

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

October 3, 2006

Date of Report (Date of earliest event reported)

The Hershey Company

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

1-183

(Commission File Number)

23-0691590

(IRS Employer Identification No.)

100 Crystal A Drive, Hershey, Pennsylvania 17033

(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (717) 534-4200

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry Into a Material Definitive Agreement**

On October 3, 2006, the Board of Directors of The Hershey Company (the “Company”) approved amendments to the Company’s Amended and Restated Supplemental Executive Retirement Plan (“SERP”) and Deferred Compensation Plan. The Board also approved amendments to the Company’s Executive Employment Agreement with Richard H. Lenny, Chairman, President and Chief Executive Officer.

Subject to the terms and conditions of the current SERP, effective January 1, 2007, the SERP was amended to:

limit participation in the SERP to Company employees who were designated by the Compensation and Executive Organization Committee of the Board of Directors (the “Committee”) as Participants on or before October 2, 2006;

reduce the SERP benefit by ten percent (10%) for Vested Participants who are fifty (50) years old or older as of January 1, 2007, and reduce the SERP benefit by twenty percent (20%) for Vested Participants who have not attained age fifty (50) as of January 1, 2007;

change the SERP vesting requirements from attaining age fifty-five (55), completing ten (10) Years of Service with the Company and, for certain employees, participating in the performance share unit portion of the Company’s Key Employee Incentive Plan (“KEIP”) or SERP for at least five (5) of the last ten (10) years of employment; to attaining age fifty-five (55) and completing five (5) Years of Service with the Company;

change the distribution method from monthly payments to a lump sum cash payment equal to the present value of the SERP benefit and other plan provisions to conform with the requirements of section 409A of the Internal Revenue Code (the “Code”);

change the definition of Final Average Compensation upon which the SERP benefit will be calculated to the sum of the highest annual average of a Vested Participant’s salary paid over any three (3) calendar year period during the Participant’s last five (5) years of employment (versus the last ten (10) years of employment under the current plan), and the highest annual average of a Vested Participant’s annual award under the Annual Incentive Program (“AIP”) of the KEIP paid or deferred over any three (3) calendar year period (versus a five (5) calendar year period under the current plan) during the last five (5) years of employment with the Company (versus the last ten (10) years of employment under the current plan);

The Deferred Compensation Plan was amended, effective January 1, 2007, to:

change the deferral elections, including the addition of the option to defer benefits payable under the SERP, the distribution events, and other plan provisions to conform with the requirements of Code section 409A;

provide that the Company may make allocations to certain Participants' Accounts (to the extent not already made under the Company's 401(k) plan) in an amount equal to four and one-half percent (4-1/2%) (for existing and future eligible employees) plus an additional three percent (3%) (for eligible employees hired after 2006) of (i) amounts awarded under the AIP that are deferred under the Deferred Compensation Plan and (ii) Compensation in excess of the limit under Code section 401(a)(17);

provide that the Company will credit a specified percentage of certain Participants' Compensation, as determined by the Committee, to a newly created Defined Contribution Supplemental Executive Retirement Plan within the Deferred Compensation Plan, the terms of which are not yet finalized.

The Company's Board of Directors also approved amendments to the Company's Executive Employment Agreement with Richard H. Lenny, Chairman, President and Chief Executive Officer, to delete the provision relating to a maximum annual bonus under the AIP (the Company has waived this provision each year since 2003) and to conform the agreement to the benefit changes in the SERP and Deferred Compensation Plan applicable to the Company's executive team.

The foregoing descriptions of the Amended and Restated (2007) Supplemental Executive Retirement Plan, the Deferred Compensation Plan (Amended and Restated as of January 1, 2007) and Amendment to Executive Employment Agreement are qualified by reference to the respective plan documents and amendment, copies of which are attached hereto as Exhibit 10.1, 10.2 and 10.3, respectively, and incorporated by reference herein.

#### **Item 8.01 Other Events**

In addition to the amendments to the plans and agreement described in Item 1.01 above, the Board of Directors also approved amendments to certain of the Company's qualified retirement plans on October 3, 2006. A copy of the Company's press release, dated October 10, 2006, announcing the amendments to those plans is attached hereto as Exhibit 99.1.

#### **Item 9.01 Financial Statements and Exhibits**

##### (d) Exhibits

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|------|---|
| 10.1 | The Hershey Company Amended and Restated (2007) Supplemental Executive Retirement Plan                      |
| 10.2 | The Hershey Company Deferred Compensation Plan (Amended and Restated as of January 1, 2007)                 |
| 10.3 | Amendment to Executive Employment Agreement between The Hershey Company and Richard H. Lenny                |
| 99.1 | Press Release dated October 10, 2006 relating to changes to certain retirement plans of The Hershey Company |

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: October 10, 2006

THE HERSHEY COMPANY

By: /s/ David J. West  
David J. West  
Senior Vice President, Chief Financial Officer

Page 4 of 5 Pages  
Exhibit Index - Page 5

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EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	The Hershey Company Amended and Restated (2007) Supplemental Executive Retirement Plan
10.2	The Hershey Company Deferred Compensation Plan (Amended and Restated as of January 1, 2007)
10.3	Amendment to Executive Employment Agreement between The Hershey Company and Richard H. Lenny
99.1	Press Release dated October 10, 2006 relating to changes to certain retirement plans of The Hershey Company

**THE HERSHEY COMPANY  
AMENDED AND RESTATED (2007)  
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN**

1. Purpose of Plan. The purpose of the Amended and Restated (2007) Supplemental Executive Retirement Plan, effective as of January 1, 2007 (except as otherwise provided below) (hereinafter called the "Plan") is to enable The Hershey Company (hereinafter called the "Company") to help attract and retain a strong management team by ensuring executive and certain selected upper level management employees receive benefits to assist them in preparing for retirement. The Plan constitutes an amendment, restatement and continuation of the prior plan which was most recently restated as of October 6, 2003.

To the extent provided by law, the benefits provided hereunder with respect to any Participant who retired or whose employment with the Company terminated prior to January 1, 2007, will, except as otherwise specifically provided for herein, be governed in all respects by the terms of the plan document then in effect on the date of the Participant's retirement or other termination of employment.

2. Definitions. The following words and phrases as used in the Plan shall have the following meanings, unless a different meaning is plainly required by the context:

a. "Cause" means, as determined by the Committee in its reasonable discretion, the willful engaging by an employee of the Company in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company, including, without limitation, illegal conduct or gross misconduct that causes, or has the potential to cause, material financial or reputational injury to the Company.

For purposes of this definition, no act or failure to act, on the part of an employee of the Company, shall be considered "willful" unless it is done, or omitted to be done, by the employee in bad faith and without reasonable belief that the employee's action or omission was in the best interest of the Company. Any act or failure to act, based upon prior approval given by the Board or upon the instruction or with the approval of the Chief Executive Officer or the employee's superior or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the employee in good faith and in the best interest of the Company.

b. "Committee" means the Compensation and Executive Organization Committee of the Board of Directors of the Company (the "Board") or other such person, persons or committees as the Board may prescribe from time to time.

Effective as of October 2, 2001, Committee shall also mean the Employee Benefits Committee of the Company, to which the Board has delegated certain duties with respect to the administration of the Company's employee benefit plans, or any successor committee as designated by the Board.

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c. "Deferred Retirement Date" means the first day of the month following an employee's termination of employment with the Company provided such termination occurs after his or her Normal Retirement Date.

d. "Disability" or "Disabled", for purposes of this Plan, shall have the same meaning as provided in Section 1.16 of the Retirement Plan, as such section may be amended from time to time.

e. "Early Retirement Date" means the first day of any month following an employee's termination of employment with the Company which is coincident with or following his or her fifty-fifth (55th) birthday and prior to his or her Normal Retirement Date.

f. "Final Average Compensation" means the sum of (i) the average of the highest three (3) calendar years of base salary paid to a Vested Participant over his or her last five (5) years of employment with the Company and (ii) the average of the highest three (3) calendar years of annual awards under the Annual Incentive Program (hereinafter called the "AIP") of the Hershey Foods Corporation Key Employee Incentive Plan ("KEIP") received or deferred over his or her last five (5) years of employment with the Company.

g. "GATT Interest Rate" means, for purposes of this Plan, for any specific month, the "applicable interest rate" as specified by the Commissioner of the Internal Revenue Service in Section 417(e)(3) of the Internal Revenue Code of 1986, as amended (the "Code") (as such applicable interest rate is modified from time to time in revenue rulings, notices or other guidance, published in the Internal Revenue Service Bulletin).

h. "Lump Sum Interest Rate" means, as of any specific date, the sum of one-twelfth (1/12<sup>th</sup>) of each GATT Interest Rate for the twelve (12) consecutive months beginning with the thirteenth (13<sup>th</sup>) month preceding the month during which such date occurs.

i. "Normal Retirement Date" means, for the purposes of this Plan, the first day of the month nearest an employee's sixty-fifth (65th) birthday, except that if his or her birthday is equally near the first of two (2) calendar months, the first day of the month prior to his or her sixty-fifth (65th) birthday shall be his or her Normal Retirement Date.

j. "Participant" means an employee of the Company who has been designated by the Committee in its sole discretion on or before October 2, 2006. Any employee who is not a Participant after October 2, 2006 may not be selected for participation in the Plan after October 2, 2006.

k. "Retirement Plan" means The Hershey Company Retirement Plan, as in effect from time to time and any successor plan thereto.

l. "Vested Participant" means, as of any specific date, a Participant who, as of such date, satisfies each eligibility requirement set forth in the first sentence of Section 3 of the Plan.

m. "Years of Service," shall have the same meaning as provided in Section 1.59 of the Retirement Plan, as such section may be amended from time to time.

3. Eligibility. A Participant will be eligible to receive a benefit pursuant to Section 4 of the Plan if, at the time of his or her termination of employment with the Company, such Participant (i) is at least fifty-five (55) years of age and (ii) has completed five (5) Years of Service. No Participant, regardless of whether he or she satisfies all the eligibility requirements to be a Vested Participant, shall be entitled to receive any benefits under the Plan if his or her employment with the Company is terminated for Cause. Notwithstanding the above, a Participant whose employment with the Company is terminated prior to his or her Normal Retirement Date for reason of Disability will be treated as provided for in Section 4.c.

4. Retirement Benefits.

a. Normal Retirement Benefit. An employee who qualifies as a Vested Participant on the date of his or her termination of employment with the Company, and who retires (or whose employment is otherwise terminated, other than for Cause) on or after his or her Normal Retirement Date shall be entitled under the Plan to receive a lump sum cash payment (as determined under Section 6) equal to the present value of the annual benefit equal to:

(1) the product of three and two-thirds percent (3-2/3%) of his or her Final Average Compensation and his or her Years of Service not in excess of fifteen (15) Years of Service; reduced by the sum of (2) and (3), where (2) and (3) equal:

(2) one hundred percent (100%) of the Vested Participant's retirement benefit under the Retirement Plan (calculated as described in Section 4.e.) and any other tax-qualified defined benefit pension plan maintained by the Company or any affiliate thereof, payable as a life annuity commencing at his or her Normal Retirement Date or his or her Deferred Retirement Date if he or she retires after his or her Normal Retirement Date, regardless of whether such benefit payment is in that form or begins at that time; and

(3) one hundred percent (100%) of the estimated primary social security benefit to which the Vested Participant would be entitled on his or her Normal Retirement Date or his or her Deferred Retirement Date if he or she retires after his or her Normal Retirement Date regardless of whether he or she receives any portion of such primary Social Security benefit on such date.

The benefit payable (as determined above) to a Participant who is age fifty (50) or over as of January 1, 2007 shall be reduced by ten percent (10%). For those Participants who have not attained age fifty (50) as of January 1, 2007, the benefit payable (as determined above) shall be reduced by twenty percent (20%).

b. Early Retirement Benefit. An employee who qualifies as a Vested Participant on the date of his or her termination of employment with the Company, and who retires (or whose employment is otherwise terminated, other than for Cause) on or after his or her



Early Retirement Date and prior to his or her Normal Retirement Date shall be entitled under the Plan to receive a lump sum cash payment (as determined under Section 6) equal to the present value of the annual benefit equal to:

(1) the product of three and two-thirds percent (3-2/3%) of his or her Final Average Compensation and his or her Years of Service not in excess of fifteen (15) Years of Service reduced by the sum of (2), (3), and (4), where (2), (3), and (4) equal:

(2) one hundred percent (100%) of the Vested Participant's retirement benefit under the Retirement Plan (calculated as described in Section 4.e.) and any other tax-qualified defined benefit pension plan maintained by the Company or any affiliate thereof, payable as a life annuity commencing at his or her Early Retirement Date or the first day thereafter on which such benefits would be payable if they are not payable on his or her Early Retirement Date, regardless of whether such benefit payment is in that form or begins at that time;

(3) one hundred percent (100%) of the estimated primary Social Security benefit to which the Vested Participant would be entitled on his or her Early Retirement Date or the first date thereafter on which such benefits would be payable if they are not payable on his or her Early Retirement Date regardless of whether he or she receives any portion of such primary Social Security benefit on such date; provided, however, if the Vested Participant has not attained age sixty-two (62) at the time of termination, this reduction shall be calculated as if his or her compensation is payable at the same rate in effect at the time of his or her termination; and

(4) the product of (i) the difference between (1) and the sum of (2) and (3), (ii) five-twelfths of a percent (5/12%), and (iii) the number of complete calendar months by which the Vested Participant's date of termination of employment precedes his or her sixtieth (60<sup>th</sup>) birthday.

The benefit payable (as determined above) to a Participant who is age fifty (50) or over as of January 1, 2007 shall be reduced by ten percent (10%). For those Participants who have not attained age fifty (50) as of January 1, 2007, the benefit payable (as determined above) shall be reduced by twenty percent (20%).

c. Disability Retirement Benefit. If a Participant suffers a Disability prior to his or her Normal Retirement Date and while employed by the Company, the period of his or her Disability will be recognized as Years of Service and as years as a Participant in the Plan for purposes of calculating benefits under Section 4. If such Participant's Disability continues to his or her Normal Retirement Date, for purposes of the Plan, he or she will retire on that date and will be entitled to the benefit described in and calculated under Section 4.a.

d. Pre-Retirement Death Benefit. If a Participant (i) dies before his or her employment with the Company terminates and (ii) qualifies as a Vested Participant on his or her date of death, his or her designated beneficiary(ies), or his or her estate if he or she has not designated any beneficiary or beneficiaries in accordance with procedures established by the

Committee, shall receive a death benefit equal to the lump sum cash payment that would have been payable to the Vested Participant under Sections 4.a. or 4.b. as if he or she had retired on the date of death.

e. Calculation of Retirement Plan Benefits. Notwithstanding any future amendment to the Retirement Plan, the terms of the Retirement Plan as in effect on December 31, 2006 shall be used for the purposes of calculating a benefit payable under this Section 4.

f. Coordination With Severance Arrangement. For purposes of calculating benefits under this Section 4, a Participant who is receiving benefits in a form other than a lump sum under the Company's Executive Benefits Protection Plan (Group 3) ("EBPP Group 3") and Executive Benefits Protection Plan (Group 3A) ("EBPP Group 3A"): (i) amounts paid to such Participant under the EBPP Group 3 and EBPP Group 3A shall be included in a Participant's Final Average Compensation and (ii) the period under which the Participant is receiving benefits under the EBPP Group 3 and EBPP Group 3A shall be recognized as Years of Service and as years as a Participant in this Plan. If amounts are paid to a Participant in a lump sum under the EBPP Group 3 and EBPP Group 3A, (i) such amounts shall not be included in the Participant's Final Average Compensation and (ii) no period of coverage shall be recognized as Years of Service and as years as a Participant in this Plan.

5. Administration of the Plan. The Committee is charged with the administration of the Plan. It shall have full power and authority to construe and interpret the Plan. Its decisions shall be final, conclusive and binding on all parties. Subject to Section 9 of this Plan, the Committee shall also have the power, in its sole discretion, at any time to waive, in whole or in part, application of any of the eligibility requirements of Section 3 or of the benefit reduction factors in Sections 4.a. and 4.b. in the case of any individual Participant, Vested Participant or other employee of the Company (including an employee who has participated in the performance share unit portion of the KEIP).

6. Lump Sum Distribution.

a. Distribution Upon Retirement or Death. A lump sum cash payment payable to or on behalf of a Vested Participant under Sections 4.a., 4.b., or 4.d. shall be payable as soon as administratively practicable following the date of retirement or death. Such payment shall be equal to the actuarial present value of (i) the annual benefit payable to a Vested Participant as a single life annuity under Sections 4.a. or 4.b. or (ii) if the Vested Participant is married on date of retirement or death, the annual benefit payable to a Vested Participant as a fifty percent (50%) joint and survivor annuity with the Participant's spouse as contingent annuitant under Sections 4.a. or 4.b. (reduced by the monthly annuity value of any life insurance provided by the Company or any affiliate thereof for retired employees that is in excess of post-retirement group term life insurance regularly provided by the Company or any affiliate thereof). Such payment shall be calculated using: (i) the prevailing Commissioner's standard mortality table (described in Code section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date of the Vested Participant's retirement (or the Vested Participant's date of termination of employment other than for Cause) or death (without regard to any other subparagraph for such Code section 807(d)(5)) that is prescribed by the Commissioner of the

Internal Revenue Service in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and (ii) an interest rate equal to the Lump Sum Interest Rate as of the date of the Vested Participant's retirement (or the Vested Participant's date of termination of employment other than Cause) or death. Notwithstanding the preceding sentence, the interest rate for those Vested Participants who elected to participate in The Hershey Company 2005 Enhanced Mutual Separation Plan for E-Grade Employees (the "EMSP") or The Hershey Company 2005 Early Retirement Plan for E-Grade Employees (the "ERP for E-Grade Employees") shall be an interest rate equal to (i) the Lump Sum Interest Rate as of December 31, 2005 or (ii) the prevailing Lump Sum Interest Rate as of the date of the Vested Participant's retirement. If the Committee, in its sole discretion, determines that the benefit payable to a Vested Participant covered under the EMSP or ERP for E-Grade Employees using the Lump Sum Interest Rate as of December 31, 2005 exceeds the benefit otherwise payable under this Plan by \$500, the excess shall be paid in a lump sum cash payment as soon as administratively practicable following the date of retirement or death.

b. **Distribution to Key Employees.** In the case of a Separation from Service of a Key Employee, a lump sum cash payment payable under Section 6.a. may not be made before the date which is six (6) months after the date of the Key Employee's Separation from Service (or, if earlier, the date of death of the Key Employee) (hereinafter called the "Waiting Period"). The lump sum cash payment that is otherwise payable to a Key Employee under Section 6.a. shall accrue interest during the Waiting Period at a rate equal to the Lump Sum Interest Rate. For purposes of this Section 6.b., "Key Employee" means a "specified employee" under Code section 409A(a)(2)(B)(i) (i.e., a key employee (as defined under Code section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise) and applicable Treasury regulations and other guidance under Code section 409A. A "Separation from Service" means a termination of employment within the meaning of Code section 409A and applicable Treasury regulations and other guidance under Code section 409A.

7. **Payment of Benefits.** Nothing contained in the Plan and no action taken pursuant to the provisions of the Plan shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and any Participant, Vested Participant, spouse of a Participant or Vested Participant, or any other person. No person other than the Company shall by virtue of the provisions of the Plan have any interest in such assets. To the extent that any person acquires a right to receive payments from the Company under the Plan, such right shall be no greater than the right of any unsecured general creditor of the Company. The right of any Vested Participant or any other person to the payment of benefits under the Plan shall not be assigned, transferred, pledged or encumbered, such payments and the right thereto are expressly declared to be non-assignable and nontransferable. No payments hereunder shall be subject to the claim of the creditors of any Vested Participant or of any other person entitled to payments hereunder. Any payments required to be made pursuant to the Plan to a person who is under a legal disability may be made by the Company to or for the benefit of such person in such of the following ways as the Committee shall determine:

a. Directly to such person;

- b. To the legal representative of such person;
- c. To a near relative of such person to be used for such person's benefit; or
- d. Directly in payment of expenses of support, maintenance or education of such person.

The Company shall not be required to see to the application by any third party of any payments made pursuant to the Plan.

8. Effective Date of Plan. This Amended and Restated (2007) Supplemental Executive Retirement Plan shall be effective January 1, 2007 (except as otherwise provided in this Plan) and Vested Participants who become eligible to retire under the Plan on or after that date shall be entitled to the benefits provided hereunder.

9. Amendment, Suspension or Termination of the Plan.

a. Ability to Amend, Suspend, or Terminate. The Board of Directors of the Company may, at any time, suspend or terminate the Plan. The Board, or its duly appointed delegee, if applicable, may also from time to time, amend the Plan in such respects as it may deem advisable in order that benefits provided hereunder may conform to any change in law or in other respects which the Board, or its delegee in accordance with the Board's delegation of authority thereto, deems to be in the best interest of the Company. No such suspension, termination or amendment of the Plan shall adversely affect any right of any person who is a Vested Participant at the time of such suspension, termination or amendment or his or her beneficiary(ies), estate or surviving spouse, as applicable, to receive benefits under the Plan in accordance with its provisions in effect immediately prior to such suspension, termination or amendment without the consent of such Vested Participant, beneficiary(ies), estate or surviving spouse. Any benefits payable under the terms of the Plan at the time of any suspension, termination or amendment of the Plan shall remain in effect according to their original terms, or such alternate terms as may be in the best interests of both parties and agreed to by the Vested Participant or his or her beneficiaries, estate or surviving spouse, as applicable.

b. Amendment or Termination After Change in Control. Notwithstanding the foregoing, (i) the Plan may not be terminated or amended in any manner that is adverse to the interests of a Participant or the surviving spouse of a Participant without the consent of the Participant or surviving spouse, as applicable, either: (a) after a Potential Change in Control occurs and for one (1) year following the cessation of the Potential Change in Control, or (b) for a two (2) year period beginning on the date of a Change in Control (the "Coverage Period"), and (ii) no termination of this Plan or amendment hereof in a manner adverse to the interests of any Participant, or such Participant's surviving spouse, (without the consent of the Participant or surviving spouse) shall be effective if such termination or amendment occurs (a) at the request of a third party who has taken steps reasonably calculated to effect a Change in Control, or (b) in connection with or in anticipation of a Change in Control. After the Coverage Period, the Plan may not be amended or terminated in any manner that would adversely affect the entitlement of a Participant or his or her surviving spouse (without the consent of the Participant or surviving

spouse) to benefits that have accrued hereunder. For purposes of the immediately preceding two sentences of this Section 9, whether an employee of the Company qualifies as a Participant shall be determined at the time (i) the Coverage Period commences and any time thereafter or (ii) his or her employment is terminated or the Plan is amended (a) at the request of a third party who has taken steps reasonably calculated to effect a Change in Control, or (b) in connection with or in anticipation of a Change in Control.

(1) "Change in Control" means:

(a) Individuals who, on June 8, 1999, constitute the Board (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to June 8, 1999, whose election or nomination for election was approved by a vote of at least two-thirds (2/3) of the Incumbent Directors then on the Board (either by specific vote or by approval of the proxy statement of the Company in which such person is named as nominee for director, without written objection to such nomination) shall be an Incumbent Director, provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest (as described in Rule 14a-11 under the Exchange Act) ("Election Contest") or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board ("Proxy Contest"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director, and provided further, however, that a director who has been approved by the Hershey Trust while it beneficially owns more than 50% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Power") shall be deemed to be an Incumbent Director;

(b) The acquisition or holding by any Person of beneficial ownership (within the meaning of Section 13(d) under the Exchange Act and the rules and regulations promulgated thereunder) of shares of the Common Stock and/or the Class B Common Stock of the Company representing 25% or more of either (i) the total number of then outstanding shares of both Common Stock and Class B Common Stock of the Company (the "Outstanding Company Stock") or (ii) the Outstanding Company Voting Power, provided that, at the time of such acquisition or holding of beneficial ownership of any such shares, the Hershey Trust does not beneficially own more than 50% of the Outstanding Company Voting Power, and provided, further, that any such acquisition or holding of beneficial ownership of shares of either Common Stock or Class B Common Stock of the Company by any of the following entities shall not by itself constitute such a Change in Control hereunder: (i) the Hershey Trust, (ii) any trust established by the Company or by any Subsidiary for the benefit of the Company and/or its employees or those of a Subsidiary, (iii) any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary, (iv) the Company or any Subsidiary or (v) any underwriter temporarily holding securities pursuant to an offering of such securities;

(c) The approval by the stockholders of the Company of any merger, reorganization, recapitalization, consolidation or other form of business combination (a "Business Combination") if, following consummation of such Business Combination, the Hershey Trust does not beneficially own more than 50% of the total voting power of all outstanding voting securities eligible to elect directors of (i) the surviving entity or entities (the "Surviving Company") or (ii) if applicable, the ultimate parent corporation that directly or indirectly has beneficial ownership of more than 50% of the combined voting power of the then outstanding voting securities eligible to elect directors of the Surviving Company; or

(d) The approval by the stockholders of the Company of (i) any sale or other disposition of all or substantially all of the assets of the Company, other than to a corporation (the "Acquiring Corporation") if, following consummation of such sale or other disposition, the Hershey Trust beneficially owns more than 50% of the total voting power of all outstanding voting securities eligible to elect directors (a) of the Acquiring Corporation or (b) if applicable, the ultimate parent corporation that directly or indirectly has beneficial ownership of more than 50% of the combined voting power of the then outstanding voting securities eligible to elect directors of the Acquiring Corporation, or (ii) a liquidation or dissolution of the Company.

(2) "Potential Change in Control" means:

(a) The Hershey Trust by action of any of the Board of Directors of Hershey Trust Company, the Board of Managers of Milton Hershey School, the Investment Committee of the Hershey Trust, and/or any of the officers of Hershey Trust Company or Milton Hershey School (acting with authority) undertakes consideration of any action the taking of which would lead to a Change in Control as defined herein, including, but not limited to consideration of (i) an offer made to the Hershey Trust to purchase any number of its shares in the Company such that if the Hershey Trust accepted such offer and sold such number of shares in the Company the Hershey Trust might no longer have more than 50% of the Outstanding Company Voting Power, (ii) an offering by the Hershey Trust of any number of its shares in the Company for sale such that if such sale were consummated the Hershey Trust might no longer have more than 50% of the Outstanding Company Voting Power or (iii) entering into any agreement or understanding with a person or entity that would lead to a Change in Control; or

(b) The Board approves a transaction described in subsection (b), (c) or (d) of the definition of a Change in Control contained in Section 9.b(1).

(3) For purposes of this Section 9.b: (i) "Hershey Trust" means either or both of (a) the Hershey Trust Company, a Pennsylvania corporation, as Trustee for the Milton Hershey School, or any successor to the Hershey Trust Company as such trustee, and (b) the Milton Hershey School, a Pennsylvania not-for-profit corporation, (ii) "Exchange Act" shall mean the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, (iii) "Person" shall have the meaning given in

Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d)(3) and 14(d) thereof, and (iv) "Subsidiary" shall mean any corporation controlled by the Company, directly or indirectly.

IN WITNESS WHEREOF, The Hershey Company has caused this Hershey Company Amended and Restated (2007), Supplemental Executive Retirement Plan to be adopted the 3<sup>rd</sup> day of October, 2006.

THE HERSHEY COMPANY

By: /s/ Marcella K. Arline

Marcella K. Arline

Senior Vice President, Chief People Officer

**The Hershey Company  
Deferred Compensation Plan  
(Amended and Restated as of January 1, 2007)**

This Deferred Compensation Plan (the "Plan") allows participants in the following programs of Hershey Foods Corporation's Key Employee Incentive Plan ("KEIP") to defer receipt of all or part of their awards: (1) cash awards under the Annual Incentive Program (the "AIP"), (2) the cash equivalent or Common Stock of The Hershey Company (the "Company") representing performance stock unit ("PSU") awards under the KEIP, and (3) awards of Common Stock of the Company pursuant to restricted stock unit ("RSU") awards under the KEIP granted on or after January 1, 2001. In addition, this Plan allows participants in The Hershey Company Amended and Restated (2007) Supplemental Executive Retirement Plan (the "SERP") and The Hershey Company Compensation Limit Replacement Plan (the "CLRP") to defer receipt of all or a portion of a lump sum cash payment payable under the SERP and CLRP. The Company may allocate Supplemental Core and Supplemental Match Contributions on behalf of eligible Plan Participants, and the Company may credit a specified percentage of Compensation for the benefit of certain Plan Participants under the Defined Contribution Supplemental Executive Retirement Plan (the "DC SERP"). The Plan is intended to benefit those executives of the Company and subsidiaries who are specified as participants in and receive awards under the KEIP, former participants of the SERP and CLRP, and Plan Participants with compensation in excess of Code section 401(a)(17), to secure their goodwill, loyalty and achievement, and to help attract and retain highly qualified executives.

For Grandfathered Amounts, the terms of the Plan in effect on December 31, 2004 and the requirements summarized in Appendix A of this Plan shall be followed in all respects. For amounts deferred or elected to be deferred on or after January 1, 2005 and before January 1, 2007, the terms of this Plan shall be followed in all respects.

**Article I  
Definitions**

The following definitions apply to this Plan:

1.1 401(k) Plan. "401(k) Plan" means The Hershey Company 401(k) Plan, formerly The Hershey Company Employee Savings Stock Investment and Ownership Plan, as in effect from time to time and any successor plan thereto.

1.2 Account. "Account" means a bookkeeping account established by the Company for each Participant under the Plan, which includes, but is not limited to, the following Sub-Accounts: (i) a Supplemental Core Contributions Sub-Account, (ii) a Supplemental Match Contributions Sub-Account, (iii) an AIP Awards Sub-Account, (iv) a PSU Awards Sub-Account, (v) an RSU Awards Sub-Account, (vi) a SERP Benefits Sub-Account, (vii) a CLRP Benefits Sub-Account, and (viii) a DC SERP Benefits Sub-Account.

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1.3 AIP and AIP Awards. “AIP” means the Annual Incentive Program, and any similar or successor plan or program, of the KEIP, including annual incentives awarded under the Company’s Sales Incentive Program and any successor or replacement thereof and “AIP Awards” means awards made to the Participant under the KEIP.

1.4 AIP Sub-Account. “AIP Sub-Account” means a bookkeeping account established by the Company for each Participant electing to defer all or a portion of their AIP Awards.

1.5 Board. “Board” or “Board of Directors” means the Board of Directors of the Company.

1.6 Change in Control. “Change in Control” means a Change in Control as such term is defined under the Company’s Executive Benefits Protection Plan (Group 3A).

1.7 Committee or Compensation Committee. “Committee” or “Compensation Committee” means the Compensation and Executive Organization Committee of the Board or any successor committee having similar authority.

1.8 Company. “Company” means The Hershey Company, a Delaware corporation.

1.9 Company Common Stock or Common Stock. “Company Common Stock” or “Common Stock” means the common stock of the Company.

1.10 Compensation. “Compensation” means the sum of (i) base salary paid to a Participant during a calendar year and (ii) amounts awarded under the Company’s AIP, whether paid or deferred.

1.11 CLRP and CLRP Benefits. “CLRP” means the Company’s Amended and Restated Compensation Limit Replacement Plan and “CLRP Benefits” means amounts payable to a Participant under the CLRP that are deferred under this Plan.

1.12 CLRP Benefits Sub-Account. “CLRP Benefits Sub-Account” means a bookkeeping account established by the Company for each Participant electing to defer all or a portion of their lump sum cash payment payable under the CLRP.

1.13 Core Retirement Contributions. “Core Retirement Contributions” means contributions made by the Company on behalf of an employee who is eligible to receive such contributions under Section 5.2(g) of the 401(k) Plan.

1.14 DC SERP and DC SERP Benefits. “DC SERP” means the Defined Contribution Supplemental Executive Retirement Plan as described under Article VI and “DC SERP Benefits” means amounts credited to a Participant’s DC SERP Sub-Account in accordance with Article VI.

1.15 DC SERP Benefits Sub-Account. “DC SERP Benefits Sub-Account” means a bookkeeping account established by the Company for each Participant to which amounts are credited on behalf of the Participant under the DC SERP.

1.16 Determination Date. “Determination Date” means the last day of each calendar quarter or any other date specified by the Plan Administrator in its sole discretion.

1.17 Disabled or Disability. “Disabled” or “Disability” means Disabled as that term is defined under Section 1.15 of The Hershey Company Retirement Plan, as in effect from time to time and any successor plan thereto.

1.18 EBPP. “EBPP” means, with respect to a Participant, the Company’s Employee Benefits Protection Plan (Group 2), Executive Benefits Protection Plan (Group 3), Executive Benefits Protection Plan (Group 3A), or The Hershey Company Severance Benefits Plan for Salaried Employees as applicable to such Participant.

1.19 Grandfathered Amounts. “Grandfathered Amounts” mean amounts deferred under this Plan, if any, to which a Participant had a nonforfeitable right to receive as of December 31, 2004, plus subsequent investment credits. Grandfathered Amounts are subject to the terms of the Plan in effect on December 31, 2004 and the requirements set forth in Appendix A of this Plan. Grandfathered Amounts are exempt from the requirements under Code section 409A.

1.20 Initial Deferral Election. “Initial Deferral Election” means an election to defer (i) AIP Awards, (ii) PSU Awards, (iii) RSU Awards, (iv) SERP Benefits, and (v) CLRP Benefits in accordance with the requirements set forth under Section 4.1.

1.21 Investment Options. “Investment Options” means those investment options which are to be used as earnings indices as described in Section 2.1. Except as hereafter provided with respect to a Participant’s constructive investment in Company Common Stock: (a) the Investment Options are chosen by the Plan Administrator and are subject to change from time to time as the Plan Administrator, in its sole discretion, deems necessary or appropriate, and (b) no provision of this Plan shall be construed as giving any Participant an interest in any of these Investment Options nor shall any provision require that the Company make any investment in any such funds. Investment Options, other than the Company Common Stock Investment Option, may be added, modified or deleted from time to time in the discretion of the Plan Administrator; provided, however, that after the occurrence of a Change in Control, the Plan Administrator shall not alter any Investment Option in effect immediately prior to the Change in Control unless the Investment Options provided are substantially the same as those provided to participants in the Company’s tax-qualified retirement plan having the most investment options available for selection by participants.

1.22 KEIP. “KEIP” means the Hershey Foods Corporation’s Key Employee Incentive Plan and any similar or successor plan or program.

1.23 Long Term Disability Plan. “Long Term Disability Plan” means The Hershey Company Long Term Disability Plan and any similar or successor plan or program.

1.24 Participant. “Participant” means an employee of the Company who is eligible to participate in the KEIP and who meets the eligibility criteria for participation in this Plan established by the Plan Administrator from time to time.

- 1.25            Plan. “Plan” means The Hershey Company Deferred Compensation Plan as set forth herein and as amended from time to time.
- 1.26            Plan Administrator. “Plan Administrator” means the Employee Benefits Committee of the Company, or any successor committee having similar authority, or such other individual or committee as may be determined by the Committee from time to time.
- 1.27            Plan Year. “Plan Year” means the calendar year.
- 1.28            PSU and PSU Award. “PSU” means performance stock units granted under the KEIP and “PSU Awards” means PSU awards made to the Participant under the KEIP.
- 1.29            PSU Awards Sub-Account. “PSU Awards Sub-Account” means a bookkeeping account established by the Company for each Participant electing to defer all or a portion of their PSU Awards.
- 1.30            Retirement Plan. “Retirement Plan” means The Hershey Company Retirement Plan, as in effect from time to time and any successor plan thereto.
- 1.31            RSU and RSU Awards. “RSU” means restricted stock units granted under the KEIP and “RSU Awards” means RSU awards made to the Participant under the KEIP.
- 1.32            RSU Awards Sub-Account. “RSU Awards Sub-Account” means a bookkeeping account established by the Company for each Participant electing to defer all or a portion of their RSU Awards.
- 1.33            SERP and SERP Benefits. “SERP” means The Hershey Company Amended and Restated (2007) Supplemental Executive Retirement Plan and “SERP Benefits” means amounts payable to a Participant under the SERP that are deferred under this Plan.
- 1.34            SERP Benefits Sub-Account. “SERP Benefits Sub-Account” means a bookkeeping account established by the Company for each Participant electing to defer all or a portion of their lump sum cash payment payable under the SERP.
- 1.35            Supplemental Core Contributions. “Supplemental Core Contributions” means amounts credited to a Participant’s Supplemental Core Contributions Sub-Account in accordance with Section 3.1.
- 1.36            Supplemental Core Contributions Sub-Account. “Supplemental Core Contributions Sub-Account” means a bookkeeping account established by the Company for each Participant to which Supplemental Core Contributions are credited on behalf of the Participant.
- 1.37            Supplemental Match Contributions. “Supplemental Match Contributions” means amounts credited to a Participant’s Supplemental Match Contributions Sub-Account in accordance with Section 3.2.

1.38 Supplemental Match Contributions Sub-Account. “Supplemental Match Contributions Sub-Account” means a bookkeeping account established by the Company for each Participant to which Supplemental Match Contributions are credited on behalf of the Participant.

1.39 Trust. “Trust” means the trust described in Section 9.2.

1.40 Year of Service. “Year of Service” means years of Vesting Service as that term is defined in Section 1.59 of the 401(k) Plan.

## **Article II Account and Sub-Accounts**

2.1 Account and Sub-Accounts.

a. Establishment of Account and Sub-Accounts. Except as provided in Section 9.2, any amounts deferred by a Participant will not be funded or set aside for future payment by the Company. Instead, an Account with Sub-Accounts will be established to which (i) Supplemental Core Contributions, (ii) Supplemental Match Contributions, (iii) deferrals of AIP Awards, (iv) deferrals of PSU Awards, (v) deferrals of RSU Awards, (vi) SERP Benefits, (vii) CLRP Benefits, and (viii) DC SERP Benefits shall be credited to each respective Sub-Account, along with investment credits as provided in paragraph c. below.

b. Participants as Unsecured Creditors. A Participant’s entitlement to receive the amount reflected by his or her Sub-Accounts, to the extent vested, will be based solely on an unfunded unsecured unconditional promise to pay by the Company that is not assignable.

c. Investment Credits to Sub-Accounts. Subject to such limitations as may from time to time be required by law, imposed by the Plan Administrator or as set forth in paragraph (6) below, and subject to such operating rules and procedures as may be imposed from time to time by the Plan Administrator, each Participant may express to the Plan Administrator a preference as to how the Participant’s Accounts should be constructively invested among the Investment Options; provided that, following a Change in Control, any such preference expressed by a Participant (whether such preference is expressed prior to, or following, a Change in Control) shall be binding upon the Plan Administrator. Such preference shall designate the percentage of the Participant’s Accounts which is requested to be constructively invested in each Investment Option.

(1) Any initial or subsequent expression of investment preference shall be in writing on a form supplied by and filed with the Plan Administrator or in any other form as determined by the Plan Administrator from time to time in its sole discretion. Participants may change their investment preferences effective as of the beginning of each Plan Year, or more frequently if permitted in the discretion of the Plan Administrator; provided, however, that following a Change in Control, Participants shall be permitted to change their investment preferences at least as frequently as they could under procedures in effect immediately prior to the Change in Control.

(2) Except as set forth above following a Change in Control, all investment preferences shall be advisory only and shall not bind the Company or the Plan Administrator and the Company shall not be obligated to invest any funds in connection with this Plan. If, however, the Company chooses to invest any amount to provide for its liabilities under this Plan, the Plan Administrator shall have complete discretion as to investments and no Participant shall have any claim on such investments as a fund to provide benefits hereunder.

(3) From time to time, but not less frequently than each Determination Date, the Plan Administrator shall allocate the net earnings or losses of the Plan since the preceding Determination Date among the Accounts of Participants, and to the extent a Participant's Investment Option preferences are honored by the Plan Administrator, such net earnings or losses shall be allocated as though the Accounts had been invested in the Investment Option in accordance with the Participant's indicated preference. The "net earnings or losses" of the Plan shall be equal to the net increase or net decrease (taking into account any constructive dividends or interest thereon), as the case may be, in the value of a Participant's Accounts since the last Determination Date in accordance with the Participant's investment preferences or other such allocation of such net increase or net decrease in the value of funds constructively invested by the Plan Administrator and allocated to the Accounts of Participants hereunder.

(4) If the Plan Administrator receives an initial or revised investment preference which it deems to be incomplete, unclear or improper, the Participant's investment preference then in effect shall remain in effect (or, in the case of a deficiency in an initial investment preference, the Participant shall be deemed to have filed no investment preference) until the beginning of the next Plan Year, unless the Plan Administrator provides for, and permits the application of, corrective action prior thereto. If a Participant fails to file an effective investment preference, the Participant's Accounts will be constructively invested in the Investment Option designated by the Plan Administrator from time to time as a default Investment Option.

(5) If the Plan Administrator determines that the constructive value of an Account as of any date on which distributions are to be made differs materially from the constructive value of the Account on the prior Determination Date upon which the distribution is to be based, the Plan Administrator, in its discretion, shall have the right to designate any date in the interim as a Determination Date for the purpose of constructively revaluing the Account so that the Account from which the distribution is being made will, prior to the distribution, reflect its share of such material difference in value. Similarly, the Plan Administrator may adopt a policy of providing for regular interim valuations without regard to the materiality of changes in the value of the Accounts.

(6) Notwithstanding the foregoing provisions of this paragraph 2.1.c. to the contrary, (i) prior to a Change in Control, that portion of all deferred PSUs that is payable in Company Common Stock under the KEIP and all deferred RSUs shall be constructively invested in Company Common Stock, (ii) the Participant's Accounts shall be credited from time to time with the amount of any dividends declared and paid on such Company Common Stock, and shall be adjusted in connection with any stock dividend, split, reorganization, liquidation or other event which affects the number of shares of Common Stock represented by such PSUs and RSUs, and (iii) no other amounts deferred under this Plan shall be constructively invested in

Company Common Stock. Following a Change in Control, no amounts deferred under this Plan shall be required to be constructively invested in Company Common Stock.

d. Statement of Account and Sub-Accounts. Within a reasonable time after the end of each Plan Year, the Plan Administrator shall submit to each Participant a statement of the balance in his or her Account, including his or her Sub-Accounts; provided, however, that following a Change in Control, such statement of Account and Sub-Accounts shall be provided on at least a quarterly basis.

**Article III**  
**Supplemental Core and Supplemental Match Contributions**

3.1 Supplemental Core Contributions.

a. Each Plan Year, for a Participant who (i) is eligible to receive Core Retirement Contributions under Section 5.2(g) of the 401(k) Plan and (ii) defers to this Plan AIP Awards, the Company shall credit to such Participant's Supplemental Core Contributions Sub-Account an amount equal to three percent (3%) of those deferred amounts as soon as administratively practicable following the last day of the Plan Year.

b. Each Plan Year, for a Participant who is eligible to receive Core Retirement Contributions under Section 5.2(g) of the 401(k) Plan, the Company shall credit to such Participant's Supplemental Core Contributions Sub-Account an amount equal to three percent (3%) of the excess of (1) plus (2) less (3), where (1), (2), and (3) are determined as follows:

(1) Compensation as defined under Section 1.14 of the 401(k) Plan, other than AIP Awards and without application of the limitation under Code section 401(a)(17) (indexed for inflation);

(2) Amounts awarded under the AIP that are not deferred under this Plan;

(3) The limit under Code section 401(a)(17) (indexed for inflation).

Such amount shall be credited to a Participant's Supplemental Core Contributions Sub-Account as soon as administratively practicable following the last day of the Plan Year.

c. If a Participant becomes Disabled, such Participant shall continue to be credited with Supplemental Core Contributions in accordance with this Section 3.1 until the earlier of (i) two (2) years from the date benefits commence under the Company's Long Term Disability Plan or (ii) the date he or she is no longer eligible for such long-term disability benefits, based on the amount of Compensation that was payable to the Participant at the time of Disability.

3.2 Supplemental Match Contributions.

a. Each Plan Year, for a Participant who defers Compensation under the 401(k) Plan equal to (i) the maximum deferral percentage as permitted by the plan administrator under the 401(k) Plan or (ii) the maximum contribution limit under Code section 402(g) (indexed for inflation), the Company shall credit to such Participant's Supplemental Match Contributions Sub-Account an amount equal to four and one-half percent (4-1/2%) of those amounts awarded under the AIP that are deferred under this Plan as soon as administratively practicable following the last day of the Plan Year.

b. Each Plan Year, for a Participant who defers Compensation under the 401(k) Plan equal to (i) the maximum deferral percentage as permitted by the plan administrator under the 401(k) Plan or (ii) the maximum contribution limit under Code section 402(g) (indexed for inflation), the Company shall credit to such Participant's Supplemental Match Contributions Sub-Account an amount equal to four and one-half percent (4-1/2%) of (1) plus (2) less (3), where (1), (2), and (3) are determined as follows:

- (1) Compensation as defined under Section 1.14 of the 401(k) Plan, other than AIP Awards and without application of the limitation under Code section 401(a)(17) (indexed for inflation);
- (2) Amounts awarded under the AIP that are not deferred under this Plan;
- (3) The limit under Code section 401(a)(17) (indexed for inflation).

Such amount shall be credited to a Participant's Supplemental Match Contributions Sub-Account as soon as administratively practicable following the last day of the Plan Year.

3.3 Time and Form of Distribution.

a. Nonelective Initial Deferral. Amounts held in a Participant's Supplemental Core Contributions Sub-Account and Supplemental Match Contributions Sub-Account shall be payable in a lump sum cash payment within ninety (90) days following the earlier of a Separation from Service, subject to the requirements under Section 5.2.b., or death, subject to the requirements under Section 5.2.c.

b. Distribution Upon Disability. Notwithstanding Section 3.3.a., if a Separation from Service is caused by a Participant becoming Disabled, amounts held in a Participant's Supplemental Core Contributions Sub-Account and Supplemental Match Contributions Sub-Account shall be payable in a lump sum cash payment two (2) years following the date benefits commence under the Company's Long Term Disability Plan.

c. Change in Time and Form of Distribution. A Participant may make a subsequent election to change the time or form of the distribution of his or her Supplemental Core Contributions Sub-Account and Supplemental Match Contribution Sub-Account as specified in Section 3.3.a. in accordance with Section 4.2.b., but only if the requirements of Section 4.2.a. are satisfied. A distribution of a Participant's Supplemental Core Contributions Sub-Account and Supplemental Match Contribution Sub-Account subject to a subsequent deferral election under this Section 3.3.c. shall be made within ninety (90) days following the occurrence of the Participant's distributable event. Notwithstanding a subsequent deferral election made under this Section 3.3.c., in the case of death, a distribution will be made in accordance with Section 5.2.c.

3.4 Vesting. A Participant shall be one hundred percent (100%) vested in his or her Supplemental Core Contributions Sub-Account and Supplemental Match Contributions Sub-Account after completing three (3) Years of Service with the Company. Notwithstanding the preceding sentence, if a Participant dies or becomes Disabled, such Participant shall be one hundred percent (100%) vested in his or her Supplemental Core Contributions Sub-Account and Supplemental Match Contributions Sub-Account.

#### **Article IV Elections to Defer**

##### 4.1 Initial Deferral Election.

a. AIP Awards. A Participant may elect under the Plan to defer receipt of all or a portion of his or her anticipated bonus under the AIP, but such election must be made no later than June 30 of the calendar year in which the bonus is earned. Such AIP Awards shall be credited to a Participant's AIP Award Sub-Account as soon as administratively practicable following the last day of the Plan Year.

b. PSU Awards. A Participant may elect under the Plan to defer receipt of all or a portion of the cash or Company Common Stock amount earned as a PSU Award by a date specified by the Plan Administrator in its sole discretion, but such election must be made no later than June 30 of the calendar year in which the performance period for such PSU Award ends. Such PSU Awards shall be credited to a Participant's PSU Award Sub-Account as soon as administratively practicable following the last day of the Plan Year.

c. RSU Awards. A Participant may elect under the Plan to defer receipt of all or a portion of the Company Common Stock amount earned as an RSU Award, but such election must be made no later than thirty (30) days after the date of grant, provided the election is also made at least 12 months in advance of the vesting date. Upon the occurrence of a Change in Control, all restrictions on a Participant's RSU Award shall lapse pursuant to the terms of the KEIP. Such RSU Award shall be credited to a Participant's RSU Award Sub-Account as soon as administratively practicable following the last day of the Plan Year.



d. SERP Benefits. A Participant may elect to defer all or a portion of the lump sum cash payment payable under the SERP, provided the election is made at least twelve (12) months before such amounts are payable under the SERP. A distribution of SERP Benefits under this Plan may not be made earlier than at least five (5) years from the date the distribution would have been made but for the Participant's election to defer such amounts under this Plan. Such SERP Benefits shall be credited to a Participant's SERP Benefits Sub-Account as soon as administratively practicable following the date a distribution under the SERP would have otherwise been made.

e. CLRP Benefits. A Participant may elect to defer all or a portion of the lump sum cash payment payable under the CLRP, provided the election is made at least twelve (12) months before such amounts are payable under the CLRP. A distribution of CLRP Benefits under this Plan may not be made earlier than at least five (5) years from the date the distribution would have been made but for the Participant's election to defer such amounts under this Plan. Such CLRP Benefits shall be credited to a Participant's CLRP Benefits Sub-Account as soon as administratively practicable following the date a distribution under the CLRP would have otherwise been made.

f. Any deferral election under this Section 4.1:

(1) Must specify:

(i) The time of distribution under one of the distributable events set forth under Sections 5.2.a and 5.2.b.; and

(ii) The form of distribution set forth under Section 5.1.

(2) Shall be irrevocable, except as otherwise provided in this Plan; and

(3) Shall be made on a form supplied by the Plan Administrator.

#### 4.2 Changes in Time and Form of Distribution.

a. A Participant may make a subsequent election to change the time or form of distribution specified in Sections 3.3.a., 4.1, and 6.3.a., but only if the following conditions are satisfied:

(1) The election may not take effect until at least twelve (12) months after the date on which the election is made;

(2) In the case of an election to change the time and form of a distribution under Sections 5.2.a, 5.2.b, and 5.2.e a distribution may not be made earlier than at least five (5) years from the date the distribution would have otherwise been made;

(3) The election must be made at least twelve (12) months before the date of the first scheduled distribution; and

(4) The election may not result in an impermissible acceleration of payment prohibited under Code section 409A. If the Plan Administrator, in its sole discretion, determines that a change in the time or form of distribution will result in an impermissible acceleration, the Plan Administrator reserves the right to refuse to honor the change.

b. A Participant may change the time and form of distribution specified in Sections 3.3.a., 4.1, and 6.3.a. to a (i) form of distribution set forth in Section 5.1.a. and/or (ii) distributable event described in Sections 5.2.a. and 5.2.b.

## **Article V Distribution of Deferrals**

The provisions of this Article V shall apply only to amounts subject to Code section 409A. Distribution rules applicable to Grandfathered Amounts are summarized in Appendix A of this Plan.

### 5.1 Forms of Distribution.

a. A Participant may elect to receive his or her (i) AIP Awards, (ii) PSU Awards, (iii) RSU Awards, (iv) SERP Benefits, and (v) CLRP Benefits in:

- (1) A lump sum payment; or
- (2) Substantially equal annual installment payments up to fifteen (15) years.

All amounts of a Participant's Account constructively invested in Company Common Stock shall be distributed in the form of Company Common Stock, except in the event a Change in Control occurs, in which case amounts constructively invested in Company Common Stock shall be dealt with in accordance with the terms of the EBPP applicable to such Participant. All other amounts shall be distributed in cash.

b. (1) Effective for distributions made under this Plan before April 1, 2007, such distributions shall be made as soon as administratively practicable during the first calendar quarter of the calendar year following the occurrence of a distributable event set forth under Sections 5.2.a and 5.2.b.

(2) Effective for distributions made under this Plan on or after April 1, 2007, such distributions shall be made within ninety (90) days following the occurrence of a distributable event set forth under Sections 5.2.a. and 5.2.b.

c. Notwithstanding the distribution form elected under Section 5.1.a., if a Participant's Account balance is less than \$10,000 upon the occurrence of a distributable event set forth under Sections 5.2.a. and 5.2.b, the full Account balance shall be distributed in a lump sum payment within ninety (90) days following the occurrence of a distributable event set forth under Sections 5.2.a. and 5.2.b.

5.2 Permissible Distributable Events. A Participant may designate in his or her Initial Election to Defer under Section 4.1 to receive a distribution:

a. As of a specified date or time, but such date or time may not be later than the Plan Year following the calendar year in which the Participant attains age 70.

b. Upon a Separation From Service.

(1) In the case of a Separation from Service of a Key Employee, a distribution may not be made before the date which is six (6) months after the date of the Key Employee's Separation from Service (or, if earlier, the date of death of the Key Employee) (hereinafter called the "Waiting Period"). Upon completion of the Waiting Period, a distribution shall be made in accordance with Section 5.1.b. or as soon as administratively practicable following the completion of the Waiting Period.

(2) During the Waiting Period, a Key Employee's Account will continue to accrue investment credits in accordance with Section 2.1.c.

(3) For purposes of this Section 5.2.b.:

(i) Key Employee means a "specified employee" under Code section 409A(a)(2)(B)(i) (i.e., a key employee (as defined under Code section 416(i) (without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise) and applicable Treasury regulations and other guidance under Code section 409A.

(ii) Separation from Service means a termination of employment within the meaning of Code section 409A and applicable Treasury regulations and other guidance under Code section 409A.

c. Distribution Upon Death. Notwithstanding any provision in the Plan to the contrary, if a Participant dies, the unpaid portion of such Participant's Account balance shall be distributed to the Participant's beneficiary, or in the absence of a beneficiary, to the Participant's estate in an immediate lump sum payment as soon as administratively practicable following the date of death. A Participant may designate or change his or her beneficiary (without the consent of any prior beneficiary) on a form provided by the Plan Administrator and delivered to the Plan Administrator before the Participant's death.

d. Withdrawals for Unforeseeable Emergency. The Plan Administrator may, in its sole discretion, permit a Participant to withdraw all or a portion of his or her AIP Sub-Account or the cash portion of his or her PSU Sub-Account in the event of demonstrated Unforeseeable Emergency. The amounts distributed with respect to an Unforeseeable Emergency may not exceed the amounts necessary to satisfy such Unforeseeable Emergency, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship). An Unforeseeable Emergency shall mean a severe financial hardship of a Participant resulting from an illness or accident of the Participant, the Participant's spouse, or a dependent

(as defined in Code section 152(a)) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. A Participant seeking a withdrawal on account of an Unforeseeable Emergency must request a hearing with the Plan Administrator. If the Plan Administrator renders a decision in favor of permitting a withdrawal for an Unforeseeable Emergency, such amounts shall be payable to the Participant as soon as administratively practicable following such decision.

e. Distribution Upon a Change in Control. Notwithstanding any provision in the Plan to the contrary, a Participant's Account balance under the Plan shall be distributed in an immediate lump sum payment on the later of (i) the first day of January of the year following the year in which both a Change in Control and Change in Control Event occurs and (ii) the one hundred twentieth (120th) day following the occurrence of both a Change in Control and Change in Control Event. For the purposes of this Section 5.2.e., a Change in Control Event means a Change in Control Event as defined under Code section 409A and applicable guidance thereunder.

5.3 Withholding. Any payments made pursuant to Articles III, V, or VI shall be subject to appropriate federal, state or local income tax withholdings. With respect to any withholdings required on a distribution of Company Common Stock, the Company will first withhold from the cash equivalent of dividends on such Company Common Stock and interest earned on such cash equivalent that are payable to the Participant on the date of distribution, and if such withholdings are insufficient, then the Company will withhold from such distribution such number of shares of Company Common Stock having a fair market value (as defined in the KEIP) equal to the amount required to satisfy the remaining withholding tax obligation, unless the Participant elects to (i) deposit with the Company such amount of cash or (ii) direct the Company to withhold cash from other amounts then distributed under this Plan to satisfy such withholding tax obligation.

## **Article VI DC SERP**

6.1 Eligibility. An individual will be eligible to become a Participant in this Plan and receive DC SERP Benefits in accordance with this Article VI if the individual is selected by the Compensation Committee in its sole discretion.

6.2 Benefits. A Participant meeting the eligibility requirements under Section 6.1 shall receive DC SERP Benefits in an amount equal to a percentage of Compensation determined by the Compensation Committee in its sole discretion. Such DC SERP Benefits shall be credited to a Participant's DC SERP Benefits Sub-Account as soon as administratively practicable following the last day of the Plan Year. If a Participant becomes Disabled, such Participant shall continue to be credited with DC SERP Benefits in accordance with this Section 6.2 until the earlier of (i) two (2) years from the date benefits commence under the Company's Long Term Disability Plan or (ii) the date he or she is no longer eligible for such long-term disability benefits, based on the amount of Compensation that was payable to the Participant at the time of Disability.

- a. Nonelective Initial Deferral. Amounts held in a Participant's DC SERP Benefits Sub-Account shall be payable in a lump sum cash payment within ninety (90) days following the earlier of a Separation from Service, subject to the requirements under Section 5.2.b., or death, subject to the requirements under Section 5.2.c.
- b. Distribution Upon Disability. Notwithstanding Section 6.3.a., if a Separation from Service is caused by a Participant becoming Disabled, amounts held in a Participant's DC SERP Benefits Sub-Account shall be payable in a lump sum cash payment two (2) years following the date benefits commence under the Company's Long Term Disability Plan.
- c. Change in Time and Form of Distribution. A Participant may make a subsequent election to change the time or form of the distribution of his or her DC SERP Benefits Sub-Account as specified in Section 6.3.a. in accordance with Section 4.2.b., but only if the requirements of Section 4.2.a. are satisfied. A distribution of a Participant's DC SERP Sub-Account subject to a subsequent deferral election under this Section 6.3.c. shall be made within ninety (90) days following the occurrence of a distributable event set forth under Sections 5.2.a and 5.2.b. Notwithstanding a subsequent deferral election made under this Section 6.3.c., in the case of death, a distribution will be made in accordance with Section 5.2.c.

## **Article VII Plan Administrator**

7.1 Plan Administrator Duties. The Plan Administrator shall administer this Plan. All members of the committee comprising the Plan Administrator may be Participants. A member of the committee comprising the Plan Administrator who is a Participant may not vote on matters affecting his or her personal benefit under this Plan, but any such individual shall otherwise be fully entitled to act in matters arising out of or affecting this Plan notwithstanding his or her participation herein. The Plan Administrator shall have the authority to make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan and decide or resolve any and all questions, including interpretations of this Plan, as may arise in connection with the Plan.

7.2 Agents. In the administration of this Plan, the Plan Administrator may, from time to time, employ agents and delegate to them or to others (including employees of the Company) such administrative duties as it sees fit. The Plan Administrator may from time to time consult with counsel, who may be counsel to the Company.

7.3 Binding Effect of Decisions. In carrying out its duties herein, the Plan Administrator (or its designee) shall have full discretion to exercise all powers and to make all determinations, consistent with the terms of the Plan, in all matters entrusted to it, and its determinations shall be final and binding on all parties.

7.4 Indemnity. The Company shall indemnify and hold harmless the Plan Administrator and any employees to whom administrative duties under this Plan are delegated,

against any and all claims, loss, damage, expense, or liability arising from any action or failure to act with respect to this Plan, except in the case of willful misconduct.

## **Article VIII Amendment and Termination**

8.1 Amendment. The Committee may at any time amend the Plan in whole or in part. However, no amendment shall be effective to decrease or restrict any then existing Account or to change the Company's obligations under any then existing Initial Deferral Election or as otherwise may be provided in an agreement entered into between the Company and the Participant prior to the date of such Initial Deferral Election or the Company's Executive Benefits Protection Plan (or any similar or successor plan or program). After the occurrence of a Change in Control, no amendment shall be made to this Plan that would adversely affect the rights of any Participant without the consent of such Participant, except for such changes that the Committee reasonably determines, upon the advice of nationally recognized tax counsel, are necessary to fulfill the intent of the Plan to defer federal income taxation of Participants' Accounts until such Accounts are paid in accordance with the terms of the Plan.

8.2 Board's Right to Terminate. The Board may at any time terminate the Plan in its entirety, in which event no new Initial Deferral Elections shall be made, but the obligations of the Company under this Plan and under existing Initial Deferral Elections and Account balances shall continue.

8.3 No Material Modification. Notwithstanding the foregoing, no amendment of the Plan shall apply to Grandfathered Amounts, unless the amendment specifically provides that it applies to such amounts. The purpose of this restriction is to prevent a Plan amendment from resulting in an inadvertent "material modification" to Grandfathered Amounts.

## **Article IX Miscellaneous**

9.1 Unfunded Plan. This Plan is intended to be an "unfunded" plan maintained primarily to provide deferred compensation for a "select group of management or highly compensated employees" within the meaning of the Employee Retirement Income Security Act of 1974, as amended, and shall be so construed.

9.2 Rabbi Trust. The Company shall establish promptly a revocable trust to hold assets, subject to the claims of the Company's creditors in the event of the Company's insolvency, for the purpose of the payment of the benefits hereunder, which shall become irrevocable upon a Change in Control. The Company shall contribute to the Trust cash in such amounts and at such times as are specified in this Plan and in the applicable trust agreement. Upon the occurrence of a Change in Control, the Company shall contribute to a separate Trust account maintained for each Participant under the Trust, in cash, an amount equal to 100% of the value of each such Participant's Account, less any amount credited to such Participant's Trust account as of the date of such contribution. Amounts paid to Participants from the Trust shall discharge the obligations of the Company hereunder to the Participants to the extent of the payments so made.

9.3 Unsecured General Creditor. This Plan is unfunded. Benefits shall be paid from the Company's general assets. Participants and their beneficiaries, heirs, successors, and assigns shall have no legal or equitable rights, interest or claims in any property or assets owned or which may be acquired by the Company. Such assets of the Company shall not be held under any trust for the benefit of Participants, their beneficiaries, heirs, successors or assigns, or held in any way as collateral security against the obligations of the Company under this Plan. The Company's obligation under the Plan shall be that of an unfunded and unsecured promise of the Company to pay money in the future. The Company in its sole discretion, may, however, elect to provide for its liabilities under this Plan through a trust or funding vehicle, provided, however, that the terms of any such trust or funding vehicle shall not alter the status of Participants and beneficiaries as mere general unsecured creditors of the Company or otherwise cause the Plan to be funded or benefits taxable to Participants except upon actual receipt.

9.4 Nonassignability. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage, or otherwise encumber, transfer, hypothecate, or convey in advance of actual receipt the amounts, if any, payable hereunder, or any part thereof. The rights to all such amounts are expressly declared to be unassignable and non-transferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure or sequestration for the payment of any debts, judgments, alimony, or separate maintenance owed by Participants or any other person, nor be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency, except as required by law.

9.5 Domestic Relations Orders. Notwithstanding Section 9.4, all or a portion of a Participant's Account may be paid to another person as specified in a domestic relations order that the Plan Administrator in its sole discretion determines is qualified (a "Qualified Domestic Relations Order"). For this purpose, a Qualified Domestic Relations Order means a judgment, decree, or order (including the approval of a settlement agreement) which is:

- (a) Issued pursuant to a State's domestic relations law;
- (b) Relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of the Participant;
- (c) Creates or recognizes the right of a spouse, former spouse, child or other dependent of the Participant to receive all or a portion of the Participant's benefits under the Plan;
- (d) Provides for payment in an immediate lump sum as soon as practicable after the Company determines that a Qualified Domestic Relations Order exists; and
- (e) Meets such other requirements established by the Plan Administrator.

The Plan Administrator in its sole discretion shall determine whether any document received by it is a Qualified Domestic Relations Order. In making this determination, the Plan Administrator may consider the rules applicable to "domestic relations orders" under Code section 414(p) and ERISA section 206(d), and such other rules and procedures as it deems

relevant. If an order is determined to be a Qualified Domestic Relations Order, the amount to which the other person is entitled under the Order shall be paid in a single lump sum payment as soon as administratively practicable after such determination.

9.6 Not a Contract of Employment. The terms and conditions of this Plan shall not be deemed to constitute a contract of employment between the Company and a Participant, and a Participant shall have no rights against the Company except as may otherwise be specifically provided herein. Moreover, nothing in the Plan shall be deemed to give a Participant the right to be retained in the service of the Company or to interfere with the right of the Company to discipline or discharge an employee at any time. This foregoing provisions of this Section 9.6 to the contrary notwithstanding, this Plan shall not diminish any rights or increase any obligations of a Participant or the Company under any employment agreement entered into by the Participant and the Company prior to such Participant's Deferral Election, or after such Deferral Election to the extent that such employment agreement specifically provides that it shall supersede any inconsistency with the terms of this Plan.

9.7 Forfeiture of Benefits. If a Participant's employment is terminated because of willful misfeasance or gross negligence in the performance of his or her duties, his or her right to benefits under this Plan shall be forfeited in the discretion of (i) the Committee, in the case of officers covered by Section 16(b) of the Securities and Exchange Act of 1934 or (ii) the Plan Administrator, in the case of all other Participants, and the Company shall have no further obligation hereunder to such Participant or his or her beneficiary(ies); provided, however, that notwithstanding any provision of the Plan, upon a Change in Control, a Participant's AIP Awards, PSU Awards, RSU Awards, SERP Benefits, and CLRP Benefits deferred under the Plan (together, the "Deferred Benefits") shall vest and be payable pursuant to the provisions of Sections 2.1, 2.2 and 2.5 of the EBPP applicable to such Participant and Section 7.IV(b) of the KEIP, respectively, and such vested Deferred Benefits shall not be subject to forfeiture under this Section 9.7. If a Participant is not a participant under any EBPP or the KEIP, upon a Change in Control, Sections 2.1, 2.2 and 2.5 of the Employee Benefits Protection Plan (Group 2) and Section 7.IV(b) of the KEIP shall nevertheless apply to the Participant's Deferred Benefits and such Deferred Benefits shall not be subject to forfeiture under this Section 9.7.

9.8 Terms. Use of the masculine, feminine and neuter pronouns in this Plan are intended to be interchangeable and use of the singular will include the plural, unless the context clearly indicates otherwise.

9.9 Captions. The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

9.10 Governing Law. This Plan shall be governed by the laws of the United States and, to the extent not preempted thereby, the laws of Pennsylvania; provided, however, that after a Change in Control, any court or tribunal that adjudicates any dispute, controversy or claim arising between the Participants and the Committee, Plan Administrator, Company or any of their delegates or successors, relating to or concerning the provisions of this Plan, will apply a de novo standard of review to any determinations made by such person. Such de novo standard



shall apply notwithstanding the grant of full discretion hereunder to any such person or characterization of any decision by such person as final, binding or conclusive on any party.

9.11 Validity. The illegality or invalidity of any provision of this Plan shall not affect its remaining parts, but this Plan shall be construed and enforced without such illegal or invalid provisions.

9.12 Notice. Any notice or filing required or permitted to be given to the Plan Administrator under the Plan shall be sufficient if in writing and hand delivered, or sent by registered or certified mail, to:

Employee Benefits Committee  
The Hershey Company  
100 Crystal A Drive  
Hershey, Pennsylvania 17033

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

9.13 Successors. The provisions of this Plan shall bind and inure to the benefit of the Company and its successors and assigns. The term successors as used herein shall include any corporation or other business entity which shall, whether by merger, consolidation, purchase of assets, or otherwise, acquire all or substantially all of the business or assets of the Company, and successors of any such corporation or other business entity.

9.14 Incapacity. If the Plan Administrator finds that any Participant or beneficiary to whom a benefit is payable under this Plan is unable to care for his or her affairs, any payment due (unless prior claim therefore shall have been made by a duly authorized guardian or other legal representative) may be paid, upon appropriate indemnification of the Plan Administrator, to any person who is charged with the support of the Participant or beneficiary. Any such payment shall be payment for the account of the Participant and shall be a complete discharge of any liability of the Company under the Plan to the Participant or beneficiary.

IN WITNESS WHEREOF, the Company has caused this Deferred Compensation Plan to be amended and restated as of the 3rd day of October, 2006.

THE HERSHEY COMPANY

By: /s/ Marcella K. Arline  
Marcella K. Arline  
Senior Vice President, Chief People Officer

## Appendix A

Distribution of the Grandfathered Amounts shall be made in accordance with the Plan terms as in effect on December 31, 2004 and as summarized in this Appendix A.

### Article I Distribution of Deferrals

#### 1.1 Initial Election of Distribution Options in Deferral Election.

a. A Participant must specify in each of his or her Deferral Elections when such Account will be distributed. Distribution may be made or begin in any future Plan Year or Years, but distributions must begin not later than the Plan Year following the calendar year in which the Participant attains age 70. The Participant may elect to receive amounts deferred in a lump sum or in up to ten substantially equal annual installments. A Participant may specify different distribution dates and forms of payment under each of his or her Deferral Elections. All amounts of a Participant's Accounts constructively invested in Company Common Stock shall be distributed in the form of Company Common Stock, except in the event a Change in Control occurs, in which case amounts constructively invested in Company Common Stock shall be dealt with in accordance with the terms of the EBPP applicable to such Participant. All other amounts shall be distributed in cash.

b. Any provision of this Plan to the contrary notwithstanding, all distributions hereunder shall be deferred until such time (but not beyond the occurrence of a Change in Control unless otherwise specified in a Participant's Deferral Election), in the discretion of the Committee, as such distribution would not be disallowed as a deduction under Section 162(m) of the Internal Revenue Code.

#### 1.2 Changes in Distribution Options.

a. A Participant is entitled to one future opportunity to further lengthen (not shorten) the deferral period provided in a Deferral Election and to make one future change with regard to lengthening (not shortening) the payment schedule provided in that Deferral Election up to a maximum payment schedule of ten years.

b. Any change in the deferral period or the payment schedule must be submitted to the Plan Administrator in writing, on a form provided by the Plan Administrator, at least twelve months, or such shorter period as the Plan Administrator may accept, but in no event later than the December 31, before the date payments were originally scheduled to begin. No change in the deferral period shall be permitted if such change would cause payments to begin after the Plan Year following the calendar year in which the Participant attains age 70.

#### 1.3 Payment of Deferred Amounts.

a. Upon the date elected by the Participant, the Company shall begin to pay to the Participant an amount equal to the total amount then credited to the Participant's Accounts. Such amount is to be paid either in one lump sum or in substantially equal annual installments over a

period of years as previously elected by the Participant, which period shall be not more than ten years. Each annual installment shall include investment credits on the remaining balance during the previous Plan Year until the Accounts shall have been paid in full. A Participant may continue to express investment preferences as provided in Section 2.1.c during the period that an Account is being distributed.

b. If the Participant dies before payment in full of the amount standing to the Participant's credit in the Accounts, the unpaid balance may be paid in one lump sum or in substantially equal installments to the Participant's beneficiary over the remaining distribution period elected by the Participant. If the Participant dies before the beginning date of the deferred payment and did not indicate a specific method of distribution, then the Participant's designated beneficiary may petition the Plan Administrator regarding the method of distribution. In the absence of a designated beneficiary, the balance of the Accounts will be paid in a lump sum to the estate of the Participant as soon as possible.

c. If the Participant's employment is terminated for any reason other than Retirement, death or Disability before the elected payment date, then the Company, acting through the Plan Administrator, at its discretion, but subject to any limitations set forth in the EBPP applicable to such Participant (or any similar or successor plan or program) or any employment agreement to which the Participant is a party or is covered, at any time thereafter may:

(1) Immediately pay over any amounts credited to the Participant's Accounts to the Participant; provided, however, if such termination of employment occurs at any time following a Change in Control, the Company and the Plan Administrator may not pay over any amounts credited to a Participant's Accounts, unless prior to the occurrence of the Change in Control, such Participant made an election pursuant to which such Participant consented to receive an immediate payment of such Participant's Accounts in the event such Participant's employment is terminated following a Change in Control for any reason other than Retirement, death or Disability.

(2) Deposit any amounts credited to the Participant's Accounts in a grantor trust for the Company's benefit who will manage and pay over such amounts to the Participant in accordance with the terms of this Plan, with administrative costs in such event being charged to the Participant's Accounts; provided, however, that following a Change in Control, all such administrative costs shall be borne solely by the Company.

(3) Continue to itself maintain and pay over amounts deferred to the Participant in accordance with the terms of this Plan and the Participant's election pursuant thereto.

d. If both the Participant and his beneficiary die after payments to the Participant begin and before all payments are made from the Participant's Accounts, the remaining value of the Accounts shall be determined as of the date of death of the beneficiary or Participant, whichever is later, and shall be paid as promptly as possible in one lump sum to the estate of the survivor of the Participant and such beneficiary.

e. A Participant may designate or change his or her beneficiary (without the consent of any prior beneficiary) on a form provided by the Plan Administrator and delivered to the Plan Administrator before the Participant's death.

f. Subject to Section 3.1 of the Plan in effect on December 31, 2004: (1) if a Participant elects to receive amounts deferred in a lump sum or in annual installments on a date prior to Retirement, such payments will commence or payment will be made in the month of January of the Plan Year selected by the Participant; (2) if the Participant elects to receive amounts deferred in a lump sum (other than amounts deferred as Common Stock for payment in a lump sum) or in annual installments after Retirement, such payments shall commence or payment shall be made in the month of January of the Plan Year following the calendar year in which the Participant retires; and (3) if a Participant elects to receive amounts deferred as Common Stock in a lump-sum after Retirement, such payment will be made in the month of January of the Plan Year following the calendar year in which the Participant retires, unless an earlier date is approved by the Plan Administrator upon application by the Participant.

g. Notwithstanding anything herein to the contrary, if, at any time, the Company determines (based on advice of tax counsel), by reason of legislation relating to, amendment of, or interpretation by a court or administrative body of, the provisions of the Internal Revenue Code of 1986, as amended, or any rules and regulations promulgated thereunder, that any amounts deferred by a Participant under this Plan shall be currently taxable, such Participant shall be entitled to elect to receive immediate payment of any such deferred amounts (without any reduction other than applicable tax withholding).

1.4 Hardship Distributions. The Plan Administrator may, in its discretion, accelerate payments to a Participant in an amount up to the AIP bonus or the cash portion of a PSU award previously deferred, together with investment credits to date, in the event of demonstrated severe financial hardship (or any similar circumstances under which a payment would be permitted without causing the imposition of federal income taxes on Participants' Accounts that have not been distributed, pursuant to Revenue Procedure 92-65 or any successor Revenue Procedure, Revenue Ruling, regulation or other applicable administrative determination issued by the Internal Revenue Service.) Any such payments made will be limited to the amount needed to meet the demonstrated financial need. A Participant seeking a financial hardship withdrawal from his or her Accounts must request a hearing with the Plan Administrator, who will then render a decision on whether to permit such distribution.

1.5 Other Withdrawals: Forfeiture Penalty. A Participant may, by written request on a form provided by the Plan Administrator, withdraw all or any portion of any of his Accounts as of any Determination Date, provided that the Participant shall forfeit 10% of the amount withdrawn as a penalty.

1.6 Withholding. Any payments made pursuant to Articles III, V, or VI shall be subject to appropriate federal, state or local income tax withholdings. With respect to any withholdings required on a distribution of Company Common Stock, the Company will first withhold from the cash equivalent of dividends on such Company Common Stock and interest earned on such cash

equivalent that are payable to the Participant on the date of distribution, and if such withholdings are insufficient, then the Company will withhold from such distribution such number of shares of Company Common Stock having a fair market value (as defined in the KEIP) equal to the amount required to satisfy the remaining withholding tax obligation, unless the Participant elects to (i) deposit with the Company such amount of cash or (ii) direct the Company to withhold cash from other amounts then distributed under this Plan to satisfy such withholding tax obligation.

## AMENDMENT TO EXECUTIVE EMPLOYMENT AGREEMENT

WHEREAS, The Hershey Company (the "Employer") and Richard H. Lenny (the "Executive") entered into an Executive Employment Agreement as of March 12, 2001 (the "Agreement");

WHEREAS, Section 14 of the Agreement provides that it may be amended through a written instrument executed by the Employer and the Executive;

WHEREAS, the Board of Directors of the Employer (the "Board"), at its meeting on October 3, 2006, approved changes to The Hershey Company Supplemental Executive Retirement Plan ("SERP") and The Hershey Company Retirement Plan ("Retirement Plan");

WHEREAS, the Compensation and Executive Organization Committee of the Board, at its meeting on October 2, 2006, approved changes to The Hershey Company Deferred Compensation Plan (these changes along with the changes to the SERP and Retirement Plan are collectively referred to herein as the "Amendments");

WHEREAS, the Board and the Executive desire to amend the Agreement in a manner consistent with the Amendments and to revise a provision of the Agreement dealing with Annual Bonus Programs.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, intending to be legally bound, Employer and Executive agree as follows:

1. The second sentence of Section 3(b) of the Agreement, which currently reads "If the Executive achieves his target performance goals, as determined by the Compensation Committee on an annual basis, the Executive shall have a target annual bonus under such Annual Bonus Programs equal to eighty percent (80%) of Base Salary, and a maximum annual bonus equal to one hundred sixty percent (160%) of Base Salary." is amended to read as follows:

The Executive shall have a target annual bonus under such Annual Bonus Programs equal to not less than eighty percent (80%) of Base Salary.

2. The Agreement is amended to the extent necessary to conform to the provisions of the Amendments in accordance with their terms and conditions so that the benefit reductions, offsets or limitations intended to be implemented by the Amendments will apply to the Executive in the same manner as they apply to similarly situated members of the Hershey Executive Team.

3. The Agreement is amended to delete Section 3(g)(iii) in its entirety.

**[Signature Page Follows]**

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IN WITNESS WHEREOF, each of the parties hereto has duly executed this Amendment to Executive Employment Agreement, effective as of October 3, 2006.

EXECUTIVE:

Richard H. Lenny

/s/ Richard H. Lenny

EMPLOYER:

The Hershey Company, a Delaware corporation

By: /s/ Marcella K. Arline

Marcella K. Arline

Senior Vice President, Chief People Officer

ATTEST:

/s/ Burton H. Snyder

Burton H. Snyder

Secretary

**HERSHEY REDESIGNS RETIREMENT PLANS****Changes Maintain Competitive Benefits for Employees  
While Reducing Future Company Pension Costs**

**HERSHEY, Pa., October 10, 2006** — The Hershey Company (NYSE:HSY) today announced that it is redesigning its U.S. pension and savings plans to maintain competitive retirement benefits for its employees while reducing future company pension costs. The changes, effective January 1, 2007, will affect approximately 6,400 U.S. employees not covered by a collective bargaining agreement.

Hershey's new retirement program, *WorkLife Invest*, will include:

- A higher company match in the 401(k) plan to encourage and support employees in saving for retirement. Hershey will match 75% of the first 6% of pay contributed by the employee.
- A modified defined benefit pension plan that recognizes both age and service, provides future benefits at a reduced rate for current employees, and is closed to new employees hired on or after January 1, 2007. Importantly, employees' current pension balances as of year-end 2006 will be maintained and will continue to grow with interest. Future retirement benefits for executives participating in the company's Supplemental Executive Retirement Plan (SERP) will also be reduced to reflect reductions in the company's broader pension plan. This benefit will be redesigned as a defined contribution SERP for any future participants.
- A company contribution in the 401(k) plan, in addition to the increased company match, for employees hired on or after January 1, 2007. The company will make this contribution whether or not employees contribute to their 401(k) account, ensuring savings for all employees.

"We have redesigned our U.S. retirement plans to provide for the well-being of our employees while ensuring a cost structure that enables Hershey to remain competitive in the marketplace," said Marcella Arline, Senior Vice President, Chief People Officer. "The changes announced today will help us better manage increasing benefits costs over the long term. At the same time, thanks to the enhancements we're making to our 401(k) plan, these changes will improve our ability to offer a competitive, attractive and sustainable retirement benefit to our current and future employees. Hershey's redesigned retirement plans will ensure that we are able to continue investing both in our people and in our brands, the essential elements of our success."

The changes to retirement benefits protect employees' previously earned pension benefits and will not affect current retirees and terminated employees with a deferred pension benefit. The company has contributed nearly \$800 million to its pension plans over the past five years and they are fully funded.

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### **Safe Harbor Statement**

This release contains statements which are forward-looking. These statements are made based upon current expectations which are subject to risk and uncertainty. Actual results may differ materially from those contained in the forward-looking statements. Factors which could cause results to differ materially include, but are not limited to: our ability to implement and generate expected ongoing annual savings from the initiatives to advance our value-enhancing strategy; changes in raw material and other costs and selling price increases; our ability to implement improvements to and reduce costs associated with our supply chain; pension cost factors, such as actuarial assumptions, market performance and employee retirement decisions; changes in our stock price, and resulting impacts on our expenses for incentive compensation, stock options and certain employee benefits; market demand for our new and existing products; changes in our business environment, including actions of competitors and changes in consumer preferences; changes in governmental laws and regulations, including taxes; risks and uncertainties related to our international operations; and such other matters as discussed in our Annual Report on Form 10-K for 2005.

### **About The Hershey Company**

The Hershey Company (NYSE: HSY) is a leading snack food company and the largest North American manufacturer of quality chocolate and non-chocolate confectionery products. With revenues of over \$4 billion and more than 13,000 employees worldwide, The Hershey Company markets such well-known brands as *Hershey's*, *Reese's*, *Hershey's Kisses*, *Kit Kat*, *Almond Joy*, *Mounds*, *Jolly Rancher*, *Twizzlers*, *Ice Breakers*, and *Mauna Loa*, as well as innovative new products such as *Take 5* and *Hershey's Cookies*. In addition to its traditional confectionery products, Hershey offers a range of products specifically developed to address the nutritional interests of today's health-conscious consumer. These products include sugar-free *Hershey's*, *Reese's* and *York* candies, and *PayDay Pro*. It also markets *Hershey's* cocoa, *Hershey's* syrup and other branded baking ingredients, toppings and beverages. In addition, Artisan Confections Company, a wholly owned subsidiary of The Hershey Company, markets such premium chocolate offerings as *Scharffen Berger*, known for its high-cacao dark chocolate products, and *Joseph Schmidt*, recognized for its fine, handcrafted chocolate gifts. Visit us at [www.hersheynewsroom.com](http://www.hersheynewsroom.com).

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