debtors and successful implementation of the Revised Turnaround Plan will depend largely upon the services of their executive officers and management team personnel, including operational, marketing, information technology, human resource and finance personnel. These officers and non-union employees have a strong understanding of the Debtor's business and the industry that cannot be readily replaced. A significant portion of the Debtors' management and non-union employees have received limited increases in compensation and experienced increases in benefits costs during recent years, which has led to turnover. Moreover, the Reorganized Debtors are contractually obligated under the terms of their modified CBAs to use best efforts to implement wage and benefit cost adjustments for management and non-union employees comparable to those set forth in the modified CBAs (i.e., for example, an 8% reduction in the pay in the first year and limited pay increases over the next five years). As a result, for the Debtors to avoid violating the terms of their modified CBAs, the Debtors may have to offer management and non-union employees compensation and benefits at levels below the market rate in various locations. Such a construct could negatively impact both the Reorganized Debtors' ability to retain management and non-union employees and their ability to attract new such employees after the Effective Date.

The loss of any member of the Reorganized Debtors' management team, the loss of key non-union employees and an inability to attract new management team members and non-union employees could impair the Reorganized Debtors' ability to execute the Revised Turnaround Plan, could result in a loss of key customers, suppliers and vendors and reduce revenues and may adversely affect employee morale. If the Reorganized Debtors are unable to retain key members of their management team and non-union employees, their business, financial condition, cash flows or results of operations could be materially and adversely affected.

**7. Demand for the Debtors' Products**

The Debtors have experienced a significant decline in the demand for their branded sweet goods and bread products. According to data from Information Resources Incorporated (the "IRI"), an independent market research concern that reports sales trends in most supermarkets (excluding mass merchandisers, club stores and discount stores), the Debtors' total unit volume of branded sweet goods declined by 4.3% during the latest 52 weeks ending September 5, 2012, and revenues from the Debtors' branded sweet good products declined 1.5% during the same period. The Debtors' total unit volume of branded bread products declined by 9.6% during the latest 52 weeks ending September 5, 2012. Revenues related to the Debtors' bread products declined 5.3% from the comparable period one year ago. Data from IRI also indicates that the declining unit trend in branded bread and sweet goods products was evident in the industry during the 52 week period ending September 5, 2012. The Debtors believe that they will continue to experience reduced demand for their products based on various factors, including some of the factors discussed in greater detail below.

The Reorganized Debtors' success is dependent on anticipating changes in consumer preferences and successfully developing and launching new products and product extensions that are well-received by customers. The Debtors devote significant resources to new product development, however they may not be successful in developing new products that are commercially successful. If the Reorganized Debtors fail to identify, develop, manufacture and market new or improved products in a competitive market, their business, financial condition, cash flows or results of operations could be materially and adversely affected. In addition, the introduction of new products or product extensions may generate litigation or other legal proceedings against the Reorganized Debtors by competitors claiming infringement of their intellectual property or other rights.

In addition, the Reorganized Debtors may need to increase the price for their products because of rising commodity costs. Any increase in the Debtors' prices could have a negative effect on consumer demand for the Debtors' products and their sales and profits.

**8. Changing Consumer Tastes**

The Reorganized Debtors' success depends, in part, on their ability to anticipate the tastes and dietary habits of consumers and to offer products that appeal to consumers' preferences. The inability of the Reorganized Debtors to anticipate and react to fluctuating consumer preferences can result in reduced demand for the Reorganized Debtors' products. There is no guarantee that the Reorganized Debtors' existing and/or new products will meet consumer preferences.

**9. Obesity and Dietary Guidelines**

The Debtors believe that the recent national awareness regarding obesity trends in children and adults and related issues has had an impact on the eating habits of many consumers and, as a result, consumers have changed and will continue to change their consumption of certain products the Debtors sell. While the long-term impact of consumers' concerns about eating habits, including consumption of carbohydrates, calories and fat, is still unclear, changes in consumption habits could impact the demand for the Reorganized Debtors' products going forward. Moreover, dietary guidelines, marketing practices and nutritional labeling requirements promulgated or imposed by various governmental entities — such as guidelines and requirements that recommend, among other things, a reduced intake of saturated and trans fats, cholesterol and added sugar — also could result in reduced demand for certain products the Reorganized Debtors will sell.

**10. Intellectual Property**

The Debtors regard their trademarks—including Wonder®, Hostess®, Nature's Pride®, Home Pride®, Dolly Madison®, Drake's® and Beefsteak®, as well as a number of regional trademarked brands—and their trade secrets and similar intellectual property, as important to their success. The efforts the Debtors have taken to protect their proprietary rights may not be sufficient or effective. In the event that any of their proprietary information is misappropriated, the

Reorganized Debtors' brand image and reputation could be seriously harmed. Accordingly, in the event the Reorganized Debtors are unable to enforce their intellectual property rights (which efforts may prove expensive), it could adversely affect their financial condition, results of operations and cash flows.

Prior to the Petition Date, Interstate Brands was a defendant in litigation in the United States District Court for the Northern District of Georgia brought by Flowers Bakeries Brands, Inc. ("Flowers"). The subject of this litigation is alleged trademark infringement relating to the Debtors' Nature's Pride® brand. Prior to the Petition Date, Flowers sought a permanent injunction to stop alleged continuing infringement by the Debtors of Flowers' trademark, Nature's Own. Additionally, Flowers has sought actual and statutory damages and attorney's fees in the Nature's Pride® litigation. Upon the commencement of the Chapter 11 Cases, the Nature's Pride® litigation had progressed through fact and witness discovery and was nearly set for trial by jury. On the Petition Date, the Nature's Pride® Litigation was stayed pursuant to section 362 of the Bankruptcy Code. A negative result in this litigation could be harmful to the Reorganized Debtors' future business prospects.

**11. Unexpected Costs Associated With Environmental Compliance or Liability**

The Reorganized Debtors' operations are subject to comprehensive federal, state and local laws and regulations relating to environmental protection. Some of their operations require environmental permits and controls to prevent and reduce air and water pollution, or the risk of exposure to chemicals, and these permits are subject to modification, renewal and revocation by the issuing authorities. The Reorganized Debtors will use pesticides, petroleum products, refrigerants and other hazardous materials in the operation of their business. If they do not fully comply with applicable environmental laws and regulations or the permits required for operations, or if a release of hazardous materials occurs at or from one of the Reorganized Debtors' facilities, they could become subject to fines, penalties or other sanctions as well as to lawsuits alleging exposure, personal injury or property damage. The Reorganized Debtors could also be held liable for the cost of remedying the condition or incur costs related to retrofitting or upgrading facilities. In addition, maintaining or achieving compliance with the existing and increasingly stringent future environmental requirements could require the Reorganized Debtors to make material additional expenditures.

**12. Product Liability Claims and Recalls**

The sale of food products for human consumption involves the risk of injury to consumers. The Debtors face risks associated with product recalls and liability claims arising from tampering by unauthorized third parties, spoilage or product contamination, including the presence of foreign objects, substances, chemicals, other agents or residues introduced during the growing, storage, handling or transportation process. While the Debtors are subject to governmental inspection and regulations and believe their facilities and operations comply in all material respects with all applicable laws and regulations, consumption of their products could cause a health-related illness or injury in the future and the Reorganized Debtors could become subject to claims or lawsuits relating to such matters.

Even if a product liability claim is unfounded, unsuccessful or is not fully pursued, the negative publicity surrounding any assertion that such products caused illness or injury could adversely affect the Reorganized Debtors' reputation with existing and potential customers and corporate and brand image. Moreover, claims or liabilities of this sort might not be covered by insurance or by any rights of indemnity or contribution that the Reorganized Debtors may have against others. The Debtors maintain product liability insurance in an amount that is believed to be adequate. However, such insurance may not continue to be available at a reasonable cost, or the Reorganized Debtors may incur claims or liabilities for which they are either not insured or indemnified or which exceed the amount of insurance coverage.

If the Reorganized Debtors are required to recall a product because of a defect in the product or other reasons, the recalls may provide the basis for product liability claims against them. In addition, recalls, whether or not the basis for a product liability claim against the Reorganized Debtors, could damage their reputation.

**13. Government Regulations**

The Debtors' operations and properties are subject to regulation by federal, state and local government entities and agencies. As a baker of fresh baked bread and sweet goods, the Debtors' operations are subject to stringent quality, labeling and traceability standards, including under the Federal Food and Drugs Act of 1906 and Bioterrorism Act of 2002, and rules and regulations governing trade practices, including advertising. The Debtors' operations are also subject to federal, state and local workplace laws and regulations, including the federal Fair Labor Standards Act of 1938 and the federal Occupational Safety and Health Act of 1970. Future compliance with or violation of such regulations, and future regulation by various federal, state and local government entities and agencies, which could become more stringent, may adversely

affect the Reorganized Debtors' financial condition, results of operations and cash flows. The Reorganized Debtors could also be subject to litigation or other regulatory actions arising out of government regulations, which could adversely affect their financial condition, results of operations and cash flows.

**14. Litigation Risk**

The Reorganized Debtors will be subject to various claims and legal actions arising in the ordinary course of their businesses, including, but not limited to, personal injury actions. The Debtors are not able to predict the nature and extent of any such claims and actions and cannot guarantee that the ultimate resolution of such claims and actions will not have a material adverse effect on the Reorganized Debtors.

**15. Negative Publicity**

Negative publicity or news coverage relating to the Reorganized Debtors, including, but not limited to, publicity or news coverage in connection with the Chapter 11 Cases, may negatively impact the Reorganized Debtors' efforts to establish and promote name recognition and a positive image after the Effective Date.

**16. Natural Disasters, Terrorism, Acts of War and General Economic Conditions**

The Reorganized Debtors' corporate offices, bakeries and distribution centers, as well as the operations of vendors from which they receive goods and services, are vulnerable to damage from earthquakes, hurricanes, tornados, fires, floods, power losses, telecommunications failures, computer viruses, acts of terrorism, acts of war and similar events. If any of these events result in damage to facilities or systems, or those of their vendors, the Reorganized Debtors may experience interruptions in business until the damage is repaired, resulting in the potential loss of customers and revenues. In addition, the Reorganized Debtors may incur costs in repairing any damage beyond applicable insurance coverage.

Additionally, the continued threat of terrorism and related heightened security measures in the U.S. may disrupt commerce and the U.S. economy. Any further acts of terrorism or a war may disrupt commerce and undermine consumer confidence, which could negatively impact sales revenue by causing consumer spending and/or shopping center traffic to decline. Furthermore, acts of terrorism, acts of war and military action both in the United States and abroad can have a significant effect on economic conditions and may negatively affect the Reorganized Debtors' ability to purchase merchandise from vendors for sale to customers.

Any significant declines or lack of improvement in general economic conditions, public safety concerns or uncertainties regarding future economic prospects that affect customer spending habits could have a material adverse effect on customer purchases of products. Further, the Revised Turnaround Plan and the Projections make certain assumptions regarding the general economic conditions of the United States economy and the baking industry. An estimate of future economic conditions is subject to many factors outside the Reorganized Debtors' control, including costs for relevant commodities necessary to create the Reorganized Debtors' products, interest rates, inflation, unemployment rates, consumer spending, war and other such factors. Any one of these or other economic factors could have a significant impact on the business, financial condition, cash flows or results of operations of the Reorganized Debtors. Further, there is no guarantee that economic conditions will improve in the near term.

Moreover, the willingness of consumers to purchase premium branded food products depends in part on national and local economic conditions. In periods of economic downturns or uncertainty, consumers tend to purchase more private label or other lower priced products. Any economic downturn could negatively impact the Reorganized Debtors' sales volume of higher margin branded products, adversely affecting the Reorganized Debtors' business, financial condition, cash flows or results of operations.

The Debtors are extremely dependent on information technology systems to manage and support a variety of business processes and activities, and if they are unable to protect against service interruptions, data corruption, cyber-based attacks or network security breaches, their operations could be disrupted. The Debtors rely on information technology and systems to process, transmit and store electronic and financial information, to manage a variety of business processes and activities and to comply with financial, regulatory and other obligations. These information technology systems, some of which are managed by third parties, may be susceptible to damage, disruptions or shutdowns due to failures during the process of upgrading or replacing software, databases or components thereof, power outages, hardware failures, computer viruses, attacks by computer hackers, telecommunication failures, user errors or catastrophic events. If the Reorganized Debtors' information technology systems suffer severe damage, disruption or shutdown their business, financial condition, cash flows or results of operations could be materially and adversely affected. In addition, if the Reorganized Debtors are

unable to prevent security breaches, they may suffer financial and reputational damage or penalties because of the unauthorized disclosure of confidential information belonging to the Reorganized Debtors or their partners, customers or suppliers. Any business interruptions or damage to the Reorganized Debtors' reputation could negatively impact the Reorganized Debtors' business, financial condition, cash flows, operating results, and the market price of the Reorganized Debtors' common stock.

**D. Risks Related to New Hostess Common Stock**

**1. Risks Associated with Receipt and Ownership of New Hostess Common Stock**

As discussed previously, on the Effective Date, New Hostess Common Stock will be distributed to the holders of Third Lien Term Loan Claims and the Unions. Upon implementation of the Plan, each holder of New Hostess Common Stock will become subordinated to all liabilities of Reorganized Hostess. Therefore, the assets of Reorganized Hostess would not be available for distribution to any holder of New Hostess Common Stock in any bankruptcy, liquidation or reorganization of Reorganized Hostess unless and until all indebtedness of the Reorganized Hostess has been paid. See "Overview of the Plan — Summary of Classes and Treatment of Claims and Interests."

**2. No Established Market for New Hostess Common Stock**

The New Hostess Common Stock will not be listed on a national exchange and an established market may not exist for the New Hostess Common Stock, which may impact the liquidity of the New Hostess Common Stock and may have a negative impact on the value of the New Hostess Common Stock. There can be no assurance that any market for the New Hostess Common Stock will develop or that holders will be able to sell their New Hostess Common Stock at a particular time or that the prices that may be received will be favorable.

The Debtors have not attempted to make any estimate of the prices at which the New Hostess Common Stock may trade in connection with the development of the Plan. The value of the New Hostess Common Stock will depend, among other things, upon the number of outstanding shares of New Hostess Common Stock, conditions in the economy and the Reorganized Debtors' financial performance, none of which can be determined or definitively predicted. No assurance can be given as to the value of the New Hostess Common Stock that will prevail following the Effective Date.

The Reorganized Debtors are not expected to be reporting companies under the Securities Exchange Act of 1934, as amended, immediately following the Effective Date, and there can be no assurance that they will become reporting companies at any time thereafter. ANY PERSONS INTENDING TO RELY ON THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 ARE URGED TO CONSULT WITH THEIR OWN COUNSEL AS TO THE REQUIREMENTS THEREOF AND WHETHER SUCH REQUIREMENTS ARE CAPABLE OF BEING SATISFIED AT ANY PARTICULAR TIME.

**3. Certain Holders of New Hostess Common Stock Could Have a Significant Degree of Influence on Reorganized Hostess and Matters Presented to Shareholders**

Certain holders of New Hostess Common Stock are expected to acquire a significant ownership in Reorganized Hostess pursuant to the Plan. In addition, of Reorganized Hostess' nine board seats, six will be selected by the holders of Third Lien Term Loan Claims. Thus, certain holders of Third Lien Term Loan Claims may have a significant influence or control over the operations of Reorganized Hostess and matters presented to shareholders of Reorganized Hostess.

**4. Future Sales of New Hostess Common Stock May Cause Holders to Incur Substantial Dilution**

In the future, Reorganized Hostess may grant equity securities to its employees, consultants and directors under certain stock option and incentive plans, and Reorganized Hostess currently intends to issue equity interests under a management incentive plan to be in effect following emergence from chapter 11. Furthermore, Reorganized Hostess may issue equity securities in connection with future investments, acquisitions or capital raising transactions. Such grants or issuances could constitute a substantial portion of the then-outstanding common stock, which may result in substantial dilution in ownership of common stock.

**5. No Expectation of Dividends in Near Future**

Reorganized Hostess does not anticipate that cash dividends or other distributions will be paid with respect to the New Hostess Common Stock in the foreseeable future. In addition, restrictive covenants in certain debt instruments to which the Reorganized Debtors will, or may, be a party, including the New First Lien Term Loan Facility, the New Third Lien Term Loan Facility and the Exit Facility, may limit the ability of Reorganized Hostess to pay dividends.

**6. Change of Control**

The organization documents for the Reorganized Debtors may contain, and the general corporate law under the jurisdictions of organization for the Reorganized Debtors may contain, provisions that may have the effect of delaying, deterring or preventing a change in control of Reorganized Debtors.

**XV.**

**FEDERAL INCOME TAX CONSEQUENCES OF CONSUMMATION OF THE PLAN**

**A. General**

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW. THE DESCRIPTION IS BASED ON THE INTERNAL REVENUE CODE (THE "IRC"), TREASURY REGULATIONS, JUDICIAL DECISIONS AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT AND ALL SUBJECT TO CHANGE, POSSIBLY WITH RETROACTIVE EFFECT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION COULD CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN IMPORTANT RESPECTS, UNCERTAIN. NO RULING HAS BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE (THE "IRS"); NO OPINION HAS BEEN REQUESTED FROM DEBTORS' COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN; AND NO TAX OPINION IS GIVEN BY THIS DISCLOSURE STATEMENT.

THE DESCRIPTION THAT FOLLOWS DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTORS OR HOLDERS OF CLAIMS. FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX EXEMPT ORGANIZATIONS AND NON-U.S. TAXPAYERS, NOR DOES IT ADDRESS TAX CONSEQUENCES TO HOLDERS OF INTERESTS IN THE DEBTORS. IN ADDITION, THE DESCRIPTION DOES NOT DISCUSS STATE, LOCAL, NON-U.S. OR NON-INCOME TAX CONSEQUENCES.

FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

**B. U.S. Federal Income Tax Consequences to the Debtors**

**1. Cancellation of Debt Income**

Generally, the discharge of a debt obligation by a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) creates cancellation of indebtedness ("COD") income, that must be included in the debtor's income. The amount of the Debtors' COD income is dependent upon the value of the Plan consideration distributed on account of the Claims against the Debtors vis-à-vis the amount of such Claims, as well as the extent to which those Claims constitute debt for federal income tax purposes and whether the payment of such Claims would be deductible for tax purposes. However, COD income is not recognized by a taxpayer that is a debtor in a reorganization case if the discharge is granted by the bankruptcy court or pursuant to a plan of reorganization approved by a bankruptcy court. The Plan, if approved, would enable the Debtors to qualify for this bankruptcy exclusion rule with respect to any COD income triggered by the Plan.

If debt is discharged in a reorganization case, however, certain income tax attributes otherwise available and of value to the debtor are reduced, in most cases by the amount of the indebtedness forgiven. Tax attributes subject to reduction include: (a) net operating losses ("NOLs") and NOL carryforwards; (b) most credit carryforwards, including the general business credit and the minimum tax credit; (c) capital losses and capital loss carryforwards; (d) the tax basis of the debtor's depreciable and nondepreciable assets, but not in an amount greater than the excess of the aggregate tax bases of the property held by the debtor immediately after the discharge over the aggregate of the debtor's liabilities immediately after the discharge; and (e) foreign tax credit carryforwards.

A debtor may elect to avoid the prescribed order of attribute reduction and instead reduce the basis of certain property first. In the case of affiliated corporations filing a consolidated return (such as Hostess and its consolidated subsidiaries), the attribute reduction rules apply first to the separate attributes of or allocable to the particular corporation whose debt is being discharged, and then, if necessary, to certain attributes of other members of the group. Accordingly, COD income of a debtor would result first in the reduction of any consolidated NOLs and other attributes, including asset basis, attributable to such debtor, and then, if necessary, of consolidated NOLs and/or basis attributable to other members of the consolidated group, after use of any such NOLs to determine the consolidated group's taxable income for the tax year in which the debt is discharged.

## 2. Limitation on NOL Carryforwards

### a. General

Section 382 of the IRC provides rules limiting the utilization of a corporation's NOLs and other losses, deductions and credits following a more than 50% change in ownership of a corporation's equity (an "Ownership Change"). An Ownership Change will occur with respect to the Debtors in connection with the Plan. Therefore, post-Effective Date usage of any NOLs and other tax attributes of the Debtors (after reduction for COD income) by the Reorganized Debtors will be limited by section 382(l)(6) of the IRC, unless the Bankruptcy Exception (described below) applies to the transactions contemplated by the Plan. Unless the Bankruptcy Exception applies, the amount of post-ownership change annual taxable income of the Reorganized Debtors that can be offset by the pre-ownership change NOLs of the Debtors generally cannot exceed an amount equal to the product of (a) the applicable federal long-term tax-exempt rate in effect on the date of the ownership change and (b) the value of Hostess' stock immediately prior to implementation of the Plan (the "Annual Limitation"). The value of Hostess' stock for purposes of this computation would reflect the increase, if any, in value resulting from any surrender or cancellation of any Claims in the Chapter 11 Cases.

Any unused Annual Limitation may be carried forward, thereby increasing the Annual Limitation in the subsequent taxable year. However, if Reorganized Hostess does not continue Hostess' historic businesses or use a significant portion of its assets in a new business for two years after the ownership change (the "Business Continuity Requirement"), the Annual Limitation resulting from the ownership change is zero.

In addition, the Annual Limitation may be increased if Hostess has a net unrealized built-in gain at the time of an ownership change. If, however, Hostess has a net unrealized built-in loss at the time of an ownership change, the Annual Limitation may apply to such net unrealized built-in loss. Although the issue is not free from doubt, the Debtors anticipate that they will be in a net unrealized built-in gain position at the time the Plan is implemented.

### b. Bankruptcy Exception

Section 382(l)(5) of the IRC (the "Bankruptcy Exception") provides that the Annual Limitation will not apply to limit the utilization of the Reorganized Debtors' NOLs or built-in losses if the New Hostess Common Stock owned by those Persons who were stockholders of Hostess immediately before the ownership change, together with New Hostess Common Stock received by certain holders of Allowed Claims pursuant to the Plan, comprise 50% or more of the value of all of the New Hostess Common Stock outstanding immediately after the ownership change. New Hostess Common Stock received by such holders will be included in the 50% calculation if, and to the extent that, such holders constitute "qualified creditors." A "qualified creditor" is a holder of an Allowed Claim that (i) was held by such holder since the date that is 18 months before the date on which the Debtors first filed their petition with the Bankruptcy Court or (ii) arose in the ordinary course of business and is held by the Person who at all times held the beneficial interest in such Allowed Claim. In determining whether the Bankruptcy Exception applies, certain holders of Allowed Claims that would own a *de minimis* amount of New Hostess Common Stock pursuant to the Plan are presumed to have held their Claims since the origination of such Claims. In general, this *de minimis* rule applies to holders of Allowed Claims who would own directly or indirectly less than 5% of the total fair market value of New Hostess Common Stock pursuant to the Plan.

If the Bankruptcy Exception applies, a subsequent ownership change with respect to the Reorganized Debtors occurring within two years after the Effective Date will result in the reduction of the Annual Limitation that would otherwise apply to the subsequent ownership change to zero. Thus, an ownership change within two years after the Effective Date would eliminate the ability of the Reorganized Debtors to use NOLs thereafter. However, if the Bankruptcy Exception applies, the Business Continuity Requirement does not apply, although a lesser business continuation requirement may apply under Treasury Regulations. If a change of ownership occurs after the two years following the Effective Date, then the Reorganized Debtors will become subject to limitation in the use of their NOLs based upon the value of the Reorganized Debtors at the time of that subsequent change.

The Reorganized Debtors expect that the Bankruptcy Exception will apply unless the Reorganized Debtors elect to not have the Bankruptcy Exception apply, in which event the Annual Limitation would apply. The Reorganized Debtors have not yet determined whether they will elect to not have the Bankruptcy Exception apply, and they have until the due date of the tax return for the taxable year of the Effective Date to make such a determination.

Although the Annual Limitation will not apply to restrict the deductibility of NOLs if the Bankruptcy Exception applies, NOLs of the Reorganized Debtors will be reduced by the amount of any deduction for any interest paid or accrued, with respect to all Allowed Claims converted into New Hostess Common Stock, by the Debtors during the three taxable years preceding the taxable year in which the ownership change occurs and during the portion of the taxable year of the ownership change preceding the ownership change.

### **3. Alternative Minimum Tax**

In general, a federal alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income ("AMTI") at a 20% rate to the extent that such tax exceeds the corporation's regular federal income tax for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. In particular, even though a corporation might otherwise be able to offset all of its taxable income for regular federal income tax purposes by available NOL carryforwards, a corporation is generally entitled to offset no more than 90% of its AMTI with NOL carryforwards (as recomputed for AMT purposes). Accordingly, usage of the Debtors' NOLs by the Reorganized Debtors may be subject to limitations for AMT purposes in addition to any other limitations that may apply.

In addition, if a corporation (or a consolidated group) undergoes an ownership change and is in a net unrealized built-in loss position on the date of the ownership change, the corporation's (or group's) aggregate tax basis in its assets may be reduced for certain AMT purposes to reflect the fair market value of such assets as of the change date.

Any AMT that a corporation pays generally will be allowed as a nonrefundable credit against its regular federal income tax liability in future taxable years when the corporation is no longer subject to AMT.

### **4. OID**

The New First Lien Term Loans and the New Third Lien Term Loans will provide for the payment of some or all of the interest in kind and therefore are expected to be issued with original issue discount ("OID"), which the Reorganized Debtors generally can deduct as it accrues for U.S. federal income tax purposes.

### **5. Restructuring Transactions**

The Restructuring Transactions will constitute, for federal income tax purposes, a "reorganization" of the Debtors that generally will not be taxable to the Debtors, and the NOLs and other tax attributes of the Debtors generally will carry over to the Reorganized Debtors subject to certain reductions and limitations including those described herein.

Other federal income tax consequences to the Debtors may result depending on the terms of any additional Restructuring Transactions that occur with respect to the Debtors.

## **C. U.S. Federal Income Tax Consequences to Holders of Claims**

The federal income tax consequences of the Plan to a holder of a Claim will depend, in part, on whether the Claim constitutes a "tax security" for federal income tax purposes, what type of consideration was received in exchange for the Claim, whether the holder reports income on the accrual or cash basis, whether the holder has taken a bad debt deduction or

worthless security deduction with respect to the Claim and whether the holder receives distributions under the Plan in more than one taxable year.

**1. Definition of Securities**

There is no precise definition of the term "security" under the federal income tax law. Rather, all facts and circumstances pertaining to the origin and character of a claim are relevant in determining whether it is a security. Nevertheless, courts generally have held that a debt instrument having a term of less than five years will not be considered a tax security, while corporate debt evidenced by a written instrument and having an original maturity of ten years or more will be considered a tax security.

The First Lien Term Loan (Tranche A) was incurred by Interstate Brands and Hostess and has a maturity of five years; the First Lien Term Loan (Tranche B) was incurred by IBC Sales and has a maturity of five years; and the Third Lien Term Loan was incurred by Interstate Brands and Hostess and has a maturity of six years. It is unclear whether any such loans are tax securities. The New First Lien Term Loans will be incurred by Reorganized Interstate Brands and Reorganized Hostess and will have maturities of five years; and the New Third Lien Term Loans will be incurred by Reorganized Interstate Brands and will have maturities of five and a half years. It is unclear whether any such loans will be tax securities.

**2. Holders of Claims Constituting Tax Securities Exchanged for New Hostess Common Stock and/or New Tax Securities of the Same Issuer**

Under the Plan, holders of certain Allowed Claims which may constitute tax securities may receive New Hostess Common Stock, new debt constituting tax securities of the same issuer, and/or Cash. A holder of a Claim constituting a tax security who receives New Hostess Common Stock, new debt constituting tax securities of the same issuer, and/or Cash would recognize gain (but not loss), if any, to the extent of any Cash received. To the extent any portion of a holder's recovery is allocable to interest on the Claim, such portion would be treated as interest income to such holder. See "Certain Other Tax Considerations for Holders of Claims — Accrued but Unpaid Interest" below for a discussion of the allocation of recoveries first to principal and then to interest.

A holder's aggregate tax basis in any New Hostess Common Stock and any new debt constituting tax securities of the same issuer (apart from any portion thereof allocable to interest) would equal the portion of the holder's basis in its Allowed Claim allocable to the New Hostess Common Stock and to the new debt constituting tax securities of the same issuer, allocated between such New Hostess Common Stock and such new debt based on the fair market value of such New Hostess Common Stock and the issue price of such new debt. The holding period for the New Hostess Common Stock and the new debt constituting tax securities of the same issuer (apart from any portion allocable to interest) would include the holding period of the Allowed Claims surrendered.

To the extent any portion of a holder's recovery is allocable to interest, the holder's tax basis in the New Hostess Common Stock and the new debt constituting tax securities of the same issuer would be allocated proportionately to such interest, and the holding period of such New Hostess Common Stock or such debt allocable to interest would begin on the day after the day of receipt.

Any gain recognized would be capital or ordinary, depending on the status of the Claim in the holder's hands, including whether the Claim constitutes a market discount bond in the holder's hands. Generally, any gain recognized by a holder of an Allowed Claim would be a long-term capital gain if the Claim is a capital asset in the hands of the holder and the holder has held such Claim for more than one year, unless the holder had previously claimed a bad debt deduction or the holder had accrued market discount with respect to such Claim. See "Certain Other Tax Considerations for Holders of Claims — Market Discount" below for a discussion of the character of any gain recognized from a Claim with accrued market discount.

**3. Holders of Claims Not Constituting Tax Securities and/or Tax Securities Exchanged for Property Other than New Hostess Common Stock or New Tax Securities of the Same Issuer**

A holder of an Allowed Claim that is not a tax security or that is a tax security but is exchanged for property other than New Hostess Common Stock or new tax securities of the same issuer, would recognize gain or loss in an amount equal to the difference between (a) the amount of Cash, the fair market value of New Hostess Common Stock, and/or the issue price of the new debt, as applicable, received by the holder with respect to its Allowed Claim and (b) the holder's adjusted

tax basis in its Claim. All holders are urged to consult their tax advisors regarding the possible application of, or ability to elect out of, the "installment method" of reporting gain that may be recognized in respect of a Claim.

To the extent any portion of a claimholder's recovery is allocable to interest on the Claim, such portion would be treated as interest income to such holder. See "Certain Other Tax Considerations for Holders of Claims— Accrued but Unpaid Interest" below for a discussion of the allocation of recoveries first to principal and then to interest.

The tax basis of any New Hostess Common Stock received under the Plan by a holder of an Allowed Claim not constituting a tax security would equal the fair market value of the New Hostess Common Stock received by the holder. The tax basis of any new debt received under the Plan by the holder of an Allowed Claim not constituting a tax security, or constituting a tax security not issued by the same issuer, would equal the issue price of the new debt on the date of distribution to the holder. The holding period for any such New Hostess Common Stock and/or new debt received under the Plan by such a holder generally would begin on the day following the day of receipt.

Any gain or loss recognized would be capital or ordinary, depending on the status of the Claim in the holder's hands, including whether the Claim constitutes a market discount bond in the holder's hands. Generally, any gain or loss recognized would be a long-term capital gain or loss if the Claim is a capital asset in the hands of the holder and the holder has held such Claim for more than one year, unless the holder had previously claimed a bad debt deduction or the holder had accrued market discount with respect to such Claim. See "Certain Other Tax Considerations for Holders of Claims— Market Discount" below for a discussion of the character of any gain recognized from a Claim with accrued market discount.

#### **D. Certain Other Tax Considerations for Holders of Claims**

##### **1. Certain Tax Consequences of Owning New Debt Issued by the Reorganized Debtors**

###### **a. Interest**

Stated interest on a new debt issued pursuant to the Plan by the Reorganized Debtors generally will be taxable to a holder as ordinary interest income at the time it accrues or is received in accordance with such holder's method of accounting for U.S. federal income tax purposes.

The New First Lien Term Loans and the New Third Lien Term Loans will provide for the payment of some or all of the interest in kind and therefore are expected to be issued with OID. A holder of new debt issued pursuant to the Plan with OID will be required to include OID in gross income as ordinary income as it accrues on a constant yield to maturity basis for U.S. federal income tax purposes in advance of receiving cash that corresponds to that income (regardless of the holder's regular method of tax accounting).

###### **b. Sale or Exchange**

Upon a sale, exchange, redemption, repurchase or other taxable disposition of new debt issued pursuant to the Plan by the Reorganized Debtors, a holder generally will recognize taxable gain or loss. The amount of such gain or loss will be measured by the difference, if any, between (i) the amount of cash plus the fair market value of any other property received in exchange for the disposed new debt, excluding any such amount attributable to accrued but unpaid interest, and (ii) the holder's adjusted tax basis in the disposed new debt. Any amount received by the holder attributable to accrued but unpaid interest will be taxed as such, as described under the heading "—Interest" above.

A holder's adjusted tax basis in a new debt instrument issued pursuant to the Plan will be determined in the manner described under the heading "U.S. Federal Income Tax Consequences to Holders of Claims" above, increased by the amount of any OID previously included in income, and reduced by any Cash payments received on account of the debt other than stated interest and by any amortizable bond premium previously amortized. Gain or loss recognized by a U.S. holder generally will be capital gain or loss and, if such holder held the debt instrument for more than one year at the time of the disposition, long-term capital gain or loss. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, generally will be subject to a reduced tax rate. The deductibility of capital losses is subject to limitations.

**2. Medicare Surtax**

Legislation enacted in 2010 will require certain U.S. holders who are individuals, estates or trusts to pay a 3.8% Medicare surtax on all or part of that holder's "net investment income," which includes, among other items, dividends on stock and interest (including OID) on, and capital gains from the sale or other taxable disposition of, debt. This surtax will apply to taxable years beginning after December 31, 2012. Holders should consult their own tax advisors regarding the effect, if any, of this legislation on their ownership of New Hostess Common stock and new debt issued pursuant to the Plan by the Reorganized Debtors.

**3. Accrued but Unpaid Interest**

In general, a Claim holder that was not previously required to include in taxable income any accrued but unpaid interest on the Claim may be required to take such amount into income as taxable interest. A Claim holder that was previously required to include in taxable income any accrued but unpaid interest on the Claim may be entitled to recognize a deductible loss to the extent that such interest is not satisfied under the Plan. The Plan provides that, to the extent applicable, all distributions to a holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount is paid in full and then to any interest accrued on such Claim prior to the Petition Date, and the remaining portion of such distributions, if any, will apply to any interest accrued on such Claim after the Petition Date. There is no assurance, however, that the IRS will respect this treatment and will not determine that all or a portion of amounts distributed to such holder and attributable to principal under the Plan is properly allocable to interest. Each holder of a Claim on which interest has accrued is urged to consult its tax advisor regarding the tax treatment of distributions under the Plan and the deductibility of any accrued but unpaid interest for federal income tax purposes.

**4. Post-Effective Date Distributions**

Holders of Claims may receive distributions subsequent to the Effective Date. The imputed interest provisions of the IRC may apply to treat a portion of any Post Effective Date distribution as imputed interest. Imputed interest may, with respect to certain holders, accrue over time using the constant interest method, in which event the holder may, under some circumstances, be required to include imputed interest in income prior to receipt of a distribution.

**5. Reinstatement of Claims**

Holders of Claims that will be Reinstated generally should not recognize gain, loss or other taxable income upon the Reinstatement of their Claims under the Plan. Taxable income, however, may be recognized by those holders if they are considered to receive interest, damages or other income in connection with the Reinstatement or if the Reinstatement is considered for tax purposes to involve a substantial modification of the Claim.

**6. Bad Debt and/or Worthless Securities Deduction**

A holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the holder's tax basis in the Allowed Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under section 166(a) of the IRC or a worthless securities deduction under section 165 of the IRC. The rules governing the character, timing and amount of bad debt or worthless securities deductions place considerable emphasis on the facts and circumstances of the holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

**7. Market Discount**

A holder that purchased its Claim from a prior holder with market discount will be subject to the market discount rules of the IRC. Under those rules, assuming that the holder has made no election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized on the exchange of its Claim (subject to a *de minimis* rule) generally would be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

To the extent that a holder's Claim is exchanged in a transaction in which gain or loss is not recognized for U.S. federal income tax purposes, any accrued market discount not treated as ordinary income upon such exchange should carry over, on an allocable basis, to any New Hostess Common Stock or any tax security issued by the same issuer received under the Plan, such that any gain recognized by the holder upon a subsequent disposition of such New Hostess Common

Stock or such tax security would be treated as ordinary income to the extent of any accrued market discount not previously included in income.

**8. Installment Method**

A holder of a Claim constituting an installment obligation for tax purposes may be required to recognize currently any gain remaining with respect to the obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold, or otherwise disposed of within the meaning of section 453B of the IRC.

**9. Information Reporting and Backup Withholding**

All distributions under the Plan will be subject to applicable federal income tax reporting and withholding. The IRC imposes "backup withholding" (currently at a rate of 28% but scheduled to increase to 31% in 2013) on certain "reportable" payments to certain taxpayers, including payments of interest. Under the IRC's backup withholding rules, a holder of a Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan, unless the holder (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional federal income tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of income tax. A holder of a Claim may be required to establish an exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

**E. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**XVI.**

**APPLICABILITY OF CERTAIN FEDERAL AND STATE SECURITIES LAWS**

**A. General**

The following is a discussion of the federal and state securities laws applicable to the issuance of securities pursuant to the Plan, including the New Hostess Common Stock.

The Debtors anticipate that no registration statement will be filed under the Securities Act or any state securities laws with respect to the offer and distribution under the Plan of the securities. The Debtors believe that the provisions of section 1145(a)(1) of the Bankruptcy Code exempt the offer and distribution of such securities under the Plan from federal and state securities registration requirements as discussed below.

**1. Initial Offer and Sale**

Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of reorganization from registration under the Securities Act and state securities laws if three principal requirements are satisfied: (a) the securities must be offered and sold under a plan of reorganization and must be securities of the debtor, an affiliate participating in a joint plan with the debtor or a successor to the debtor under the plan; (b) the recipients of the securities must hold a prepetition or administrative expense claim against the debtor or an interest in the debtor; and (c) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor, or principally in such exchange and partly for cash or property. Section 1145(a)(2) of the Bankruptcy Code exempts the offer of a security through any warrant, option, right to purchase or conversion privilege that is sold in the manner specified in section 1145(a)(1) and the sale of a security upon the exercise of such a warrant, option, right or privilege. The Debtors believe that the offer and sale

of the securities under the Plan satisfy the requirements of section 1145(a)(1) of the Bankruptcy Code and, therefore, are exempt from registration under the Securities Act and state securities laws.

**2. Subsequent Transfers**

In general, all resales and subsequent transactions in the securities issued pursuant to the Plan will be exempt from registration under the Securities Act pursuant to section 4(1) of the Securities Act, unless the holder thereof is deemed to be an "underwriter" with respect to such securities, an "affiliate" of the issuer of such securities or a "dealer." Section 1145(b) of the Bankruptcy Code defines four types of "underwriters":

- a. persons who purchase a claim against, an interest in, or a claim for administrative expense against the debtor with a view to distributing any security received in exchange for such a claim or interest ("accumulators");
- b. persons who offer to sell securities offered under a plan for the holders of such securities ("distributors");
- c. persons who offer to buy securities from the holders of such securities, if the offer to buy is (i) with a view to distributing such securities and (ii) made under a distribution agreement; and
- d. a person who is an "issuer" with respect to the securities, as the term "issuer" is defined in section 2(11) of the Securities Act.

Under section 2(11) of the Securities Act, an "issuer" includes any "affiliate" of the issuer, which means any person directly or indirectly through one or more intermediaries controlling, controlled by or under common control with the issuer. Under section 2(12) of the Securities Act, a "dealer" is any person who engages either for all or part of such person's time, directly or indirectly, as agent, broker or principal in the business of offering, buying, selling or otherwise dealing or trading in securities issued by another person. Whether or not any particular person would be deemed to be an "underwriter" or an "affiliate" with respect to any security to be issued pursuant to the Plan or to be a "dealer" would depend upon various facts and circumstances applicable to that person. Accordingly, the Debtors express no view as to whether any person would be deemed to be an "underwriter" or an "affiliate" with respect to any security to be issued pursuant to the Plan or to be a "dealer."

In connection with prior bankruptcy cases, the staff of the SEC has taken the position that resales by accumulators and distributors of securities distributed under a plan of reorganization are exempt from registration under the Securities Act if effected in "ordinary trading transactions." The staff of the SEC has indicated in this context that a transaction may be considered an "ordinary trading transaction" if it is made on an exchange or in the over-the-counter market and does not involve any of the following factors:

- a. either (i) concerted action by the recipients of securities issued under a plan in connection with the sale of such securities or (ii) concerted action by distributors on behalf of one or more such recipients in connection with such sales;
- b. the use of informational documents concerning the offering of the securities prepared or used to assist in the resale of such securities, other than a bankruptcy court-approved disclosure statement and supplements thereto and documents filed with the SEC pursuant to the Exchange Act; or
- c. the payment of special compensation to brokers and dealers in connection with the sale of such securities designed as a special incentive to the resale of such securities (other than the compensation that would be paid pursuant to arm's-length negotiations between a seller and a broker or dealer, each acting unilaterally, not greater than the compensation that would be paid for a routine similar-sized sale of similar securities of a similar issuer).

*The Debtors have not sought the views of the SEC on this matter and, therefore, no assurance can be given regarding the proper application of the "ordinary trading transaction" exemption described above. Any persons intending to rely on such exemption are urged to consult their own counsel as to the applicability thereof to any particular circumstances.*

In addition, for any "affiliate" of an issuer deemed to be an underwriter, Rule 144 under the Securities Act provides a safe-harbor from registration under the Securities Act for certain limited public resales of unrestricted securities

by "affiliates" of the issuer of such securities. Rule 144 allows a holder of unrestricted securities that is an affiliate of the issuer of such securities to sell, without registration, within any three-month period a number of shares of such unrestricted securities that does not exceed the greater of 1% of the number of outstanding securities in question or the average weekly trading volume in the securities in question during the four calendar weeks preceding the date on which notice of such sale was filed pursuant to Rule 144, subject to the satisfaction of certain other requirements of Rule 144 regarding the manner of sale, notice requirements and the availability of current public information regarding the issuer.

GIVEN THE COMPLEX NATURE OF THE QUESTION OF WHETHER A PARTICULAR PERSON MAY BE AN UNDERWRITER, THE DEBTORS MAKE NO REPRESENTATIONS CONCERNING THE RIGHT OF ANY PERSON TO TRADE IN THE SECURITIES ISSUED PURSUANT TO THE PLAN. THE DEBTORS RECOMMEND THAT HOLDERS OF CLAIMS CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE SUCH SECURITIES.

**3. Subsequent Transfers Under State Law**

State securities laws generally provide registration exemptions for subsequent transfers by a bona fide owner for the owner's own account and subsequent transfers to institutional or accredited investors. Such exemptions generally are expected to be available for subsequent transfers of the securities issued pursuant to the Plan.

**XVII.**

**ADDITIONAL INFORMATION**

Any statements in this Disclosure Statement concerning the provisions of any document are not necessarily complete, and in each instance reference is made to such document for the full text thereof. Certain documents described or referred to in this Disclosure Statement have not been attached as Exhibits because of the impracticability of furnishing copies of these documents to all recipients of this Disclosure Statement. All Exhibits to the Plan will be Filed with the Bankruptcy Court and available for review, free of charge, on the Document Websites no later than [\_\_\_\_], 2012 (i.e., seven (7) days prior to the Voting Deadline). Copies of all Exhibits to the Plan also may be obtained, free of charge, by contacting the Solicitation and Tabulation Agent by (a) telephone for U.S. and Canadian callers toll-free at 877-573-3984, and for international callers at +1-310-751-1829 or (b) written request to Hostess Brands, Inc., c/o KCC, 2335 Alaska Avenue, El Segundo, California 90245. All parties entitled to vote on the Plan are encouraged to obtain and review all Exhibits to the Plan prior to casting their vote.

**XVIII.**

**RECOMMENDATION AND CONCLUSION**

The Debtors believe that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all parties entitled to vote to accept the Plan and to evidence their acceptance by duly completing and returning their Ballots so that they will be received on or before the Voting Deadline.

Dated: October 10, 2012

Respectfully submitted,

HOSTESS BRANDS, INC. (on its own behalf and on  
behalf of each affiliate Debtor)

By: /s/ Gregory Rayburn

Name: Gregory Rayburn

Title: Chief Executive Officer

**EXHIBIT A**

THE PLAN

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
:  
In re : Chapter 11  
:  
Hostess Brands, Inc., *et al.*, : Case No. 12-22052 (RDD)  
:  
: (Jointly Administered)  
Debtors. :  
:  
-----X

**JOINT PLAN OF REORGANIZATION OF  
DEBTORS AND DEBTORS IN POSSESSION**

CORINNE BALL  
HEATHER LENNOX  
RYAN T. ROUTH (RR 1994)  
JONES DAY  
222 East 41st Street  
New York, New York 10017  
Telephone: (212) 326-3939  
Facsimile: (212) 755-7306

ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

October 10, 2012

---

<sup>1</sup> The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Hostess Brands, Inc. (0322), IBC Sales Corporation (3634), IBC Services, LLC (3639), IBC Trucking, LLC (8328), Interstate Brands Corporation (6705) and MCF Legacy, Inc. (0599).

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I	DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME..... 1
A.	Defined Terms ..... 1
B.	Rules of Interpretation and Computation of Time ..... 16
1.	Rules of Interpretation ..... 16
2.	Computation of Time..... 17
ARTICLE II	CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS ..... 17
A.	Unclassified Claims ..... 17
1.	Payment of Administrative Claims ..... 17
2.	Payment of Priority Tax Claims ..... 20
B.	Classified Claims and Interests ..... 20
1.	Priority Claims Against the Debtors (Class 1 Claims)..... 20
2.	Senior Secured Revolving Credit Claims Against the Debtors (Class 2A Claims) ..... 21
3.	First Lien Term Loan Tranche A/B Designated Claims Against the Debtors (Class 2B Claims)..... 21
4.	First Lien Term Loan Tranche A/B Non-Designated Claims Against the Debtors (Class 2C Claims) ..... 21
5.	First Lien Term Loan Tranche C Claims Against the Debtors (Class 2D Claims) ..... 21
6.	Third Lien Term Loan Claims Against the Debtors (Class 2E Claims) ..... 21
7.	Other Secured Claims Against the Debtors (Class 2F Claims)..... 21
8.	General Unsecured Claims Against the Debtors (Class 3 Claims) ..... 22
9.	Prepetition Intercompany Claims (Class 4 Claims)..... 22
10.	Old Common Stock of Hostess Interests (Class 5 Interests)..... 22
11.	Subsidiary Debtor Equity Interests (Class 6 Interests) ..... 22
C.	Special Provisions Regarding the Treatment of Allowed Secondary Liability Claims; Maximum Recovery..... 22
ARTICLE III	MEANS FOR IMPLEMENTATION OF THE PLAN ..... 22
A.	Continued Corporate Existence and Vesting of Assets..... 22
B.	Restructuring Transactions ..... 23
1.	Restructuring Transactions Generally..... 23
2.	Obligations of Any Successor Corporation in a Restructuring Transaction ..... 23
C.	New Stockholder Agreement..... 23
D.	Corporate Governance and Directors and Officers ..... 24
1.	Certificates of Incorporation and Bylaws of Reorganized Hostess..... 24
2.	Directors and Officers of Reorganized Hostess ..... 24
E.	New Hostess Common Stock..... 24
1.	Issuance of New Hostess Common Stock..... 24

Pg 118 of 184  
**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
F.	Implementation of Global Resolution and Non-Consenting Union 1113/1114 Orders ..... 25
1.	Assumption and Assignment of Collective Bargaining Agreements ..... 25
2.	Withdrawal From and Re-Entry Into MEPPs ..... 25
3.	Union Concession Distribution Property ..... 25
4.	Distribution and Allocation of Union Concession Distribution Property ..... 25
G.	Excess Cash ..... 25
H.	Employment, Retirement and Other Related Agreements; Cessation of Retiree Benefits; Workers' Compensation Programs ..... 26
1.	Employment-Related Agreements ..... 26
2.	Retiree Benefits ..... 26
3.	Company Pension Plan ..... 26
4.	Continuation of Workers' Compensation Programs ..... 26
5.	Equity Incentive Plan ..... 26
I.	Confirmation Cash Infusion ..... 26
J.	Corporate Action ..... 27
K.	Special Provisions Regarding Insured Claims ..... 27
1.	Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims ..... 27
2.	Assumption and Continuation of Insurance Policies ..... 27
L.	Preservation of Causes of Action by the Debtors and Reorganized Debtors ..... 27
M.	Cancellation and Surrender of Instruments, Securities and Other Documentation ..... 28
N.	Release of Liens ..... 28
O.	Effectuating Documents; Further Transactions ..... 28
P.	Exemption from Certain Transfer Taxes ..... 28
ARTICLE IV	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES ..... 29
A.	Executory Contracts and Unexpired Leases to Be Assumed ..... 29
1.	Assumption and Assignment, Generally ..... 29
2.	Assumptions and Assignments of Ancillary Agreements ..... 29
B.	Payments Related to the Assumption of Executory Contracts or Unexpired Leases ..... 29
C.	Contracts and Leases Entered Into or Assumed After the Petition Date ..... 30
D.	Rejection of Executory Contracts and Unexpired Leases ..... 30
1.	Agreements to Be Rejected ..... 30
2.	Procedures Relating to Rejection ..... 30
E.	Bar Date for Rejection Damages ..... 30
F.	Approval of Assumptions and Assignments and Related Procedures ..... 30
G.	Obligations to Indemnify Directors, Officers and Employees ..... 31

Pg 119 of 184  
**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
H. No Change in Control .....	32
ARTICLE V PROVISIONS GOVERNING DISTRIBUTIONS .....	32
A. Distributions for Claims Allowed as of the Effective Date.....	32
B. Method of Distributions and Calculation of Amounts to be Distributed.....	32
1. Determination of Aggregate Amount of New First Lien Term Loans.....	32
2. Distributions of First Lien Term Loan Tranche A/B Designated Plan Distribution Property and Distribution on Allowed First Lien Term Loan Tranche C Claims .....	33
3. Distributions of First Lien Term Loan Tranche A/B Non-Designated Plan Distribution Property .....	33
4. Distribution of Third Lien Term Loan Plan Distribution Property .....	33
5. Distribution of Union Concession Distribution Property.....	34
6. Distributions for Claims and Interests Allowed as of the Effective Date .....	34
C. Compensation and Reimbursement for Services Related to Distributions.....	34
D. Distributions to Holders of Allowed Compromise Administrative Claims.....	35
1. Funding of the Compromise Administrative Claim Reserve.....	35
2. Distributions to Holders of Compromise Administrative Claims.....	35
3. Cash Receipts and Distributions .....	35
4. Recourse .....	35
E. Delivery of Distributions and Undeliverable or Unclaimed Distributions.....	36
1. Delivery of Distributions .....	36
2. Undeliverable Distributions Held by Disbursing Agents.....	36
F. Timing and Calculation of Amounts to Be Distributed .....	36
1. Distributions to Holders of Allowed Claims.....	36
2. Interest on Claims .....	37
3. De Minimis Distributions .....	37
4. Distributions of New Hostess Common Stock – No Fractional Shares; Rounding .....	37
G. Distribution Record Date .....	37
H. Means of Cash Payments .....	37
I. Establishment of Reserves .....	37
J. Withholding and Reporting Requirements.....	37
K. Reorganized Debtor Setoffs .....	38
L. Application of Distributions.....	38
ARTICLE VI PROCEDURES FOR RESOLVING DISPUTED CLAIMS .....	38
A. Treatment of Disputed Claims .....	38
1. ADR Procedures .....	38

Pg 120 of 184  
**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
2. Tort Claims .....	38
3. Disputed Insured Claims.....	39
4. No Distributions Until Allowance .....	39
B. Prosecution of Objections to Claims .....	39
1. Objections to Claims.....	39
2. Extension of Claims Objection Bar Date.....	40
3. Authority to Prosecute Objections .....	40
4. Authority to Amend Schedules.....	40
C. Distributions on Account of Disputed Claims Once Allowed .....	40
ARTICLE VII SUBSTANTIVE CONSOLIDATION .....	40
A. Substantive Consolidation.....	40
B. Order Granting Consolidation.....	40
ARTICLE VIII CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN .....	41
A. Conditions Precedent to Confirmation.....	41
B. Conditions Precedent to the Effective Date .....	41
C. Waiver of Conditions to the Confirmation or Effective Date .....	42
D. Effect of Nonoccurrence of Conditions to the Effective Date .....	42
ARTICLE IX CRAMDOWN .....	42
ARTICLE X EFFECT OF CONFIRMATION OF THE PLAN .....	42
A. Creditors' Committee .....	42
B. Comprehensive Settlement of Claims and Controversies .....	43
C. Discharge of Claims and Termination of Interests.....	43
1. Complete Satisfaction, Discharge and Release.....	43
2. Discharge and Termination.....	43
D. Injunction .....	43
E. Releases .....	44
1. General Releases by the Debtors and the Reorganized Debtors .....	44
2. General Releases by Holders of Claims or Interests.....	44
3. Release of Released Parties by Other Released Parties .....	45
F. Exculpation .....	45
G. Plan Impact on Prepetition Secured Claims .....	45
H. Termination of Certain Subordination Rights .....	46
ARTICLE XI RETENTION OF JURISDICTION .....	46
ARTICLE XII MISCELLANEOUS PROVISIONS .....	47

Pg 121 of 184  
**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
A. Modification of the Plan .....	47
B. Revocation of the Plan .....	47
C. Successors and Assigns.....	48
D. The Union Settlement Agreements .....	48
E. Service of Documents .....	48
1. The Debtors and Reorganized Debtors .....	48
2. The Creditors' Committee.....	48
3. Certain of the Unions.....	49
4. DIP Lender Agent, First Lien Term Loan Agent & Third Lien Term Loan Agent .....	49
5. The Senior Secured Revolving Credit Agent.....	50
6. The Fourth Lien Notes Indenture Trustee.....	50
7. The United States Trustee.....	50

**TABLE OF EXHIBITS**

Exhibit I.A.44	Consenting Unions
Exhibit I.A.47	Debtors in the Chapter 11 Cases
Exhibit I.A.72	Principal Terms of the Exit Facility
Exhibit I.A.105	Schedule of Imposed Collective Bargaining Agreements
Exhibit I.A.115	Principal Terms of the New First Lien Term Loan Facility
Exhibit I.A.120	Form of New Stockholders Agreement
Exhibit I.A.122	Principal Terms of the New Third Lien Term Loan Facility
Exhibit I.A.128	Non-Consenting Unions
Exhibit I.A.133	Schedule of Other Union Settlement Agreements
Exhibit I.A.154	Schedule of Retained Actions
Exhibit III.B.1	Restructuring Transactions
Exhibit III.D.1.a	Certificate of Incorporation (or Comparable Constituent Documents) of Reorganized Hostess and Form Certificates of Incorporation (or Comparable Constituent Documents) for the Other Reorganized Debtors
Exhibit III.D.1.b	Bylaws (or Comparable Constituent Documents) of Reorganized Hostess and Form Bylaws (or Comparable Constituent Documents) for the Other Reorganized Debtors
Exhibit III.D.2	Initial Directors and Officers of Reorganized Hostess and Each Other Reorganized Debtor
Exhibit III.F.1	Collective Bargaining and Related Agreements to be Assumed and Assigned
Exhibit IV.A.1	Executory Contracts and Unexpired Leases to be Assumed
Exhibit IV.D.1	Executory Contracts and Unexpired Leases to be Rejected

## INTRODUCTION

Hostess Brands, Inc., a Delaware corporation, and the other five above-captioned debtors and debtors in possession (collectively, as further defined below, the "Debtors") propose the following joint plan of reorganization for the resolution of the outstanding claims against and equity interests in the Debtors. The Debtors are the proponents of the Plan (as such term is defined below) within the meaning of section 1129 of the Bankruptcy Code (as such term is defined below). Reference is made to the Debtors' Disclosure Statement (as such term is defined below), distributed contemporaneously with the Plan, for a discussion of the Debtors' assets, liabilities, history, businesses, properties, results of operations, historical financial information and for a summary and analysis of the Plan and the distributions to be made thereunder. Other agreements and documents supplement the Plan and have been or will be filed with the Bankruptcy Court (as such term is defined below). These supplemental agreements and documents are referenced in the Plan and the Disclosure Statement and will be available for review.

## ARTICLE I

### DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

#### A. Defined Terms

As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules (as each such term is defined below), will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1. "503(b)(9) Agreement" means an agreement between a Debtor or a Reorganized Debtor and a holder of a 503(b)(9) Claim that indicates the holder's agreement to treatment of such 503(b)(9) Claim or a portion thereof as a Consenting 503(b)(9) Claim.

2. "503(b)(9) Claim" means any Claim, pursuant to section 503(b)(9) of the Bankruptcy Code, for the value of goods received by the Debtors in the 20 days immediately prior to the Petition Date and sold to the Debtors in the ordinary course of the Debtors' businesses.

3. "Administrative Claim" means a Claim against a Debtor or its Estate arising prior to the Effective Date for a cost or expense of administration in the Chapter 11 Cases that is entitled to priority or superpriority under sections 364(c)(1), 503(b), 503(c), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises); (b) Claims under the DIP Credit Agreement; (c) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a) or 331 of the Bankruptcy Code, including Professional Fee Claims and Compromise Professional Fee Claims; (d) 503(b)(9) Claims and Consenting 503(b)(9) Claims; (e) all fees and charges assessed against the Estates under chapter 123 of title 28, United States Code, 28 U.S.C. §§ 1911-1930; and (f) all Intercompany Claims arising on or after the Petition Date.

4. "ADR Injunction" means the injunction set forth at Section I.B of the ADR Procedures, as approved pursuant to paragraph 2 of the ADR Order.

5. "ADR Order" means the Order, Pursuant to Sections 105 and 502 of the Bankruptcy Code, Bankruptcy Rules 3007 and 9019 and Local Bankruptcy Rule 9019-1, Approving Alternative Dispute Resolution Procedures to Promote the Resolution of Certain Prepetition Claims (Docket No. 1085), entered by the Bankruptcy Court on June 11, 2012, as it may be amended or supplemented from time to time.

6. "ADR Procedures" means the alternative dispute resolution procedures approved by the ADR Order, as such procedures may be modified by further order of the Bankruptcy Court.

7. "Allowed ... Claim" means an Allowed Claim in the particular Class or category specified.

8. "Allowed Claim" means:
- a. a Claim that (i) has been listed by a particular Debtor on its Schedules as other than disputed, contingent or unliquidated and (ii) is not a Disputed Claim;
  - b. a Claim (i) for which a proof of Claim or request for payment of Administrative Claim (or similar request) has been Filed by the applicable Bar Date or otherwise has been deemed timely Filed under applicable law and (ii) that is not a Disputed Claim;
  - c. a Claim that is expressly allowed: (i) in any Stipulation of Amount and Nature of Claim executed by the Debtors and the Claim holder; (ii) in any contract, instrument or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or
  - d. a Claim that the Debtors or Reorganized Debtors, in their sole discretion, determine prior to the Claims Objection Bar Date (i) will not be subject to an objection or to an amendment to the Schedules and (ii) will be satisfied in accordance with the terms of the Plan.
9. "Assets" means all of a Debtor's property, rights and interests that are property of a Debtor's Estate pursuant to section 541 of the Bankruptcy Code.
10. "Assumed Collective Bargaining Agreements" means, collectively, those certain collectively bargained labor contracts among the Debtors and the Unions identified on Exhibit III.F.1 hereto, and any related modification agreements, extension agreements and side agreements, expressly including the modifications made to such contracts under the Union Settlement Agreements.
11. "Ballot" means the form or forms distributed to each holder of an impaired Claim entitled to vote on the Plan on which the holder indicates either acceptance or rejection of the Plan and (when applicable) any election for treatment of such Claim under the Plan.
12. "Bankruptcy Code" means title 11 of the United States Code, as now in effect or hereafter amended, as applicable to these Chapter 11 Cases.
13. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York.
14. "Bankruptcy Rules" means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended.
15. "Bar Date" means the applicable bar date by which a proof of Claim must be, or must have been, Filed, as established by an order of the Bankruptcy Court, including a Bar Date Order and the Confirmation Order, and which was April 24, 2012 for most General Unsecured Claims.
16. "Bar Date Order" means any order of the Bankruptcy Court establishing Bar Dates for Filing proofs of Claim in the Chapter 11 Cases, including, but not limited to, (a) the Order, Pursuant to Sections 105, 501 and 503 of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3) and Local Bankruptcy Rule 3003-1, Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof, entered on March 14, 2012 (Docket No. 516) and (b) the Order, Pursuant to Sections 105(a) and 503 of the Bankruptcy Code and Bankruptcy Rules 3002 and 3003, Establishing Procedures for the Assertion of Section 503(b)(9) Claims Relating to Goods Received Within Twenty Days Prior to the Petition Date, entered on January 27, 2012 (Docket No. 215), as any such orders may be amended, modified or supplemented.
17. "BCTGM" means the Bakery, Confectionery, Tobacco Workers & Grain Millers International Union.

18. "BCTGM Local Unions" means the Consenting Unions affiliated with the BCTGM identified on Exhibit I.A.44.

19. "BCTGM Settlement Agreement" means the Letter of Understanding for the Restructuring of Hostess Brands entered into by and between certain of the BCTGM Local Unions and Interstate Brands, dated August 29, 2012, any exhibits thereto and any ancillary agreements related thereto, approved by the Global Settlement Order, as it may be amended, supplemented or modified.

20. "Business Day" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

21. "Cash" means legal tender of the United States of America and equivalents thereof.

22. "Cash Investment Yield" means the net yield (*i.e.*, net of, *inter alia*, applicable Taxes, fees and other expenses) earned by the applicable Disbursing Agent from the investment of Cash held pending distribution pursuant to the Plan, which investment will be in a manner consistent with the Reorganized Debtors' investment and deposit guidelines.

23. "Causes of Action" means, without limitation, any and all actions, causes of action, controversies, liabilities, obligations, rights, suits, damages, judgments, claims and demands whatsoever of any of the Debtors or their Estates, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity or otherwise.

24. "Chapter 11 Cases" means, collectively, the cases commenced under chapter 11 of the Bankruptcy Code by the Debtors in the Bankruptcy Court, being jointly administered under Case No. 12-22052 (RDD).

25. "Claim" means a claim (as defined in section 101(5) of the Bankruptcy Code) against a Debtor.

26. "Claims and Noticing Agent" means Kurtzman Carson Consultants LLC.

27. "Claims Objection Bar Date" means, for all Claims other than Allowed Claims, the latest of: (a) 180 days after the Effective Date, subject to extension by order of the Bankruptcy Court; (b) 90 days after the Filing of a proof of Claim for such Claim; and (c) such other period of limitation as may be specifically fixed by the Plan, the Confirmation Order, the Bankruptcy Rules or other order of the Bankruptcy Court.

28. "Class" means a class of Claims or Interests, as described in Article II.

29. "Company Pension Plan" means the IBC Defined Benefit Plan, a tax-qualified defined benefit pension plan covered by ERISA.

30. "Compromise Administrative Claim" means either a Consenting 503(b)(9) Claim or a Compromise Professional Fee Claim.

31. "Compromise Administrative Claim Reserve" means the reserve of Compromise Administrative Claim Reserve Assets maintained by the Reorganized Debtors for Distributions to holders of Allowed Compromise Administrative Claims, which reserve will not constitute property of the Reorganized Debtors.

32. "Compromise Administrative Claim Reserve Assets" means (a) 50% of any Excess Cash and (b) any Reserved Cash.

33. "Compromise Fee Professionals" means Bailey & Ehrenberg PLLC; The Blackstone Group, L.P.; Bryan Cave LLP; Cohen, Weiss & Simon LLP; Conway, Del Genio, Gries & Co., LLC (n/k/a CDG Group, LLC); Curtis, Mallet-Prevost, Colt & Mosle LLP; Debevoise & Plimpton LLP; Fortgang Consulting LLC; FTI Consulting, Inc.; Fulbright & Jaworski L.L.P.; Garden City Group, Inc.; Glanzer & Company LLC; John Wells; Jones Day;

Kobi Partners LLC; Kramer Levin Naftalis & Frankel LLP; Kurtzman Carson Consultants LLC; Lazard Frères & Co. LLC; MAEVA Advisors, LLC; Paul, Weiss, Rifkind, Wharton & Garrison LLP; Paul Hastings LLP; Perella Weinberg Partners; Potok & Co., Inc.; Proskauer Rose LLP; Sitrick and Company; Stinson Morrison Hecker LLP; Thompson & Knight LLP; Venable LLP; Willkie Farr & Gallagher LLP; and any other professional that becomes entitled to compensation pursuant to section 503(b)(4) of the Bankruptcy Code.

34. "Compromise Professional Fee Claim" means, for each Compromise Fee Professional, 18% of the Total Compromise Fee Claim, whether paid on the Effective Date or otherwise.

35. "Confirmation" means the entry of the Confirmation Order on the docket of the Bankruptcy Court.

36. "Confirmation Cash Infusion" means a transaction or set of transactions that generate(s) sufficient value to effectuate the reorganization contemplated herein.

37. "Confirmation Date" means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

38. "Confirmation Exhibits" means, collectively, the documents listed on the "Table of Exhibits" included herein, which documents will be Filed no later than seven calendar days before the Confirmation Hearing, to the extent not filed earlier; *provided, however*, that (a) Exhibits IV.A.1 and IV.D.1 will be filed no later than seven calendar days prior to the Voting Deadline and (b) Exhibits I.A.44, I.A.47, I.A.115, I.A.120, I.A.122, I.A.128, I.A.133, I.A.154 and III.F.1 will be either (i) included in any solicitation materials distributed to holders of Claims in Classes entitled to vote to accept or reject the Plan or (ii) Filed as a supplement to the Plan no later than seven calendar days prior to the Voting Deadline. All Confirmation Exhibits will be made available on the Document Website once they are Filed. The Debtors reserve the right, in accordance with the terms hereof, to modify, amend, supplement, restate or withdraw any of the Confirmation Exhibits after they are Filed and shall promptly make such changes available on the Document Website.

39. "Confirmation Hearing" means the hearing held by the Bankruptcy Court on Confirmation of the Plan, as such hearing may be continued from time to time.

40. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

41. "Consenting 503(b)(9) Claim" means a 503(b)(9) Claim (or a portion thereof) held by a Consenting 503(b)(9) Claimant with respect to which the Consenting 503(b)(9) Claimant has agreed to the treatment set forth at Section II.A.1.b.

42. "Consenting 503(b)(9) Claimant" means any holder of a 503(b)(9) Claim that has a 503(b)(9) Agreement with the Debtors or the Reorganized Debtors.

43. "Consenting Other Union" means a Consenting Union identified on Exhibit I.A.44 other than the BCTGM Local Unions, the IBT and the IBT Local Unions.

44. "Consenting Unions" means, collectively, those unions identified on Exhibit I.A.44, which are the union parties to the Union Settlement Agreements.

45. "Creditors' Committee" means the statutory official committee of unsecured creditors appointed by the United States Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as such appointment has been subsequently modified.

46. "Cure Amount Claim" means any Claim that could be asserted based upon a Debtor's defaults under an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by such Debtor under section 365 of the Bankruptcy Code, including any amounts necessary to be paid to assume such Executory Contract or Unexpired Lease under section 365 of the Bankruptcy Code.

47. "Debtors" means, collectively, the above-captioned debtors and debtors in possession identified on Exhibit I.A.47.

48. "Deficiency Claim" means a General Unsecured Claim for the difference between (a) the total amount of an Allowed Claim and (b) the portion of such Allowed Claim that constitutes an Allowed Secured Claim.

49. "Derivative Claim" means a claim (as defined in section 101(5) of the Bankruptcy Code) or cause of action that is the property of any of the Debtors' Estates pursuant to section 541 of the Bankruptcy Code.

50. "DIP Credit Agreement" means the Debtor-in-Possession Credit, Guaranty and Security Agreement, dated as of January 12, 2012 (as the same may have been subsequently modified, amended, supplemented or otherwise revised from time to time, and together with all instruments, documents and agreements related thereto) among Hostess and Interstate Brands (as borrowers), the Subsidiary Debtor guarantors signatory thereto, the DIP Lender Agent and the other lenders party thereto.

51. "DIP Lender Agent" means Silver Point, in its capacity as administrative agent and collateral agent under the DIP Credit Agreement.

52. "DIP Lender Claim" means any Claim of the DIP Lender Agent or the DIP Lenders against a Debtor under or evidenced by (a) the DIP Credit Agreement and (b) the Final DIP Order.

53. "DIP Lenders" means, collectively, those entities identified as "Lenders" in the DIP Credit Agreement and their respective permitted successors and assigns (solely in their capacity as "DIP Lenders" under the DIP Credit Agreement).

54. "DIP Notice Parties" means, collectively: (a) the Reorganized Debtors; (b) the DIP Lender Agent; (c) the Senior Secured Revolving Credit Agent; (d) the First Lien Term Loan Agent; (e) the Third Lien Term Loan Agent; (f) the Fourth Lien Notes Indenture Trustee; (g) the United States Trustee; and (h) the Creditors' Committee.

55. "Disbursing Agent" means, as applicable, any Reorganized Debtor in its capacity as disbursing agent pursuant to Article V or any Third Party Disbursing Agent.

56. "Disclosure Statement" means the Disclosure Statement with Respect to Joint Plan of Reorganization of Debtors and Debtors in Possession, dated October 10, 2012 (including all exhibits and schedules thereto or referenced therein) that relates to the Plan that has been prepared and distributed by the Debtors, as plan proponents, pursuant to section 1125(g) of the Bankruptcy Code, as the same may be amended, modified or supplemented.

57. "Disputed ... Claim" means a Disputed Claim in the particular Class or category specified.

58. "Disputed Claim" means any Claim (including any Tort Claim until it is an Allowed Claim):

a. if no proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, (i) a Claim that is listed on a Debtor's Schedules as disputed, contingent or unliquidated or (ii) a Claim that is not listed on a Debtor's Schedules;

b. prior to and on the Claims Objection Bar Date, if a proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, all Claims that have not been expressly allowed (i) in any Stipulation of Amount and Nature of Claim executed by the Debtors or the Reorganized Debtors and the Claim holder; (ii) in any contract, instrument or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or

c. after the Claims Objection Bar Date, if a proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, any such Claim for which the Debtors or

the Reorganized Debtors have Filed an objection in the Bankruptcy Court, and such objection has not been resolved in its entirety by a Final Order or withdrawn (and for which there is no agreement with the Claim holder to treat the Claim as a Disputed Claim for a period of time after the Claim Objection Bar Date).

Notwithstanding the above, if a Claim is an Allowed Claim under the definition set forth herein, it shall not also be considered to be a Disputed Claim.

59. "Distribution" means a distribution under the Plan of Cash, notes, securities, interests or other property, as may be applicable, to the holders of Allowed Claims in accordance with and subject to the terms of the Plan.

60. "Distribution Date" means a date selected by the Reorganized Debtors in accordance with the terms of the Plan to make Distributions on account of Allowed Claims.

61. "Distribution Record Date" means the close of business on the Confirmation Date.

62. "Document Website" means the internet site address <http://www.kccllc.net/hostess> at which all of the Confirmation Exhibits and schedules to the Plan and the Disclosure Statement will be available to the public.

63. "Effective Date" means a day, as determined by the Debtors, that is the Business Day as soon as reasonably practicable after all conditions to the Effective Date in Section VIII.B have been met or waived in accordance with Section VIII.C.

64. "Equity Incentive Plan" means an incentive plan for management to be implemented by Reorganized Hostess after the Effective Date that will reserve a certain percentage of fully-diluted outstanding shares of New Hostess Common Stock.

65. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq.

66. "Estate" means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

67. "Excess Cash" means the amount by which the sum of (a) unrestricted Cash held by the Reorganized Debtors (as determined in accordance with GAAP) as of the Effective Date and (b) the amount of unused commitments that are available to be borrowed by the Debtors under the Exit Facility as of the Effective Date (after the transactions to be effected on the Effective Date have been completed) exceeds \$120 million, as determined in accordance with Section III.G.

68. "Excess Cash Record Date" means the date of the Professional Final Fee Hearing.

69. "Excess Professional Fee Payment" means the amount by which the Cash actually paid (whether directly or indirectly) to a Compromise Fee Professional by the Debtors or the Reorganized Debtors with respect to the Total Compromise Fee Claim exceeds, for each Compromise Fee Professional, 82% of the Total Compromise Fee Claim.

70. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

71. "Executory Contract or Unexpired Lease" means a contract or lease to which a Debtor is a party that is subject to assumption, assumption and assignment or rejection under section 365 of the Bankruptcy Code and includes any modifications, amendments, addenda or supplements thereto or restatements thereof.

72. "Exit Facility" means a senior secured revolving credit facility that will be entered into by Reorganized Hostess and/or one or more of the other Reorganized Debtors, the Exit Facility Agent and the lenders from time to time party thereto, on substantially the terms set forth on Exhibit I.A.72.

73. "Exit Facility Agent" means the agent for the lenders under the Exit Facility.

74. "Face Amount" means (a) if a proof of Claim has been filed: (i) if only a liquidated amount is provided on the proof of Claim, the full stated amount claimed by the holder of such Claim in any proof of Claim filed by the applicable Bar Date, (ii) if a portion of the Claim is unliquidated, an amount proposed by the Debtors or the Reorganized Debtors in their reasonable estimation if they were unsuccessful in litigating the Claim to a Final Order, such amount to not be less than the liquidated amount of the Claim; *provided, however*, that in each case, if a party requests that the amount of the Claim be estimated for purposes of calculating distributions, the Face Amount shall be the amount so estimated by the Bankruptcy Court; or (b) if a proof of Claim has not been filed: (i) the amount set forth in the Schedules, if such amount is liquidated; or (ii) an amount reasonably estimated, in the discretion of the Debtors or the Reorganized Debtors, to account for a proof (or proofs) of Claim not yet Filed that potentially could be Filed by an applicable Bar Date.

75. "Fee Order" means the Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a) and Local Bankruptcy Rule 2016-1, Establishing Procedures for Interim Monthly Compensation for Professionals (Docket No. 212), entered by the Bankruptcy Court on January 27, 2012.

76. "File," "Filed" or "Filing" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

77. "Final DIP Order" means the Final Order (I) Authorizing Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364 and (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection to Pre-Petition Secured Parties (Docket No. 254), entered by the Bankruptcy Court on February 3, 2012, as it may have been or may be amended from time to time.

78. "Final Distribution Date" means the date that is between 60 and 90 days after all Disputed Claims have been resolved, as selected by the Reorganized Debtors, which shall be the date the final Distribution is made under this Plan.

79. "Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Cases or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or petition for certiorari or move for a new trial, reargument or rehearing has expired, and as to which no appeal or petition for certiorari or other proceeding for a new trial, reargument or rehearing that has been timely taken is pending, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.

80. "First Lien Term Loan Agent" means Silver Point in its capacity as administrative agent and collateral agent under the First Lien Term Loan Facility.

81. "First Lien Term Loan Facility" means the Credit and Guaranty Agreement, dated as of February 3, 2009 (as the same may have been subsequently modified, amended, supplemented or otherwise revised from time to time, and together with all instruments, documents and agreements related thereto), by and among Hostess and Interstate Brands (as tranche A and tranche C borrowers) and Debtor IBC Sales Corporation (as tranche B borrower), the Subsidiary Debtor guarantors signatory thereto, the lenders party thereto and the First Lien Term Loan Agent.

82. "First Lien Term Loan Lenders" means, collectively, the lenders party to the First Lien Term Loan Facility or their successors or assigns.

83. "First Lien Term Loan Notes" means the promissory notes or other similar instruments, if any, evidencing the First Lien Term Loans.

84. "First Lien Term Loan Tranche A/B Claims" means, collectively, any Claim of the First Lien Term Loan Agent or the First Lien Term Loan Lenders arising under, evidenced by or in connection with tranche A and/or tranche B of the First Lien Term Loan Facility.

85. "First Lien Term Loan Tranche A/B Designated Claims" means, collectively, any First Lien Term Loan Tranche A/B Claims entitled to priority of payment over other First Lien Term Loan Tranche A/B Claims pursuant to the terms of clause seventh, eighth, ninth or tenth of Section 2.12(g) of the First Lien Term Loan Facility.

86. "First Lien Term Loan Tranche A/B Non-Designated Claims" means, collectively, any First Lien Term Loan Tranche A/B Claims that are not First Lien Term Loan Tranche A/B Designated Claims.

87. "First Lien Term Loan Tranche A/B Designated Plan Distribution Property" means, collectively, (a) the New First Lien Tranche A Term Loans, (b) up to \$59 million in Cash and (c) 50% of any Excess Cash.

88. "First Lien Term Loan Tranche A/B Non-Designated Plan Distribution Property" means the New First Lien Tranche B Term Loans.

89. "First Lien Term Loan Tranche C Claims" means, collectively, any Claim of the First Lien Term Loan Agent or the First Lien Term Loan Lenders arising under, evidenced by or in connection with tranche C of the First Lien Term Loan Facility.

90. "First Lien Term Loans" means the loans made or deemed made by the First Lien Term Loan Lenders under the First Lien Term Loan Facility.

91. "Fourth Lien Noteholder Claim" means any Claim against a Debtor arising under, evidenced by or in connection with the Fourth Lien Notes, which Claim includes, but is not limited to, principal and interest as of the Petition Date, with no provision for the accrual of postpetition interest.

92. "Fourth Lien Notes" means, collectively, the Series A 2019 Notes, the Series B 2019 Notes and the Series C 2019 Notes.

93. "Fourth Lien Notes Indenture" means the Indenture among Hostess, as issuer, the Subsidiary Debtor guarantors signatory thereto and the Fourth Lien Notes Indenture Trustee, as trustee and as collateral trustee, dated February 3, 2009, as supplemented by the Supplemental Indenture dated March 30, 2011, relating to (a) the \$85.8 million principal amount Series A 2019 Notes, (b) the \$85.8 million principal amount Series B 2019 Notes and (c) the \$30 million principal amount Series C 2019 Notes, as the same may have been subsequently modified, amended, supplemented or otherwise revised from time to time, together with all instruments, documents and agreements related thereto.

94. "Fourth Lien Notes Indenture Trustee" means The Bank of New York Mellon Trust Company, N.A., as trustee and as collateral trustee under the Fourth Lien Notes Indenture.

95. "GAAP" means generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and in effect in the United States as of the date hereof.

96. "General Bar Date" means April 24, 2012, the Bar Date for most General Unsecured Claims asserted against the Debtors that was established by the Bar Date Order.

97. "General Unsecured Claim" means any Claim (including, but not limited to, any Deficiency Claim) that is not an Administrative Claim, Secured Claim, Cure Amount Claim, Priority Claim, Priority Tax Claim or Intercompany Claim.

98. "Global Resolution" means, collectively: (a) the settlement among the Debtors and the Consenting Unions documented in the Union Settlement Agreements and their respective exhibits, appendices and

ancillary agreements; and (b) any relief granted and to be implemented pursuant to the Non-Consenting Union 1113/1114 Orders.

99. "Global Settlement Order" means the **[Order Approving Settlement Agreements with Certain Unions, Pursuant to 11 U.S.C. §§ 1113 and 1114(e) and Federal Rule of Bankruptcy Procedure 9019]** (Docket No. [\_\_\_]), entered on [\_\_\_\_], 2012, and the exhibits thereto, as it may be amended, supplemented or modified from time to time.

100. "Hostess" means Debtor Hostess Brands, Inc. (f/k/a Interstate Bakeries Corporation).

101. "IBC-IBTNNC" means the IBC-IBT National Negotiating Committee for the IBT Local Unions.

102. "IBT" means the International Brotherhood of Teamsters and its applicable affiliated union entities (including, but not limited to, the IBC-IBTNNC).

103. "IBT Local Unions" means the local unions affiliated with the IBT that represent the Debtors' or Reorganized Debtors' employees.

104. "IBT Settlement Agreement" means the Letter of Understanding for the Restructuring of Hostess Brands entered into by and between the IBC-IBTNNC, the IBT and Interstate Brands, dated August 11, 2012, any exhibits thereto and any ancillary agreements related thereto, approved by the Global Settlement Order, as it may be amended, supplemented or modified from time to time.

105. "Imposed Collective Bargaining Agreements" means the terms and conditions and governing agreements, if any, that dictate the terms of the employer-employee relationship that were previously governed by those certain collectively bargained labor agreements among the Debtors and the Non-Consenting Unions identified on Exhibit I.A.105, which were rejected during the Chapter 11 Cases by the Non-Consenting Union 1113/1114 Orders.

106. "Insured Claim" means that portion of any Claim arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtors or their businesses; *provided that* claims for benefits and liabilities arising under the Debtors' workers' compensation programs for which the Debtors or the Reorganized Debtors are responsible under applicable state workers' compensation law shall not be, and shall not be deemed, Insured Claims.

107. "Insurance Contract" means any policy of third party liability insurance under which any of the Debtors could have asserted or did assert, or may in the future assert, a right to coverage for any claim, together with any other contracts that pertain or relate to such policy.

108. "Insurer" means any company or other entity that issued, or is responsible for, a policy of third party liability insurance under which any of the Debtors could have asserted or did assert, or may in the future assert, a right to coverage for any claim under an Insurance Contract.

109. "Intercompany Claim" means any Claim by any Debtor against another Debtor.

110. "Interest" means the rights and interests of the holders of the Old Common Stock of any Debtor, any other instruments evidencing an ownership interest in a Debtor and the rights of any entity to purchase or demand the issuance of any of the foregoing, including: (a) redemption, conversion, exchange, voting, participation and dividend rights (including any rights in respect of accrued and unpaid dividends); (b) liquidation preferences; and (c) options and warrants.

111. "Interstate Brands" means Interstate Brands Corporation.

112. "Liabilities" means any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Derivative Claims, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent,

matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place on or prior to the Effective Date.

113. "MEPPs" means, collectively, those multi-employer pension plans to which the Debtors are or, since January 1, 2011, have been obligated to make contributions or other payments pursuant to collective bargaining or other agreements with a Union or under applicable law.

114. "New First Lien Term Loan Agent" means the administrative agent under the New First Lien Term Loan Facility.

115. "New First Lien Term Loan Facility" means the term loan facility in an aggregate principal amount to be determined in accordance with Section V.B.1 pursuant to which holders of First Lien Term Loan Tranche A/B Claims will be deemed to have made term loans on the terms set forth on Exhibit I.A.115 and otherwise in accordance with the terms of the agreements governing the New First Lien Term Loan Facility.

116. "New First Lien Term Loans" means, collectively, the New First Lien Tranche A Term Loans and New First Lien Tranche B Term Loans.

117. "New First Lien Tranche A Term Loans" means the loans made or deemed made by holders of First Lien Term Loan Tranche A/B Claims under the New First Lien Term Loan Facility, which will have payment priority over New First Lien Tranche B Term Loans.

118. "New First Lien Tranche B Term Loans" means the loans made or deemed made by holders of First Lien Term Loan Tranche A/B Claims under the New First Lien Term Loan Facility, which will be subordinate in right of payment to the New First Lien Tranche A Term Loans.

119. "New Hostess Common Stock" means the shares of common stock of Reorganized Hostess, authorized pursuant to the certificate of incorporation of Reorganized Hostess to be initially issued pursuant to the Plan as of the Effective Date.

120. "New Stockholders Agreement" means the stockholders agreement, substantially in the form of Exhibit I.A.120, deemed to become effective as of the Effective Date pursuant to Section III.C among Reorganized Hostess and each entity receiving New Hostess Common Stock pursuant to this Plan.

121. "New Third Lien Term Loan Agent" means the administrative agent under the New Third Lien Term Loan Facility.

122. "New Third Lien Term Loan Facility" means the term loan facility pursuant to which holders of Third Lien Term Loan Claims, the Unions and holders of Consenting 503(b)(9) Claims and Compromise Professional Fee Claims (or any trust(s) that may be established for their benefit) will be deemed to have made term loans on the terms set forth on Exhibit I.A.122 and otherwise in accordance with the terms of the agreements governing the New Third Lien Term Loan Facility.

123. "New Third Lien Term Loans" means, collectively, the New Third Lien Tranche A Term Loans, the New Third Lien Tranche B Term Loans and the New Third Lien Tranche C Term Loans.

124. "New Third Lien Tranche A Term Loans" means the loans made or deemed to be made by the holders of Third Lien Term Loan Claims under the New Third Lien Term Loan Facility, having the terms set forth on Exhibit I.A.122 and as otherwise set forth in the New Third Lien Term Loan Facility.

125. "New Third Lien Tranche B Term Loans" means the loans made or deemed to be made by the Unions in the initial aggregate principal amount of \$100 million, having the terms set forth on Exhibit I.A.122 and as otherwise set forth in the New Third Lien Term Loan Facility (which terms will provide that, although such New Third Lien Tranche B Term Loans will have full *pari passu* economic rights with the other New Third Lien Term

Loans, the lenders thereof will not have any voting or control rights (whether in a bankruptcy context, amendment context or otherwise) other than with respect to amendments, changes or supplements that materially disproportionately impair or affect such lenders' rights as compared to the holders of the New Third Lien Tranche A Term Loans or the New Third Lien Tranche C Term Loans; *provided, that* the New Third Lien Tranche B Term Loans may be made or deemed to have been made by, and all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to, a trust or other appropriate entity established for the benefit of the Unions to the extent necessary or appropriate to comply with applicable non-bankruptcy laws.

126. "New Third Lien Tranche C Term Loans" means the loans made or deemed to be made by the holders of Consenting 503(b)(9) Claims and Compromise Professional Fee Claims, having the terms set forth on Exhibit I.A.122 and as otherwise set forth in the New Third Lien Term Loan Facility (which terms will provide that, although such New Third Lien Tranche C Term Loans will have full *pari passu* economic rights with the other New Third Lien Term Loans, the lenders thereof will not have any voting or control rights (whether in a bankruptcy context, amendment context or otherwise) other than with respect to amendments, changes or supplements that materially disproportionately impair or affect such lenders' rights as compared to the holders of the New Third Lien Tranche A Term Loans or the New Third Lien Tranche B Term Loans; *provided, that* the New Third Lien Tranche C Term Loans may be made or deemed to have been made by, and all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to, a trust or other appropriate entity established for the benefit of holders of Consenting 503(b)(9) Claims and Compromise Professional Fee Claims to the extent necessary or appropriate to comply with applicable non-bankruptcy laws.

127. "New Third Lien Term Loans" means the loans made or deemed made by the lenders under the New Third Lien Term Loan Facility.

128. "Non-Consenting Union" means the unions or local affiliates of a union identified on Exhibit I.A.128, which are those unions for which the Debtors have obtained relief from the Bankruptcy Court pursuant to the Non-Consenting Union 1113/1114 Orders.

129. "Non-Consenting Union 1113/1114 Orders" means: (a) the Order Granting, With Respect to Certain Unions, the Debtors' Second Motion to Reject Certain Collective Bargaining Agreements Pursuant to Section 1113(c) of the Bankruptcy Code (Docket No. 1574), entered on October 4, 2012, as it may be amended, supplemented or modified from time to time; (b) the Order Granting Motion of Debtors and Debtors in Possession Pursuant to Sections 1113(c), 1113(e) and 1114 of the Bankruptcy Code and Bankruptcy Rule 9024 (Docket No. 1563), entered on October 4, 2012, as it may be amended, supplemented or modified from time to time; and (c) the **[Supplemental Order Granting, With Respect to Certain Local Unions, the Debtors' Second Motion to Reject Certain Collective Bargaining Agreements Pursuant to Section 1113(c) of the Bankruptcy Code]** (Docket No. [ ]), entered on October [ ], 2012, as it may be amended, supplemented or modified from time to time.

130. "Notice Parties" means (a) prior to the Effective Date, the Debtors, the Creditors' Committee, the DIP Lender Agent, the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the Fourth Lien Notes Indenture Trustee; and (b) on or after the Effective Date, the Reorganized Debtors.

131. "Old Common Stock" means, when used with reference to a particular Debtor, the common stock, membership interests, partnership interests or other capital stock issued by such Debtor and outstanding immediately prior to the Petition Date, and any options, warrants or other rights with respect thereto.

132. "Other Union" means a Union identified on Exhibit I.A.44 or Exhibit I.A.133 other than the BCTGM, the BCTGM Local Unions, the IBT and the IBT Local Unions.

133. "Other Union Settlement Agreements" means, collectively, those settlement agreements between Interstate Brands and a Consenting Other Union identified on Exhibit I.A.133, and the exhibits thereto and any ancillary agreements related thereto, approved by the Global Settlement Order, as they may be amended, supplemented or modified from time to time.

134. "Ordinary Course Professionals Order" means the Order Authorizing the Debtors' Retention and Compensation of Certain Professionals in the Ordinary Course of Their Businesses (Docket No. 211), entered by the Bankruptcy Court on January 27, 2012.

135. "Person" means any individual, firm, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

136. "Petition Date" means January 11, 2012, the date on which the Debtors Filed their petitions for relief commencing the Chapter 11 Cases.

137. "Plan" means this joint plan of reorganization for the Debtors, and all exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented.

138. "Prepetition Secured Lenders" means, collectively, the Senior Secured Revolving Credit Lenders, the First Lien Term Loan Lenders, the Third Lien Term Loan Lenders and the holders of the Fourth Lien Notes.

139. "Priority Claim" means a Claim that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

140. "Priority Tax Claim" means a Claim that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

141. "Pro Rata" means, when used with reference to a Distribution of property to holders of Allowed Claims in a particular Class or other specified group of Claims pursuant to Article II, proportionately so that with respect to a particular Allowed Claim in such Class or in such group, the ratio of (a)(i) the amount of property to be distributed on account of such Claim to (ii) the amount of such Claim, is the same as the ratio of (b)(i) the amount of property to be distributed on account of all Allowed Claims in such Class or group of Claims to (ii) the amount of all Allowed Claims, as the case may be, in such Class or group of Claims. Until all Disputed Claims in a Class are resolved, Disputed Claims shall be treated as Allowed Claims in their Face Amount for purposes of calculating Pro Rata Distribution of property to holders of Allowed Claims in such Class.

142. "Professional" means (a) any professional employed in the Chapter 11 Cases pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code (other than a professional entitled to receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order) (b) any professional seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code or an order of the Bankruptcy Court or (c) all Compromise Fee Professionals.

143. "Professional Fee Claim" means a Claim under sections 328, 330(a), 331 or 1103 of the Bankruptcy Code for services rendered, or reimbursement of expenses incurred, in connection with the Chapter 11 Cases.

144. "Professional Final Fee Hearing" means the hearing held by the Bankruptcy Court to consider the applications for final allowance of Professional Fee Claims filed in accordance with Section II.A.1.h.ii.A.

145. "Recovery Actions" means, collectively and individually, preference actions, fraudulent conveyance actions and other claims or Causes of Action under sections 544, 547, 548 and 550 of the Bankruptcy Code and other similar state law claims and Causes of Action.

146. "Reinstated" or "Reinstatement" means rendering a Claim or Interest unimpaired within the meaning of section 1124 of the Bankruptcy Code. Unless the Plan specifies a particular method of Reinstatement, when the Plan provides that a Claim or Interest will be Reinstated, such Claim or Interest will be Reinstated, at the Debtors' discretion, subject to the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent, in accordance with one of the following:

- a. The legal, equitable and contractual rights to which such Claim or Interest entitles the holder will be unaltered; or
- b. Notwithstanding any contractual provisions or applicable law that entitles the holder of such Claim or Interest to demand or receive accelerated payment of such Claim or Interest after the occurrence of a default:
  - i. any such default that occurred before or after the commencement of the applicable Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, will be cured;
  - ii. the maturity of such Claim or Interest as such maturity existed before such default will be reinstated;
  - iii. the holder of such Claim or Interest will be compensated for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;
  - iv. if such Claim arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, the holder of such Claim will be compensated for any actual pecuniary loss incurred by such holder as a result of such failure; and
  - v. the legal, equitable or contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest will not otherwise be altered.

147. "Released Parties" means, collectively and individually, the IBC-IBTNNC, the Debtors, the Creditors' Committee and its members (solely in their capacity as such), the Reorganized Debtors, the DIP Lender Agent, the DIP Lenders, the First Lien Term Loan Agent, the First Lien Term Loan Lenders, the Third Lien Term Loan Agent, the Third Lien Term Loan Lenders, Silver Point and its affiliates (in all of their respective capacities), the Consenting Unions and the Representatives of each of the foregoing.

148. "Reorganized ..." means, when used in reference to a particular Debtor, such Debtor on or after the Effective Date.

149. "Reorganized Debtors" means the Debtors on and after the Effective Date and any entities created as part of the Restructuring Transactions.

150. "Representatives" means, with respect to any entity: a successor, officer, director, member of a limited liability company, employee, committee member, partner, agent, attorney, advisor, investment banker, financial advisor, accountant, actuary, consultant or other Professional of such entity, in each case in such capacity, serving on or after the Petition Date.

151. "Reserved Cash" means (a) any Cash or other distributions received by the Disbursing Agent on account of the New Third Lien Tranche C Term Loans (to the extent any interest accrues with respect thereto), (b) any related Cash Investment Yield and (c) any Cash Investment Yield on the 50% of Excess Cash in the Compromise Administrative Claim Reserve.

152. "Restricted DIP Cash" means the Cash on deposit in the "Loan Proceeds Account" established pursuant to the DIP Credit Agreement for the purposes set forth in Sections 2.1(b) and 2.1(c) thereof.

153. "Restructuring Transactions" means, collectively, those mergers, consolidations, restructurings, conversions, dispositions, liquidations or dissolutions that the Debtors and the Reorganized Debtors determine to be

necessary or appropriate to effect a corporate restructuring of their respective businesses or otherwise to simplify the overall corporate structure of the Reorganized Debtors, as described in greater detail in Section III.B.

154. "Retained Actions" means those Causes of Actions identified or described on Exhibit I.A.154 which will not include any Causes of Action released hereunder.

155. "Schedules" means the schedules of assets and liabilities and the statement of financial affairs Filed by a Debtor on February 24, 2012, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified or supplemented from time to time.

156. "Secondary Liability Claim" means a Claim that arises from a Debtor being liable as a guarantor of, or otherwise being jointly, severally or secondarily liable for, any contractual, tort, guaranty or other obligation of another Debtor, including any Claim based on: (a) vicarious liability; (b) liabilities arising out of piercing the corporate veil, alter ego liability or similar legal theories; (c) guaranties of collection, payments or performance; (d) indemnity bonds, obligations to indemnify or obligations to hold harmless; (e) performance bonds; (f) contingent liabilities arising out of contractual obligations or out of undertakings (including any assignment or transfer) with respect to leases, operating agreements or other similar obligations made or given by a Debtor or relating to the obligations or performance of another Debtor; (g) liability of a member of an affiliated, consolidated, combined or unitary group for Taxes of other members of the group or of the entire group; or (h) any other joint or several liability, including Claims for contribution, that any Debtor may have in respect of any obligation that is the basis of a Claim.

157. "Secured Claim" means a Claim that is secured by a lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to sections 506(a) and, if applicable, 1129(b) of the Bankruptcy Code.

158. "Secured Tax Claim" means a Secured Claim arising out of a Debtor's liability for any Tax.

159. "Securities Act" means the Securities Act of 1933, as amended.

160. "Senior Secured Revolving Credit Agent" means General Electric Capital Corporation in its capacity as administrative agent and collateral agent under the Senior Secured Revolving Credit Facility.

161. "Senior Secured Revolving Credit Claims" means, collectively, any Claim of the Senior Secured Revolving Credit Agent and the Senior Secured Revolving Credit Lenders arising under, evidenced by or in connection with the Senior Secured Revolving Credit Facility.

162. "Senior Secured Revolving Credit Facility" means the Credit Agreement, dated as of February 3, 2009 (as the same may have been subsequently modified, amended, supplemented or otherwise revised from time to time, and together with all instruments, documents and agreements related thereto), by and among Hostess and Interstate Brands, as borrowers, the Subsidiary Debtor guarantors signatory thereto, the lenders and letter of credit issuers party thereto and the Senior Secured Revolving Credit Agent.

163. "Senior Secured Revolving Credit Lenders" means, collectively, the lenders party to the Senior Secured Revolving Credit Facility or their successors or assigns.

164. "Series A 2019 Notes" means the 5% Secured Convertible PIK-Election Series A Notes due 2019 issued under the Fourth Lien Notes Indenture and convertible into Old Common Stock at an initial conversion rate of 100 shares per \$1,000 principal amount.

165. "Series B 2019 Notes" means the 5% Secured Convertible PIK-Election Series B Notes due 2019 issued under the Fourth Lien Notes Indenture and convertible into Old Common Stock at an initial conversion rate of 92.1901 shares per \$1,000 principal amount.

166. "Series C 2019 Notes" means the 10% Secured Convertible PIK-Election Series C Notes due 2019 issued under the Fourth Lien Notes Indenture and convertible into Old Common Stock at an initial conversion rate of 666.667 shares per \$1,000 principal amount.

167. "Silver Point" shall mean Silver Point Finance, LLC.

168. "Stay Extension Order" means the Order Extending the Automatic Stay to Certain Claims Against the Debtors' Employees, Pursuant to Sections 105 and 362 of the Bankruptcy Code (Docket No. 390), entered by the Bankruptcy Court on February 23, 2012, as it may be amended or supplemented from time to time.

169. "Stipulation of Amount and Nature of Claim" means a stipulation or other agreement between the applicable Debtor and a holder of a Claim or Interest, that, prior to the Effective Date, is approved by the Bankruptcy Court (including, but not limited to, agreements settling claims pursuant to authority granted under claims settlement procedures established by order of the Bankruptcy Court in the Chapter 11 Cases), or an agreed order of the Bankruptcy Court, establishing the amount and nature of a Claim or Interest. Any such stipulation or other agreement between any Reorganized Debtors and a holder of a Claim or Interest executed after the Effective Date is not subject to approval of the Bankruptcy Court.

170. "Subsidiary Debtor" means any Debtor other than Hostess.

171. "Subsidiary Debtor Equity Interests" means, as to a particular Subsidiary Debtor, any Interests in such Debtor.

172. "Tax" means: (a) any net income, alternative or add-on minimum, gross income, gross receipts, gross margin, sales, use, *ad valorem*, value added, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, escheat or windfall, profits tax, custom, duty or other tax, governmental fee or like assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.

173. "Third Lien Term Loan Agent" means Silver Point in its capacity as administrative agent and collateral agent under the Third Lien Term Loan Facility.

174. "Third Lien Term Loan Claims" means, collectively, any Claim of the Third Lien Term Loan Agent or the Third Lien Term Loan Lenders arising under, evidenced by or in connection with the Third Lien Term Loan Facility, with no provision for the accrual of postpetition interest.

175. "Third Lien Term Loan Facility" means the Third Lien Credit and Guaranty Agreement, dated as of February 3, 2009 (as the same may have been subsequently modified, amended, supplemented or otherwise revised from time to time, and together with all instruments, documents and agreements related thereto), by and among Hostess and Interstate Brands, as borrowers, the Subsidiary Debtor guarantors signatory thereto, the lenders party thereto and the Third Lien Term Loan Agent.

176. "Third Lien Term Loan Lenders" means, collectively, the lenders party to the Third Lien Term Loan Facility or their successors or assigns.

177. "Third Lien Term Loan Notes" means the promissory notes or other similar instruments, if any, evidencing the Third Lien Term Loans.

178. "Third Lien Term Loan Plan Distribution Property" means, collectively: (a) the New Third Lien Tranche A Term Loans and (b) 75% of New Hostess Common Stock (subject to dilution to less than 75% pursuant to the Equity Incentive Plan).

179. "Third Lien Term Loans" means the loans made or deemed made by the lenders under the Third Lien Term Loan Facility.

180. "Third Party Disbursing Agent" means an entity expressly designated by a Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor to act as a Disbursing Agent pursuant to Article V.

181. "Total Compromise Fee Claim" means an Allowed Claim for (a) fees for services rendered by a Professional (but not expenses) arising from and after the Petition Date (excluding any fees or compensation for services performed as an officer of one of the Debtors) until the day prior to the Effective Date and/or (b) any success fee, restructuring fee or similar fee or award payable as a result of the consummation of the Plan and the transactions contemplated hereunder, as such Claims are determined by (x) the Bankruptcy Court in a Final Order approving the Professional's final fee application (if the Professional is required to file fee applications or otherwise seek Bankruptcy Court approval of its fees and expenses) or (y) through the process described in Section II.A.1.d.

182. "Tort Claim" means any Claim that has not been settled, compromised or otherwise resolved that arises out of allegations of personal injury or wrongful death claims.

183. "Unions" means the Consenting Unions and the Non-Consenting Unions.

184. "Union Concession Distribution Property" means (a) 25% of the New Hostess Common Stock (subject to dilution to less than 25% pursuant to the Equity Incentive Plan) and (b) the New Third Lien Tranche B Term Loans.

185. "Union Professionals" means Bailey & Ehrenberg PLLC; Cohen, Weiss & Simon LLP; Fulbright & Jaworski L.L.P.; Glanzer & Company LLC; MAEVA Advisors, LLC; Potok & Co., Inc.; and Willkie Farr & Gallagher LLP.

186. "Union Settlement Agreements" means, collectively, the BCTGM Settlement Agreement, the IBT Settlement Agreement and the Other Union Settlement Agreements.

187. "United States Trustee" means the Office of the United States Trustee for the Southern District of New York.

188. "Voting Deadline" means the deadline for submitting Ballots either to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code that is specified in the Disclosure Statement, the Ballots or related solicitation documents approved by the Bankruptcy Court.

## **B. Rules of Interpretation and Computation of Time**

### **1. Rules of Interpretation**

For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or Confirmation Exhibit Filed or to be Filed means such document or Confirmation Exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan, Confirmation Order or otherwise; (d) any reference to an entity as a holder of a Claim or Interest includes that entity's successors, assigns and affiliates; (e) all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Confirmation Exhibits of or to the Plan; (f) the words "herein," "hereunder" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) subject to the provisions of any contract, articles or certificates of incorporation, bylaws, codes of regulation,

similar constituent documents, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code will apply to the extent not inconsistent with any other provision of this Section I.B.1.

**2. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

**ARTICLE II  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

All Claims and Interests, except DIP Lender Claims, Administrative Claims and Priority Tax Claims, are placed in the following Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in Section II.A, have not been classified and thus are excluded from the following Classes. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

**A. Unclassified Claims**

**1. Payment of Administrative Claims**

**a. Administrative Claims in General**

Except as otherwise specified in this Section II.A.1 (including, but not limited to, with respect to Compromise Administrative Claims and Intercompany Claims arising on or after the Petition Date), and subject to the Bar Date provisions herein, unless otherwise agreed by the holder of an Administrative Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, or unless a Final Order of the Bankruptcy Court provides otherwise, each holder of an Allowed Administrative Claim will receive, in full satisfaction of its Allowed Administrative Claim, Cash equal to the amount of such Allowed Administrative Claim either (i) on the Effective Date or (ii) if the Administrative Claim is not allowed as of the Effective Date, 60 days after the date on which such Administrative Claim becomes an Allowed Administrative Claim. Any holder of an Allowed Administrative Claim for which multiple Debtors are liable shall be entitled to only one Distribution in respect of such Administrative Claim. No multiple recovery on account of any Allowed Administrative Claim will be provided or permitted.

**b. Compromise Administrative Claims and Excess Cash**

Unless otherwise agreed by a holder of a Compromise Administrative Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, or unless a Final Order of the Bankruptcy Court provides otherwise, each holder of an Allowed Compromise Administrative Claim will receive, in accordance with Section V.D.2 and in full satisfaction of its Compromise Administrative Claim, an initial principal amount of New Third Lien Tranche C Term Loans in the allowed amount of such Compromise Administrative Claim (and will be deemed to have loaned such amount to the Reorganized Debtors under the New Third Lien Term Loan Facility), plus a Pro Rata share of any Reserved Cash held by the Disbursing Agent on account of such principal amount; *provided that*, in the event that Excess Cash is determined to exist pursuant to Section III.G, then (i) holders of Compromise Administrative Claims as of the Excess Cash Record Date will be entitled to their Pro Rata share of 50% of such Excess Cash and (ii) the initial principal amount of New Third Lien Tranche C Term Loans deemed to have been loaned by the holders of Compromise Administrative Claims will be reduced on a dollar-for-dollar basis for each dollar of Excess Cash paid on account of such claims (and in the event promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility have been delivered to such holders, such promissory notes or other instruments shall be

returned to the New Third Lien Term Loan Agent for cancellation and replaced with promissory notes or other instruments reflecting the correct initial principal amount) and additional principal will be deemed to have accreted (or, if such loans bear interest, interest will be deemed to have accrued) only on the correct initial principal amount from the Effective Date.

**c. Overpayment of Professionals**

Upon the determination of the Total Compromise Fee Claim and the Compromise Professional Fee Claim for a particular Compromise Fee Professional, the Reorganized Debtors shall determine whether an Excess Professional Fee Payment was made to that Compromise Fee Professional. To the extent an Excess Professional Fee Payment was made, the Reorganized Debtors will notify the Compromise Fee Professional and the Compromise Fee Professional will, within five Business Days of receiving such notice, return the amount of the Excess Professional Fee Payment to the Reorganized Debtors.

**d. Notice Procedures Governing Certain Holders of Compromise Administrative Claims.**

Within 30 days of the Effective Date, the following Compromise Fee Professionals will each submit a report to the DIP Notice Parties identifying all fees earned and expenses incurred during the Chapter 11 Cases (and any amounts paid by the Debtors as of the Effective Date): (i) Union Professionals, (ii) Compromise Fee Professionals that rendered services to the DIP Lenders or the Prepetition Secured Lenders, (iii) Debevoise & Plimpton LLP and (iv) FTI Consulting, Inc. If none of the DIP Notice Parties Files an objection to the calculation of fees and expenses identified on any such report within 10 days of receipt, the Compromise Administrative Claim held by such Compromise Fee Professional shall be deemed allowed; *provided, however, that* all fees and expenses of the Compromise Fee Professionals that have rendered services to the DIP Lenders shall be deemed allowed to the extent they have been previously paid by the Debtors. If an objection to the calculation of fees and expenses identified on such report is Filed within 10 days of receipt, then the amount of the Compromise Administrative Claim held by such Compromise Fee Professional shall be determined by the Bankruptcy Court after notice and a hearing.

**e. Statutory Fees**

On or before the Effective Date, Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing or in the Confirmation Order, will be paid in Cash equal to the amount of such Administrative Claims by the Debtors. All fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid by the applicable Reorganized Debtor in accordance therewith until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code, or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

**f. Ordinary Course Postpetition Administrative Liabilities**

Allowed Administrative Claims based upon liabilities incurred by a Debtor on or after the Petition Date in the ordinary course of the Debtor's business (including but not limited to (i) postpetition Administrative Claims arising from or with respect to the sale of goods or provisions of services (but not including Professional Fee Claims); (ii) postpetition customer credits under a Debtor's existing customer program; (iii) postpetition Administrative Claims of governmental units for Taxes (including Tax audit Claims related to Tax years or portions thereof ending after the Petition Date), (iv) Administrative Claims arising under contracts and leases that are assumed and have not been rejected and (v) Administrative Claims arising under post-Petition Date contracts and leases) will be paid by the applicable Reorganized Debtor, pursuant to the terms and conditions of the particular transaction giving rise to those Administrative Claims, without further action by the holders of such Administrative Claims or further approval by the Bankruptcy Court. Administrative Claims held by MEPPs shall not be considered Administrative Claims incurred in the ordinary course of the Debtor's business. 503(b)(9) Claims and Compromise Administrative Claims shall be payable under Sections II.A.1.a and II.A.1.b and not under this Section.

**g. Claims Under the DIP Credit Agreement**

On or before the Effective Date, Allowed DIP Lender Claims will be paid in Cash in an amount equal to the full amount of those Claims; *provided that* any DIP Lender Claims that also qualify as Compromise Administrative Claims shall receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b. Any Restricted DIP Cash will be first used to satisfy Allowed DIP Lender Claims pursuant to this Section II.A.1.g, with the balance paid from the Debtors' Cash or other sources. Any DIP Lender Claims liquidated and allowed after the Effective Date will be paid in full in Cash by the Reorganized Debtors promptly upon liquidation; *provided that* any DIP Lender Claims that also qualify as Compromise Administrative Claims shall receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b.

**h. Bar Dates for Administrative Claims**

**i. General Bar Date Provisions**

Except as otherwise provided herein or in a Bar Date Order or other order of the Bankruptcy Court, unless previously Filed, requests for payment of Administrative Claims must be Filed no later than 60 days after the Effective Date and served on the Notice Parties pursuant to the procedures specified in the Confirmation Order. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors, their respective property and any reserves established pursuant to the terms hereof, and such Administrative Claims will be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the Notice Parties and the requesting party by 120 days after the Effective Date. Holders of 503(b)(9) Claims that have asserted such claims as part of a proof of claim filed in accordance with the Bar Date Order shall not be required to File additional requests for payment of Administrative Claims under this Section. The General Bar Date shall continue to apply to 503(b)(9) Claims and nothing in this Section shall waive, extend or lengthen the General Bar Date for the holder of any prepetition Claim, including 503(b)(9) Claims.

**ii. Bar Dates for Certain Administrative Claims**

**A. Professional Compensation**

Professionals or other entities asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the Notice Parties and such other entities who are designated by the Bankruptcy Rules, the Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Professional Fee Claim no later than 60 days after the Effective Date; *provided, however*, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval (except as provided in the Ordinary Course Professionals Order). Objections to any Professional Fee Claim must be Filed and served on the Notice Parties and the requesting party by the later of (1) 90 days after the Effective Date, (2) 30 days after the Filing of the applicable request for payment of the Professional Fee Claim or (3) such other period of limitation as may be specifically fixed by a Final Order for objecting to such Professional Fee Claims. To the extent necessary, the Confirmation Order will amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Professional Fee Claims.

**B. Ordinary Course Liabilities**

Holders of Allowed Administrative Claims based upon liabilities incurred by a Debtor on or after the Petition Date but prior to the Effective Date in the ordinary course of the Debtor's business (including but not limited to (1) postpetition Administrative Claims arising from or with respect to the sale of goods or provisions of services (but not including Professional Fee Claims); (2) postpetition customer credits under a Debtor's existing customer program; (3) postpetition Administrative Claims of governmental units for Taxes (including Tax audit Claims related to Tax years or portions thereof ending after the Petition Date), (4) Administrative Claims arising

under contracts and leases that are assumed and have not been rejected (including Assumed Collective Bargaining Agreements) and (5) Administrative Claims arising under post-Petition Date contracts and leases) will not be required to File or serve any request for payment of such Administrative Claims. If an Administrative Claim is not one of the types of postpetition Administrative Claims explicitly identified in the parenthetical above and is not paid within 45 days of the Effective Date, the holder of such claim must File its Administrative Claim in the Bankruptcy Court in accordance with Section II.A.1.h.i or such holder shall be forever barred from asserting such claims against the Reorganized Debtors or their property.

**C. Claims Under the DIP Credit Agreement and Related Orders**

Holders of Administrative Claims that are DIP Lender Claims will not be required to File or serve any request for payment or application for allowance of such Claims. Such Administrative Claims will be satisfied pursuant to Section II.A.1.g.

**i. Postpetition Intercompany Claims**

Intercompany Claims arising on or after the Petition Date will be extinguished on the Effective Date for no recovery, subject to the Restructuring Transactions.

**2. Payment of Priority Tax Claims**

**a. Priority Tax Claims**

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Priority Tax Claim, Cash equal to the amount of such Allowed Priority Tax Claim, at the election of the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, (i) either (A) on the Effective Date or (B) if the Priority Tax Claim is not allowed as of the Effective Date, 60 days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim or (ii) in equal annual installment payments, payable on the anniversary of the Petition Date (*provided that* the first such payment shall be made on the later of the first anniversary of the Petition Date and the Effective Date) and concluding on the fifth anniversary of the Petition Date, in Cash the present value of which (calculated in accordance with section 511 of the Bankruptcy Code), as of the Effective Date, is equal to the amount of such Allowed Priority Tax Claim, *provided that* the Reorganized Debtors shall retain the option, to be exercised in their sole discretion, to fully satisfy such Allowed Priority Tax Claim at any time after the Effective Date and prior to the fifth anniversary of the Petition Date through a Cash payment in an amount sufficient to render the present value of all Cash payments received by the holder of such Allowed Priority Tax Claim on account of such Allowed Priority Tax Claim (calculated in accordance with section 511 of the Bankruptcy Code), as of the Effective Date, equal to the amount of such Allowed Priority Tax Claim.

**b. Other Provisions Concerning Treatment of Priority Tax Claims**

Notwithstanding the provisions of Section II.A.2.a or Section I.A.172, the holder of an Allowed Priority Tax Claim will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any such Claim or demand for any such penalty will be classified in Class 3. The holder of an Allowed Priority Tax Claim will not assess or attempt to collect such penalty from the Debtors, the Reorganized Debtors or their respective property or any reserves established pursuant to the Plan (other than as a holder of a Class 3 Claim).

**B. Classified Claims and Interests**

**1. Priority Claims Against the Debtors (Class 1 Claims) are unimpaired.** On the Effective Date, each holder of an Allowed Claim in Class 1 will receive Cash equal to the amount of such Allowed Claim, unless

the holder of such Priority Claim and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, as applicable, agree to a different treatment.

**2. Senior Secured Revolving Credit Claims Against the Debtors (Class 2A Claims) are unimpaired.** On the Effective Date, each holder of an Allowed Claim in Class 2A will receive Cash equal to the amount of such Allowed Claim; *provided that* any Senior Secured Revolving Credit Claims that also qualify as Compromise Administrative Claims will instead receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b.

**3. First Lien Term Loan Tranche A/B Designated Claims Against the Debtors (Class 2B Claims) are impaired.** On the Effective Date, each holder of an Allowed Claim in Class 2B will receive its Pro Rata share of each component of the First Lien Term Loan Tranche A/B Designated Plan Distribution Property.

**4. First Lien Term Loan Tranche A/B Non-Designated Claims Against the Debtors (Class 2C Claims) are impaired.** On the Effective Date, each holder of an Allowed Claim in Class 2C will receive its Pro Rata share of the First Lien Term Loan Tranche A/B Non-Designated Plan Distribution Property; *provided that* any First Lien Term Loan Tranche A/B Non-Designated Claims that also qualify as Compromise Administrative Claims will receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b on account of such Compromise Administrative Claims.

**5. First Lien Term Loan Tranche C Claims Against the Debtors (Class 2D Claims) are impaired.** On the Effective Date, each holder of an Allowed Claim in Class 2D will receive Cash equal to the amount of such Allowed Claim, with prepetition and postpetition interest on such Allowed Claims calculated at the applicable non-default rate under the First Lien Term Loan Facility; *provided that* any First Lien Term Loan Tranche C Claims that also qualify as Compromise Administrative Claims will receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b on account of such Compromise Administrative Claims.

**6. Third Lien Term Loan Claims Against the Debtors (Class 2E Claims) are impaired.** On the Effective Date, each holder of an Allowed Claim in Class 2E will receive its Pro Rata share of the Third Lien Term Loan Plan Distribution Property; *provided that* any Third Lien Term Loan Claims that also qualify as Compromise Administrative Claims shall receive the treatment accorded to Compromise Administrative Claims in Section II.A.1.b on account of such Compromise Administrative Claims.

**7. Other Secured Claims Against the Debtors (Class 2F Claims) are unimpaired.** On the Effective Date, unless otherwise agreed by a Claim holder and the applicable Debtor (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or Reorganized Debtor, each holder of an Allowed Claim in Class 2F will receive treatment on account of such Allowed Secured Claim in the manner set forth in Option A, B or C below, at the election of the applicable Debtor. The applicable Debtor will be deemed to have elected Option B except with respect to (a) any Allowed Secured Claim as to which the applicable Debtor elects either Option A or Option C in one or more certifications Filed prior to the conclusion of the Confirmation Hearing and (b) any Allowed Secured Tax Claim, with respect to which the applicable Debtor will be deemed to have elected Option A.

Option A: On the Effective Date, Allowed Claims in Class 2F with respect to which the applicable Debtor elects Option A will receive Cash equal to the amount of such Allowed Claim.

Option B: On the Effective Date, Allowed Claims in Class 2F with respect to which the applicable Debtor elects or is deemed to have elected Option B will be Reinstated.

Option C: On the Effective Date, a holder of an Allowed Claim in Class 2F with respect to which the applicable Debtor elects Option C will be entitled to receive (and the applicable Debtor or Reorganized Debtor shall release and transfer to such holder) the collateral securing such Allowed Claim, *provided that* such holder shall not be entitled to receive collateral of a value in excess of such Allowed Class 2F Claim.

Notwithstanding either the foregoing or Section I.A.172, the holder of an Allowed Secured Tax Claim in Class 2F will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with such Allowed Secured Tax Claim. Any such Claim or demand for any such penalty will be subject to treatment in Class 3, if not subordinated to Class 3 Claims pursuant to an order of the Bankruptcy Court. The holder of an Allowed Secured Tax Claim will not assess or attempt to collect such penalty from the Debtors, Reorganized Debtors or their respective property (other than as a holder of a Class 3 Claim).

**8. General Unsecured Claims Against the Debtors (Class 3 Claims) are impaired.** No property will be distributed to or retained by the holders of General Unsecured Claims, and such Claims will be extinguished on the Effective Date. Holders of Class 3 Claims will not receive any Distribution pursuant to the Plan. Consistent with the language of section 1126(g) of the Bankruptcy Code, each of the holders of General Unsecured Claims in Class 3 will be deemed to have rejected the Plan.

**9. Prepetition Intercompany Claims (Class 4 Claims) are impaired.** All Intercompany Claims arising prior to the Petition Date will be extinguished on the Effective Date for no recovery, subject to the Restructuring Transactions. Notwithstanding this treatment of Class 4 Claims, each of the holders of such Intercompany Claims will be deemed to have accepted the Plan.

**10. Old Common Stock of Hostess Interests (Class 5 Interests) are impaired.** On the Effective Date, the Old Common Stock of Hostess and all Interests related thereto will be canceled, and holders of Class 5 Interests will not receive any Distribution pursuant to the Plan. Consistent with the language of section 1126(g) of the Bankruptcy Code, each holder of a Class 5 Interest will be deemed to have rejected the Plan.

**11. Subsidiary Debtor Equity Interests (Class 6 Interests) are unimpaired.** On the Effective Date, the Subsidiary Debtor Equity Interests will be Reinstated, subject to the Restructuring Transactions.

**C. Special Provisions Regarding the Treatment of Allowed Secondary Liability Claims; Maximum Recovery**

The classification and treatment of Allowed Claims under the Plan take into consideration all Allowed Secondary Liability Claims. On the Effective Date, Allowed Secondary Liability Claims will be treated as follows:

1. The Allowed Secondary Liability Claims arising from or related to any Debtor's joint or several liability for the obligations under any Executory Contract or Unexpired Lease that is being assumed or deemed assumed by another Debtor or under any Executory Contract or Unexpired Lease that is being assumed by and assigned to another Debtor will be Reinstated.

2. Except as provided in Section II.C.1, holders of Allowed Secondary Liability Claims against any Debtor will be entitled to only one Distribution in respect of the Liabilities related to such Allowed Secondary Liability Claim and will be deemed satisfied in full by the Distributions on account of the related underlying Allowed Claim. Notwithstanding the existence of a Secondary Liability Claim, no multiple recovery on account of any Allowed Claim against any Debtor in excess of 100 cents on the dollar will be provided or permitted.

**ARTICLE III  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Continued Corporate Existence and Vesting of Assets**

Except as otherwise provided herein (including with respect to the Restructuring Transactions described in Section III.B): (1) as of the Effective Date, Reorganized Hostess will exist as a separate corporate entity, with all corporate powers in accordance with the laws of the state of Delaware and the certificates of incorporation and bylaws attached hereto as Exhibits III.D.1.a and III.D.1.b; (2) subject to the Restructuring Transactions, each of the Debtors will, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, with all of the powers of such a legal entity under applicable law and without prejudice to any

right to alter or terminate such existence (whether by merger, conversion, dissolution or otherwise) under applicable state law; and (3) on the Effective Date, all property of the Estate of a Debtor, and any property acquired by a Debtor or Reorganized Debtor under the Plan, will vest, subject to the Restructuring Transactions, in such Reorganized Debtor free and clear of all Claims, liens, charges, other encumbrances, Interests and other interests. On and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, each Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for appropriate Professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Bankruptcy Court.

## **B. Restructuring Transactions**

### **1. Restructuring Transactions Generally**

On or after the Confirmation Date, consistent with the terms of the Plan, the applicable Debtors or Reorganized Debtors may enter into any Restructuring Transactions and may take such actions as the Debtors or Reorganized Debtors may determine to be necessary or appropriate to effect, in accordance with applicable non-bankruptcy law, a corporate restructuring of their respective businesses or simplify the overall corporate structure of the Reorganized Debtors, including but not limited to the Restructuring Transactions identified on Exhibit III.B.1 and any other transactions as necessary as a means to accomplish the Restructuring Transactions identified on such Exhibit. Unless otherwise provided by the terms of a Restructuring Transaction, all such Restructuring Transactions will be deemed to occur on the Effective Date and may include one or more mergers, consolidations, restructurings, conversions, dispositions, liquidations or dissolutions, as may be determined by the Debtors or the Reorganized Debtors to be necessary or appropriate. The actions to effect these transactions may include: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree; (c) the filing of appropriate certificates or articles of merger, consolidation, conversion, dissolution or change in corporate form pursuant to applicable state law; and (d) the taking of all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions. Any such transactions may be effected on or subsequent to the Effective Date without any further action by the stockholders or directors of any of the Debtors or the Reorganized Debtors.

### **2. Obligations of Any Successor Corporation in a Restructuring Transaction**

The Restructuring Transactions may result in substantially all of the respective assets, properties, rights, liabilities, duties and obligations of certain of the Reorganized Debtors vesting in one or more surviving, resulting or acquiring corporations. In each case in which the surviving, resulting or acquiring corporation in any such transaction is a successor to a Reorganized Debtor, such surviving, resulting or acquiring corporation will perform the obligations of the applicable Reorganized Debtor arising under or pursuant to the Plan to pay or otherwise satisfy the Allowed Claims against such Reorganized Debtor, except as provided in the Plan or in any contract, instrument or other agreement or document effecting a disposition to such surviving, resulting or acquiring corporation, which may provide that another Reorganized Debtor will perform such obligations.

## **C. New Stockholder Agreement**

On the Effective Date, Reorganized Hostess and the recipients of the New Hostess Common Stock will become parties to the New Stockholder Agreement. Each recipient of New Hostess Common Stock, by virtue of such receipt, will be bound to the terms and conditions of the New Stockholder Agreement even if such recipient has not executed the New Stockholder Agreement.

**D. Corporate Governance and Directors and Officers**

**1. Certificates of Incorporation and Bylaws of Reorganized Hostess**

As of the Effective Date, the certificates of incorporation and the bylaws (or comparable constituent documents) of each Reorganized Debtor will be substantially in the forms set forth in Exhibits III.D.1.a and III.D.1.b, respectively. The certificates of incorporation and bylaws (or comparable constituent documents) of each Reorganized Debtor, among other things, will: (a) prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code; and (b) authorize the issuance of New Hostess Common Stock in amounts not less than the amounts necessary to permit the Distributions required or contemplated by the Plan. After the Effective Date, the Reorganized Debtor may amend and restate their respective articles of incorporation or bylaws (or comparable constituent documents) as permitted by applicable state law, subject to the terms and conditions of such constituent documents. On the Effective Date, or as soon thereafter as is practicable, the Reorganized Debtors shall file their certificates of incorporation (or comparable constituent documents) with the respective secretaries of state of the states in which they are incorporated or organized, to the extent required by and in accordance with the applicable corporate law of such states.

**2. Directors and Officers of Reorganized Hostess**

Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, from and after the Effective Date: (a) the initial officers of each of the Reorganized Debtors will consist of the individuals identified on Exhibit III.D.2; (b) the initial board of directors of Reorganized Hostess will be comprised of nine members (to be identified on Exhibit III.D.2), as follows: (i) six directors selected by a committee established by the existing Third Lien Term Loan Lenders, (ii) one director selected by the IBC-IBTNNC, (iii) one director selected by the BCTGM and (iv) the chief executive officer of Reorganized Hostess; and (c) the initial boards of directors of each of the other Reorganized Debtors will consist of the individuals identified, or to be designated pursuant to the procedures specified, on Exhibit III.D.2; *provided that* (x) Reorganized Hostess, as applicable, shall recruit and appoint a new chief executive officer as soon as practicable and (y) the chief executive officer of Reorganized Hostess shall not serve as the chairman of Reorganized Hostess's board of directors, *provided that* such restriction does not unreasonably impede Hostess's recruitment efforts. Each of the six directors selected by a committee established by the existing Third Lien Term Loan Lenders and the initial officers of the Reorganized Debtors will serve from and after the Effective Date until his or her successor is duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the terms of the certificates of incorporation and bylaws (or comparable constituent documents) of the Reorganized Debtors and state law. The directors selected by the IBC-IBTNNC and the BCTGM shall serve from and after the Effective Date until the expiration of the Assumed Collective Bargaining Agreements and, during such period, the IBC-IBTNNC and the BCTGM (as applicable) shall have the right to select any successor to such directors. The directors selected by the IBC-IBTNNC and the BCTGM shall serve on each of the audit and compensation committees of Reorganized Hostess's board of directors until the expiration of the Assumed Collective Bargaining Agreements with the IBT and BCTGM, respectively.

**E. New Hostess Common Stock**

**1. Issuance of New Hostess Common Stock**

The New Hostess Common Stock, when issued as provided in the Plan, will be duly authorized, validly issued and, if applicable, fully paid and nonassessable. Each issuance under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such issuance and by the terms and conditions of the instruments evidencing or relating to such issuance, which terms and conditions shall bind each person or entity receiving such issuance. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of the New Hostess Common Stock under the Plan will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder.

**F. Implementation of Global Resolution and Non-Consenting Union 1113/1114 Orders**

**1. Assumption and Assignment of Collective Bargaining Agreements**

On the Effective Date, the applicable Debtor or Debtors will assume and assign to the applicable Reorganized Debtor (a) any Assumed Collective Bargaining Agreements, (b) any Imposed Collective Bargaining Agreements and (c) any and all other related agreements necessary to effect the Union Settlement Agreements and the relief granted by the Non-Consenting Union 1113/1114 Orders. Upon assumption, any and all Claims held by the Unions (whether prepetition or postpetition), and any and all Claims asserted by current or former members of the Unions (whether prepetition or postpetition) relating to matters addressed by either the Union Settlement Agreements (for Consenting Unions) or the proposal approved by the Non-Consenting Union 1113/1114 Orders (for Non-Consenting Unions) shall be deemed waived, discharged and extinguished. The Reorganized Debtors shall to the extent necessary object to proofs of Claim or requests for payment of an Administrative Claim Filed in respect of such obligations. Ordinary course obligations arising under Assumed Collective Bargaining Agreements, specifically including wages, vacation pay, medical payments, health and welfare payments and postpetition grievances (other than grievances over payments to MEPPs) of the kind that the Debtors have been making from and after the Petition Date to or for the benefit of the Debtors' employees represented by the Unions shall not be waived, discharged and extinguished but shall be unaltered by the Plan and shall be satisfied in the ordinary course of business.

**2. Withdrawal From and Re-Entry Into MEPPs**

To the extent that the Debtors have not previously withdrawn from a MEPP, the Debtors shall be deemed to have withdrawn from all MEPPs no later than December 31, 2012.

**3. Union Concession Distribution Property**

In accordance with the terms of the Union Settlement Agreements and the Non-Consenting Union 1113/1114 Orders, the Disbursing Agent will reserve the Union Concession Distribution Property to be distributed to the Unions in accordance with Section III.F.4 of the Plan; *provided that* in no event shall any allocation of shares pursuant to the Plan require Reorganized Hostess to become obligated to register the New Hostess Common Stock pursuant to Section 12(g) of the Exchange Act or otherwise become obligated to file reports pursuant to Section 13 or 15(d) of the Exchange Act.

**4. Distribution and Allocation of Union Concession Distribution Property**

In accordance with the terms of the Union Settlement Agreements and the Non-Consenting Union 1113/1114 Orders, the Unions shall determine the allocation of the Union Concession Distribution Property among themselves. The Unions shall provide the Debtors with the details of the proposed allocation of the Union Concession Distribution Property in writing no later than 10 calendar days after the Effective Date; *provided that* if the Unions do not provide the Debtors with such writing by such date, the Disbursing Agent will retain the Union Concession Distribution Property pending a determination of the allocation of the Union Concession Distribution Property by the Bankruptcy Court pursuant to a Final Order. The Union Concession Distribution Property shall be distributed to each Union or its applicable employees in accordance with Section V.B.5.

**G. Excess Cash**

No later than three days prior to the Effective Date, the Debtors shall (1) estimate the amount of Excess Cash that will be either held by or available to the Reorganized Debtors as of the Effective Date after completion of the transactions that are to occur on the Effective Date and (2) report such estimate to the Notice Parties. Any Excess Cash shall be distributed or allocated as follows: (1) 50% to the holders of First Lien Term Loan Tranche A/B Designated Claims, in accordance with Section II.B.3, and (2) 50% to the Compromise Administrative Claim Reserve, in accordance with Section V.D.

**H. Employment, Retirement and Other Related Agreements; Cessation of Retiree Benefits; Workers' Compensation Programs**

**1. Employment-Related Agreements**

As of the Effective Date, the Reorganized Debtors will have authority to: (a) maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification and other agreements with its active directors, officers and employees, subject to the terms and conditions of any such agreement; and (b) enter into new employment, retirement, welfare, incentive, severance, indemnification and other agreements for active employees.

**2. Retiree Benefits**

Except as provided in any modifications under the Union Settlement Agreements or the Non-Consenting Union 1113/1114 Orders, as applicable, obligations to pay or provide retiree benefits (as defined in section 1114(a) of the Bankruptcy Code) for all retirees will be assumed by the applicable Reorganized Debtor and paid after the Effective Date in the ordinary course of business.

**3. Company Pension Plan**

In accordance with the Union Settlement Agreements (for Consenting Unions) and the Non-Consenting Union 1113/1114 Orders (for Non-Consenting Unions), benefit accrual for all participating employees under the Company Pension Plan will be frozen, and the Company Pension Plan shall be amended accordingly. The Company Pension Plan (as amended) will be assumed by the applicable Reorganized Debtor on the Effective Date.

**4. Continuation of Workers' Compensation Programs**

From and after the Effective Date, (a) the Reorganized Debtors will continue to administer and pay or cause to be paid all valid claims for benefits and liabilities arising under the Debtors' workers' compensation programs for which the Debtors or the Reorganized Debtors are responsible under applicable state workers' compensation law, regardless of when the applicable injuries occurred, in accordance with the Debtors' prepetition practices and procedures, applicable plan documents and governing state workers' compensation law, (b) any restricted Cash held by the Reorganized Debtors or third parties (as determined in accordance with GAAP) that secures, or letters of credit issued to a governmental entity or insurance company that provide assurances of payment of, the Debtors' workers' compensation obligations will remain in place and, if applicable, may be used to satisfy workers' compensation claims in accordance with the Debtors' existing workers' compensation practices and procedures, applicable plan documents and governing state workers' compensation laws and (c) nothing in the Plan shall discharge, release, or relieve the Debtors or the Reorganized Debtors from any current or future liability under applicable state workers' compensation law in the jurisdictions where the Debtors or the Reorganized Debtors participate in workers' compensation programs. The Debtors expressly reserve the right to challenge the validity of any claim for benefits or liabilities arising under any workers' compensation program.

**5. Equity Incentive Plan**

After the Effective Date, the Reorganized Debtors will implement the Equity Incentive Plan.

**I. Confirmation Cash Infusion**

The Debtors shall close all transactions relating to the Confirmation Cash Infusion on or prior to the Effective Date.

**J. Corporate Action**

The Restructuring Transactions; the adoption of new or amended and restated certificates of incorporation and bylaws (or comparable constituent documents) for the Reorganized Debtors; the initial selection of directors and officers for each Reorganized Debtor; the entry into the Exit Facility and receipt of the proceeds thereof; the issuance of the New Hostess Common Stock; the deemed incurrence of the New First Lien Term Loans and New Third Lien Term Loans; the Distribution of the New Hostess Common Stock and Cash pursuant to the Plan; the issuance and Distribution of the Union Concession Distribution Property; the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or documents related to any of the foregoing; the adoption, execution and implementation of employment, retirement and indemnification agreements, incentive compensation programs (including the Equity Incentive Plan), retirement income plans, welfare benefit plans and other employee plans and related agreements; the assumption of the Company Pension Plan (as amended) by a Reorganized Debtor or other entity created in connection with the Restructuring Transactions; and the other matters provided for under the Plan involving the corporate structure of the Debtors and the Reorganized Debtors or corporate action to be taken by or required of a Debtor or a Reorganized Debtor will be deemed to occur and be effective as of the Effective Date, if no such other date is specified in such other documents, and will be authorized and approved in all respects and for all purposes without any requirement of further action by the stockholders or directors of the Debtors or the Reorganized Debtors.

**K. Special Provisions Regarding Insured Claims**

**1. Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims**

Distributions, if any, under the Plan to each holder of an Allowed Insured Claim will be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section III.K will constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any entity may hold against any other entity, including the Debtors' insurance carriers.

**2. Assumption and Continuation of Insurance Policies**

From and after the Effective Date, each of the Insurance Contracts will be assumed by the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code or continued in accordance with its terms, with rights and obligations under such policy such that each of the parties' contractual, legal and equitable rights under each Insurance Contract shall remain unaltered, and the successors to the Debtor parties to each Insurance Contract will continue to be bound by such Insurance Contract as if the Chapter 11 Cases had not occurred. Nothing in the Plan, shall affect, impair or prejudice the rights and defenses of the Insurers or the Reorganized Debtors under the Insurance Contracts in any manner, and such Insurers and Reorganized Debtors shall retain all rights and defenses under the Insurance Contracts, and the Insurance Contracts shall apply to, and be enforceable by and against, the Reorganized Debtors and the applicable Insurer(s) as if the Chapter 11 Cases had not occurred. In addition, notwithstanding anything to the contrary in the Plan, nothing in the Plan (including any other provision that purports to be preemptory or supervening), shall in any way operate to, or have the effect of, impairing any party's legal, equitable or contractual rights and/or obligations under any Insurance Contract, if any, in any respect. Any such rights and obligations shall be determined under the Insurance Contracts, any agreement of the parties and applicable law.

**L. Preservation of Causes of Action by the Debtors and Reorganized Debtors**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors will retain and may enforce any Causes of Action that the Debtors or the Estates may hold against any entity (including, but not limited to, all Retained Actions) to the extent not expressly released under the Plan or by any Final Order of the Bankruptcy Court.

**M. Cancellation and Surrender of Instruments, Securities and Other Documentation**

Except as provided in any contract, instrument or other agreement or document entered into or delivered in connection with the Plan or as otherwise provided for herein, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article V: (1) the Senior Secured Revolving Credit Facility, the First Lien Term Loan Facility, the Third Lien Term Loan Facility, the Fourth Lien Notes Indenture, the First Lien Term Loan Notes, the Third Lien Term Loan Notes, the Fourth Lien Notes and the Old Common Stock of Hostess will be deemed canceled and of no further force and effect against the Debtors, without any further action on the part of any Debtor; (2) the obligations of the Debtors, the Senior Secured Revolving Credit Agent, the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the Fourth Lien Notes Indenture Trustee, if applicable, under such canceled agreements, contracts, instruments, securities and other documents shall be discharged, *provided, however, that* (a) the Senior Secured Revolving Credit Facility, the First Lien Term Loan Facility and the Third Lien Term Loan Facility shall continue to survive and be in full force and effect only for the purposes of (i) making Distributions under the Plan, (ii) permitting the Senior Secured Revolving Credit Agent, the First Lien Term Loan Agent and the Third Lien Term Loan Agent to appear in the Chapter 11 Cases and (iii) any function necessary in connection with the foregoing clauses (a)(i)-(ii) and (b) the Fourth Lien Notes shall continue to survive and be in full force and effect only for the purposes of (i) making Distributions under the Plan, (ii) asserting any charging lien thereunder, (iii) permitting the Fourth Lien Notes Indenture Trustee to appear in the Chapter 11 Cases and (iv) any function necessary in connection with the foregoing clauses (b)(i)-(iii); and (3) the holders of or parties to such canceled agreements, contracts, instruments, securities and other documents will have no rights arising therefrom or relating thereto or the cancellation thereof, except the rights provided pursuant to the Plan.

**N. Release of Liens**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and except as specified in the treatment provided for Claims and Interests in Article II, all mortgages, deeds of trust, liens or other security interests against the property of any Estate will be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, will revert to the applicable Reorganized Debtors and their successors and assigns. As of the Effective Date, the Reorganized Debtors shall be authorized to execute and file on behalf of all applicable creditors who have had their liens released and discharged pursuant to the foregoing such UCC termination statements, mortgage or deed of trust releases or such other forms, releases or terminations as may be necessary or appropriate to implement the provisions of this Section III.N.

**O. Effectuating Documents; Further Transactions**

The president, chief executive officer, chief financial officer, treasurer or any vice president of each Debtor or Reorganized Debtor, as applicable, shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The secretary or any assistant secretary of each Debtor or Reorganized Debtor will be authorized to certify or attest to any of the foregoing actions.

**P. Exemption from Certain Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax, filing fee, sales or use Tax or similar Tax: (1) the issuance, transfer or exchange of New Hostess Common Stock; (2) the creation of any mortgage, deed of trust, lien or other security interest; (3) the making or assignment of any lease or sublease; (4) the execution and delivery of the Exit Facility, the New First Lien Term Loan Facility or the New Third Lien Term Loan Facility; (5) any Restructuring Transaction; (6) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, conversion, disposition, liquidation or dissolution, deeds, bills of sale or assignments, applications, certificates or statements executed or filed in connection with any of the foregoing or pursuant to the Plan; or (7) any transaction related to the Confirmation Cash Infusion. The Confirmation Order shall direct the appropriate state or

local governmental officials or agents to forgo the collection of any such Tax and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Tax.

**ARTICLE IV  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Executory Contracts and Unexpired Leases to Be Assumed**

**1. Assumption and Assignment, Generally**

On the Effective Date, the following Executory Contracts or Unexpired Leases of the Debtors shall be assumed or assumed and assigned (as applicable): (a) all contracts and leases identified on Exhibit IV.A.1; and (b) all Executory Contracts or Unexpired Leases entered into by a Debtor prior to the Petition Date that are not identified on either Exhibit IV.A.1 or Exhibit IV.D.1 (as it may be modified pursuant to Section IV.D.1), except for Executory Contracts or Unexpired Leases that (i) have been rejected pursuant to a Final Order of the Bankruptcy Court, (ii) are subject to a pending motion for reconsideration or appeal of an order authorizing the rejection of such Executory Contract or Unexpired Lease, (iii) are subject to a motion to reject such Executory Contract or Unexpired Lease Filed on or prior to the Effective Date, (iv) have terminated or expired by their respective terms; or (v) are designated for rejection in accordance with Section IV.F.6. Each contract and lease assumed pursuant to this Section IV.A.1 will be assumed only to the extent that such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit IV.A.1 will not constitute an admission by a Debtor or Reorganized Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that a Debtor or Reorganized Debtor has any liability thereunder. The Confirmation Order will constitute an order of the Bankruptcy Court approving such assumptions or assumptions and assignments, pursuant to section 365 of the Bankruptcy Code, as of the later of (a) the Effective Date or (b) the resolution of any objection to the proposed assumption or assumption and assignment of an Executory Contract or Unexpired Lease. As of the effective time of an applicable Restructuring Transaction, any Executory Contract or Unexpired Lease to be held by any Debtor or Reorganized Debtor and assumed hereunder or otherwise in the Chapter 11 Cases, if not expressly assigned to a third party previously in the Chapter 11 Cases or assigned to a particular Reorganized Debtor, will be deemed assigned to the surviving, resulting or acquiring corporation in the applicable Restructuring Transaction, pursuant to section 365 of the Bankruptcy Code.

**2. Assumptions and Assignments of Ancillary Agreements**

Each Executory Contract or Unexpired Lease assumed pursuant to Section IV.A.1 will include any modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such contract or lease, unless any such modification, amendment, supplement, restatement or other agreement is expressly identified on Exhibit IV.D.1.

**B. Payments Related to the Assumption of Executory Contracts or Unexpired Leases**

To the extent that such Claims constitute monetary defaults, the Cure Amount Claims associated with each Executory Contract or Unexpired Lease to be assumed pursuant to the Plan will be (a) identified on Exhibit IV.A.1, if such Executory Contract or Unexpired Lease is included thereon and (b) satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Amount Claim in Cash on the Effective Date or on such other terms as are agreed to by the Debtors (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) or Reorganized Debtors and the other parties to such Executory Contract or Unexpired Lease. If an objection to a proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served in accordance with Section IV.F, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code will be made within 60 days following the entry of a Final Order or the execution of a Stipulation of Amount and Nature of Claim resolving the dispute and approving the assumption, subject to the Debtors' (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) or Reorganized Debtors' right to designate the contract or lease in question for rejection in accordance with Section IV.F.6.

**C. Contracts and Leases Entered Into or Assumed After the Petition Date**

To the extent not later rejected pursuant to an order of the Bankruptcy Court or by inclusion on Exhibit IV.D.1, contracts, leases and other agreements entered into after the Petition Date by a Debtor and any Executory Contracts or Unexpired Leases assumed by a Debtor prior to the Effective Date will survive and remain unaffected by entry of the Confirmation Order. Such contracts and leases may be assigned from a Debtor to a Reorganized Debtor by operation of law pursuant to the Restructuring Transactions.

**D. Rejection of Executory Contracts and Unexpired Leases**

**1. Agreements to Be Rejected**

On the Effective Date, each Executory Contract and Unexpired Lease identified on Exhibit IV.D.1 will be rejected pursuant to section 365 of the Bankruptcy Code; *provided, however*, that the Debtors (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) and the Reorganized Debtors reserve the right, at any time on or prior to the Effective Date, to amend Exhibit IV.D.1 to: (i) delete any Executory Contract or Unexpired Lease listed therein, thus providing for its assumption or assumption and assignment pursuant to Section IV.A; or (ii) add any Executory Contract or Unexpired Lease thereto, thus providing for its rejection pursuant to this Section IV.D.1. Each contract and lease listed on Exhibit IV.D.1 will be rejected only to the extent that such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit IV.D.1 will not constitute an admission by a Debtor or Reorganized Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that a Debtor or Reorganized Debtor has any liability thereunder. The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as of the later of (a) the Effective Date or (b) the resolution of any objection to the proposed rejection of an Executory Contract or Unexpired Lease. Any Claim arising from the rejection of any Executory Contract or Unexpired Lease will be treated as a Class 3 Claim (General Unsecured Claims) and shall be subject to the provisions of section 502 of the Bankruptcy Code.

**2. Procedures Relating to Rejection**

The Debtors will serve a notice on all counterparties identified on Exhibit IV.D.1. The notice shall provide parties in interest with the following information: (a) the identity of the contract or lease being rejected and (b) the procedures and bar date for asserting any claims arising from the rejection of the Executory Contract or Unexpired Lease. The failure of a non-Debtor counterparty to an Executory Contract or Unexpired Lease to receive a notice served by the Debtors will not prevent the rejection of the Executory Contract or Unexpired Lease. Parties that desire to object to the rejection of a specific Executory Contract or Unexpired Lease must File an objection to the Plan by the deadline for Filing objections thereto.

**E. Bar Date for Rejection Damages**

Except as otherwise provided in a Final Order of the Bankruptcy Court approving the rejection of an Executory Contract or Unexpired Lease, Claims arising out of the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court on or before the later of: (1) 30 days after the Effective Date or (2) 30 days after such Executory Contract or Unexpired Lease is rejected pursuant to an order of the Bankruptcy Court. Any Claims not Filed within such applicable time periods will be forever barred from receiving a distribution from the Debtors or the Reorganized Debtors.

**F. Approval of Assumptions and Assignments and Related Procedures**

The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions or assumptions and assignments described in Section IV.A, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date, subject to parties' ability to object as set forth below. The procedures for assumption of an Executory Contract or Unexpired Lease, which shall be included in the Confirmation Order proposed by the Debtors, shall be as follows:

1. After the entry of the Confirmation Order, but prior to the Effective Date, the Debtors shall serve upon each party to an Executory Contract or Unexpired Lease being assumed pursuant to the Plan notice of: (a) the contract or lease being assumed or assumed and assigned; (b) the Cure Amount Claim, if any, that the applicable Debtor believes it would be obligated to pay in connection with such assumption; and (c) these procedures, including how such party can object to the assumption or assumption and assignment of the applicable contract or lease or the amount of the proposed Cure Amount Claim.

2. Any entity wishing to object to (a) the proposed assumption or assumption and assignment of an Executory Contract or Unexpired Lease under the Plan or (b) the proposed amount of the related Cure Amount Claim must File and serve on counsel to the Debtors or the Reorganized Debtors (as applicable) a written objection setting forth the basis for the objection within 20 days of service of the notice described in Section IV.F.1.

3. If no objection to the proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease: (a) the proposed assumption or assumption and assignment of the Executory Contract or Unexpired Lease shall be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court; and (b) the Cure Amount Claim identified by the Debtors in the notice shall be fixed and shall be paid to the appropriate contract or lease party identified on the notice on the Effective Date in accordance with Section IV.B.

4. If an objection to the proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtors (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) or the Reorganized Debtors (as applicable) and the objecting party may resolve such objection by Stipulation of Amount and Nature of Claim, without further action of the Bankruptcy Court.

5. If an objection to the proposed assumption, assumption and assignment or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection, then: (a) either party may notice the dispute for hearing by Filing a notice of hearing in the Bankruptcy Court no later than 21 days prior to the hearing date; and (b) the Debtors or the Reorganized Debtors (as applicable) may File a reply to such objection no later than seven days prior to the proposed hearing date.

6. If, at a hearing scheduled pursuant to Section IV.F.5, the Bankruptcy Court imposes requirements upon the Debtors or the Reorganized Debtors as a condition to assuming an Executory Contract or Unexpired Lease, or if the Bankruptcy Court determines that the Cure Amount Claim for a particular Executory Contract or Unexpired Lease is in excess of the amount proposed by the Debtors or the Reorganized Debtors, the Debtors (with the consent of the First Lien Term Loan Agent or the Third Lien Term Loan Agent) or the Reorganized Debtors, in their discretion, may choose to designate such Executory Contract or Unexpired Lease for rejection within five Business Days of the entry of the order of the Bankruptcy Court resolving the matter against the Debtors by Filing a supplement to Exhibit IV.D.1 with the Court. Such rejection shall be deemed effective as of the Effective Date.

#### **G. Obligations to Indemnify Directors, Officers and Employees**

1. Prior to the Effective Date, the Debtors (a) shall make arrangements to continue liability and fiduciary (including ERISA) insurance, or purchase a tail policy or policies, for the benefit of their directors, officers and employees for the period from and after the Effective Date and (b) may fully pay the premium for such insurance. Any and all directors and officers liability and fiduciary (including ERISA) insurance or tail policies in existence as of the Effective Date shall be continued in accordance with their terms and, to the extent applicable, shall be deemed assumed or assumed and assigned by the applicable Debtor pursuant to section 365 of the Bankruptcy Code.

2. The obligations of each Debtor or Reorganized Debtor to indemnify any person who was serving as one of its directors, officers or employees on or after the Petition Date by reason of such person's prior or future

service in such a capacity, or as a director, officer or employee of another corporation, partnership or other legal entity at the applicable Debtor's request, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor or Reorganized Debtor, will be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification obligations will survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

3. The obligations of each Debtor or Reorganized Debtor to indemnify any person who was serving as one of its directors, officers or employees prior to but not after the Petition Date by reason of such person's prior service in such a capacity, or as a director, officer or employee of another corporation, partnership or other legal entity at the applicable Debtor's request, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor or otherwise, will terminate and be discharged pursuant to section 502(e) of the Bankruptcy Code or otherwise as of the Effective Date; *provided, however*, that to the extent that such indemnification obligations no longer give rise to contingent Claims that can be disallowed pursuant to section 502(e) of the Bankruptcy Code, such indemnification obligations will be deemed and treated as Executory Contracts that are rejected by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date, and any Claims arising from such indemnification obligations (including any rejection damage claims) will be subject to the Bar Date provisions of Section IV.E.

#### **H. No Change in Control**

The consummation of the Plan, the implementation of the Restructuring Transactions or the assumption or assignment of any Executory Contract or Unexpired Lease to a Reorganized Debtor is not intended to, and shall not, constitute a change in ownership or change in control under any employee benefit plan or program, financial instrument, loan or financing agreement, Executory Contract or Unexpired Lease or contract, lease or agreement in existence on the Effective Date to which a Debtor is a party; *provided, however, that* nothing in this Section IV.H shall be deemed to override or render unenforceable any "Change in Control" provisions in any policies of insurance, including, without limitation, the "Change in Control" provisions in the Directors, Officers & Organization Liability Policy, No. 14-MGU-11-A23242, issued to Hostess by US Specialty Insurance Company and any policies that are excess to or follow form to that policy.

### **ARTICLE V PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. Distributions for Claims Allowed as of the Effective Date**

Distributions on Allowed Claims described in Section V.B below will be made at the times designated in those sections. Distributions with respect to Allowed DIP Lender Claims and Allowed Senior Secured Revolving Credit Claims (Class 2A Claims) will be made on the Effective Date. Distributions to be made on the Effective Date to holders of other Claims that are allowed as of the Effective Date shall be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (1) 60 days after the Effective Date; or (2) with respect to any particular Claim, such later date when the applicable conditions of Section IV.B (regarding cure payments for Executory Contracts and Unexpired Leases being assumed), Section V.E (regarding undeliverable Distributions) and Section V.J (regarding compliance with Tax requirements), as applicable, are satisfied. Distributions on account of Claims that become Allowed Claims after the Effective Date will be made in accordance with this Article V.

#### **B. Method of Distributions and Calculation of Amounts to be Distributed**

##### **1. Determination of Aggregate Amount of New First Lien Term Loans**

The Cash component of the First Lien Term Loan Tranche A/B Designated Plan Distribution Property (other than Excess Cash) shall be determined by the First Lien Term Loan Agent, in consultation with the

Debtors, no later than three Business Days prior to the Effective Date and shall not exceed \$59,000,000. The aggregate principal amount of the New First Lien Term Loans to be deemed incurred by the Reorganized Debtors in favor of the holders of First Lien Term Loan Tranche A/B Claims shall be (a) determined by the Debtors and the First Lien Term Loan Agent on the day before the Effective Date and (b) equal to the difference of (i) the aggregate amount of First Lien Term Loan Tranche A/B Claims (including accrued interest at the non-default rate) as of the Effective Date (as determined by the Debtors and the First Lien Term Loan Agent) minus (ii) the sum of (A) any Cash to be distributed to holders of First Lien Term Loan Tranche A/B Designated Claims and (B) the aggregate total of Professional Fee Claims held by any Professionals rendering services to the holders of First Lien Term Loan Tranche A/B Claims (to the extent that such claims are included in the First Lien Term Loan Tranche A/B Claims).

**2. Distributions of First Lien Term Loan Tranche A/B Designated Plan Distribution Property and Distribution on Allowed First Lien Term Loan Tranche C Claims**

**a. Distribution of New First Lien Tranche A Term Loans**

On the Effective Date and in accordance with the terms of the Plan and the New First Lien Term Loan Facility, the Reorganized Debtors shall be deemed to have incurred New First Lien Tranche A Term Loans in favor of the holders of Allowed First Lien Term Loan Tranche A/B Designated Claims and shall deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New First Lien Term Loan Facility.

**b. Distribution of Cash and Excess Cash**

On the Effective Date, the Disbursing Agent shall make Distributions of Cash and Excess Cash, if any, to holders of Allowed First Lien Term Loan Tranche A/B Designated Claims and Allowed First Lien Term Loan Tranche C Claims to the First Lien Term Loan Agent and otherwise in accordance with Section V.A.

**3. Distributions of First Lien Term Loan Tranche A/B Non-Designated Plan Distribution Property**

On the Effective Date and in accordance with the terms of the Plan and the New First Lien Term Loan Facility, the Reorganized Debtors shall be deemed to have incurred New First Lien Tranche B Term Loans in favor of the holders of Allowed First Lien Term Loan Tranche A/B Non-Designated Claims and shall deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New First Lien Term Loan Facility.

**4. Distribution of Third Lien Term Loan Plan Distribution Property.**

**a. Distribution of New Third Lien Tranche A Term Loans**

On the Effective Date and in accordance with the terms of the Plan and the New Third Lien Term Loan Facility, the Reorganized Debtors shall be deemed to have incurred New Third Lien Tranche A Term Loans in favor of the holders of Allowed Third Lien Term Loan Claims and shall deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility. The initial aggregate principal amount of the New Third Lien Tranche A Term Loans to be deemed to have been incurred by the Reorganized Debtors shall be (i) determined by the Debtors and the Third Lien Term Loan Agent on the day before the Effective Date and (ii) equal to 90% of the difference of (A) the aggregate amount of Third Lien Term Loan Claims (including accrued interest at the non-default rate) as of the Effective Date (as determined by the Debtors and the Third Lien Term Loan Agent) minus (B) the aggregate total of Professional Fee Claims held by any Professionals rendering services to Third Lien Term Loan Agent (to the extent that such claims are included in the Third Lien Term Loan Claims).

**b. Distribution of New Hostess Common Stock**

On the Effective Date and in accordance with the terms of the Plan, the Reorganized Debtors shall deliver to each holder of an Allowed Third Lien Term Loan Claim its Pro Rata share of 75% of the New Hostess Common Stock (subject to dilution pursuant to the Equity Incentive Plan); *provided that*, as set forth in Section V.F.4, no fractional shares of New Hostess Common Stock shall be issued; and *provided, further, that* in no event shall any allocation of shares pursuant to the Plan require Reorganized Hostess to become obligated to register the New Hostess Common Stock pursuant to Section 12(g) of the Exchange Act or otherwise become obligated to file reports pursuant to Section 13 or 15(d) of the Exchange Act.

**5. Distribution of Union Concession Distribution Property**

No later than 60 days after the Effective Date, the Disbursing Agent shall deliver the Union Concession Distribution Property to the Unions or their designee, as provided under the allocation timely delivered to the Debtors in accordance with Section III.F.4; *provided that*, if the Unions have not timely delivered such an allocation to the Debtors, the Disbursing Agent shall deliver the Union Concession Distribution Property to the Unions within 60 days of the entry of a Final Order determining the allocation of the Union Concession Distribution Property or, if the matter is arbitrated, a final award of an arbitrator not subject to further appellate review. The New Hostess Common Stock may be delivered to, and the New Third Lien Tranche B Term Loans may be made or deemed to have been made by (and the related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to) a trust or other appropriate entity established for the benefit of the Unions to the extent necessary or appropriate to comply with applicable non-bankruptcy laws. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of any security representing an interest in any such trust or other appropriate entity under the Plan will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder.

**6. Distributions for Claims and Interests Allowed as of the Effective Date**

The Reorganized Debtors, or such Third Party Disbursing Agents as the Reorganized Debtors may employ in their sole discretion, will make all distributions of Cash, New Third Lien Tranche B Term Loans, New Third Lien Tranche C Term Loans, New Hostess Common Stock and other instruments or documents required under the Plan.

**C. Compensation and Reimbursement for Services Related to Distributions**

Each Third Party Disbursing Agent providing services related to Distributions pursuant to the Plan will receive from the Reorganized Debtors, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services. These payments will be made by the Reorganized Debtors and will not be deducted from Distributions to be made pursuant to the Plan to holders of Allowed Claims receiving Distributions from a Third Party Disbursing Agent. For purposes of reviewing the reasonableness of the fees and expenses of any Third Party Disbursing Agent, the Reorganized Debtors shall be provided with copies of invoices from each Third Party Disbursing Agent employed by them in the form typically rendered in the regular course of the applicable Third Party Disbursing Agent's business but with sufficient detail that reasonableness may be assessed. To the extent that there are any disputes that the Reorganized Debtors are unable to resolve with a Third Party Disbursing Agent, the Reorganized Debtors may submit such dispute to the Bankruptcy Court for resolution. Each Disbursing Agent serving in connection with this Plan will serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the Distributions required by the Plan. The duties of any Third Party Disbursing Agent shall be set forth in the applicable agreement retaining such Third Party Disbursing Agent.

**D. Distributions to Holders of Allowed Compromise Administrative Claims**

**1. Funding of the Compromise Administrative Claim Reserve**

On the Effective Date, the Compromise Administrative Claim Reserve will be established by the Disbursing Agent and the Compromise Administrative Claim Reserve Assets will be placed in the Compromise Administrative Claim Reserve by the Disbursing Agent for the benefit of holders of Allowed Compromise Administrative Claims.

**2. Distributions to Holders of Compromise Administrative Claims**

**a. Distributions of Excess Cash**

The Disbursing Agent shall make Distributions of Excess Cash, if any, to holders of Allowed Compromise Administrative Claims in accordance with Section V.A; *provided, however*, that if a Compromise Fee Professional has not returned an Excess Professional Fee Payment, that professional's Excess Cash may be applied to satisfy as much as possible of the Compromise Fee Professional's obligation to return the Excess Professional Fee Payment.

**b. Distributions of New Third Lien Tranche C Term Loans**

Within (i) five Business Days after the Effective Date for Compromise Administrative Claims allowed as of such date or (ii) five Business Days after the allowance of a Compromise Administrative Claim, as applicable, the Reorganized Debtors will provide the New Third Lien Term Loan Agent with a notice identifying the aggregate initial principal amount of New Third Lien Tranche C Term Loans to be deemed to have been incurred by the Reorganized Debtors and loaned by holders of such Allowed Compromise Administrative Claim(s) (subject to Section II.A.1.b) and will deliver to such holders all related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility; *provided that* no New Third Lien Tranche C Term Loans will be distributed to a Compromise Fee Professional to the extent any Excess Professional Fee Payment owed by such Compromise Fee Professional in accordance with Section II.A.1.d remains outstanding. The New Third Lien Tranche C Term Loans may be made or deemed to have been made by (and the related promissory notes or other instruments, if any, required under the terms governing the New Third Lien Term Loan Facility may be delivered to) a trust or other appropriate entity established for the benefit of the holders of Compromise Administrative Claims to the extent necessary or appropriate to comply with applicable non-bankruptcy laws. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of any security representing an interest in any such trust or other appropriate entity under the Plan will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder.

**3. Cash Receipts and Distributions**

Any Cash Investment Yield on Cash held in the Compromise Administrative Claim Reserve will (a) be deposited in a segregated bank account in the name of the Disbursing Agent for the benefit of holders of Allowed Compromise Administrative Claims, (b) will be accounted for separately and (c) will not constitute property of the Reorganized Debtors. The Disbursing Agent will invest any Cash held in the Compromise Administrative Claim Reserve in a manner consistent with the Debtors' investment and deposit guidelines.

**4. Recourse**

Each holder of (a) an Allowed Compromise Administrative Claim and (b) a Disputed Compromise Administrative Claim that ultimately becomes an Allowed Compromise Administrative Claim will have recourse only to the Compromise Administrative Claim Reserve Assets and not to any other assets held by the Reorganized Debtors, their property or any assets previously distributed on account of any Allowed Claim.

**E. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

**1. Delivery of Distributions**

Distributions to holders of Allowed Claims will be made by a Disbursing Agent: (i) at the addresses set forth on the respective proofs of Claim Filed by holders of such Claims; (ii) at the addresses set forth in any written certification of address change delivered to the Claims and Noticing Agent or the applicable Disbursing Agent, as applicable, after the date of Filing of any related proof of claim; (iii) at the addresses reflected in the applicable Debtor's Schedules if no proof of Claim has been Filed and neither the Claims and Noticing Agent nor the applicable Disbursing Agent has received a written notice of a change of address; or (iv) if clauses (i) through (iii) are not applicable, at the last address directed by such holder in a Filing made after such Claim becomes an Allowed Claim.

**2. Undeliverable Distributions Held by Disbursing Agents**

**a. Holding of Undeliverable Distributions**

If any Distribution to a holder of an Allowed Claim is returned to a Disbursing Agent as undeliverable, no further Distributions will be made to such holder unless and until the applicable Disbursing Agent is notified by written certification of such holder's then-current address. Subject to Section V.E.2.c, Distributions returned to a Disbursing Agent or otherwise undeliverable will remain in the possession of the applicable Disbursing Agent pursuant to this Section V.E.2.a until such time as a Distribution becomes deliverable. Subject to Section V.E.2.c, while remaining in the possession of the applicable Disbursing Agent, undeliverable Distributions will be held for the benefit of the potential claimants of such Distributions.

**b. After Distributions Become Deliverable**

On each Distribution Date, the applicable Disbursing Agent will make all Distributions that became deliverable to holders of Allowed Claims after the most recent Distribution Date; *provided, however*, that the applicable Disbursing Agent may, in its sole discretion, establish a record date prior to each Distribution Date, such that only Claims allowed as of the record date will participate in such periodic Distribution. Notwithstanding the foregoing, the applicable Disbursing Agent reserves the right, if it determines a Distribution on any Distribution Date is uneconomical or unfeasible, or is otherwise inadvisable, to postpone a Distribution Date.

**c. Failure to Claim Undeliverable Distributions**

Any holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable Distribution to be made by a Disbursing Agent within one year after the later of (i) the Effective Date and (ii) the last date on which a Distribution was deliverable to such holder will have its claim for such undeliverable Distribution discharged and will be forever barred from asserting any such claim against the Debtors or the Reorganized Debtors. Unclaimed Distributions otherwise deliverable to holders of Allowed Claims shall be retained by, or, if held by a Third Party Disbursing Agent, returned to, Reorganized Hostess and shall become the property of Reorganized Hostess, free of any restrictions thereon. Nothing contained in the Plan will require any Debtor, any Reorganized Debtor or any Disbursing Agent to attempt to locate any holder of an Allowed Claim.

**F. Timing and Calculation of Amounts to Be Distributed**

**1. Distributions to Holders of Allowed Claims**

Subject to Section V.A, on the Effective Date, each holder of an Allowed Claim will receive the full amount of the Distributions that the Plan provides for Allowed Claims in the applicable Class. On each Distribution Date, Distributions also will be made, pursuant to Section VI.C, to holders of Claims that previously were Disputed Claims that were allowed after the most recent Distribution Date. Such periodic Distributions also shall be in the full amount that the Plan provides for Allowed Claims in the applicable Class. Distribution Dates shall occur no less frequently than once per year.

**2. Interest on Claims**

Except as expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, interest shall not accrue on account of any Claim.

**3. De Minimis Distributions**

A Disbursing Agent need not distribute Cash to the holder of an Allowed Claim if the amount of Cash to be distributed on any Distribution Date (other than the Final Distribution Date) is less than \$100. On the Final Distribution Date, a Disbursing Agent will not distribute Cash to the holder of an Allowed Claims if the amount of Cash to be distributed on such Final Distribution Date is less than \$25.

**4. Distributions of New Hostess Common Stock – No Fractional Shares; Rounding**

Notwithstanding any other provisions of the Plan, only whole numbers of shares of New Hostess Common Stock will be distributed. Fractional shares of New Hostess Common Stock will be rounded up or down to the nearest whole number or zero, as applicable. No New Hostess Common Stock will be distributed on account of fractional shares that are rounded down.

**G. Distribution Record Date**

1. A Disbursing Agent will have no obligation to, and will not, recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the Distribution Record Date and will be entitled for all purposes herein to recognize and make Distributions only to those holders of Allowed Claims that are holders of such Claims, or participants therein, as of the Distribution Record Date.

2. Except as otherwise provided in a Final Order, the transferees of Claims that are transferred and noticed pursuant to Bankruptcy Rule 3001 prior to the Distribution Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

**H. Means of Cash Payments**

Except as otherwise specified herein, Cash payments made pursuant to the Plan will be in U.S. currency by checks drawn on a domestic bank selected by the applicable Disbursing Agent or, at the option of the applicable Disbursing Agent, by wire or automated clearinghouse transfer from a domestic bank; *provided, however*, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the applicable Disbursing Agent, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**I. Establishment of Reserves**

The Reorganized Debtors may establish any reserves that they deem necessary or advisable to make Distributions to holders of Allowed Claims or otherwise to satisfy their obligations under the Plan, including the creation of one or more reserves for Disputed Claims, which may be treated (in the discretion of the Reorganized Debtors), for U.S. federal income Tax purposes, as one or more disputed ownership funds within the meaning of Treasury Regulations section 1.468B-9(b)(1).

**J. Withholding and Reporting Requirements**

1. In connection with the Plan, to the extent applicable, each Disbursing Agent will comply with all applicable Tax withholding and reporting requirements imposed by any governmental unit, and all Distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, each Disbursing Agent will be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation,

liquidating a portion of the Distribution to be made under the Plan to generate sufficient funds to pay applicable withholding Taxes or establishing any other mechanisms the Disbursing Agent believes are reasonable and appropriate, including requiring Claim holders to submit appropriate Tax and withholding certifications and/or requiring Claim holders to pay the Tax withholding amount to the Disbursing Agent in Cash as a condition of receiving any non-Cash Distributions under the Plan. To the extent any Claim holder fails to submit appropriate Tax and withholding certifications as required by the Disbursing Agent, such Claim holder's Distribution may, in the Disbursing Agent's reasonable discretion, be deemed undeliverable and subject to Section V.E.

2. Notwithstanding any other provision of the Plan, each entity receiving a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of the Distribution, including income, withholding and other Tax obligations.

3. The Debtors reserve, and the Reorganized Debtors shall have, the right to allocate and distribute all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, liens and similar encumbrances.

#### **K. Reorganized Debtor Setoffs**

Except with respect to claims of a Debtor or a Reorganized Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, each Reorganized Debtor or a Third Party Disbursing Agent (as instructed by a Reorganized Debtor), as applicable, may, pursuant to sections 553 or 558 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of the Claim (before any Distribution is made on account of the Claim) the claims, rights and Causes of Action of any nature that the applicable Debtor or Reorganized Debtor may hold against the holder of the Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the applicable Debtor or Reorganized Debtor of any claims, rights and Causes of Action that they may possess against the Claim holder.

#### **L. Application of Distributions**

To the extent applicable, all Distributions to a holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount is paid in full, then to any interest accrued on such Claim prior to the Petition Date and then to any interest accrued on such Claim after the Petition Date, with the remainder allocated to fees and costs.

### **ARTICLE VI PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

#### **A. Treatment of Disputed Claims**

##### **1. ADR Procedures**

At the Debtors' or, after the Effective Date, the Reorganized Debtors' option, any Tort Claim eligible to be designated for resolution through the ADR Procedures may be so designated in accordance with the terms thereof and the ADR Order. For the avoidance of doubt, the designation of a Disputed Claim for resolution through the ADR Procedures, either prior to or after the Effective Date, will not modify, and will not be deemed to have modified, the terms of the ADR Injunction imposed pursuant to the ADR Order. Disputed Claims not resolved through the ADR Procedures will be resolved pursuant to the Plan.

##### **2. Tort Claims**

At the Debtors' or, after the Effective Date, the Reorganized Debtors' option, any unliquidated Tort Claim (as to which a proof of Claim was timely Filed in the Chapter 11 Cases) not resolved through the ADR

Procedures or pursuant to a Final Order of the Bankruptcy Court will be determined and liquidated in the administrative or judicial tribunal(s) in which it is pending on the Effective Date (subject to the Debtors' or Reorganized Debtors' right to seek removal or transfer of venue) or, if no action was pending on the Effective Date, in an administrative or judicial tribunal of appropriate jurisdiction selected by the Debtors or the Reorganized Debtors that (a) has personal jurisdiction over the parties, (b) has subject matter jurisdiction over the Tort Claim, (c) has *in rem* jurisdiction over the property involved in the Tort Claim (if applicable) and (d) is a proper venue. The Debtors or the Reorganized Debtors may exercise the above option by service upon the holder of the applicable Tort Claim (and, if prior to the Effective Date, the First Lien Term Loan Agent, the Third Lien Term Loan Agent, or the Creditors' Committee) of a notice informing such holder that the Debtors or the Reorganized Debtors have exercised such option (which notice shall be deemed to satisfy the notice requirements of Section II.F.4 of the ADR Procedures). Upon a Debtor's or Reorganized Debtor's service of such notice, the automatic stay imposed pursuant to section 362 of the Bankruptcy Code (along with the extension of such stay to employees of the Debtors pursuant to the terms of the Stay Extension Order) or, after the Effective Date, the discharge injunction, will be deemed modified, without the necessity for further Bankruptcy Court approval or any further action by the Debtors or Reorganized Debtors, solely to the extent necessary to allow the parties to determine or liquidate the Tort Claim in the applicable administrative or judicial tribunal(s); *provided that* nothing contained in this Section will modify, or will be deemed to have modified, the terms of the Stay Extension Order with respect to any Tort Claim prior to the Debtors or Reorganized Debtors having served notice of their intent to determine and liquidate such Tort Claim pursuant to this Section. If the Debtors or the Reorganized Debtors do not serve such a notice upon a holder of a Tort Claim by the Claims Objection Bar Date, such holder may file a motion with the Bankruptcy Court seeking relief from the discharge injunction imposed pursuant to Section X.D in order to liquidate and determine its Claim.

Any Tort Claim determined and liquidated pursuant to a judgment obtained in accordance with this Section VI.A.2 and applicable non-bankruptcy law that is no longer appealable or subject to review will be deemed an Allowed Claim, as applicable, in Class 3 against the applicable Debtor in such liquidated amount, *provided that* only the amount of such Allowed Tort Claim that is not satisfied from proceeds of insurance payable to the holder of such Allowed Tort Claim will be treated as an Allowed Claim for the purposes of distributions under the Plan. Nothing contained in this Section will constitute or be deemed a waiver of any claim, right or cause of action that a Debtor may have against any Person in connection with or arising out of any Tort Claim, including but not limited to any rights under section 157(b)(5) of title 28 of the United States Code. All claims, demands, rights, defenses and Causes of Action that the Debtors or the Reorganized Debtors may have against any Person in connection with or arising out of any Tort Claim are expressly retained and preserved .

**3. Disputed Insured Claims**

The resolution of Disputed Insured Claims, including Tort Claims, pursuant to this Article VI shall be subject to the provisions of Section III.K of the Plan.

**4. No Distributions Until Allowance**

Notwithstanding any other provision of the Plan, no payments or Distributions will be made on account of a Disputed Claim until such Claim (or a portion of such Claim) becomes an Allowed Claim, if ever.

**B. Prosecution of Objections to Claims**

**1. Objections to Claims**

All objections to Claims must be Filed and served on the holders of such Claims, and any amendment to the Schedules to reduce the scheduled Claim of such holder, must be made by the Debtors or the Reorganized Debtors by the Claims Objection Bar Date. If an objection has not been Filed to a Claim or an amendment has not been made to the Schedules with respect to a scheduled Claim by the Claims Objection Bar Date, the particular Claim will be treated as an Allowed Claim in the amount specified in a timely filed proof of Claim or the amount scheduled, as applicable, if such Claim has not been allowed earlier.

**2. Extension of Claims Objection Bar Date**

The Reorganized Debtors may seek authorization to extend the Claims Objection Bar Date for some or all Disputed Claims for cause through the Filing of a motion with the Bankruptcy Court.

**3. Authority to Prosecute Objections**

On or after the Effective Date, only the Reorganized Debtors will have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, including pursuant to the ADR Procedures or similar procedures approved by the Bankruptcy Court. On or after the Effective Date, the Reorganized Debtors, and only the Reorganized Debtors, may settle or compromise any Disputed Claim or any objection or controversy relating to any Claim without approval of the Bankruptcy Court.

**4. Authority to Amend Schedules**

The Debtors or the Reorganized Debtors, as applicable, will have the authority to amend the Schedules with respect to any Claim and to make Distributions based on such amended Schedules without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Debtors or the Reorganized Debtors will provide the holder of such Claim with notice of such amendment and parties in interest will have 30 days to File an objection to such amendment with the Bankruptcy Court. If no such objection is Filed, the applicable Disbursing Agent may proceed with Distributions based on such amended Schedules without approval of the Bankruptcy Court.

**C. Distributions on Account of Disputed Claims Once Allowed**

Distributions on account of Disputed Claims that become Allowed Claims after the Effective Date shall be made in accordance with Article V of the Plan.

**ARTICLE VII  
SUBSTANTIVE CONSOLIDATION**

**A. Substantive Consolidation**

Pursuant to the Confirmation Order, the Bankruptcy Court will approve the substantive consolidation of the Debtors for purposes of implementing the Plan, voting, assessing whether Confirmation standards have been met, calculating and making Distributions under the Plan and filing post-Confirmation reports and paying quarterly fees to the Office of the United States Trustee. Pursuant to such order, as of the Effective Date: (1) all assets and liabilities of the Debtors will be deemed merged; (2) all guarantees by one Debtor of the obligations of any other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors will be deemed to be one obligation of the consolidated Debtors; (3) each and every Claim Filed or to be Filed in the Chapter 11 Case of any Debtors will be deemed Filed against the consolidated Debtors and will be deemed one Claim against and a single obligation of the consolidated Debtors, and the Debtors may file and the Bankruptcy Court will sustain objections to Claims for the same liability that are Filed against multiple Debtors; and (4) Intercompany Claims between Debtors will be eliminated and extinguished. Such substantive consolidation will not affect (1) the legal and corporate structures of the Debtors, subject to the right of the Debtors to effect restructurings as provided in Section III.B; (2) the vesting of assets in the Reorganized Debtors; (3) the right to distributions from any insurance policies or proceeds of such policies; or (4) the rights of the Debtors or the Reorganized Debtors to contest alleged setoff or recoupment efforts by creditors on the grounds of lack of mutuality under section 553 of the Bankruptcy Code and otherwise applicable law.

**B. Order Granting Consolidation**

This Plan serves as a motion seeking entry of an order substantively consolidating the Debtors, as described and to the extent set forth in Section VII.A above. Unless an objection to such substantive consolidation

is made in writing by any creditor or claimant affected by the Plan, Filed with the Bankruptcy Court and served on the parties listed in Section XII.E on or before the Voting Deadline, or such other date as may be fixed by the Bankruptcy Court, the substantive consolidation order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. In the event any such objections are timely Filed, a hearing with respect thereto will occur at the Confirmation Hearing.

**ARTICLE VIII**  
**CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

**A. Conditions Precedent to Confirmation**

The following are conditions to the entry of the Confirmation Order unless such conditions, or any of them, have been satisfied or duly waived pursuant to Section VIII.C:

1. The Confirmation Order will be reasonably acceptable in form and substance to (a) the Debtors, (b) the First Lien Term Loan Agent, (c) the Third Lien Term Loan Agent and (d) the DIP Lender Agent.
2. All Confirmation Exhibits (including any amendments or modifications thereto) are in form and substance reasonably satisfactory to (a) the Debtors, (b) the First Lien Term Loan Agent, (c) the Third Lien Term Loan Agent and (d) the DIP Lender Agent.
3. All material agreements relating to the Confirmation Cash Infusion, which shall be in form and substance reasonably satisfactory to the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the DIP Lender Agent, will have been executed by the applicable Debtor(s) and any counterparty thereto.
4. The Global Settlement Order shall have been entered by the Bankruptcy Court.

**B. Conditions Precedent to the Effective Date**

The Effective Date will not occur, and the Plan will not be consummated, unless and until the following conditions have been satisfied or duly waived pursuant to Section VIII.C:

1. The Bankruptcy Court shall have entered the Confirmation Order on or before December 27, 2012.
2. The Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) approving and authorizing the Debtors and the Reorganized Debtors to take all actions necessary or appropriate to implement the Plan, including completion of the Restructuring Transactions and the other transactions contemplated by the Plan and the implementation and consummation of the contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan.
3. The documents evidencing the New First Lien Term Loan Facility, the New Third Lien Term Loan Facility and any trust(s) or other entity(ies) that may be established to hold the New Third Lien Tranche B Term Loans, the New Third Lien Tranche C Term Loans and/or the New Hostess Common Stock to be distributed to the Unions shall be in form and substance reasonably satisfactory to the Debtors, the New First Lien Term Loan Agent and the New Third Lien Term Loan Agent and shall have been executed and delivered by the applicable Reorganized Debtors, the New First Lien Term Loan Agent and the New Third Lien Term Loan Agent.
4. The documents evidencing the Exit Facility shall be in form and substance reasonably satisfactory to the Debtors and the Exit Facility Agent and shall have been executed and delivered by the applicable Reorganized Debtors, the Exit Facility Agent and each of the lenders under the Exit Facility.
5. The final forms of the Confirmation Exhibits shall be in form and substance reasonably satisfactory to the First Lien Term Loan Agent, the Third Lien Term Loan Agent and the DIP Lender Agent.

6. All agreements and other instruments required to be executed by the applicable Unions as of the Effective Date under the Union Settlement Agreements have been executed.

7. The Effective Date shall occur on or before January 11, 2013.

8. All transactions relating to the Confirmation Cash Infusion shall have closed in all material respects in accordance with the terms of any agreements effecting such transactions on or prior to the Effective Date.

9. Each MEPP and each of the Unions shall have provided Hostess with written waivers of any Administrative Claims and/or Priority Claims held by such MEPPs or Unions, other than Claims expressly permitted in the Global Resolution and/or this Plan.

**C. Waiver of Conditions to the Confirmation or Effective Date**

The conditions to Confirmation set forth in Section VIII.A and the conditions to the Effective Date set forth in Section VIII.B may be waived in whole or in part at any time by the Debtors, with the consent of the DIP Lender Agent, the First Lien Term Loan Agent and the Third Lien Term Loan Agent without an order of the Bankruptcy Court.

**D. Effect of Nonoccurrence of Conditions to the Effective Date**

If each of the conditions to the Effective Date set forth in Section VIII.B is not satisfied or duly waived in accordance with Section VIII.C, then upon motion by the Debtors made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section VIII.D: (1) the Plan will be null and void in all respects, including with respect to (a) the discharge of Claims and termination of Interests pursuant to section 1141 of the Bankruptcy Code, (b) the assumptions, assignments or rejections of Executory Contracts and Unexpired Leases pursuant to Section IV.A and (c) the releases described in Section X.E; and (2) nothing contained in the Plan will (a) constitute a waiver or release of any Claims by or against, or any Interest in, any Debtor or (b) prejudice in any manner the rights of the Debtors or any other party in interest.

**ARTICLE IX  
CRAMDOWN**

The Debtors request Confirmation under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that has not accepted or is deemed not to have accepted the Plan pursuant to section 1126 of the Bankruptcy Code.

**ARTICLE X  
EFFECT OF CONFIRMATION OF THE PLAN**

**A. Creditors' Committee**

As of the Effective Date, the Creditors' Committee shall dissolve, and the members of the Creditors' Committee and its Professionals shall cease to have any role arising from or relating to the Chapter 11 Cases. The Professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to assert any Professional Fee Claim for any services rendered or expenses incurred after the Effective Date, except for reasonable fees for services rendered, and actual and necessary expenses incurred, in connection with any final applications for allowance of compensation and reimbursement of expenses of the members of or Professionals to the Creditors' Committee Filed and served after the Effective Date in accordance with the Plan.

**B. Comprehensive Settlement of Claims and Controversies**

Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the rights (including any subordination rights) that a holder of a Claim may have with respect to any Allowed Claim or any Distribution to be made pursuant to the Plan on account of any Allowed Claim. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that all such compromises or settlements are in the best interests of the Debtors, the Reorganized Debtors, the Estates and their respective property and Claim holders and are fair, equitable and reasonable.

**C. Discharge of Claims and Termination of Interests**

**1. Complete Satisfaction, Discharge and Release**

Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims and termination of all Interests arising on or before the Effective Date, including any interest accrued on Claims from and after the Petition Date. Except as provided in the Plan or in the Confirmation Order, Confirmation will, as of the Effective Date and immediately after cancellation of the Old Common Stock of Hostess: (a) discharge the Debtors from all Claims or other debts that arose on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (iii) the holder of a Claim based on such debt has accepted the Plan; and (b) terminate all Interests and other rights of holders of Interests in Hostess.

**2. Discharge and Termination**

In accordance with the foregoing, except as provided in the Plan, the Confirmation Order will be a judicial determination, as of the Effective Date and immediately after the cancellation of the Old Common Stock of Hostess, but prior to the issuance of the New Hostess Common Stock, of a discharge of all Claims and other debts and Liabilities against the Debtors and a termination of all Interests and other rights of the holders of Interests in Hostess, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge will void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.

**D. Injunction**

**On the Effective Date, except as otherwise provided herein or in the Confirmation Order,**

**1. all Persons who have been, are or may be holders of Claims against or Interests in a Debtor shall be enjoined from taking any of the following actions against or affecting a Debtor, its Estate or its Assets with respect to such Claims or Interests (other than actions brought to enforce any rights or obligations granted under or Reinstated by the Plan and appeals, if any, from the Confirmation Order):**

**a. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor (including, without limitation, all suits, actions and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);**

**b. enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order against a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor;**

c. creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien against a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor, other than as contemplated by the Plan;

d. except as provided herein, asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due a Debtor, its Estate, its Assets or any direct or indirect successor in interest to a Debtor, or any assets or property of such successor; and

e. proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan or the settlements set forth herein to the extent such settlements have been approved by the Bankruptcy Court in connection with Confirmation of the Plan.

2. All Persons that have held, currently hold or may hold any Liabilities released or exculpated pursuant to Sections X.E and X.F, respectively, will be permanently enjoined from taking any of the following actions against any Released Party or its property on account of such Liabilities: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien; (d) except as provided herein, asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due a Released Party; and (e) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan.

## **E. Releases**

### **1. General Releases by the Debtors and the Reorganized Debtors**

Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their affiliates, the Estates and their respective successors, assigns and any and all entities who may purport to claim by, through, for or because of them, will forever release, waive and discharge all Liabilities that they have, had or may have against any Released Party except with respect to obligations arising under the Plan or the obligations assumed hereunder; *provided, however, that* the foregoing provisions shall not affect (a) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted gross negligence or willful misconduct, (b) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or previously, entered into or delivered in connection with the Plan, (c) any objections by the Debtors or the Reorganized Debtors to Claims or Interests filed by any Person or entity against any Debtor and/or the Estates, including rights of setoff, refund or other adjustments, (d) the rights of the Debtors to assert any applicable defenses in litigation or other proceedings with their employees (including the rights to seek sanctions, fees and other costs), (e) amounts owed by employees for benefit costs or regularly deducted from employee wages in the ordinary course of the Debtors' businesses or (f) any claim of the Debtors or Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other causes of action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party.

### **2. General Releases by Holders of Claims or Interests**

Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan and the consideration and other contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, each holder of a Claim that votes in favor of the Plan will be deemed to forever release, waive and discharge all Liabilities in any way relating to a Debtor, the Chapter 11 Cases, the Estates, the Plan, the Confirmation Exhibits or the Disclosure Statement that such entity has, had or may have against any Released Party (which release will be in addition to the discharge of Claims and termination of Interests provided herein and under the Confirmation Order and the Bankruptcy Code); *provided, however, that* the foregoing provisions shall not affect

any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or previously, entered into or delivered in connection with the Plan.

### **3. Release of Released Parties by Other Released Parties**

From and after the Effective Date, except with respect to obligations arising under the Plan or assumed hereunder, to the fullest extent permitted by applicable law, the Released Parties shall release each other from any and all Liabilities that any Released Party is entitled to assert against any other Released Party in any way relating to any Debtor; the Chapter 11 Cases; the Estates; the formulation, preparation, negotiation, dissemination, implementation, administration, Confirmation or consummation of any of the Plan (or the property to be distributed under the Plan), the Confirmation Exhibits, the Disclosure Statement, the Assumed Collective Bargaining Agreements, any contract, employee pension or other benefit plan, instrument, release or other agreement or document related to any Debtor, the Chapter 11 Cases or the Estates created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtors and any Released Party; or any other act taken or omitted to be taken in connection with the Chapter 11 Cases; *provided, however, that* the foregoing provisions shall not affect (a) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted gross negligence or willful misconduct, (b) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or previously, entered into or delivered in connection with the Plan, (c) the rights of the Released Party to assert any applicable defenses in litigation or other proceedings (including the rights to seek sanctions, fees and other costs) or (d) any claim of a Released Party, including (but not limited to) cross-claims or counterclaims or other causes of action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors and the Released Party are each a party.

### **F. Exculpation**

From and after the Effective Date, the Released Parties shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with the Debtors' restructuring, including the formulation, negotiation, preparation, dissemination, implementation, Confirmation or approval of the Plan (or the property to be distributed under the Plan), the Global Resolution, the Confirmation Exhibits, the Disclosure Statement, the Assumed Collective Bargaining Agreements or any contract, employee pension or other benefit plan, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; *provided, however, that* this section shall not apply to the obligations arising under the Plan or the obligations assumed hereunder; and *provided further, however, that* the foregoing provisions shall not affect the liability of any Person that otherwise would result from any act or omission to the extent that act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

### **G. Plan Impact on Prepetition Secured Claims**

Confirmation of the Plan will serve as a determination that the First Lien Term Loan Tranche A/B Claims are allowed Secured Claims in the principal amount of \$373.765 million plus accrued prepetition interest at applicable rates and postpetition interest at the non-default rate. Confirmation of the Plan will serve as a determination that the First Lien Term Loan Tranche C Claims are allowed in the principal amount of \$28.864 million plus accrued prepetition and postpetition interest at the non-default rate.

Confirmation of the Plan will serve as a determination that the Third Lien Term Loan Claims are (1) allowed Secured Claims in the principal amount of \$171.573 million plus accrued prepetition interest at applicable rates and postpetition interest at the non-default rate and (2) not oversecured Claims. In exchange for the other consideration granted under the Plan, any Deficiency Claim that is a Third Lien Term Loan Claim shall be deemed waived, discharged and released by the holders of Third Lien Term Loan Claims.

Confirmation of the Plan will serve as a determination that the Fourth Lien Noteholder Claims (1) have been satisfied in part through payments made to Professionals rendering services to the Fourth Lien Notes

Indenture Trustee and distributions made on account of Allowed Compromise Claims held by Compromise Fee Professionals rendering services to the Fourth Lien Notes Indenture Trustee and (2) are otherwise General Unsecured Claims properly classified in Class 3 of the Plan.

**H. Termination of Certain Subordination Rights**

The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise, that a holder of a Claim or Interest may have against other Claim or Interest holders with respect to any Distribution made pursuant to the Plan. All subordination rights that a holder of a Claim may have with respect to any Distribution to be made pursuant to the Plan will be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined. Accordingly, Distributions pursuant to the Plan to holders of Allowed Claims will not be subject to payment to a beneficiary of such terminated subordination rights or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights.

**ARTICLE XI  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such exclusive jurisdiction over the Chapter 11 Cases after the Effective Date as is legally permissible. As part of its jurisdiction, the Bankruptcy Court will have jurisdiction to:

A. Allow, disallow, determine, liquidate, reduce, classify, re-classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the amount, allowance, priority or classification of Claims or Interests;

B. Either grant or deny any applications for allowance of compensation or reimbursement of expenses for periods ending on or before the Effective Date, including requests by Professionals addressed in Section II.A.1.d;

C. Resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which any Debtor or Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;

D. Ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

E. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and either grant or deny any applications involving any Debtor or any Reorganized Debtor that may be pending on the Effective Date or brought thereafter;

F. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

G. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;

H. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other

agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

I. Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order or issued earlier in the Chapter 11 Cases, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

J. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or Distributions pursuant to the Plan are enjoined or stayed;

K. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

L. Consider and approve the compromise and settlement of any Claim by, on behalf of or against the Debtors' Estates, to the extent that Bankruptcy Court approval is required or permitted;

M. Enforce or clarify any orders previously entered by the Bankruptcy Court in the Chapter 11 Cases;

N. Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes;

O. Hear matters and enter orders for the recovery or turnover of all assets of the Debtors and their Estates, wherever located;

P. Enter a final decree or decrees closing the Chapter 11 Cases; and

Q. Hear any other matter not inconsistent with the Bankruptcy Code.

To the extent that it is not legally permissible for the Bankruptcy Court to have exclusive jurisdiction over any of the foregoing matters, the Bankruptcy Court shall have non-exclusive jurisdiction over such matters.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

### **A. Modification of the Plan**

Subject to the restrictions on alteration, amendment and modification set forth in section 1127 of the Bankruptcy Code, the Debtors (with the consent of the First Lien Term Loan Agent and the Third Lien Term Loan Agent) reserve the right to alter, amend or modify the Plan before the Effective Date.

### **B. Revocation of the Plan**

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, or if Confirmation does not occur, then the Plan will be null and void in all respects, and nothing contained in the Plan will: (1) prejudice in any manner the rights of any Debtor or any other party in interest; or (2) constitute an admission of any sort by any Debtor or any other party in interest.

**C. Successors and Assigns**

The rights, benefits and obligations of any entity named or referred to in the Plan will be binding on, and will inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

**D. The Union Settlement Agreements**

To the extent there is a conflict between the terms of the Plan and the Union Settlement Agreements, the terms of the Plan shall control.

**E. Service of Documents**

Any pleading, notice or other document required by the Plan or the Confirmation Order to be served on or delivered to (1) the Debtors and the Reorganized Debtors; (2) the Creditors' Committee; (3) the Unions; (4) the DIP Lender Agent; (5) the Senior Secured Revolving Credit Agent; (6) the First Lien Term Loan Agent; (7) the Third Lien Term Loan Agent; (8) the Fourth Lien Notes Indenture Trustee; and (9) the United States Trustee must be sent by overnight delivery service, facsimile transmission, courier service or messenger to:

**1. The Debtors and Reorganized Debtors**

Jolyn Sebree, Esq.  
Hostess Brands, Inc.  
12 East Armour Boulevard  
Kansas City, Missouri 64111  
Telephone: (816) 502-4238  
Facsimile: (816) 502-4138

Corinne Ball, Esq.  
Heather Lennox, Esq.  
Lisa Laukitis, Esq.  
Veerle Roovers, Esq.  
JONES DAY  
222 East 41st Street  
New York, New York 10017  
Telephone: (212) 326-3939  
Facsimile: (212) 755-7306

(Counsel to the Debtors and Reorganized Debtors)

**2. The Creditors' Committee**

Thomas Moers Mayer, Esq.  
Josh Brody, Esq.  
KRAMER LEVIN NAFTALIS & FRANKEL LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 715-9169  
Facsimile: (212) 715-8000

(Counsel to the Creditors' Committee)

**3. Certain of the Unions**

Jeffrey R. Freund, Esq.  
BREDHOFF & KAISER, P.L.L.C.  
805 Fifteenth Street, N.W.  
Suite 1000  
Washington, DC 20005  
Telephone: (202) 842-2600  
Facsimile: (202) 842-1888

(Counsel to the BCTGM)

Matthew A. Feldman, Esq.  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 728-8651  
Facsimile: (212) 728-9651

Richard M. Seltzer  
COHEN, WEISS & SIMON LLP  
330 West 42nd Street  
25th Floor  
New York, New York 10036-6976  
Telephone: (212) 563-4100  
Facsimile: (212) 695-5436

(Counsel to the IBT)

**4. DIP Lender Agent, First Lien Term Loan Agent & Third Lien Term Loan Agent**

Alan W. Kornberg, Esq.  
Brian S. Hermann, Esq.  
Kellie A. Cairns, Esq.  
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 373-3545  
Facsimile: (212) 492-0545

(Counsel to Silver Point)

**5. The Senior Secured Revolving Credit Agent**

Leslie Plaskon, Esq.  
PAUL HASTINGS LLP  
75 East 55th Street  
New York, New York 10022  
Telephone: (212) 318-6000  
Facsimile: (212) 319-4090

- and -

Jesse H. Austin, III, Esq.  
Cassie Coppage, Esq.  
PAUL HASTINGS LLP  
600 Peachtree Street NE  
Suite 2400  
Atlanta, Georgia 30308  
Telephone: (404) 815-2400  
Facsimile: (404) 815-2424

(Counsel to the Senior Secured Revolving Credit Agent)

**6. The Fourth Lien Notes Indenture Trustee**

Ira L. Herman, Esq.  
Jennifer A. Christian, Esq.  
THOMPSON & KNIGHT LLP  
900 Third Avenue, 20th Floor  
New York, New York 10022  
Telephone: (212) 751-3001  
Facsimile: (212) 751-3113

(Counsel to The Bank of New York Mellon Trust Company, N.A.)

**7. The United States Trustee**

Office of the United States Trustee for the Southern District of New York  
33 Whitehall Street  
21st Floor  
New York, New York 10004  
(Attn: Paul Schwartzberg, Esq.)  
Telephone: (212) 510-0500  
Facsimile: (212) 668-2255

Dated: October 10, 2012

Respectfully submitted,

Hostess Brands, Inc., on its own behalf and on behalf of  
each affiliate Debtor

By: /s/ Gregory Rayburn  
Name: Gregory Rayburn  
Title: Chief Executive Officer

COUNSEL:

Corinne Ball  
Heather Lennox  
Ryan T. Routh (RR 1994)  
JONES DAY  
222 East 41st Street  
New York, New York 10017  
Telephone: (212) 326-3939  
Facsimile: (212) 755-7306

ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**PLAN EXHIBIT I.A.47**

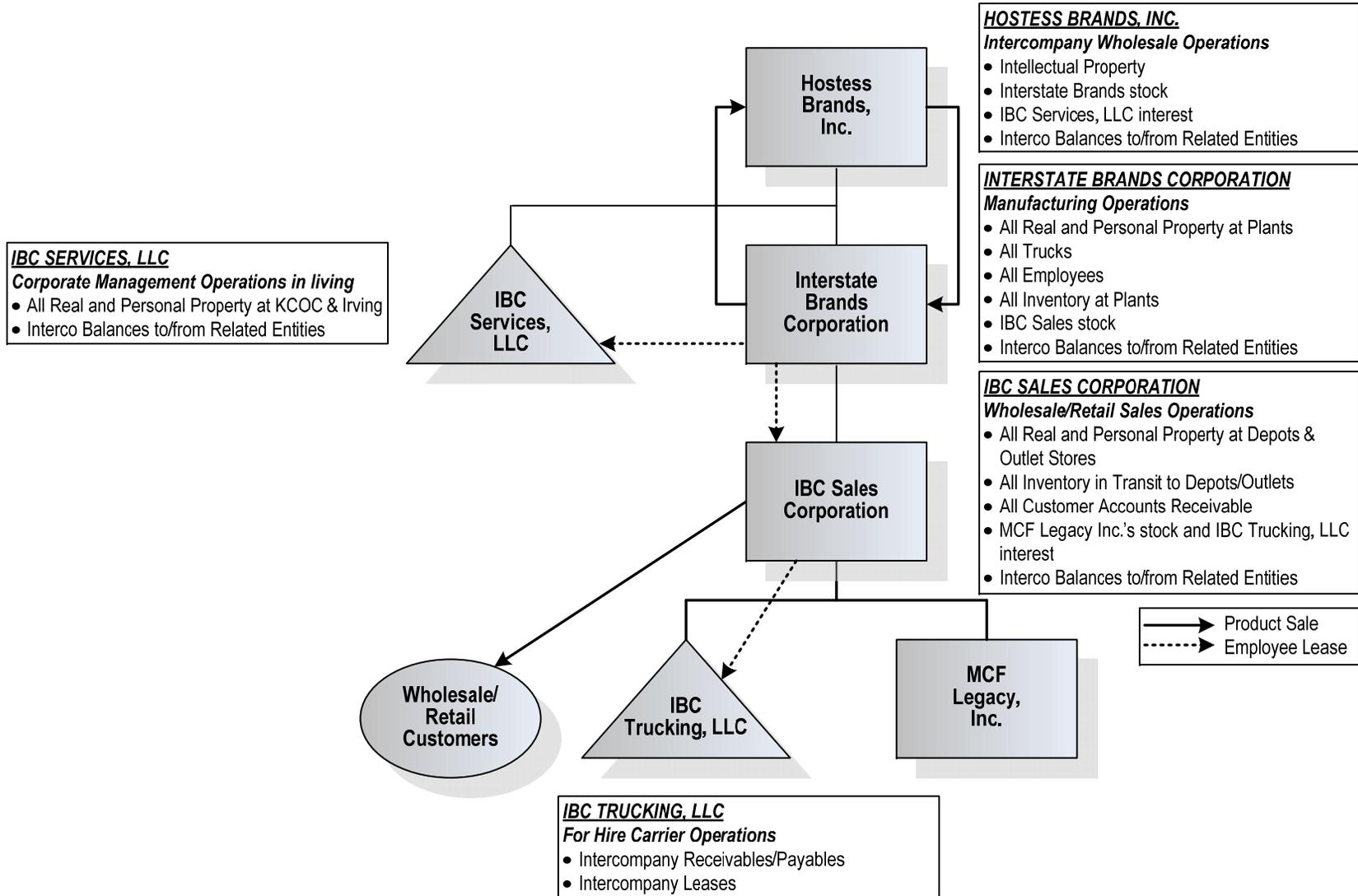
**LIST OF DEBTORS**

<b><u>DEBTOR</u></b>	<b><u>STATE OF FORMATION</u></b>	<b><u>CASE NUMBER</u></b>
Hostess Brands, Inc.	Delaware	Case No. 12-22052 (RDD)
IBC Sales Corporation	Delaware	Case No. 12-22051 (RDD)
IBC Services, LLC	Missouri	Case No. 12-22054 (RDD)
IBC Trucking, LLC	Delaware	Case No. 12-22053 (RDD)
Interstate Brands Corporation	Delaware	Case No. 12-22055 (RDD)
MCF Legacy, Inc.	California	Case No. 12-22056 (RDD)

**EXHIBIT B**

CORPORATE ORGANIZATIONAL CHART FOR THE DEBTORS

## Corporate Structure



**EXHIBIT C**

HISTORICAL FINANCIAL STATEMENTS

### **HISTORICAL FINANCIAL RESULTS**

The following table highlights certain selected consolidated financial information derived from the Debtors' audited consolidated financial statements as of and for each of the three fiscal years prior to the period ended June 2, 2012. The information in the table below contains summary financial data which is not necessarily indicative of the results of the Debtors' future operations.

**Hostess Brands, Inc. and Subsidiaries**  
**THREE-YEAR SUMMARY OF FINANCIAL DATA**

<u>(\$ in millions)</u>	Fifty-three Weeks Ended June 2, 2012	Fifty-two Weeks Ended May 28, 2011	Fifty-two Weeks Ended May 29, 2010
<b>Net revenues</b>	<b>\$ 2,466.5</b>	<b>\$ 2,474.1</b>	<b>\$ 2,584.5</b>
Cost of products sold (exclusive of items shown below)	1,309.4	1,312.1	1,309.6
Selling, delivery and administrative expenses <sup>(1) (2)</sup>	1,195.3	1,221.5	1,272.7
Operational Restructuring charges <sup>(3) (4) (5)</sup>	4.7	3.2	6.1
Pension withdrawal expense <sup>(6)</sup>	931.9	-	-
Depreciation and amortization	34.2	37.5	38.3
(Gain) loss on disposition of assets	(1.3)	(10.2)	2.0
Property and equipment impairment	50.6	49.5	9.8
Intangible asset impairment	-	46.6	1.5
	<u>3,524.7</u>	<u>2,660.3</u>	<u>2,640.0</u>
<b>Operating loss</b>	<b>(1,058.2)</b>	<b>(186.2)</b>	<b>(55.5)</b>
% of net sales	<b>(42.9%)</b>	<b>(7.5%)</b>	<b>(2.1%)</b>
Other (income) expense			
Interest expense (excluding unrecorded contractual and other interest expense of \$56,742 in 2012)	57.5	215.3	79.2
Reorganization charges, net <sup>(7)</sup>	33.5	-	-
Other (income) expense	1.2	(39.7)	0.9
	<u>92.3</u>	<u>175.6</u>	<u>80.2</u>
Income (loss) before income taxes	(1,150.5)	(361.8)	(135.7)
Provision (benefit) for income taxes	(10.0)	(22.8)	2.9
Net income (loss)	(1,140.5)	(339.0)	(138.6)
Less: Net income (loss) attributable to the non-controlling interest	-	1.7	(0.8)
<b>Net income (loss) attributable to Hostess Brands, Inc.</b>	<b>\$ (1,140.5)</b>	<b>\$ (340.7)</b>	<b>\$ (137.8)</b>
% of net sales	<b>(46.2%)</b>	<b>(13.8%)</b>	<b>(5.3%)</b>

(\$ in millions)	June 2, 2012	May 28, 2011	May 29, 2010
<b>ASSETS</b>			
Current assets			
Cash	\$ 56.5	\$ 34.9	\$ 81.9
Accounts receivable (net of allowance for doubtful accounts)	106.5	113.5	119.8
Inventories	51.8	54.6	50.3
Assets held for sale	-	1.1	1.8
Other current assets	37.4	30.5	44.9
<b>Total current assets</b>	<b>252.2</b>	<b>234.5</b>	<b>298.8</b>
Property and equipment, net	319.3	387.0	454.4
Restricted cash	295.5	242.8	232.3
Intangible assets	134.4	134.9	182.9
Other assets	13.9	14.7	46.8
<b>Total assets</b>	<b>\$ 1,015.2</b>	<b>\$ 1,014.0</b>	<b>\$ 1,215.1</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>			
<b>Liabilities not subject to compromise</b>			
Current liabilities			
DIP Facility	\$ 75.0	\$ -	\$ -
ABL Facility - Revolver	50.0	50.0	-
Short-term debt	29.5	1.0	-
Long-term debt payable within one year	-	533.1	0.5
Convertible notes payable within one year	-	219.4	-
Accounts payable	65.3	90.6	85.2
Accrued expenses	122.6	159.7	174.0
<b>Total current liabilities</b>	<b>342.4</b>	<b>1,053.8</b>	<b>259.7</b>
Long-term debt	-	-	465.4
Convertible notes	-	-	113.5
Other liabilities	162.1	212.8	268.4
Deferred income taxes	96.7	105.4	133.3
<b>Total liabilities not subject to compromise</b>	<b>601.2</b>	<b>1,372.0</b>	<b>661.4</b>
<b>Liabilities subject to compromise</b>	<b>1,922.2</b>	<b>-</b>	<b>-</b>
<b>Total Liabilities</b>	<b>2,523.4</b>	<b>1,372.0</b>	<b>661.4</b>
<b>Stockholders' equity (deficit)</b>	<b>(1,508.1)</b>	<b>(357.9)</b>	<b>553.6</b>
<b>Total liabilities and stockholders' equity (deficit)</b>	<b>\$ 1,015.2</b>	<b>\$ 1,014.0</b>	<b>\$ 1,215.1</b>

- (1) The Debtors record advertising and promotion costs as part of selling and delivery expenses. Advertising and promotion costs, through both national and regional media, are expensed in the period in which the costs are incurred. Such costs amounted to approximately \$15.4 million, \$35.0 million, and \$33.0 million for the fiscal years ended June 2, 2012, May 28, 2011, and May 29, 2010, respectively.
- (2) Shipping and handling costs are classified within the caption "Selling, delivery and administrative expenses" in the Debtors' consolidated statement of operations. Such costs amounted to approximately \$552.0 million, \$553.1 million, and \$567.3 million for the fiscal years ended June 2, 2012, May 28, 2011, and May 29, 2010, respectively.
- (3) For fiscal 2012, the Debtors initiated an operational restructuring plan, which included the reorganization of the general and administrative offices and the outsourcing of the Debtors' field accounting offices to consolidate functions, reduce costs and improve efficiencies. During the fiscal year ended June 2, 2012, the severance and benefit costs was approximately \$3.7 million.
- (4) For fiscal 2011, the Debtors initiated an operational restructuring plan, which included the closure of certain retail outlet stores, the consolidation of the Debtors' seven business units into four business units, and the reorganization of the general and administrative offices to reduce costs and improve efficiencies. During the fiscal year ended May 28, 2011, the severance and benefit costs was approximately \$2.6 million. The Debtors incurred other expenses of approximately \$1.8 million, which consisted primarily of lease termination costs and other costs related to the closure of the retail outlets.
- (5) For fiscal 2010, the Debtors initiated an operational restructuring plan to close three bakeries. During the fiscal year ended May 29, 2010, the severance and benefit costs associated with the closure of the three bakeries was approximately \$4.2 million. During fiscal 2011, the severance and benefit costs associated with the closure of the three bakeries was approximately \$1.5 million. In addition, during fiscal 2011, the Debtors recorded an impairment charge of \$1.6 million to reflect the land for these facilities at fair value.
- (6) As a result of the Debtors' suspension of contributions in August 2011, various multi-employer pension plans have determined that a complete withdrawal from such multi-employer pension plans has now occurred, and have asserted, or threatened to assert, claims against the Debtors for withdrawal liability. Specifically, three multi-employer pension plans have assessed a withdrawal liability. At June 2, 2012, approximately \$931.9 million has been recorded for pension withdrawal liability included in liabilities subject to compromise in the accompanying consolidated balance sheets.
- (7) For fiscal 2012, the Debtors have incurred or realized reorganization charges because of the Chapter 11 Cases. These items include professional fees and similar types of expenses incurred directly related to the Chapter 11 Cases, loss accruals or gains or losses resulting from activities of the reorganization process, and costs, claims and adjustments which stem from the rejection of unexpired leases and executory contracts.

**EXHIBIT D**

LIQUIDATION ANALYSIS

**[To be Filed at least seven calendar days prior to the  
deadline for objections to the form of the Disclosure Statement.]**

**EXHIBIT E**

FINANCIAL PROJECTIONS

**[To be Filed at least seven calendar days prior to the  
deadline for objections to the form of the Disclosure Statement.]**