

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE:)
)
BELLE FOODS, LLC,) **Chapter 11**
) **Case No. 13-81963-11**
Debtor.)

MODIFICATION OF FINAL DIP ORDER

The Court, having entered on August 12, 2013, the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (A) Authorizing Postpetition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, and (D) Granting Related Relief* [Docket No. 340] (the “Final DIP Order”), and having been advised that Belle Foods, LLC, as debtor and debtor in possession (“Debtor”) and the Lenders (as defined in the Final DIP Order) agree to the relief as set forth herein, and after due deliberation and good and sufficient cause appearing therefore, it is hereby **ORDERED, ADJUDGED, and DECREED** that:

1. **Jurisdiction and Venue.** This Court has subject matter jurisdiction over this proceeding and property affected hereby under 28 U.S.C. § 1334. This proceeding is a core matter under 28 U.S.C. § 157(b). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

2. **Extended Use of DIP Facility.** Through and including the earlier of **November 8, 2013** or the occurrence of the Effective Termination Date as defined in the Amended DIP Term Sheet¹ (the “Extended Maturity Date”), subject to the budget (the “Extended Budget”) attached hereto as Exhibit A, Debtor shall be permitted to request additional Loans (the

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Final DIP Order.

“Extended DIP Loans”) under the DIP Facility according to the terms and conditions set forth in the Final DIP Order and Amended DIP Term Sheet that apply to the request and use of Loans, provided, however, that (1) in lieu of funding Extended DIP Loans with a credit under the C&S Supply Agreement as provided in the Amended DIP Term Sheet, the Lenders shall fund Extended DIP Loans in cash; (2) the Commitment Amount shall be increased to \$39,050,000.00 (being the sum of the Roll Up in the amount of \$33,300,000.00 and new money lending in the amount of \$5,750,000.00); and (3) the Maturity Date under the DIP Facility (the “Original Maturity Date”) is extended to the Extended Maturity Date solely with respect to any Extended DIP Loans. For the avoidance of doubt, (1) Lenders shall have no obligation to fund any request for an Extended DIP Loan that is inconsistent with the Extended Budget or that is made after the Extended Maturity Date, and (2) the Extended Budget shall terminate upon the occurrence of the Extended Maturity Date.

3. **Initial Extended DIP Loan.** Notwithstanding the provisions of this Order governing the surrender of Remaining Property to the Lenders, Debtor shall be permitted to retain cash in the amount of \$1,450,000 (the “Initial Extended DIP Loan”), which shall be deemed in all respects to be an Extended DIP Loan subject to the terms of this Order and the Final DIP Order, but not subject to the Loan request requirements provided by the same. The Initial Extended DIP Loan shall be used solely to fund anticipated expenses of the estate from the date of the entry of this Order through October 26, 2013, as provided in the Extended Budget.

4. **Extended Use of Cash Collateral.** Debtor is permitted to use Cash Collateral following the Original Maturity Date only as provided in the Extended Budget. With the exception of the Extended Budget, which shall take effect at midnight on the day following the date on which the present Budget expires, all other terms and conditions set forth in the Final

DIP Order regarding the use of Cash Collateral (including, but not limited to, adequate protection requirements) shall apply to the use of Cash Collateral following the Original Maturity Date. For the avoidance of doubt, and consistent with paragraphs 5 and 7 herein, any Cash Collateral held or used by Debtor following the Initial Remaining Property Surrender Deadline (as defined herein) shall consist only of proceeds of an Extended DIP Loan.

5. **Transfer of Property to Lenders.** On September 27, 2013, the Court entered the *Order (A) Approving Asset Purchase Agreement By and Between Belle Foods, LLC and Associated Wholesale Grocers, Inc., (B) Authorizing (I) Sale of Certain of the Debtor's Assets Free and Clear of Liens, Claims, Encumbrances and Interests And (II) Assumption and Assignment of Leases and (III) Buyer's Lease Designation Rights and (C) Related Relief* [Docket No. 605] (the "Sale Order"), which approved the sale (the "Sale") of certain of Debtor's assets to Associated Wholesale Grocers, Inc. ("AWG") pursuant to that certain Asset Purchase Agreement (the "APA") approved by the Sale Order. It is hereby ordered that, consistent with paragraph 29 of the Sale Order, and effective upon entry of this Order, title to all property remaining in Debtor's estate that is excluded from the Sale (the "Remaining Property"), which includes, but is not limited to, the following property, is and shall be deemed to be transferred to the Lenders:

- (a) All Accounts (as that term is defined under the applicable provision of the Alabama Uniform Commercial Code), including all accounts receivable, vendor accounts receivable, credit card accounts, food stamp accounts, Western Union accounts, and CoinStar accounts;
- (b) All litigation claims and causes of action, including all claims and rights under or relating to any subleases where Debtor is a landlord;
- (c) All store or other coupons;
- (d) Subject to paragraph 3 hereof, all cash, deposits, negotiable instruments and securities (including, but not limited to, all cash,

deposits, or other accounts or instruments securing Debtor's performance under any contract);

- (e) All Excluded Personal Property and Excluded Inventory (as those terms are defined in the APA);
- (f) All rights of Debtor relating to or arising out of escheatment; and
- (g) Miscellaneous equipment that is located in the basement of Debtor's corporate headquarters at 800 Lakeshore Parkway, Birmingham, Alabama 35211, or in the Birmingham, Alabama warehouse owned by C&S Wholesale Grocers, Inc. or its affiliate.

Notwithstanding the foregoing, the Remaining Property shall not include (i) Avoidance Actions (as defined in the Final DIP Order) and all proceeds of Avoidance Actions, (ii) commercial tort claims against the Lenders, Directors and Officers, and insiders (as that term is defined in the Bankruptcy Code) of the Debtor; and (iii) other causes of action or claims against the Lenders, Directors and Officers, and insiders (as that term is defined in the Bankruptcy Code) of the Debtor, and title to all such property shall remain with the Debtor's estate and shall not be deemed transferred to the Lenders (the "Excluded Property"), provided, however, that all Excluded Property shall remain with the estate pursuant to this paragraph and shall be subject in all respects to the provisions of the Final DIP Order, including, but not limited to, paragraph 24 of the Final DIP Order, the Debtor's Stipulations (as defined therein), and the Stipulation Extending the Challenge Period. The Remaining Property also shall exclude the Real Property, which is subject to and defined in paragraph 13, below.

6. **Remaining Property Transferred Free and Clear.** Subject to paragraph 24 of the Final DIP Order, the Remaining Property referred to in paragraph 5 above shall be transferred to the Lenders free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. §§ 105(a) and 363(f). The Lenders have provided Debtor with reasonably equivalent value and fair consideration for the Remaining Property under the Bankruptcy Code and

applicable non-bankruptcy law. For that reason, the transfer may not be avoided under 11 U.S.C. § 363(n). The Lenders have acted in good faith as that term is used in 11 U.S.C § 363(m). For that reason, any reversal or modification of this Order on appeal will not affect the validity of the transfer of the Remaining Property to the Lenders.

7. **Remaining Property Surrender Deadline.** Following the entry of this Order, the Remaining Property shall be held by Debtor in trust for the Lenders, and, subject to the Extended Budget, Debtor shall surrender the Remaining Property to the Lenders on or before the following dates, unless such dates are extended by the Lenders in writing: subject to paragraph 3 hereof, all cash and vendor accounts receivable by **October 18, 2013** (the “Initial Remaining Property Surrender Deadline”); other Accounts, including credit card accounts, by **October 25, 2013** (the “Final Remaining Property Surrender Deadline”); and all other Remaining Property by **October 23, 2013**.

8. **Surrender of Extended DIP Loan Proceeds.** Subject to and in accordance with the Extended Budget, and unless otherwise expressly consented to by the Lenders in writing, the proceeds of any Extended DIP Loan held by Debtor on the Extended Maturity Date shall be remitted to the Lenders immediately upon the occurrence of the Extended Maturity Date.

9. **Surrender of Additional Property.** With the exception only of the proceeds of any Extended DIP Loan (which shall be subject to paragraph 8, above), in the event that, subsequent to the Final Remaining Property Surrender Deadline, any Remaining Property, Collateral, or other property but not the Excluded Property of Debtor that has not been transferred to the Lenders in accordance with the terms of this Order (“Additional Property”) is discovered in the possession of, or is received by, Debtor or any third party, such Additional Property shall be transferred to the Lenders by Debtor or such third party as soon as practicable

following its discovery or receipt subject to the same terms and conditions that apply to Remaining Property that is transferred on or before the Final Remaining Property Surrender Deadline. Following the Final Remaining Property Surrender Deadline, all proceeds from the sale of any Collateral, whether pursuant to the Sale Order, APA, or otherwise, shall be remitted directly to the Lenders by Debtor, any escrow agent or title company, as applicable, without such proceeds first being remitted to Debtor. Debtor will cooperate with the Lenders in the transfer to the Lenders of all Remaining Property and will use commercially reasonable efforts to provide the Lenders with all necessary additional, back-up or other information and documents to effect such transfers and preserve and maintain the value of the Remaining Property.

10. **Order Binding on Counterparties.** This Order is binding on all counterparties to any Accounts, all counterparties to any executory contract or unexpired lease of Debtor, and any person or entity in possession of any Remaining Property, Additional Property, Collateral, or any other property of Debtor. The Lenders hereby are authorized to take any and all actions they deem reasonably appropriate or necessary to receive, collect on, and/or liquidate any Remaining Property surrendered to the Lenders in accordance with this Order, including, but not limited to, acting as Debtor's agent or in the name of Debtor to the extent necessary to collect amounts due under any surrendered Account or deposit any related check or other instrument payable to the order of Debtor.

11. **Return of Retainers.** Following the approval by the Court in a final order of the final fee application of any professional retained by Debtor or the Committee, any retainer or other cash held in escrow by such professional in excess of the amount finally approved by the Court as allowable fees and expenses shall be remitted to the Lenders within twenty (20) days following entry of such final order.

12. **Headquarters Lease Rejection.** The lease for the premises of Debtor's headquarters location (the "Headquarters Lease") shall be deemed rejected as of November 30, 2013. Subject to paragraph 15, below, all of Debtor's records in any form, electronic or otherwise, shall remain at the Headquarters location following the rejection of the Headquarters Lease, provided that following rejection of the Headquarters Lease, the Lenders shall, upon reasonable notice, shall make available to Debtor, including without limitation Debtor's representatives, agents, employees, attorneys, insurers, successors and assigns, including any liquidating trustee appointed by the Bankruptcy Court, all such records and shall provide access to the Headquarters location during business hours, to enable the Debtor to wind up its affairs, administer the bankruptcy estate, prepare taxes, reports, respond to legal process or subpoenas, and to investigate and defend claims. The Lenders' obligations with respect to records access provided in this paragraph shall terminate on the earlier to occur of (a) the dismissal or closure of the Debtor's bankruptcy case or (b) January 31, 2015.

13. **Real Property.** On October 9, 2013, Debtor filed *Debtor's Motion For Entry of an Order Pursuant to §§ 105 and 363 Authorizing and Approving the Sale of Certain Real Property Free and Clear of All Liens, Claims and Encumbrances and Granting Related Relief* [Docket No. 634] (the "Real Property Sale Motion"). As explained in the Real Property Sale Motion, Debtor owns two parcels of real property (the "Real Property") on which it previously operated two grocery stores. The Real Property is not part of the assets being sold to AWG pursuant to the APA. Debtor has entered into agreements for the sale of the Real Property (the "Real Property Sale Agreements"), the approval of which is the subject of the Real Property Sale Motion. The Real Property shall not be subject to the provisions of this Order that apply to Remaining Property, provided, however, that the Lenders shall serve as Debtor's agent with

respect to the Real Property and with respect to Debtor's obligations under the Real Property Sale Agreements, and the Lenders are fully authorized to act on behalf of the Debtor in every manner with respect to the consummation of the sales (the "Real Property Sales") contemplated by the Real Property Sale Agreements. Debtor shall execute any and all documents and instruments necessary for the Lenders to consummate the Real Property Sales in accordance with the Real Property Sale Agreements, and shall otherwise cooperate fully with the Lenders with respect thereto. In the event that the non-Debtor counterparties to the Real Property Sale Agreements fail to consummate the Real Property Sales, title to the Real Property shall be deemed to transfer from Debtor to the Lenders subject to paragraph 6 herein without further order of the Court.

14. **Reduction of Obligations.** All property that is surrendered to the Lenders in accordance with this Order, or its realized value, as applicable, shall be applied by the Lenders to reduce the amount outstanding under the DIP Obligations in accordance with paragraph 23 of the Final DIP Order, then to reduce the amount of any other claims the Lenders have asserted or may in the future assert against the estate. On or before **November 4, 2013**, the Lenders shall provide a report to counsel to Debtor and counsel to the Committee setting forth the total estimated amount of the Lenders' claim(s) against the estate—including, but not limited to, the DIP Obligations and any claims for rejection damages—and the total amount of credits applied against those claims—including, but not limited to, adequate protection payments, allowed setoffs, and proceeds received from the sale of Collateral. For the avoidance of doubt, and consistent with paragraph 21 of the Final DIP Order, subject to the reporting requirements provided in this paragraph, Lenders shall not be subject to any order of the Court setting

deadlines to file a proof of claim, including this Court's order dated August 29, 2013 [Docket No. 428].

15. **Cooperation With Asset Purchaser(s) and Lease Counterparties.** Nothing in this Order is intended to nor shall be deemed to alter the terms of the Sale Order or any orders (the "Assignment Orders") approving the assumption and assignment of any unexpired leases or executory contracts of Debtor. To the extent that any portion of any Remaining Property transferred to the Lenders in accordance with this Order is required to be remitted or transferred to AWG, to any other ultimate purchaser(s) of Debtor's assets, or any counterparties to leases or executory contracts assumed and assigned by Debtor, in accordance with the terms of the Sale Order and/or Assignment Orders, the Lenders shall make such remittances or transfers and shall otherwise cooperate with any such purchaser or counterparty with respect to the same.

16. **Challenge Rights Unaffected.** Nothing in this Order is intended to nor shall be deemed to affect the Committee's Challenge rights provided in paragraph 24 of the Final DIP Order, or any stipulation, agreement, or further order with respect to the same. For the avoidance of doubt, and consistent with paragraph 7 of the Final DIP Order, any unwinding, recharacterization, or disgorgement ordered by the Court pursuant to a successful Challenge shall apply only in respect of the Roll Up and shall not apply in respect of any other Loans under the DIP Facility, including any Extended DIP Loans. For the further avoidance of doubt, as provided in paragraph 8 of the Final DIP Order, no amount under the DIP Facility, including the Extended DIP Loans, may be used to commence a Challenge.

17. **No Further Commitment.** Nothing in this Order is or shall be deemed to be a commitment by the Lenders to consent to the use of their Collateral, including Cash Collateral, other than according to the terms of this Order and the Final DIP Order. Nothing in this Order is

or shall be deemed to be a commitment by the Lenders to further provide financing, in any form, to Debtor during the pendency of this chapter 11 proceeding, except as otherwise expressly provided herein. Furthermore, nothing in this Order, or the Lenders' consent to the entry hereof, is or shall be deemed to be evidence of any consent by the Lenders to the use of the Collateral, including Cash Collateral, for any period of time subsequent to the Extended Maturity Date.

18. **No Implied Modifications.** To the extent not inconsistent with the terms of this Order, the terms of the Final DIP Order remain in full force and effect. For the avoidance of doubt, except as otherwise expressly provided for herein, nothing herein shall be deemed to be an implied modification of any term of the Final DIP Order.

19. **Survival of Order.** The terms of this Order shall survive entry of any order converting Debtor's case under Chapter 11 to Chapter 7 and any reconversion to Chapter 11. This Order is binding on all successors and assigns of Debtor, including any chapter 7 trustee or other trustee that may be appointed in this or any converted or reconverted bankruptcy case.

DONE and ORDERED this day October 18, 2013

/s/ Jack Caddell
Jack Caddell
U.S. Bankruptcy Judge

EXHIBIT A

{369.012-W0028263.3}