

Letter of Intent (LOI) Example

BabyBurgers LLC – A Completely Fictional Company

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This document was prepared with help from **Katten Muchin Rosenman LLP** (“Katten”). The founder of ASimpleModel.com has worked on control-equity, non-control equity and preferred equity investments with partners who are now at Katten for 10+ years. They have always been excellent to work with.

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Month XX, XXXX

Via Email

[NAME]
[TITLE]
[FIRM NAME]
[EMAIL]

Dear [NAME]:

This letter sets forth a non-binding proposal, other than as expressly set forth herein, by which [INDPENDEPENDENT SPONSOR] (“SPONSOR”) would form a new limited liability company (the “Buyer”) to acquire all of the membership interests and other equity interests (the “Equity Interests”) of BabyBurgers LLC (“BabyBurgers” or the “Company”) from the sole member, Madison English (the “Seller”). Buyer would enter into employment and non-compete agreements with certain continuing members of BabyBurgers management (the “Management”) and the Seller to be determined during the course of due diligence. Except as expressly set forth herein, this is intended to be a nonbinding letter of intent (“Letter of Intent”).

1. Following the date of execution hereof, the Company and the Seller would afford to the Buyer upon prior notice and reasonable request through Buyer’s officers, attorneys, accountants, and authorized representatives and affiliates, free and full access to the offices, properties, books (including financial and operating data), records, audit reports, and income tax information relating to BabyBurgers during normal business hours in order to permit the Buyer to make such investigation of the business, properties, assets, liabilities and operations of BabyBurgers as the Buyer may deem necessary or desirable and the Company shall assist Buyer, its counsel, accountants and representatives, in their examination of such material.

2. The transaction would be documented pursuant to definitive agreements (the “Definitive Agreements”) mutually acceptable to the parties, containing, among other things, the terms and conditions set forth in Exhibit A attached hereto.

3. Until the earliest to occur of (a) written notice from Buyer to BabyBurgers that Buyer is not satisfied with the results of the due diligence investigation or financing agreements and has determined to terminate negotiations, (b) execution of Definitive Agreements to consummate the transaction contemplated herein, or (c) seventy-five (75) days from the date of execution hereof, BabyBurgers shall conduct its business in the ordinary course consistent with previous practices.

4. Until the earliest to occur of (a) seventy-five (75) days following the full execution hereof, (b) any Milestone Failure Date (as defined below), or (c) written statement by Buyer indicating that it is no longer pursuing the transaction, neither the Company nor any of its directors, officers, employees, agents or representatives nor the Seller will solicit, encourage or entertain proposals from or enter into negotiations with or furnish any nonpublic information to any other person or entity regarding the sale of any equity or debt securities of the Company, or regarding the acquisition of the Company, whether by sale of all or substantially all of its assets, merger, consolidation or equity interests, other than to the Buyer. A Milestone Failure Date is defined as the date of any Milestone, where the objectives of such Milestone have not been achieved by the designated date due to reasons within Buyer's control. Buyer agrees to immediately notify Seller in the event Buyer determines that it is no longer interested in pursuing the acquisition of the Company. The Milestones and their corresponding dates are as follows:

<u>Days from execution of Letter of Intent</u>	<u>Milestone</u>
5 days	Preliminary due diligence list
30 days	Submission of first draft of Definitive Agreements for the purchase all of the equity interests of the Company
60 days	Preliminary completion of financial due diligence
60 days	Preliminary completion of basic corporate governance due diligence

5. This Letter of Intent is intended to be a guide in the preparation of the Definitive Agreements in a form mutually satisfactory to the parties hereto. Nothing contained herein will be construed to preclude other provisions that are consistent with the terms of the transaction outlined herein from being included in the Definitive Agreements, provided such other provisions are satisfactory to all parties to the Definitive Agreements. This Letter of Intent will not be construed to impose any obligation on any party to execute the Definitive Agreements and Buyer will be free at any time if not satisfied with the results of its financing arrangements or investigations or otherwise upon written notice to BabyBurgers to abandon negotiations relative to the transaction and Buyer will incur no liability at law or in equity for abandoning such negotiations.

6. Notwithstanding anything to the contrary contained in this Letter of Intent, the terms and provisions of any definitive agreement entered into by the parties will supersede this Letter of Intent and control in the event of any conflict. This Letter of Intent, other than paragraphs 1, 3, 4 and 7 hereof (which are intended to be binding), is intended to be a nonbinding Letter of Intent.

7. Each of Buyer and Seller shall be responsible for their expenses in connection with the transactions contemplated by this Letter of Intent.

8. If this Letter of Intent is not duly executed by the Company and the Seller and delivered to the Buyer at the address below by MONTH XX, 20XX, it will expire:

[NAME]
[TITLE]
[FIRM NAME]
[EMAIL]

If the foregoing expresses your understanding with respect to this matter, please have this Letter of Intent and its enclosed counterparts executed in the spaces provided below and return one fully executed copy to the undersigned.

SIGNATURE PAGE FOLLOWS

Sincerely,

[INDPENPENDENT SPONSOR]

[Name], [Title]

enclosure

The foregoing is accepted and agreed to in all respects as of this ____ day of _____,
20XX by BabyBurgers and the Seller.

BABYBURGERS LLC

Madison English, Founder and CEO

MADISON ENGLISH

EXHIBIT A
PROPOSAL TO ACQUIRE
100% OF THE EQUITY INTERESTS OF
BABYBURGERS LLC

1. Proposed Transaction. Buyer proposes to acquire good and marketable title to the membership interests or other equity interests of BabyBurgers, free and clear of all liens, claims, preemptive rights, rights of first refusal, voting and other restrictions and encumbrances.
2. Consideration. The aggregate consideration for 100% of the membership interests would consist of \$XX,XXX,XXX (the “Enterprise Value”). The Enterprise Value assumes a debt free and cash free transaction. Buyer would pay the Enterprise Value at the closing of the transaction (the “Closing”), less an escrow amount (as defined in Section 5 hereof) and less equity rolled by Seller, all as described below. In addition, to ensure that BabyBurgers is operating in the normal course prior to Closing, the Enterprise Value would be adjusted if BabyBurgers’s working capital as of Closing is outside a range of “normalized working capital” that Buyer and Seller would establish within thirty (30) days of execution hereof. All debt for borrowed funds, capital leases, deferred compensation, other indebtedness or other non-ordinary course liabilities outstanding as of the Closing will reduce the consideration paid to the Seller.
3. Proposed Capital Structure. The capital structure of Buyer would include approximately \$XX,XXX,XXX of equity, including the equity rolled by Seller in the equity of Buyer. Total debt would be approximately \$XX,XXX,XXX. The capital structure in the total amount of \$XX,XXX,XXX includes the purchase consideration of \$XX,XXX,XXX plus \$XXX,000 in transaction costs.

We have received terms sheets from multiple lenders that show a high degree of interest in providing financing for this transaction in this range.

While we have not selected a lender(s) and we would likely modify the terms from the term sheets offered or still forthcoming, we would be happy to provide copies of the terms provided should they be of interest to the Seller.

4. Equity Structure. The equity structure would consist of common units.

An incentive units pool would be created for certain members of Management. The incentive unit pool would be in an amount equal to approximately 10% of the units outstanding as of the Closing. The incentive units would vest based on the achievement of certain financial performance benchmarks. In the event of a sale prior to the five (5) year benchmark, there would be accelerated full vesting assuming that the interim financial tests were achieved.

5. Escrow. Absent a significant due diligence finding, Buyer would limit the escrow to \$X,000,000. Absent a claim, the escrow would be released after eighteen (18) months. The escrow would be available for indemnity claims and to settle any claims for working

capital. Subject to due diligence, Buyer may require a separate escrow for working capital claims.

6. Employment and Consulting Agreements. Concurrent with the purchase, Buyer would enter into employment agreements with certain members of BabyBurgers's management team on terms and conditions to be mutually agreed to, which would include non-competition and non-solicitation provisions.
 - a. Madison English and other members of management to be determined would enter employment agreements with Buyer with compensation to be determined by mutual agreement.
 - b. Madison English would have the title of President and CEO and serve as a member of the Board of Directors.
 - c. The employment agreements would include provisions related to non-competition and non-solicitation.
7. Non-Compete. Concurrent with the purchase, Buyer would enter into non-compete agreements with the Seller for a period of (5) years. The employment agreements for Seller and other members of management would have a two-year non-compete following termination of employment.
8. Schedule. The Closing of the Purchase would occur within seventy-five (75) days of the date of execution hereof.
9. Expenses. Except as provided herein, the Seller would be responsible for all costs and expenses incurred by the Seller and BabyBurgers in connection with the negotiation, documentation and consummation of the Definitive Agreements. Seller would have the responsibility for the payment of any and all fees due to their investment bankers. Buyer would be responsible for its own such costs and expenses.
10. Conditions to Closing. Without limiting the provisions hereof, the following conditions would be satisfied at Closing.
 - a. Execution of employment, consulting, non-compete and non-solicitation agreements with certain members of Management and non-compete agreements with the Seller.
 - b. Satisfaction of Buyer with its due diligence findings and financing arrangements in its sole discretion.
 - c. Negotiation of a long-term lease of the facilities currently utilized by BabyBurgers satisfactory to Buyer.

- d. Negotiation of Definitive Agreements satisfactory to Buyer in its sole discretion.
11. Indemnification. In the Definitive Agreements, the Seller would make representations and warranties that are customary in transactions of this type and size. Buyer would seek middle-of-the-road market indemnification provisions that we view to be fair and appropriate to both Buyer and Seller. Generally, Buyer would seek an indemnification package in line with the following:
- a. The Seller would indemnify Buyer without limit from and against any damages related to Taxes, Title to Assets and Real Property, Legal Organization, Legal Authority, Capitalization, Title to Membership Interests, Authorization, Related Party Transactions, Brokers, the Covenants or Fraud.
 - b. The Seller would indemnify Buyer up to 20% of the Enterprise Value for damages related to all other Representations for a period equal to eighteen (18) months after Closing. In addition, to the extent that Buyer identifies any risk for ERISA Matters or Environmental Matters, Buyer has the right to propose a separate basket for associated damages.
 - c. There would be an indemnity tipping basket of one-half a percent of the Enterprise Value and no minimum claim level.
 - d. Given the size of the business and earnings levels, we would expect minimal use of materiality clauses.
12. INDEPENDENT SPONSOR Management Fee. Sponsor would expect to charge an annual management fee that would consist of the greater of:
- a. \$350,000 escalating at 3% annually
 - b. 5% of EBITDA