

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

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In re : **Chapter 11**
:
THE GREAT ATLANTIC & PACIFIC TEA : **Case No. 15-23007 (RDD)**
COMPANY, INC., et al., :
: **(Jointly Administered)**
:
Debtors.¹ :
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**ORDER (I) APPROVING THE PURCHASE AGREEMENT AMONG SELLERS AND
BEST YET MARKET, INC., (II) AUTHORIZING THE SALE OF CERTAIN OF THE
DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND LEASES IN CONNECTION
THEREWITH AND (IV) GRANTING RELATED RELIEF**

Upon the motion for approval of the discrete sale and lease rationalization procedures, dated July 20, 2015 (Docket No. 27), and the notice, dated November 3, 2015 (Docket No. 1703) (the "Transaction Notice"),² filed by the above-captioned debtors and debtors in possession (the "Debtors") seeking, among other things, entry of an order, pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Borman's, Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (2947); Montvale-Para Holdings, Inc. (6664); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge LLC (5965); Shopwell, Inc.(3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport, Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors' corporate headquarters is Two Paragon Drive, Montvale, New Jersey 07645.

² Capitalized terms used herein but not otherwise defined have the meanings given to them in the Purchase Agreement (as defined below) or, if not defined in the Purchase Agreement, the meanings given to them in the Transaction Notice.

Rules”), authorizing and approving the sale of the Acquired Assets and the assumption and assignment of certain executory contracts and unexpired leases of the Debtors in connection therewith; and the Court having taken into consideration this Court’s prior order, dated August 11, 2015 (Docket No. 496) (the “Discrete Procedures Order”), approving procedures for the sale or disposition of certain of the Debtors’ stores, including certain executory contracts, unexpired leases and assets related thereto (the “Discrete Procedures”); and the Court having conducted a hearing on the Transaction Notice (the “Sale Hearing”) on November 13, 2015, at which time all interested parties were offered an opportunity to be heard with respect to the Transaction Notice; and the Court having reviewed and considered (i) the Transaction Notice and the exhibits thereto, (ii) the Lease Sale Agreement between Debtor A&P Real Property, LLC and Best Yet Market, Inc. (“Buyer”), dated November 3, 2015, a copy of which is attached hereto as Exhibit A (the “Purchase Agreement”), whereby the Debtors have agreed, among other things, to sell the identified Acquired Assets to Buyer, including the unexpired nonresidential real property leases, subleases and license agreements identified in the Purchase Agreement (collectively, the “Leases”) of the Debtors that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Purchase Agreement (the “Sale Transactions”), (iii) the Declaration of Stephen Goldstein (Docket No. 251), and any supplements thereto, and (iv) the arguments of counsel made, and the evidence proffered and adduced, at the Sale Hearing; and it appearing that due notice of the Transaction Notice and the form of this order (the “Proposed Sale Order”) was provided; and all objections to the Transaction Notice having been withdrawn, resolved or overruled as provided in this Order; and it appearing that the relief requested in the Transaction Notice and granted herein is in the best interests of the Debtors, their estates and creditors and all parties in interest in these chapter 11 cases; and upon the record of the Sale Hearing and these

chapter 11 cases; and after due deliberation thereon, and good cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Jurisdiction and Venue.** This Court has jurisdiction to consider the Transaction Notice and over the Sale Transactions pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core proceeding pursuant to 28 U. S.C. § 157(b)(2). Venue of these chapter 11 cases and the Transaction Notice in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates.** The statutory and other legal predicates for the relief sought in the Transaction Notice are sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, Local Bankruptcy Rules 6004-1 and 6006-1, and the Amended Guidelines for the Conduct of Asset Sales, Approved by Administrative Order Number 383 in the United States Bankruptcy Court for the Southern District of New York.

D. **Opportunity to Object.** A fair and reasonable opportunity to object to and to be heard with respect to the Transaction Notice, the Sale Transactions and the relief requested in the Transaction Notice has been given, as required by the Bankruptcy Code and the Bankruptcy Rules, to all Persons entitled to notice pursuant to the Discrete Procedures Order, including, but not limited to, the following: (i) all non-Debtor parties to the Leases, (ii) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, (iii) all applicable

federal, state, and local taxing and regulatory authorities, and (iv) all of the Debtors' known creditors.

E. **Final Order**. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

F. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of the Transaction Notice, the Purchase Agreement, and the Sale Transaction and in entering into the Purchase Agreement and related Bill of Sale and Assignment and Assumption Agreement (the "**Related Agreements**"). The Debtors' entry into and performance under the Purchase Agreement and Related Agreements (i) constitute a sound and reasonable exercise of the Debtors' business judgment, (ii) provide value to and are beneficial to the Debtors' estates, and are in the best interests of the Debtors and their stakeholders, and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale Transactions include, but are not limited to, the following: (a) the Purchase Agreement constitutes the highest and best offer received for the Acquired Assets, (b) the Purchase Agreement presents the best opportunity to maximize the value of the Acquired Assets and avoid decline and devaluation of the Acquired Assets, (c) unless the Sale Transactions and all of the other transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for pursuant to the Purchase Agreement, recoveries to creditors may be materially diminished, and (d) the value of the Debtors' estates will be maximized through the sale of the Acquired Assets pursuant to the Purchase Agreement. The Sale Transactions neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a plan of reorganization or liquidation of the Debtors. The Sale Transactions do not constitute a *sub rosa* plan.

G. **Compliance with Discrete Procedures Order.** The Debtors and Buyer complied with the Discrete Procedures Order and the Discrete Procedures in all respects.

H. **Highest and Best Value.** (i) The Debtors and their advisors, including Evercore Group LLC and Hilco Real Estate LLC, engaged in a robust and extensive marketing and sale process, both prior to the commencement of these chapter 11 cases and through the postpetition sale process pursuant to the Discrete Procedures Order, (ii) the Debtors conducted a fair and open sale process, (iii) the sale process conducted pursuant to the Discrete Procedures was non-collusive, duly noticed and provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Acquired Assets, and (iv) the process conducted by the Debtors pursuant to the Discrete Procedures Order and the Discrete Bidding Procedures obtained the highest and best value for the Acquired Assets for the Debtors and their estates, and any other transaction would not have yielded as favorable an economic result.

I. **Fair Consideration.** The consideration provided by Buyer pursuant to the Asset Purchase Agreement: (1) is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act), (2) is fair consideration under the Uniform Fraudulent Transfer Act, (3) is reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory, or possession thereof, or the District of Columbia, and (4) will provide a greater recovery for the Debtors' creditors than would be provided by any other reasonably practicable available alternative.

J. **No Successor or Other Derivative Liability.** By consummating the Sale Transaction, Buyer is not, and will not be, a mere continuation, and is not holding itself out as a

mere continuation, of any of the Debtors or their respective estates and there is no continuity, no common identity and no continuity of enterprise between Buyer and the Debtors and Buyer does not have a common identity of incorporators, directors or equity holders with the Debtors. The Sale Transactions do not amount to a consolidation, merger or *de facto* merger of Buyer and any of the Debtors. Buyer is not a successor to any Debtor or any Debtor's estate by reason of any theory of law or equity. Other than as expressly provided for under the Purchase Agreement, neither Buyer nor any of its affiliates shall assume or in any way be responsible for any obligation or liability of any Debtor (or any of the Debtors' affiliates) and/or any Debtor's estate, including any obligation under any collective bargaining agreement or labor practice agreement.

K. **Good Faith**. The Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtors and Buyer in good faith, without collusion and from arm's-length bargaining positions, in that: (1) Buyer complied with the provisions of the Discrete Procedures Order, (2) all payments to be made by Buyer and other agreements or arrangements entered into by Buyer in connection with the Sale Transactions have been disclosed, and (3) the negotiation and execution of the Purchase Agreement, including the Sale Transactions contemplated thereby, were at arm's-length and in good faith. Buyer is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Neither the Debtors nor Buyer have engaged in any conduct or failed to take any action that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Buyer is not an "insider" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders existed between Buyer and the Debtors.

L. **Notice.** As evidenced by the certificates of service filed with the Court:

(i) proper, timely, adequate and sufficient notice of the Transaction Notice, the Sale Hearing, the Sale Transactions and the Proposed Sale Order was provided by the Debtors, (ii) such notice was good, sufficient and appropriate under the particular circumstances and complied with the Discrete Procedures Order, and (iii) no other or further notice of the Transaction Notice, the Sale Transactions, the Discrete Procedures, the Sale Hearing or the Proposed Sale Order is required. With respect to Persons whose identities are not reasonably ascertained by the Debtors, publication of the Sale Notice in *The New York Times*, national edition on August 14, 2015 was sufficient and reasonably calculated under the circumstances to reach such Persons.

M. **Cure Notice.** As evidenced by the certificates of service filed with the Court, and in accordance with the provisions of the Discrete Procedures Order, the Debtors have served, prior to the Sale Hearing, notice (the “Cure Notice”) of the Debtors’ intent to assume and assign the Leases and of the related proposed cure amount (the “Cure Amount”) upon each non-Debtor counterparty to the Leases. The service of the Cure Notice was good, sufficient and appropriate under the circumstances and no further notice need be given with respect to the Cure Amounts for the assumption and assignment of the Leases. All non-Debtor parties to the Leases have had a reasonable opportunity to object both to the Cure Amounts listed on the applicable Cure Notice and to the assumption and assignment of the Leases to Buyer.

N. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Acquired Assets free and clear of all liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, including, without limitation, any mortgages, restrictions, hypothecations, charges, indentures, loan agreements,

instruments, leases, licenses, options, deeds of trust, security interests, other interests, pledges, or liens, rights of first refusal, debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against the Debtors, and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Acquired Assets, the operation of the Debtors' businesses before the Closing, or the transfer of the Debtors' interests in the Acquired Assets to Buyer (collectively, excluding any liabilities expressly assumed under the Purchase Agreement, the "Claims"), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Without limiting the generality of the foregoing, "Claims" shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to: (a) any employment or labor agreements or the termination thereof, including any collective bargaining agreement or labor practice agreement; (b) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs or multiemployer pension plan in which the Debtors participate, including, without limitation, any pension plan or multiemployer pension plan of or related to any of the Debtors or any Debtor's Affiliates or predecessors or any

current or former employees of any of the foregoing, or the termination of any of the foregoing;

(c) the Debtors' business operations or the cessation thereof; (d) any litigation involving one or more of the Debtors; and (e) any employee, workers' compensation, occupational disease or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) the Multiemployer Pension Plan Amendments Act of 1980, (xi) state and local discrimination laws, (xii) state and local unemployment compensation laws or any other similar state and local laws, (xiii) state workers' compensation laws, (xiv) any other state, local or federal employee benefit laws, regulations or rules or other state, local or federal laws, regulations or rules relating to, wages, benefits, employment or termination of employment with any or all Debtors or any predecessors, (xv) any antitrust laws, (xvi) any product liability or similar laws, whether state or federal or otherwise, (xvii) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes, (xviii) any bulk sales or similar laws, (xix) any federal, state or local tax statutes, regulations or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (xx) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory or any other theory of or related to successor liability. The recitation in this

paragraph of specific agreements, plans, or statutes is not intended, and shall not be construed, to limit the generality of the categories of liabilities, debts, commitments, or obligations referred to herein. Those holders of Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transactions or the Transaction Notice are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object that have an interest in the Acquired Assets fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Claims that constitute interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale Transactions ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. All Persons having Claims of any kind or nature whatsoever against the Debtors or the Acquired Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Claims against Buyer or any of its assets, property, Affiliates, successors, assigns, or the Acquired Assets.

O. Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors and their estates and their creditors, if the sale of the Acquired Assets was not free and clear of all Claims, or if Buyer would, or in the future could, be liable for any such Claims, including, as applicable, certain liabilities related to the operation of stores by the Debtors that will not be assumed by Buyer, as described in the Purchase Agreement.

P. The total consideration to be provided under the Purchase Agreement reflects Buyer's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the

Bankruptcy Code, with title to and possession of the Acquired Assets free and clear of all Claims (including, without limitation, any potential derivative, vicarious, transferee or successor liability claims).

Q. **Assumption and Assignment of Leases.** The assumption and assignment of the Leases are integral to the Purchase Agreement, are in the best interests of the Debtors and their estates, and represent the reasonable exercise of the Debtors' sound business judgment. Specifically, the assumption and assignment of the Leases (i) is necessary to sell the Acquired Assets to Buyer, (ii) limit the losses suffered by counterparties to the Leases, and (iii) maximize the recoveries to other creditors of the Debtors by limiting the amount of claims against the Debtors' estates by avoiding the rejection of the Leases.

R. With respect to each of the Leases, the Debtors have met all requirements of section 365(b) of the Bankruptcy Code. Further, Buyer has provided adequate assurance of future performance under the Leases in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Leases. Accordingly, the Leases may be assumed by the Debtors and assigned to Buyer as provided for in the Purchase Agreement.

S. **Validity of the Transfer.** As of the Closing, the transfer of the Acquired Assets to Buyer will be a legal, valid and effective transfer of the Acquired Assets, and will vest Buyer with all right, title and interest of the Debtors in and to the Acquired Assets, free and clear of all Claims.

T. The Debtors (i) have full corporate or limited liability company (as applicable) power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale Transactions has been duly and validly authorized by all necessary

corporate action of the Debtors, (ii) have all of the corporate or limited liability company (as applicable) power and authority necessary to consummate the transactions contemplated by the Purchase Agreement, and (iii) upon entry of this Order, other than any consents identified in the Purchase Agreement (including with respect to antitrust matters), need no consent or approval from any other Person to consummate the Sale Transactions.

U. The Acquired Assets constitute property of the Debtors' estates and good title is vested in the Debtors' estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtors are the sole and rightful owners of the Acquired Assets, and no other Person has any ownership right, title, or interests therein.

V. The Purchase Agreement is a valid and binding contract between the Debtors and Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement and Sale Transactions, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors, any chapter 7 or chapter 11 trustee appointed in these chapter 11 cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

W. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** The sale of the Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Sale Transactions, and the Debtors and Buyer intend to close the Sale Transactions as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale Transactions as contemplated by the Purchase Agreement. Accordingly, there is sufficient cause

to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regards to the transactions contemplated by this Order.

X. **Legal and Factual Bases.** The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

Y. **No Breach of Union Obligations.** On the condition set forth in paragraph 30 of this Order, the unions affected by the sale of the Acquired Assets withdraw any objections to such sale and waive their rights to assert against any of Buyer, the Debtors, the Debtors' estates, or any other party any claims or other rights arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale.

NOW THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted.** The Transaction Notice and the relief requested therein is granted and approved as set forth herein.
2. **Objections Overruled.** All objections (except for objections to Cure Amounts), if any, to the Transaction Notice or the relief requested therein that have not been adjourned, withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. **Notice.** Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
4. **Fair Purchase Price.** The consideration provided by Buyer under the Purchase Agreement is fair and reasonable.

5. **Approval of the Purchase Agreement.** The Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

6. **Consummation of Sale Transactions.** Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors, as well as their officers, employees and agents, are authorized to execute, deliver and perform their obligations under and comply with the terms of the Purchase Agreement and to consummate the Sale Transactions, pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Order.

7. The Debtors, their Affiliates and their respective officers, employees and agents, are authorized to execute and deliver, and authorized to perform under, consummate and implement all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions as may be (a) reasonably requested by Buyer for the purpose of assigning, transferring, granting, conveying and conferring to Buyer, or reducing to possession, the Acquired Assets, or (b) necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement, all without further order of the Court.

8. All Persons that are currently in possession of some or all of the Acquired Assets are hereby directed to surrender possession of such Acquired Assets to Buyer as of the Closing.

9. Each and every any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby directed to accept any and all documents and instruments

necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. **Transfer of Assets Free and Clear.** Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement. The Acquired Assets shall be transferred to Buyer, and upon the Closing, such transfer shall: (a) be valid, legal, binding and effective, (b) vest Buyer with all right, title and interest of the Debtors in the Acquired Assets, and (c) be free and clear of all Claims in accordance with section 363(f) of the Bankruptcy Code, with all Claims that represent interests in property to attach to the net proceeds of the Sale Transactions, in the same amount and order of their priority, with the same validity, force and effect which they have against the Acquired Assets, and subject to any claims and defenses the Debtors may possess with respect thereto in each case immediately before the Closing.

11. Except as otherwise provided in the Purchase Agreement, all Persons (and their respective successors and assigns) including, without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, former employees, pension plans, multiemployer pension plans, labor unions, trade creditors and any other creditors holding Claims against the Debtors or the Acquired Assets, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing any Claims against Buyer, its Affiliates, successors or assigns, its property or the Acquired Assets, including, without limitation, taking any of the following actions with respect to a Claim (other than an Assumed Liability): (a) commencing or continuing in any manner any action or other proceeding against Buyer, its Affiliates, successors or assigns, assets or properties, (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against Buyer, its

Affiliates, successors or assigns, assets, or properties, (c) creating, perfecting, or enforcing any Claims against Buyer, its successors or assigns, assets or properties, (d) asserting a Claim as a setoff, right of subrogation or recoupment of any kind against any obligation due Buyer or its successors or assigns, or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order or the agreements or actions contemplated or taken in respect thereof. No such Persons shall assert or pursue against Buyer or its Affiliates, successors or assigns any such Claim.

12. This Order (a) shall be effective as a determination that, as of the Closing, all Claims have been unconditionally released, discharged and terminated as to Buyer and the Acquired Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing Persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

13. Following the Closing of the Sale Transactions, no holder of any Claim shall interfere with Buyer's title to or use and enjoyment of the Acquired Assets based on or related to any such Claim or based on any actions the Debtors may take in these chapter 11 cases.

14. Except as expressly set forth in the Purchase Agreement, Buyer and its successors and assigns shall have no liability for any Claim, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature or character whatsoever, by any theory of law or equity, including Claims arising under, without limitation: (a) any employment or labor agreements or the termination thereof, including any collective bargaining agreement or labor practice agreement; (b) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs or multiemployer pension plan in which the Debtors participate, including, without limitation, any pension plan or multiemployer pension plan of or related to any of the Debtors or any Debtor's Affiliates or predecessors or any current or former employees of any of the foregoing, or the termination of any of the foregoing; (c) the Debtors' business operations or the cessation thereof; (d) any litigation involving one or more of the Debtors; and (e) any employee, workers' compensation, occupational disease or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) the Multiemployer Pension Plan Amendments Act of 1980, (xi) state and local discrimination laws, (xii) state and local unemployment compensation laws or any other similar state and local laws, (xiii) state workers' compensation laws. (xiv) any

other state, local or federal employee benefit laws, regulations or rules or other state, local or federal laws, regulations or rules relating to, wages, benefits, employment or termination of employment with any or all Debtors or any predecessors, (xv) any antitrust laws, (xvi) any product liability or similar laws, whether state or federal or otherwise, (xvii) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes, (xviii) any bulk sales or similar laws, (xix) any federal, state or local tax statutes, regulations or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (xx) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory or any other theory of or related to successor liability. The recitation in this paragraph of specific agreements, plans, or statutes is not intended, and shall not be construed, to limit the generality of the categories of liabilities, debts, commitments, or obligations referred to herein.

15. If any Person that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Claims against or in the Debtors or the Acquired Assets shall not have delivered to the Debtors prior to the Closing of the Sale Transactions, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the Person has with respect to the Debtors or the Acquired Assets or otherwise, then with regard to the Acquired Assets that are purchased by Buyer pursuant to the Purchase Agreement and this Order (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the Person with respect to the Acquired Assets, and (b) Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once

filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the Acquired Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office.

16. All entities that are presently, or on the Closing may be, in possession of some or all of the Acquired Assets (wherever located) are hereby directed to surrender possession of the Acquired Assets to Buyer on the Closing Date.

17. **No Successor or Other Derivative Liability.** By virtue of the Sale Transactions, Buyer shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor to any of the Debtors, (b) have, *de facto* or otherwise, merged with or into any or all Debtors, or (c) be a mere continuation or substantial continuation of any or all Debtors or the enterprise or operations of any or all Debtors.

18. **Assumption and Assignment of Leases.** The Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign the Leases to Buyer free and clear of all Claims, and to execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Leases to Buyer as provided in the Purchase Agreement. Upon the Closing, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Leases and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Leases. Buyer acknowledges and agrees that from and after the Closing, subject to and in accordance with the Purchase Agreement, it shall comply with the terms of each assumed and assigned Lease in its entirety, including any indemnification obligations expressly contained in

such Lease that could arise as a result of events or omissions that occur from and after the Closing, unless any such provisions are not enforceable pursuant to the terms of this Sale Order.

19. All Cure Amounts shall be determined and paid in accordance with the Purchase Agreement and the Discrete Procedures Order. Payment of the Cure Amounts shall be in full satisfaction and cure of any and all defaults under the Leases, whether monetary or non-monetary. Each non-Debtor party to a Lease is forever barred, estopped and permanently enjoined from asserting against the Debtors or Buyer, their successors or assigns or the property of any of them, any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

20. An adjourned cure objection may be resolved after the Closing Date; provided that the Debtors maintain in reserve an amount corresponding to the liquidated cure cost alleged in such adjourned cure objection (the “Cure Reserve”). Upon resolution of such adjourned cure objection and the payment of the applicable cure amount, if any, the Debtors shall have no further obligation to maintain the Cure Reserve with respect to such Lease.

21. **Ipsa Facto Clauses Ineffective.** The Leases shall be transferred to, and remain in full force and effect for the benefit of, Buyer in accordance with their respective terms, including all obligations of Buyer as the assignee of the Leases, notwithstanding any provision in any such Leases (including, without limitation, those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There shall be no rent accelerations, escalations, assignment fees, increases or any other fees charged to Buyer or the Debtors as a result of the assumption or assignment of the Leases.

22. Upon the Debtors’ assignment of Leases to Buyer under the provisions of this Order, no default shall exist under any Leases, and no counterparty to any Leases shall be

permitted to declare a default by any Debtor or Buyer otherwise take action against Buyer as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the relevant Lease. Any provision in a Lease that prohibits or conditions the assignment or sublease of such Lease (including without limitation, the granting of a lien therein) or allows the counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. The failure of the Debtors or Buyer to enforce at any time one or more terms or conditions of any Lease shall not be a waiver of such terms or conditions, or of the Debtors' and Buyer's rights to enforce every term and condition of the Lease.

23. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement are undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transactions shall neither affect the validity of the Sale Transactions (including the assumption and assignment of the Lease) nor the transfer of the Acquired Assets to Buyer, free and clear of Claims, unless such authorization is duly stayed before the Closing pending such appeal. Buyer is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. The Debtors and Buyer will be acting in good faith if they proceed to consummate the Sale Transactions at any time after entry of this Sale Order.

24. **No Avoidance of Purchase Agreement.** Neither the Debtors nor Buyer has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code, and therefore

neither the Debtors nor any successor in interest to the Debtors' estates nor any other party in interest shall be entitled to bring an action against Buyer or any of its affiliates, and the sale of the Acquired Assets may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

25. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing, or risk its appeal will be foreclosed as moot.

26. **Binding Effect of this Order.** The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, or shall inure to the benefit of, the Debtors, their estates and their creditors, Buyer, and their respective Affiliates, successors and assigns, and any affected third parties, including all Persons asserting Claims, notwithstanding any subsequent appointment of any trustee, examiner or receiver under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee, examiner or receiver and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors or any trustee, examiner or receiver.

27. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Order and the terms of (a) the Purchase Agreement, or (b) any other order of this Court, the terms of this Order shall control. Nothing contained in any chapter 11 plan hereinafter confirmed in these chapter 11 cases, or any order confirming such plan or of any other type or kind entered in these chapter 11 cases, any subsequent chapter 7 or chapter 11 case of the Debtors

or any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

28. **Modification of Purchase Agreement.** The Purchase Agreement, and any related agreements, documents or other instruments, may be modified, amended or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment or supplement does not materially change the terms of the Purchase Agreement or any related agreements, documents or other instruments or the representations made on the record at the Sale Hearing. For the avoidance of doubt, Buyer is permitted to assign the Purchase Agreement at any time to the extent contemplated by and in accordance with the Purchase Agreement and the representations made on the record at the Sale Hearing.

29. **Bulk Sales.** No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Purchase Agreement, the Transaction Notice or this Order.

30. **No Breach of Union Obligations.** The unions affected by the sale of the Acquired Assets withdraw any objections to such sale and have waived their rights to assert against any of Buyer, the Debtors, the Debtors' estates, or any other party any claims or other rights arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale, and no union shall have any such claims or other rights against such parties arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale, provided that the Buyer shall use reasonable, good faith, best efforts to make offers of employment to a number of any former collective bargaining unit employees of the Debtors equivalent to at least 25% of the new store

workforce who are qualified for such positions with Buyer; provided, further, that such offers of employment are not required to be for positions in the same store location at which such former employees worked for the Debtors.

31. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith), to adjudicate disputes related to this Order or the Purchase Agreement (and such other related agreements, documents or other instruments) and to enforce the injunctions set forth herein.

Dated: November 20, 2015
White Plains, New York

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Purchase Agreement

STORE # 027-7662
211 MIDDLE COUNTRY ROAD
SELDEN, NY

STORE # 072-6639
155 ISLIP AVENUE
ISLIP, NY

STORE # 027-7617
40 GREAT NECK ROAD
GREAT NECK, NY

STORE # 72-6644
531 MONTAUK HWY
WEST BABYLON, NY

STORE # 72-6646
800 MONTAUK HIGHWAY
SHIRLEY, NY

STORE # 36-9777
316 1/2 GREENWICH STREET
NY, NY

LEASE SALE AGREEMENT

THIS LEASE SALE AGREEMENT (this “**Agreement**”) is made as of November __, 2015 by and among A&P Real Property, LLC, a Delaware limited liability company (“**Tenant**”), Pathmark Stores, Inc., a Delaware corporation, APW Supermarkets, Inc. and Shopwell, Inc. (together with Tenant and “**Sellers**”) and Best Yet Market, Inc.,¹ a New York corporation (“**Buyer**”, and collectively with Sellers, the “**Parties**”).

WITNESSETH:

WHEREAS, Tenant is the tenant under those certain leases more specifically described on Exhibit A attached hereto and made a part hereof (together with any amendments, modifications, extensions and renewals, the “**Lease**”), with respect to all or a portion certain real property (the “**Leased Premises**”), which real property is more particularly described in Exhibit B attached hereto and made a part hereof (the “**Premises**”);

¹ Consistent with market practice, Buyer seeks to assign the lease to a separate wholly-owned subsidiary that will be newly formed for each location provided that Buyer will remain responsible for its obligations under this Agreement. The “Designated Member” concepts requested by Sellers are captured in Section 28 of this Agreement.

WHEREAS, Sellers and certain of their affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) on July 19, 2015 in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, pursuant to the *Order Approving (A) Global Bidding Procedures, (B) Bid Protections Granted to Certain Stalking Horse Purchasers, (C) the Form and Manner of Notice of Auctions, Sale Transactions and Sale Hearing, (D) the Assumption and Assignment Procedures, and (E) the Date for Auctions, If Necessary, and Sale Hearings* entered by the Bankruptcy Court on August 11, 2015 [Docket No. 495] (the “**Global Bidding Procedures Order**”) or the *Order Approving Discrete Sale and Lease Rationalization Procedures* entered by the Bankruptcy Court on August 11, 2015 [Docket No. 496] (the “**Discrete Procedures Order**”), as applicable, and subject to any approval of the Bankruptcy Court required by the Global Bidding Procedures Order or the Discrete Procedures Order, as applicable, Sellers desire to sell, assign, convey and transfer all of its rights, title and interests as tenant under the Lease, together with all of its rights, title and interests as sublessor under those certain sublease agreements and/or license agreements more particularly described on Exhibit C attached hereto (each, a “**Sublease**” and, collectively, the “**Subleases**”), if any, and

☒ all trade fixtures, leasehold improvements, machinery, point of sale equipment and controllers (but no software, licenses, or contracts associated therewith), shopping carts, aisle markers, store models, shelving, display cases and racks, cash registers and refrigeration equipment and other furnishings and equipment, and other tangible personal property owned by Sellers located at the Leased Premises or otherwise used in the operation of the Leased Premise by the Sellers but not located at the Leased Premises (“**FF&E**”);

INITIAL [AK]

WHEREAS, Buyer desires (or desires to cause the Buyer Designees) to purchase and accept such assignment and assume all rights, title, interests and obligations of Tenants with respect to the Acquired Assets (including under the Lease, and any Subleases and FF&E to the extent set forth herein), subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby reciprocally acknowledged, Sellers and Buyer agree as follows:

1. Procedures. This Agreement is made subject to, and in accordance with, the Global Bidding Procedures Order or the Discrete Procedures Order. Capitalized terms used but not otherwise defined herein (including on Schedule I attached hereto) shall have the meanings ascribed to them in the Global Bidding Procedures Order or the Discrete Procedures Order, as applicable. In the event of a contradiction between this Agreement and the Global Bidding Procedures Order or the Discrete Procedures Order, as applicable, the Global Bidding Procedures Order or the Discrete Procedures Order, as applicable, shall control.

2. Lease Consideration. The consideration for (a) the assignment of the Lease, (b) the Subleases, (c) FF&E and (d) Sellers’s interest, if any, to the buildings, and improvements located on or attached to the Leased Premises (the foregoing, as applicable, collectively, the

“**Acquired Assets**”), shall be equal to Four Million Seven Hundred Twenty-Five Thousand Dollars (\$4,725,000.00) (the “**Purchase Price**”) which shall be comprised of:

- a. \$1,500,000 as consideration for the Great Neck lease and related FF&E (a portion in the amount of \$75,000 which is allocated to the FF&E);
- b. \$600,000 as consideration for the West Babylon lease and related FF&E (a portion in the amount of \$75,000 which is allocated to the FF&E);
- c. \$1,100,000 as consideration for the Shirley lease and related FF&E (a portion in the amount of \$150,000 which is allocated to the FF&E);
- d. \$300,000 as consideration for the Greenwich lease and related FF&E (a portion in the amount of \$25,000 which is allocated to the FF&E);
- e. \$612,500 as consideration for the Selden lease and related FF&E (a portion in the amount of \$75,000 which is allocated to the FF&E); and
- f. \$612,500 as consideration for the Islip lease and related FF&E (a portion in the amount of \$75,000 which is allocated to the FF&E).

Buyer’s submission of an executed copy of this Agreement along with the Deposit shall be deemed an irrevocable offer subject only to the rights of termination provided herein.

3. Payment of Purchase Price. The Purchase Price shall be paid to Sellers by Buyer (or a Buyer Designee) as follows:

a. Deposit. Concurrently herewith, Buyer shall deposit with TitleVest Services, LLC (“Escrowee”) by a bank wire transfer of immediately available federal funds to an account designated by Escrowee an amount equal to (i) Two Hundred Thirty-Six Thousand Two Hundred Fifty Dollars (\$236,250) (together with all interest thereon, the “Deposit”) less (ii) any amounts previously deposited by Buyer with Escrowee other than amounts deposited in connection with the sales of other properties that have been approved by the Bankruptcy Court as of the date hereof, which Deposit shall be held by Escrowee pursuant to the escrow agreement (the “Escrow Agreement”) attached hereto as Exhibit D and hereby made a part hereof. Notwithstanding anything to the contrary set forth in this Agreement or in the Escrow Agreement, (i) all charges of Escrowee, if any, attendant to holding and/or disbursing the Deposit shall be paid by Buyer and (ii) all interest accrued in connection with the Deposit hereunder shall accrue for the sole benefit of the party to whom the Deposit is paid. The Parties agree that any payments made pursuant to this Section 3(a) in respect of accrued interest shall be deemed to be an adjustment to the Purchase Price for tax purposes to the extent permitted by applicable Law.

b. Closing Payment. On the Closing Date, as defined below, the Purchase Price, as adjusted by the application of the Deposit, shall be paid by Buyer by wire transfer of immediately available federal funds to the account designated on Exhibit E hereto or as otherwise designated in writing by Sellers.

4. Allocation. If, at least three (3) Business Days prior to Closing, either Sellers or Buyer requests a further allocation of the Purchase Price (and all other relevant items) among the Acquired Assets, the Parties mutually agree to determine in good faith an appropriate allocation to be reflected in writing no later than the Closing (the "**Allocation Schedule**"). The Allocation Schedule shall be conclusive and binding on the Parties, and Sellers and Buyer agree to (and agree to cause their respective subsidiaries and Affiliates to) prepare, execute, and file all Tax Returns on a basis consistent with the Allocation Schedule (including any update thereto). None of the Parties will take any position inconsistent with the Allocation Schedule (including any update thereto) on any Tax Return or in any audit or Tax proceeding, unless otherwise required by a final determination by a Governmental Authority. The Allocation Schedule may be updated from time to time by mutual agreement of the Parties and as necessary to reflect any adjustment to the Purchase Price for applicable Tax purposes or as required by applicable Law.

5. Payment of Cure Amount. The Purchase Price includes consideration for the proposed cure amount of the Lease (the "**Cure Amount**"), which Cure Amount shall be the total amount payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by Buyer and assignment to Buyer of all contracts being assigned hereunder, and which shall be subject to approval by the Bankruptcy Court.

6. Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York, such other location in the state where the Leased Premises are located as may be selected by Sellers, or such other location as shall be mutually agreed upon by Sellers and Buyer commencing at 10:00 a.m. local time on a date (the "**Closing Date**") that is the thirtieth (30th) Business Day following the date hereof, or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. Sellers shall have a one-time right to adjourn the Closing for up to thirty (30) days on notice provided no later than the Closing Date. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective at 12:01 a.m., New York City time, on the Closing Date.

7. Assignment. As of the Closing Date, pursuant to sections 363 and 365 of the Bankruptcy Code and in accordance with the Discrete Procedures or a sale order entered pursuant to the Global Bidding Procedures Order, Tenant shall grant, transfer and assign to Buyer, without representation or warranty of any kind, all of its right, title, and interest in and to the Acquired Assets.

8. Assumption. On and after the Closing Date, Buyer shall assume all of the covenants, agreements, and obligations of Tenants as tenant under the Leases and as sublessor under the Subleases, if any. In further consideration of the above assignment, Buyer hereby agrees that it shall, as of the Closing Date: (a) perform all of the covenants, conditions and agreements of (i) the Leases (including making all payments) as if Buyer were the original tenant under the Leases and (ii) the Subleases, if any, as if Buyer were the original sublessor under each of such Subleases, and (b) that the Leases and each of the Subleases, if any, shall remain in full force and effect. As of the Closing Date, Sellers shall have no further liabilities or obligations with respect to the Leases, including, but not limited to, obligations related to rents, utilities, Taxes, insurance and common area maintenance, regardless of when due and payable, nor any of

the Subleases, if any, and Sellers shall be released from all such obligations and Buyer shall fully indemnify and hold harmless Sellers with respect thereto. No Person, other than Buyer, shall be deemed a beneficiary of the provisions of this Section 8.

9. Prorations/Adjustments. As set forth above, Sellers shall be solely responsible to pay the Cure Amount to the landlord. There will be no proration between Sellers and Buyer on the Closing Date, and no post-assignment reconciliations or adjustments of any kind shall occur. Buyer shall receive the benefits and burdens for all adjustments under the Lease that occur after the Closing Date (regardless of the period in question that is subject to the adjustment), including year-end adjustments for Taxes, fees, any common area maintenance charges, and percentage rent for calendar year 2015 and thereafter and Buyer shall fully indemnify and hold harmless Sellers with respect thereto. Sellers shall retain all security deposits under any Subleases and there shall be no offset or reduction in the Purchase Price in connection with the same.

10. Free and Clear of All Liens. Pursuant to the Discrete Procedures Order or a sale order entered by the Bankruptcy Court as contemplated by the Global Bidding Procedures Order, Sellers shall convey their rights and interests under the Lease to Buyer free and clear of all Liens, if any, to the maximum extent permitted by the Bankruptcy Court with any such Liens attaching to the proceeds paid to Sellers.

11. Closing Deliverables. On the Closing Date:

a. Sellers shall deliver to Buyer for each Lease or Sublease, as applicable (i) a duly executed copy of: (A) an Assignment and Assumption of Lease in the form attached hereto as Exhibit F ("Assignment and Assumption"); (B) a FIRPTA Certificate; (C) if applicable, Transfer Tax forms or certifications provided by Buyer as more specifically described in subsection (b) below; (D) if applicable, a Quitclaim Bill of Sale in the form attached hereto as Exhibit G; (E) a landlord notice and a subtenant notice (if applicable), each in the form attached hereto as Exhibit H; and (F) if applicable, an assignment and assumption with respect to the Subleases, to the extent such Subleases are assignable and are in effect on the Closing Date, in the form attached hereto as Exhibit I ("Assignment of Subleases"), (ii) original Lease files for the Leased Premises (including, to the extent in Sellers's possession and reasonably accessible and transferable, all original, fully executed copies of all Leases, Subleases, correspondence files, common area maintenance files, any waivers, consents or notices related to the Leases or subleases, all zoning/permitting related files and documents, and all other related documents), and (iii) such other documents as may be reasonably required to complete the transactions provided for in this Agreement. All documents executed and delivered by Buyer pursuant to this Section shall be in form and substance reasonably satisfactory to Sellers.

b. Buyer shall deliver to Sellers: (i) a fully executed counterpart of each Assignment and Assumption, (ii) an executed copy of all Transfer Tax forms or certifications as may be required by each state, county or municipality to record the Assignment and Assumption and effectuate the transactions contemplated herein; (iii) a fully executed counterpart of the Assignment of Subleases; (iv) such other documents as may be reasonably required to complete the transactions provided for in this Agreement. All documents executed and delivered by Buyer pursuant to this Section shall be in form and substance reasonably satisfactory to Sellers.

12. Transfer Tax Forms. Buyer shall be responsible for the preparation, delivery and recordation of any and all real estate Transfer Tax forms or certifications required by any Governmental Authority (unless Sellers notifies Buyer that it will do so), with Buyer being responsible for any payment required therewith as provided in Section 13. The Party that is required by applicable law to file or record any other Transfer Tax forms or certifications shall prepare and timely file and record such forms or certifications, with Buyer being responsible for any payment required therewith with respect to the Sale Assets as provided in Section 13. The Parties hereto shall cooperate in making, in a timely manner, all such tax returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with all applicable Laws in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such laws, the amount of any such Transfer Taxes. At Sellers's request, all Transfer Tax forms and certifications, along with payment therefor, shall be delivered by Buyer to Sellers for recordation and payment with the appropriate Governmental Authority. To the extent required by applicable Law, Sellers shall execute any Transfer Tax forms or certifications.

13. Closing Costs.

a. Sellers and Buyer shall each pay their own attorneys' fees and expenses. Buyer shall pay (i) all state, county and local Transfer Taxes required to be paid in connection with the assignment and assumption of the Lease and any and all Subleases, and the consummation of the transactions contemplated herein, all of which amounts shall be paid, if applicable, to the proper Governmental Authority on or prior to the Closing Date, and (ii) all title and escrow charges.

b. Except as otherwise provided in this Agreement, all other costs and expenses of the transaction contemplated by this Agreement shall be borne by Buyer.

c. Buyer agrees to fully indemnify and hold Sellers harmless for, from and against any loss, cost, claim, damage or expense incurred, directly or indirectly, by Sellers as a result of Buyer's failure to pay any Taxes or costs pursuant to clause (a) above. Buyer's obligations in this Section shall survive the Closing Date.

14. Conditions to Closing.

a. Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction of, or the waiver in writing by Buyer of the following conditions:

(i) (A) the representations and warranties set forth in Section 18(a) shall have been true and correct on the date hereof and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to "material" or "Material Adverse Effect" set forth therein) has not resulted in a Material Adverse Effect, and (B) the representations and

warranties set forth in Section 18(a)(iv) shall have been true and correct, on the date hereof and as of the Closing Date, in all material respects;

(ii) each Sellers shall have performed and complied with its covenants and agreements hereunder through the Closing Date in all material respects;

(iii) Sellers shall have, consistent with section 365(b)(1)(A) of the Bankruptcy Code, paid the Cure Amount in accordance with Section 5 and Section 9;

(iv) the transactions contemplated by this Agreement shall have been authorized or deemed authorized pursuant to the Discrete Procedures Order or a sale order entered by the Bankruptcy Court as contemplated by the Global Bidding Procedures Order, and no order staying, reversing, modifying or amending such authorization shall be in effect on the Closing Date;

(v) no material Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement or imposes material conditions on such consummation not otherwise provided for herein; and

(vi) each delivery contemplated by Section 11(a) to be delivered to Buyer shall have been delivered.

b. Conditions to Sellers's Obligations. Sellers's obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(i) the representations and warranties set forth in Section 18(b) shall have been true and correct on the date hereof and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date), except where the failure of such representations and warranties to be so true and correct has not resulted in a material adverse effect on the ability of the Buyer to consummate the transactions at the Closing;

(ii) Buyer shall have performed and complied with all of its covenants and agreements hereunder through the Closing in all material respects;

(iii) the transactions contemplated by this Agreement shall have been authorized or deemed authorized pursuant to the Discrete Procedures Order or a sale order entered by the Bankruptcy Court as contemplated by the Global Bidding Procedures Order, and no order staying, reversing, modifying or amending such authorization shall be in effect on the Closing Date;

(iv) no material Decree shall be in effect that prohibits consummation of any of the transactions contemplated by this Agreement or imposes material conditions on such consummation not otherwise provided for herein; and

(v) each payment contemplated by Sections 3, 4 and 13 to be made to Sellers or any landlord shall have been made, and each delivery contemplated by Section 11(b) to be delivered to Sellers shall have been delivered.

c. No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Subsection 14(a) or Subsection 14(b), as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliate's failure to use its commercially reasonable efforts to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach hereunder. The Parties agree that neither the failure to obtain a court order nor any action with respect to a Competing Bid (as defined below), to the extent permitted hereunder, shall be deemed to be a failure to use the efforts required to satisfy the conditions to consummation of the transactions contemplated hereunder nor a breach hereunder.

15. No Other Contingencies. Buyer expressly agrees and acknowledges that Buyer's obligations hereunder are not in any way conditioned upon or qualified by Buyer's ability to obtain financing of any type or nature whatsoever (i.e., whether by way of debt, financing or equity investment or otherwise) nor upon Buyer's ability to obtain title insurance.

16. Termination of Agreement.

a. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

(i) by the mutual written consent of the Parties;

(ii) by any Party by giving written notice to the other Party if:

(A) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Subsection 16(a)(ii)(A) shall not be available to Buyer or any Sellers, as the case may be, if the failure to consummate the Assignment because of such action by a Governmental Authority shall be due to the failure of Buyer or any Sellers, as the case may be, to have fulfilled any of its material obligations under this Agreement; or

(B) the Closing shall not have occurred prior to the sixtieth (60) day from the date hereof ("Outside Date"); provided that if the Closing shall not have occurred on or before the Outside Date due to a material breach of this Agreement by Buyer or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 16(a)(ii)(B).

(iii) by any Party by giving written notice to the other Party if (i)(x) Sellers enter into a definitive agreement with respect to a higher or better competing bid in accordance with the Global Bidding Procedures Order or the Discrete Procedures Order in respect of the Lease or all or any part of the Acquired Assets (whether in combination with other

assets of Sellers or their Affiliates or otherwise) ("**Competing Bid**"), (y) the Bankruptcy Court enters an order approving a Competing Bid, and (z) the Person making the Competing Bid consummates the Competing Bid or (ii) the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

b. Sellers may terminate this Agreement by giving written notice to Buyer, at any time prior to the Closing if:

(i) there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of any condition to the obligations of Sellers at Closing set forth in Section 14(b)(i) or Section 14(b)(ii), as the case may be, and such breach has not been waived by such Sellers, or, if such breach is curable, cured by Buyer prior to the earlier to occur of (A) ten (10) days after receipt of such Sellers's notice of intent to terminate or (B) the Outside Date;

(ii) Buyer fails to satisfy any requirement set forth under Section 14(b)(v), including delivery of the Deposit required hereunder. In such case, the Agreement shall be rendered null and void, Sellers shall be entitled to retain any and all consideration already paid to Sellers, including, but not limited to, the Deposit.

c. Buyer may terminate this Agreement by giving written notice to Sellers prior to the Closing, (x) if there has been a breach by any Sellers of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of any condition to the obligations of Buyer at Closing set forth in Section 14(a)(1) or Section 14(a)(2), as the case may be, and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Sellers prior to the earlier to occur of (A) ten (10) days after receipt of Buyer's notice of intent to terminate or (B) the Outside Date; prior to the Closing, if there has been a breach by any Sellers of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of any condition to the obligations of Buyer at Closing set forth in Section 14(a)(1) or Section 14(a)(2), as the case may be, and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Sellers prior to the earlier to occur of (A) ten (10) days after receipt of Buyer's notice of intent to terminate or (B) the Outside Date or (y) in accordance with Section 21(b).

d. Effect of Termination. If any Party terminates this Agreement pursuant to Section 16(a) or (b), all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Section 13, this Section 16, Sections 23 through 43, and Schedule I shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 16(b) and Section 17) to the other Party hereunder (except as may be provided in Section 4 and Subsection 16(b)); provided, however, that nothing in this Section 16 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, subject to Section 16(d) below, that other than in the case of fraud or willful misconduct, (a) the maximum Liability of Sellers under this Agreement shall not exceed the reasonable out of pocket expenses incurred by Buyer and (b)

subject to subsection (d) below, the maximum liability of Buyer under this Agreement shall not exceed the Deposit.

17. Bankruptcy Court Matters.

a. Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court in accordance with the Global Bidding Procedures Order or the Discrete Procedures Order, and the consideration by Sellers of a Competing Bid. From the date hereof and until the transactions contemplated hereby are consummated, Sellers is permitted to, and is permitted to cause its Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by or from any Person (in addition to Buyer and its Affiliates and Representatives) in connection with a Competing Bid, and Sellers shall be permitted and shall have the authority to (and to cause their Representatives and Affiliates to) respond to any inquiries or offers to purchase all or any part of the Acquired Assets, including supplying information relating to the assets of Sellers to prospective buyers. Without limiting the foregoing, Sellers shall be permitted to perform all of the foregoing activities with respect to all or any part of the Acquired Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Global Bidding Procedures Order, Discrete Procedures Order or other applicable Law.

b. Bankruptcy Court Filings.

(i) If the Buyer is the successful bidder (to the extent an auction is conducted), as soon as reasonably practicable following the execution of this Agreement, Sellers shall seek approval of the Agreement in accordance with the Global Bidding Procedures Order or the Discrete Procedures Order and file any necessary notice or pleadings required in connection therewith. Buyer agrees that it will promptly take such actions as are reasonably necessary to obtain Bankruptcy Court approval of the transactions contemplated by this Agreement pursuant to the Global Bidding Procedures Order or the Discrete Procedures Order, including a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for providing the Adequate Assurance Information to the Cure Notice Parties and filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the event the approval of the transactions contemplated by this Agreement shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

18. Representations and Warranties

a. Representations and Warranties of the Sellers. Sellers represents and warrants to Buyer that the statements contained in this Section 18(a) are true and correct as of the date of this Agreement.

(i) Each Seller is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the Laws of the state of its formation and has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so qualified or licensed, in good standing or to have such power and authority, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect.

(ii) Subject to the approval of the Bankruptcy Court, and any other necessary order to close the sale of the Acquired Assets, each Sellers has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each Sellers is a party have been duly authorized by such Sellers. Assuming due authorization and delivery of this Agreement by Buyer, and subject to the approval of the Bankruptcy Court, and any other necessary order to consummate the Closing, this Agreement constitutes the valid and legally binding obligation of each Sellers, enforceable against each Sellers in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

(iii) To Sellers' knowledge, there are no pending or threatened in writing Condemnation proceedings against any of the Leased Premises.

(iv) To Sellers' knowledge, there is no pending or proposed special assessment affecting or which may affect the Lease or Subleases.

b. Representations and Warranties of Buyer. Buyer represents and warrants to each Sellers that the statements contained in this Section 18(b) are true and correct as of the date of this Agreement.

(i) Buyer is a New York corporation duly organized, validly existing, and in good standing under the Laws of the State of New York and has all requisite corporate power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

(ii) Buyer has full corporate power and authority to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Sellers) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

19. **Deliver; "AS IS" Transaction.**

a. Buyer acknowledges that it has fully inspected or waived the right to inspect the Leased Premises prior to the execution of this Agreement and does hereby assume all of the risks, including, but not limited to, latent defects in the Leased Premises. Sellers shall not be obligated to do any work or alter, restore, repair or develop the Leased Premises, but (i) Sellers shall deliver the Leased Premises free and clear of rubbish and debris, in vacant, broom clean condition, and, if applicable, with all furnishings, fixtures, equipment, inventory, racks, aisle displays, refrigeration equipment and personal property removed from the Leased Premises, (ii) the keys to the Stores and the combinations to all safes at the Leased Premises shall be delivered to Buyer, and (iii) Sellers shall continue to operate all heat and air conditioning and all refrigerators and freezers in the Stores through and including the Closing Date, in the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice. Prior to the Closing, the Parties shall cooperate in effecting a transfer of the utilities servicing the Leased Premises from Sellers to Buyer so as to avoid any interruption of utility service to the Leased Premises. Any work (including demolition) which may be necessary to adapt the Leased Premises for Buyer's occupancy or for the operation of Buyer's business therein shall be the sole responsibility of Buyer and shall be performed by Buyer at its sole cost and expense, in accordance with the terms of the Lease.

b. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY ACKNOWLEDGES AND AGREES THAT SELLERS MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO: ANY MATTER RELATED TO THE LEASE OR THE LEASED PREMISES (INCLUDING, WITHOUT LIMITATION, INCOME TO BE DERIVED FROM OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE LEASED PREMISES; THE PHYSICAL CONDITION OF THE LEASED PREMISES; THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS IN, ON OR ABOUT THE LEASED PREMISES OR ANY OTHER MATTER RELATED TO THE ENVIRONMENTAL CONDITION OF THE LEASED PREMISES; THE ZONING OF THE LEASED PREMISES; THE POSSIBILITY OF DEVELOPING OR USING THE LEASED PREMISES IN THE MANNER CONTEMPLATED BY BUYER OR OBTAINING ANY CONSENTS, APPROVALS, PERMITS, AUTHORIZATIONS OR ENTITLEMENTS IN CONNECTION THEREWITH; THE VALUE OF THE LEASE OR THE LEASED PREMISES; THE FITNESS OF THE LEASED PREMISES, FOR ANY PARTICULAR PURPOSE OR USE; THE ACCURACY, COMPLETENESS, OWNERSHIP OR TRANSFERABILITY OF ANY DOCUMENTS OR OTHER MATERIALS FURNISHED TO BUYER WITH RESPECT TO THE LEASED PREMISES (OR ANY PORTION THEREOF); OR ANY OTHER MATTER OR THING RELATED TO THE LEASE OR THE LEASED PREMISES). BUYER ACKNOWLEDGES THAT BUYER HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE, MAPS OR SKETCHES, PROJECTIONS, PRO FORMAS, STATEMENTS, REPRESENTATIONS, GUARANTEES OR WARRANTIES (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OR MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF SELLERS. BUYER ALSO ACKNOWLEDGES THAT BUYER HAS CONDUCTED OR WAIVED THE RIGHT TO CONDUCT AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE

PHYSICAL AND ENVIRONMENTAL CONDITIONS OF THE LEASED PREMISES AND ALL SUCH OTHER MATTERS RELATED TO OR AFFECTING THE LEASED PREMISES AND/OR THE LEASE, AS BUYER DEEMED NECESSARY OR APPROPRIATE AND BUYER IS ACQUIRING THE LEASE AND THE LEASED PREMISES, BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS OR BUYER'S INDEPENDENT JUDGMENT, AND BUYER IS NOT RELYING UPON ANY REPRESENTATIONS OF SELLERSS OR SELLERSS' AGENTS. ACCORDINGLY, BUYER HEREBY ACCEPTS THE LEASED PREMISES IN THEIR "AS IS, WHERE IS," "WITH ALL FAULTS," CONDITION AND ALL LATENT OR PATENT DEFECTS.

20. Conduct of the Business Pending the Closing.

a. The Parties acknowledge and agree that Sellers has ceased (or will cease as of the Closing Date) operations at the Leased Premises.

b. Prior to the Closing and except as permitted by this Agreement or with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Sellers shall:

(i) not reject the Lease or seek or obtain an order approving such rejection; and

(ii) not renew or modify any Lease or Sublease.

21. Casualty and Condemnation.

a. If, after the date of this Agreement and before Closing or termination of this Agreement, the Leased Premises, any store on a Leased Premises or any portion of the Leased Premises or store is (i) damaged by fire or other casualty or (ii) shall have been, be in the process of or threatened to be taken by (A) eminent domain or (B) a deed in lieu of condemnation (each of (ii)(A) or (B), a "**Condemnation**" and each of (i) and (ii) a "**Casualty/Condemnation Event**"), Sellers shall give prompt notice thereof to Buyer and within ten (10) Business Days after such fire or casualty or knowledge of such Condemnation, give notice to Buyer (the "**Sellers' Casualty/Condemnation Notice**") as to whether a Material Event has occurred, which notice shall include, among other things, a reasonably detailed estimated scope and cost of repair for the damaged property prepared by a licensed architect or engineer. "**Material Event**" means that (i) the restoration of the Leased Premises or store to substantially the same condition prior to such casualty/Condemnation would take six (6) months or longer, (ii) in the case of a fire or other casualty, a fire or other casualty that results in damage to the Leased Premises in excess of \$1,000,000 (on a per location basis) or the landlord having the right to terminate the Lease as a result of such casualty or (iii) a Condemnation (x) if any portion of the improvements, access or parking with respect to the Leased Premises or store shall have been taken or otherwise rendered unusable as a result of the taking, (y) if the taking has a material adverse effect on the operations at the Leased Premises, or (z) if the landlord under the Lease has the right to terminate as a result of such condemnation.

b. In the case of a Material Event or in accordance with Section 21(f), Buyer may terminate this Agreement only upon written notice given to Sellers within five (5) Business

Days after receipt of Sellers's Casualty/Condemnation Notice. In the event that in response to a Material Event, Buyer does not terminate this Agreement or a fire or other casualty does not constitute a Material Event, Buyer shall receive at Closing (i) an abatement of the Purchase Price in an amount equal to the total of (a) the insurance proceeds or Condemnation awards ("**Proceeds**") received by Sellers through the Closing Date and (b) an amount equal to Sellers's insurance deductible (but not more than the amount by which the cost, as of the Closing Date, to repair the damage is greater than the amount of insurance proceeds assigned to Buyer), and (ii) an assignment of the Proceeds payable after Closing.

c. Other than Casualty/Condemnation Events that are Material Events as set forth above, this Agreement shall stay in full force and effect, with respect to such store. Sellers may elect to restore such store but shall have no obligation to do so. Sellers shall, at the Closing, assign to Buyer all Proceeds. In connection with such assignment, Sellers shall credit Buyer with an amount equal to the applicable deductible amount under Sellers's insurance (but not more than the amount by which the cost, as of the Closing Date, to repair the damage is greater than the amount of insurance proceeds assigned to Buyer).

d. Any assignment of proceeds or awards under this Section 21 shall not include any Proceeds to the extent attributable to lost rents or similar costs applicable to any period prior to the Closing and shall be reduced by (i) the amount of all costs incurred by Sellers in connection with any repair of such damage or destruction, collection costs of Sellers respecting any Proceeds, and (ii) any amounts required to be paid to landlord under the Lease or to any lender pursuant to any financing, as applicable, to the extent that Sellers actually have paid such amounts to the landlord or lender and any amounts otherwise expended or obligated to be expended towards repair/restoration of the affected assets by any lender or landlord.

e. In all cases, if the cost of repairing the affected Leased Premises exceeds \$1,000,000, then Sellers shall not adjust or settle any insurance claims or enter into any contract for the restoration of the Leased Premises or store without Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

f. If, after the date of this Agreement and before Closing or termination of this Agreement, the Lease is terminated or Sellers receives notice of any termination or termination proceeding in respect of the Lease, Sellers shall give prompt written notice thereof to Buyer. If Sellers has not contested such termination within a reasonable period following notice from landlord, or if contested, there has been a final, non-appealable judgment in favor of the landlord with respect to the termination before the Closing or the termination of this Agreement Buyer may terminate this Agreement with respect to the Lease in accordance with Section 21(b).

22. Brokers' Fees. Other than the fees and expenses payable to Evercore Group L.L.C. or Hilco Real Estate Group LLC in connection with the transactions contemplated hereby, which shall be borne by Sellers, neither Party has entered into any contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay. Buyer shall indemnify and hold Sellers harmless from and against any and all claims, causes of action, losses, costs, expenses, damages or liabilities, including reasonable attorneys' fees and disbursements, which Buyer, or any of its affiliates may sustain, incur or be exposed to, by reason of any claim or claims by any

broker, finder or other person or entity for fees, commissions or other compensation arising out of the transactions contemplated herein. Any broker retained by or providing services to Buyer in connection with the transaction evidenced by this Agreement shall be compensated solely by Buyer without contribution from Sellers.

23. Survival. Except as specifically set forth herein, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 11(a) or Section 11(b) shall survive, and each of the same shall terminate and be of no further force or effect as of the Closing.

24. Expenses. Except as otherwise expressly set forth herein, including but not limited to Section 11, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants.

25. Entire Agreement. This Agreement, any documents delivered at Closing pursuant hereto, and any confidentiality agreement entered into by Sellers and Best Yet Market, Inc. in connection with this transaction, constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

26. Incorporation of Exhibits and Schedules. The Exhibits and Schedule(s) to this Agreement are incorporated herein by reference and made a part hereof.

27. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach. No conditions, course of dealing or performance, understanding, or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 27 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

28. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of each other Party; provided, that the Buyer may assign its rights, interests and obligations hereunder to any Affiliate of Buyer (provided, that (i) no such assignment to any

such Affiliate shall in any way relieve Buyer of its obligations under this Agreement and (ii) the assignee shall be identified to the applicable non-Debtor counterparty to the Lease or Sublease in advance thereof).

29. Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) on the day such communication was sent by e-mail; or (d) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Sellers:

The Great Atlantic & Pacific Tea Company, Inc.
2 Paragon Drive
Montvale, New Jersey 07645
Attention: Christopher W. McGarry and Matthew Bennett
E-mail: mcgarryc@aptea.com; bennettm@aptea.com

With a copy (which shall not constitute notice to Sellers) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Ray C. Schrock, P.C. and Samuel Zylberberg
E-mail: ray.schrock@weil.com; samuel.zylberberg@weil.com

If to Buyer:

Best Yet Market, Inc.
1 Lexington Avenue
Bethpage, New York 11714
Attention: Or Raitses
E-mail: or.raitses@bestyetmarket.com

With a copy (which shall not constitute notice to Buyer) to:

Kirkland & Ellis
601 Lexington Avenue
New York, New York 10022
Attention: Christopher Greco and Shawn O'Hargan
E-mail: christopher.greco@kirkland.com;
shawn.ohargan@kirkland.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 29.

30. Governing Law. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of New York (without giving effect to the principles of conflict of laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

31. Submission to Jurisdiction; Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any documents delivered at Closing pursuant hereto or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or any documents delivered at Closing pursuant hereto or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 29; provided, however, that nothing in this Section shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any documents delivered at Closing pursuant hereto or the transactions contemplated hereby or thereby.

32. Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY DOCUMENTS DELIVERED AT CLOSING PURSUANT HERETO OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

33. Specific Performance. Each Party acknowledges and agrees that the other Parties and their respective estates, as applicable, would be damaged irreparably in the event such Party does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy a Party may have under law or equity, each Party shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

34. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this

Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

35. No Third Party Beneficiaries. Except as set forth in Section 36, this Agreement shall not confer any rights or remedies upon any Person other than Buyer, Sellers, and their respective successors and permitted assigns, except as expressly set forth in this Agreement.

36. Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or any of the documents delivered at Closing pursuant hereto may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (including without limitation Buyer and any Sellers) (the “Contracting Parties”). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing (“Non-Party Affiliates”), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or any of the documents delivered at Closing pursuant hereto or based on, in respect of, or by reason of this Agreement or any of the documents delivered at Closing pursuant hereto or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or any of the documents delivered at Closing pursuant hereto or any representation or warranty made in, in connection with, or as an inducement to this Agreement or any of the documents delivered at Closing pursuant hereto. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 36.

37. Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

38. Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

39. Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

40. Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, Sellers's obligations hereunder shall be subject to limitations under applicable Law, including, without limitation, Sections 1113 and 1114 of the Bankruptcy Code.

41. Prevailing Party. If any action is brought by either of the Parties against the other, then the prevailing Party shall be entitled to recover from the other Party court costs and reasonable attorneys' fees and costs actually incurred.

42. Employees. Buyer shall use reasonable, good faith, best efforts to make offers of employment to a number of any former collective bargaining unit employees of the Sellers equivalent to at least 25% of the new store workforce who are qualified for such positions with Buyer; provided that such offers of employment are not required to be for positions in the same store location at which such former employees worked for the Sellers.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first
above written.

A&P REAL PROPERTY, LLC

By: _____
Name:
Title:

PATHMARK STORES, INC.

By: _____
Name:
Title:


APW SUPERMARKETS, INC.

By: _____
Name:
Title:

SHOPWELL, INC.

By: _____
Name:
Title:

BEST YET MARKET, INC.

By: 
Name: AVIV RAITSES
Title: President

LIST OF SCHEDULE AND EXHIBITS

SCHEDULE

Schedule I

DESCRIPTION

Definitions

EXHIBIT

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit F

Exhibit G

Exhibit H

Exhibit I

DESCRIPTION

The Lease

Premises

Sublease(s)

Escrow Agreement

Wire Instructions

Form of Assignment and Assumption of Lease

Form of Quitclaim Bill of Sale

Form of Landlord Notice and Form of Subtenant Notice

Form of Assignment and Assumption of Subleases

Schedule I

Definitions

(i) “Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

(ii) “Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.

(iii) “Buyer Designee” means any equity holder of Buyer or any Subsidiary of Buyer or an equity holder of Buyer that is designated by Buyer to purchase the Acquired Assets on or prior to the Closing Date.

(iv) “Code” means the Internal Revenue Code of 1986, as amended.

(v) “Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.

(vi) “FIRPTA Certificate” means a certificate from Tenant in compliance with applicable Treasury Regulations setting forth Tenant’s (or, if applicable, its regarded owner’s) name, address and federal tax identification number and stating that Tenant (or, if applicable, its regarded owner) is not a “foreign person” within the meaning of section 1445 of the Code and otherwise complying with the Treasury Regulations issued pursuant to section 1445 of the Code.

(vii) “GAAP” means United States generally accepted accounting principles consistently applied.

(viii) “Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.

(ix) “Knowledge” of Sellers (and other words of similar import) means the actual knowledge of any Person holding a position of senior vice president or senior thereto at Sellers.

(x) “Law” means any constitution applicable to, and any law, statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.

(xi) “Liability” means any indebtedness, liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or

unmatured, whether determined or determinable, and whether due or to become due) regardless of when arising.

(xii) “Lien” means (a) any mortgage, pledge, lien, charge, hypothecation, claim, security interest, option, right of first refusal, right of possession, easement, security agreement or other encumbrance or restriction of any kind, including any conditional sale or other title retention, contract or lease in the nature thereof; and (b) any subordination arrangement in favor of another Person; provided, however, that “Lien” shall not be deemed to include any license of intellectual property.

(xiii) “Litigation” means any action, cause of action, suit, claim, charge, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at law or in equity (including actions or proceedings seeking injunctive relief) and whether before any Governmental Authority.

(xiv) “Material Adverse Effect” means any effect, change, condition, circumstance, development or event that, individually or in the aggregate with all other effects, changes, conditions, circumstances, developments or events has had, or would reasonable be expected to have a material adverse effect on the condition of the Acquired Assets, taken as a whole, other than any effect, change, condition, circumstance, development or event arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Stores operate; (b) any condition or occurrence affecting retail grocery generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) changes in Law or accounting rules; (f) the taking of any action contemplated by this Agreement or any document delivered at Closing pursuant hereto or taken with the consent of the other Party; (g) any effects or changes as a result of the announcement or pendency of this Agreement; (h) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (i) the sale of any other assets or stores to any third parties by any Sellers or any of its Affiliates; or (j) any effects or changes arising from or related to the breach of the Agreement by Buyer; provided, however, that in the case of the foregoing clauses (a) through (e) such effects, changes, conditions, circumstances, developments or events shall be taken into account in determining whether any material adverse effect has occurred to the extent that any such effects, changes, conditions, circumstances, developments or events have, or would reasonable be expected to have, a disproportionate effect on the Acquired Assets relative to other participants operating in the retail grocery industry.

(xv) “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or any other entity, including any Governmental Authority or any group of any of the foregoing.

(xvi) “Permitted Lien” means (a) Liens for Taxes not yet due or delinquent; (b) mechanic’s, workmen’s, repairmen’s, warehousemen’s, carrier’s or other similar Liens, including all statutory liens, arising or incurred in the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice, that in each case have been

bonded over or otherwise secured in a manner acceptable to Buyer in Buyer's reasonable discretion; (c) with respect to the Leased Premises, the terms and conditions of the Lease applicable thereto; (d) with respect to the Leased Premises, zoning, building codes and other land use laws regulating the use or occupancy of such Leased Premise or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such Leased Premises; (e) with respect to any Leased Premises, any easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects with respect to any store that, individually or in the aggregate, do not or would not reasonably be expected to adversely affect the current occupancy, use or value of such Leased Premise in any material respect; (f) with respect to any Leased Premises, matters that would be disclosed on an accurate survey of the Leased Premises that do not or would not reasonably be expected to adversely affect the current occupancy or use of such Leased Premises in any material respect; (g) any other Liens that Buyer has expressly stated are acceptable to Buyer in a writing delivered to Sellers; and (h) with respect to any Leased Premises, any Liens affecting solely the interest of the holder of the fee property thereunder and not the interest of the tenant under such Lease, and that do not or would not reasonably be expected to adversely affect the current occupancy or use of such real property in any material respect.

(xvii) "Representative" means, when used with respect to a Person, the Person's controlled Affiliates (including subsidiaries) and such Person's and any of the foregoing Persons' respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources.

(xviii) "Subsidiary" means, with respect to any Person, on any date, any other Person (a) the accounts of which would be consolidated with and into those of the applicable Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date or (b) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests or more than fifty percent (50%) of the profits or losses are, as of such date, owned, controlled or held by such Person or one or more subsidiaries of such Person.

(xix) "Tax" or "Taxes" means any United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether disputed or not.

(xx) "Transfer Tax" means any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or similar non-income Taxes, fees or governmental charges imposed under applicable Law in connection with the transactions contemplated by this Agreement.

(xxi) "Treasury Regulations" mean the Treasury regulations promulgated under the Code

EXHIBIT A

Lease

STORE 027-7662 - 211 MIDDLE COUNTRY ROAD, SELDEN, NY

AGREEMENT OF LEASE DATED NOVEMBER 3, 1976 ORIGINALLY BETWEEN IRA I. MILLER, JEROME H. MILLER, LEON A. MILLER AND HAROLD SHERMAN, AS LANDLORD, AND WALDBAUM, INC., AS TENANT, AS THE SAME MAY HAVE BEEN AMENDED.

- MEMORANDUM OF LEASE DATED NOVEMBER 3, 1976 [RECORDED]
- LEASE AMENDMENT AND MODIFICATION AGREEMENT DATED JUNE 26, 1978
- AMENDMENT TO LEASE DATED MAY 1, 1984
- LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT DATED JUNE 24, 1992
- LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT DATED JUNE 26, 1992
- ENLARGEMENT AGREEMENT DATED AUGUST 19, 1992
- MEMORANDUM OF AMENDMENT TO LEASE FOR RECORDATION DATED AUGUST 19, 1992 [RECORDED]
- RENEWAL LETTER DATED SEPTEMBER 13, 2004
- CONFIRMATION OF LEASE TERM AGREEMENT DATED NOVEMBER 2, 1994
- CONFIRMATION OF LEASE TERM AGREEMENT DATED FEBRUARY 6, 1995
- RENEWAL LETTER DATED SEPTEMBER 28, 2010
- ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED JULY 8, 2011
- ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012
- GUARANTY DATED MARCH 13, 2012

AS THE SAME MAY HAVE BEEN AMENDED,

AND ALL OTHER DOCUMENTS LOCATED IN DATAROOM FOLDER 1.5.117 AS OF THE BUSINESS DAY IMMEDIATELY PRIOR TO THE DATE OF THE AGREEMENT THAT AFFECT OR AMEND THE AGREEMENTS IDENTIFIED ABOVE

STORE 072-6639 – 155 ISLIP AVENUE, ISLIP, NY

LEASE DATED MARCH 31, 1969 ORIGINALLY BETWEEN R.L.Y. CORP., AS LANDLORD, AND SUPERMARKETS GENERAL CORPORATION, AS TENANT.

- FIRST AMENDMENT OF LEASE DATED JUNE 16, 1969
- SHORT FORM LEASE DATED JUNE 16, 1969
- LETTER AGREEMENT DATED OCTOBER 27, 1969
- LETTER AGREEMENT DATED OCTOBER 27, 1969
- SECOND AMENDMENT OF LEASE DATED AUGUST 20, 1970
- SUPPLEMENTAL AGREEMENT TO LEASE DATED SEPTEMBER 28, 1970
- MEMORANDUM OF LEASE DATED OCTOBER 14, 1993 [RECORDED]
- ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED JULY 7, 2011

- ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012
- GUARANTY DATED MARCH 13, 2012
- RENEWAL DATED MARCH 5, 2015
- THIRD AMENDMENT TO LEASE AND EXTENSION AGREEMENT

AS THE SAME MAY HAVE BEEN AMENDED,

AND ALL OTHER DOCUMENTS LOCATED IN DATAROOM FOLDER 1.5.62 AS OF THE BUSINESS DAY IMMEDIATELY PRIOR TO THE DATE OF THE AGREEMENT THAT AFFECT OR AMEND THE AGREEMENTS IDENTIFIED ABOVE.

STORE 027-7617 – 40 GREAT NECK ROAD, GREAT NECK, NY

AGREEMENT OF LEASE DATED MAY 3, 1993 ORIGINALLY BETWEEN GRETA NECK PLAZA, L.P., AS LANDLORD, AND MELMARKETS, INC., AS TENANT.

- MODIFICATION OF LEASE AGREEMENT DATED JUNE 3, 1993
- SECOND MODIFICATION OF LEASE AGREEMENT DATED DECEMBER 11, 1995
- ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT DATED DECEMBER 15, 2000
- THIRD MODIFICATION OF LEASE AGREEMENT DATED DECEMBER 15, 2000
- LETTER DATED JUNE 27, 2011
- GUARANTY DATED SEPTEMBER 20, 2011
- FOURTH MODIFICATION TO LEASE - DATED SEPTEMBER 20, 2011
- ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED OCTOBER 24, 2011
- ASSIGNMENT DATED MARCH 13, 2012 [RECORDED]
- GUARANTY DATED MARCH 13, 2012

AS THE SAME MAY HAVE BEEN AMENDED,

AND ALL OTHER DOCUMENTS LOCATED IN DATAROOM FOLDER 1.5.50 AS OF THE BUSINESS DAY IMMEDIATELY PRIOR TO THE DATE OF THE AGREEMENT THAT AFFECT OR AMEND THE AGREEMENTS IDENTIFIED ABOVE.

STORE 072-6644 – 531 MONTAUK HWY, WEST BAYLON, NY

LEASE DATED NOVEMBER 15, 1977 ORIGINALLY BETWEEN MYRON L, KAUFAN AND HAROLD BASSER, AS LANDLORD, AND SUPERMARKETS GENERAL CORPORATION, AS TENANT.

- MEMORANDUM OF LEASE DATED NOVEMBER 15, 1977 [RECORDED]
- FIRST AMENDMENT OF LEASE DATED APRIL 25, 1978
- COMMENCEMENT OF LEASE TERM AGREEMENT DATED MARCH 7, 1979
- MEMORANDUM OF LEASE AS AMENDED DATED MARCH 20, 1981
- SECOND AMENDMENT OF LEASE DATED SEPTEMBER 30, 1981
- THIRD AMENDMENT OF LEASE DATED JULY 1, 1989
- LETTER AGREEMENT DATED JULY 16, 1998
- TRI-PARTY AGREEMENT DATED JULY 16, 1998

- LETTER AGREEMENT DATED JANUARY 1, 2001
- LETTER AGREEMENT DATED DECEMBER 19, 2001
- RENEWAL LETTER DATED SEPTEMBER 20, 2002
- LETTER AMENDMENT DATED MAY 5, 2005
- RENEWAL LETTER DATED OCTOBER 29, 2007
- TRI-PARTY AGREEMENT DATED FEBRUARY 27, 2009
- LETTER AGREEMENT DATED MARCH 11, 2011
- ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED DECEMBER 23, 2011
- RENEWAL LETTER DATED DECEMBER 26, 2012
- ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012
- GUARANTY DATED MARCH 13, 2012

AS THE SAME MAY HAVE BEEN AMENDED,

AND ALL OTHER DOCUMENTS LOCATED IN DATAROOM FOLDER 1.5.132 AS OF THE BUSINESS DAY IMMEDIATELY PRIOR TO THE DATE OF THE AGREEMENT THAT AFFECT OR AMEND THE AGREEMENTS IDENTIFIED ABOVE

STORE 072-6646 – 800 MONTAUK HIGHWAY, SHIRLEY, NY

LEASE DATED SEPTEMBER 5, 1978 ORIGINALLY BETWEEN NATHAN L. SEROTA, AS LANDLORD, AND SUPERMARKETS GENERAL CORPORATION, AS TENANT, AS THE SAME MAY HAVE BEEN AMENDED

- FIRST AMENDMENT OF LEASE DATED FEBRUARY 18, 1981
- MEMORANDUM OF LEASE AS AMENDED DATED MARCH 11, 1981 [RECORDED]
- LETTER AGREEMENT DATED APRIL 7, 1981
- COMMENCEMENT AGREEMENT DATED NOVEMBER 4, 1981
- THIRD AMENDMENT OF LEASE DATED NOVEMBER 16, 1995
- COMPLETION DATE LETTER DATED MARCH 3, 1996
- LETTER AGREEMENT DATED MAY 27, 1997
- CONSENT AGREEMENT DATED MARCH 3, 1999
- AMENDED CONSENT AGREEMENT DATED MAY 24, 1999
- CONSENT LETTER DATED NOVEMBER 6, 2007
- ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED DECEMBER 23, 2011
- ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012
- GUARANTY DATED MARCH 13, 2012
- FOURTH AMENDMENT OF LEASE DATED AUGUST 26, 2014

AND ALL OTHER DOCUMENTS LOCATED IN DATAROOM FOLDER 1.5.118 AS OF THE BUSINESS DAY IMMEDIATELY PRIOR TO THE DATE OF THE AGREEMENT THAT AFFECT OR AMEND THE AGREEMENTS IDENTIFIED ABOVE.

STORE 36-9777 – 3126 1/2 GREENWICH STREET, NEW YORK, NY

AGREEMENT OF LEASE DATED JUNE 20, 1980 ORIGINALLY BETWEEN DUANE STREET ASSOCIATES, AS LANDLORD, AND SHOPWELL, INC., AS TENANT, AS THE SAME MAY HAVE BEEN AMENDED.

AND ALL OTHER DOCUMENTS LOCATED IN DATAROOM FOLDER 1.5.95 AS OF THE BUSINESS DAY IMMEDIATELY PRIOR TO THE DATE OF THE AGREEMENT THAT AFFECT OR AMEND THE AGREEMENTS IDENTIFIED ABOVE.

EXHIBIT B

Leased Premises

STORE 027-7662 - 211 MIDDLE COUNTRY ROAD, SELDEN, NY

STORE 072-6639 – 155 ISLIP AVENUE, ISLIP, NY

STORE 027-7617 – 40 GREAT NECK ROAD, GREAT NECK, NY

STORE 072-6644 – 531 MONTAUK HWY., WEST BAYLON, NY

STORE 072-6646 – 800 MONTAUK HIGHWAY, SHIRLEY, NY

STORE 036-9777 – 316 1/2 GREENWICH STREET, NEW YORK, NY

EXHIBIT C

Sublease(s)/License Agreements

STORE 027-7662 - 211 MIDDLE COUNTRY ROAD, SELDEN, NY

None

STORE 072-6639 – 155 ISLIP AVENUE, ISLIP, NY

SUBLEASE(S)/LICENSE(S), AS AMENDED, SUPPLEMENTED, OR OTHERWISE MODIFIED,
WITH RESPECT TO THE FOLLOWING SUBTENANT(S)/LICENSEE(S):

i. **NYCB ---**

LICENSE AGREEMENT, DATED JUNE 1, 1997, ORIGINALLY BETWEEN PATHMARK STORES,
INC., AS LICENSOR, AND COLUMBIA FEDERAL SAVINGS BANK, AS LICENSEE.

AND ALL OTHER DOCUMENTS WITH RESPECT TO SUCH SUBLEASE(S)/LICENSE(S)
LOCATED IN DATAROOM FOLDER 1.5.62

STORE 027-7617 – 40 GREAT NECK ROAD, GREAT NECK, NY

None

STORE 072-6644 – 531 MONTAUK HWY, WEST BAYLON, NY

SUBLEASE(S)/LICENSE(S), AS AMENDED, SUPPLEMENTED, OR OTHERWISE MODIFIED,
WITH RESPECT TO THE FOLLOWING SUBTENANT(S)/LICENSEE(S):

i. **NYCB ---**

LICENSE AGREEMENT, DATED JUNE 1, 1997, ORIGINALLY BETWEEN PATHMARK STORES,
INC., AS LICENSOR, AND COLUMBIA FEDERAL SAVINGS BANK, AS LICENSEE.

AND ALL OTHER DOCUMENTS WITH RESPECT TO SUCH SUBLEASE(S)/LICENSE(S)
LOCATED IN DATAROOM FOLDER 1.5.132.

STORE 072-6646 – 800 MONTAUK HIGHWAY, SHIRLEY, NY

SUBLEASE(S)/LICENSE(S), AS AMENDED, SUPPLEMENTED, OR OTHERWISE MODIFIED,
WITH RESPECT TO THE FOLLOWING SUBTENANT(S)/LICENSEE(S):

i. NYCB ---

LICENSE AGREEMENT, DATED MAY 7, 1997, ORIGINALLY BETWEEN PATHMARK STORES,
INC., AS LICENSOR, AND COLUMBIA FEDERAL SAVINGS BANK, AS LICENSEE.

AND ALL OTHER DOCUMENTS WITH RESPECT TO SUCH SUBLEASE(S)/LICENSE(S)
LOCATED IN DATAROOM FOLDER 1.5.118.

STORE 36-9777 – 3126 1/2 GREENWICH STREET, NEW YORK, NY

None

EXHIBIT D

Escrow Agreement

(Attached hereto)

Bidder ID No. 112

Site No(s). 027-7662; 072-6639; 027-7617; 72-6644; 72-6646; 36-9777

ESCROW RIDER TO LEASE SALE AGREEMENT

This Escrow Agreement dated this ____th day of November, 2015 (this "Escrow Agreement"), is entered into by and among A&P Real Property, LLC, a Delaware limited liability company ("Tenant"), Pathmark Stores, Inc., a Delaware corporation, APW Supermarkets, Inc. and Shopwell, Inc. (together with Tenant and "Sellers"), Best Yet Market, Inc. ("Bidder"), and TITLEVEST SERVICES, LLC, a New York limited liability company, as escrow agent ("Escrow Agent"). Sellers and Bidder are known herein, individually or collectively as the context may require as a "Party" or the "Parties". Any capitalized terms not defined herein shall have the meaning ascribed to them in the Sale Agreement (as defined below).

WITNESSETH

WHEREAS, the Bidder has executed that certain Lease Sale Agreement (the "Sale Agreement") as part of a bid for the acquisition of certain real property more particularly described on Exhibit A (the "Premises");

WHEREAS, as part of the bid process, Bidder is required to wire to Escrow Agent a Deposit in the amount of \$236,250.00 (the "Escrow Funds"); and

WHEREAS, Bidder desires that Escrow Agent hold the Escrow Funds in escrow pursuant to the terms of this Escrow Agreement; and

WHEREAS, Escrow Agent is willing to hold the Escrow Funds, on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the promises and agreements of the Parties and the Escrow Agent set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties and the Escrow Agent agree as follows:

I. ESCROW DEPOSIT

A. Delivery of Escrow Funds; Authorization of Escrow Agent. Concurrently with execution and delivery of this Escrow Agreement, Bidder shall deliver the Escrow Funds along with a nonrefundable Escrow Fee of \$500 ("Initial Escrow Fee"; together with all other nonrefundable escrow fees set forth on Exhibit C, the "Nonrefundable Escrow Fees") to Escrow Agent via wire transfer. Upon receipt, the Escrow Funds shall be held by Escrow Agent in Escrow Agent's client escrow account at Citibank. The Parties hereby appoint Escrow Agent to serve as escrow agent with respect to the Escrow Funds, and Escrow Agent hereby accepts such appointment and agrees to act in accordance with the terms and subject to the conditions of this Escrow Agreement. Escrow Agent shall have the right to disburse the Escrow Funds, in whole or in part, solely in accordance with the terms of this Escrow Agreement. Escrow Agent shall not, under any circumstances, pledge or hypothecate any portion of the Escrow Funds and shall act only as directed in accordance with the terms of this Escrow Agreement.

B. UNTIL RELEASED AND DISBURSED IN ACCORDANCE WITH THE TERMS OF THIS ESCROW AGREEMENT, ALL ESCROW FUNDS SHALL (i) REMAIN THE PROPERTY OF BIDDER, (ii) NOT BE OR BECOME THE PROPERTY OR ASSETS OF SELLERS OR ESCROW AGENT, AND (iii) NOT BE SUBJECT TO ANY LIEN OR ANY JUDGMENT OR CREDITORS' CLAIMS AGAINST SELLERS, BIDDER OR ESCROW AGENT. IN NO EVENT SHALL ANY OF THE ESCROW FUNDS BE COMMINGLED WITH DEPOSIT ACCOUNTS OF ESCROW AGENT OR OTHERWISE TREATED AS A DEPOSIT ACCOUNT OF ESCROW AGENT OR REFLECTED ON THE FINANCIAL STATEMENTS OF ESCROW AGENT.

II. RELEASE OF ESCROW FUNDS

A. Potential Bidder. If Bidder is determined by Sellers not to meet the requirements for qualifying as a bidder in any auction for the Premises (the "Auction"), as confirmed by the Debtors, within three (3) business days after the deadline for Sellers to make a determination regarding which bids have been determined to be qualified bids for such auction (the "Designation Deadline") ("Unqualified Bidder"), the Escrow Agent shall return to Bidder the Deposit.

B. Qualified Bidder. The Deposit will be forfeited to Sellers if Bidder is determined by Sellers to meet the requirements for qualifying as a bidder at the Auction ("Qualified Bidder") and (A) Bidder attempts to modify, amend or withdraw its qualified bid, except as may permitted by the governing procedures or the Sale Agreement, during the time the qualified bid remains binding and irrevocable under the applicable procedures and the Sale Agreement or (B) the Bidder is selected as the Successful Bidder (defined below) and fails to enter into the required definitive documentation or to consummate the transaction according to the applicable procedures, and the terms of the applicable transaction documents with respect to the successful bid. The Escrow Agent shall release the Deposit by wire transfer of immediately available funds to an account designated by Sellers two (2) business days after the receipt by the Escrow Agent of a joint written notice by an authorized officer of Sellers stating that Bidder has breached or failed to satisfy its obligations or undertakings.

C. Successful Bidder. If Bidder is the successful bidder for the Premises ("Successful Bidder"), Sellers or their agent shall notify Escrow Agent, and Escrow Agent shall retain the Escrow Funds through and including the Closing Date (and any permitted extensions), subject to the terms of this Escrow Agreement.

D. Backup Bidder. If the Bidder is selected as the next highest or next best bid for purchase of the Premises ("Backup Bidder"), Sellers or their agent shall notify the Escrow Agent, and the Escrow Funds will continue to be held by the Escrow Agent until the acquisition of the Premises by the Successful Bidder, at which time the Escrow Funds will be promptly returned to Bidder by wire transfer in accordance with Bidder's wire instructions attached hereto as Exhibit B (and Escrow Agent will notify Bidder by electronic mail at the time the refund wire transfer has been initiated); provided that if the Successful Bidder does not consummate the purchase of the Premises, then the Escrow Agent shall retain the Escrow Funds through and including the Closing Date (and any permitted extensions), subject to the terms of this Escrow Agreement.

E. Neither Successful Nor Backup Bidder. If Bidder is determined by Sellers to be neither the Successful Bidder nor the Backup Bidder, Sellers shall notify the Escrow Agent in a written notice, and the Escrow Funds will be promptly returned to Bidder by wire transfer in accordance with Bidder's wire instructions attached hereto as Exhibit B. Escrow Agent will notify Bidder by

electronic mail at the time the refund wire transfer has been initiated. In the case of Subsections (C) and (D) of this Section II, Escrow Agent shall release the funds, following receipt of a joint written notice from Sellers and Bidder, no later than the Outside Date except to the extent the Sale Agreement is executed by Sellers with respect to a Backup Bidder prior to the Outside Date.

F. Disbursements. The Debtors, Sellers and Bidder agree to execute an appropriate joint notice to the Escrow Agent for the return of any Deposit. If a party fails to execute such written notice, the Deposit may be released by an order of the Bankruptcy Court.

G. Reliance. Escrow Agent shall rely on all information provided to it by attorneys at Weil, Gotshal & Manges LLP regarding (i) the Successful Bidder, the Backup Bidder, an Unqualified Bidder and a Qualified Bidder, (ii) the closing with the Successful Bidder, and (iii) any default by the Successful Bidder or acceptance of the Backup Bidder. Bidder acknowledges that Escrow Agent is entitled to rely on said information in disbursing the Escrow Funds.

III. DUTIES OF THE ESCROW AGENT

A. Scope of Responsibility. Notwithstanding any provision to the contrary, Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to Escrow Agent; and Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

B. Attorneys and Agents. Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken in good faith by Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by Escrow Agent. Escrow Agent shall be reimbursed for any and all compensation (reasonable and documented fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals.

C. Reliance. Escrow Agent shall not be liable for any action taken or not taken by it in accordance with (i) the terms of this Escrow Agreement and (ii) the direction or consent of the Parties or their respective agents, representatives, successors and/or assigns. Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority. Concurrently herewith, the Bidder shall deliver Exhibit D hereto, which contains authorized party designations.

D. Right Not Duty Undertaken. The permissive rights of Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

E. No Financial Obligation. No provision of this Escrow Agreement shall require Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement. Escrow Agent shall not be liable for the insolvency of any bank in which the Escrow Funds are deposited.

IV. PROVISIONS CONCERNING ESCROW AGENT

A. Indemnification. The Parties, severally and not jointly, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable and documented out of pocket attorneys' fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating to (a) the Escrow Agent's execution and performance of this Escrow Agreement, except to the extent that such loss, liability or expense shall have been finally adjudicated to have directly resulted from the gross negligence or willful misconduct of the Escrow Agent (or any person through which its duties are performed, as provided in Section 3(C)) or (b) the Escrow Agent's following any instructions or other directions from the Bidder or Sellers, except to the extent that its following any such instruction or direction is expressly forbidden by the terms of this Escrow Agreement. The provisions of this Section 4(A) shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

B. Limitation of Liability. ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

C. Resignation or Removal. Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove Escrow Agent by furnishing to Escrow Agent a joint written notice of Escrow Agent's removal along with payment of all reasonable and documented fees and expenses to which it is entitled through the date of termination or removal. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Funds and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with Escrow Agent or in accordance with a court order. If the Sellers fails to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties. Any such successor escrow agent shall deliver to Sellers and Bidder a written instrument accepting such appointment, and thereupon it shall succeed to all the rights and duties of the Escrow Agent hereunder and shall be entitled to receive possession of the Escrow Funds. Upon receipt of the identity of the successor escrow agent, the Escrow Agent shall deliver the Escrow Funds then held hereunder, less any reasonable and documented fees and expenses then due and owing to the Escrow Agent, to the successor escrow agent. In the event of the resignation or removal of the Escrow Agent, the resigning or

removed Escrow Agent shall be absolved from any further duties as the Escrow Agent hereunder; provided, however, that the Escrow Agent or any successor escrow agent shall continue to act as the Escrow Agent until a successor is appointed and qualified to act as the Escrow Agent.

D. Compensation. Escrow Agent shall be entitled to fees and expenses incurred in administering and disbursing the Escrow Funds as specified in this Escrow Agreement, and compensation for its services which shall be paid by Bidder as set forth on Exhibit C. If any material controversy arises hereunder, or Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable and documented attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event except to the extent the same shall have been caused by the Escrow Agent's gross negligence or willful misconduct. If any amount due to Escrow Agent hereunder is not paid within thirty (30) days of the date due, Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law.

E. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving the Parties concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or Escrow Agent is in doubt as to the action to be taken hereunder, Escrow Agent is authorized to retain the Escrow Funds until Escrow Agent (i) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Funds, (ii) receives a written agreement executed by the Parties directing delivery of the Escrow Funds, in which event Escrow Agent shall be authorized to disburse the Escrow Funds in accordance with such agreement, or (iii) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, Escrow Agent shall be relieved of all liability as to the Escrow Funds which it delivers to such court and shall be entitled to recover reasonable and documented attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. Escrow Agent shall be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry, or consent.

F. Attachment of Escrow Funds; Compliance with Legal Orders. In the event that any Escrow Funds shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting Escrow Funds, Escrow Agent is hereby expressly authorized, in its reasonable discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that Escrow Agent obeys or complies with any such writ, order or decree, it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

V. MISCELLANEOUS

A. Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of the Parties shall be binding unless and until written notice of such assignment shall be delivered to other Party and Escrow Agent and shall require the prior written consent of such other Party and Escrow Agent (such consent not to be unreasonably withheld).

B. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (a) personally, (b) by facsimile transmission with written confirmation of receipt, (c) on the day of transmission if sent by electronic mail (“e-mail”) to the e-mail address given below, (d) by overnight delivery with a reputable national overnight delivery service, or (e) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five (5) Business Days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of each party hereto to notify the Escrow Agent and the other Party in writing of any name or address changes.

If to Sellers:

The Great Atlantic and Pacific Tea Company, Inc.
2 Paragon Drive
Montvale, New Jersey 07645
Attention: Christopher W. McGarry; Matthew Bennett
E-mail: mcgarryc@aptea.com; bennettm@aptea.com

with a copy (which shall not constitute notice to Sellers) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Ray C. Schrock, P.C. and Samuel Zylberberg
Facsimile: (212) 310-8007
E-mail: ray.schrock@weil.com; samuel.zylberberg@weil.com

Notices to Bidder:

Best Yet Market, Inc.
1 Lexington Avenue
Bethpage, New York 11714
Attention: Or Raitses
E-mail: or.raitses@bestyetmarket.com

With a copy to:

Kirkland & Ellis
601 Lexington Avenue
New York, New York 10022
Attention: Christopher Greco and Shawn O'Hargan
E-mail: christopher.greco@kirkland.com;
shawn.ohargan@kirkland.com

Notices to Escrow Agent:

TitleVest Services, LLC
44 Wall Street – 10th Floor

New York, NY 10005
Attn: Sara Murray
E-Mail: APBid@TitleVest.com

With a copy to:

Fax: _____
E-mail: _____

C. Governing Law; Jurisdiction. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the principles of conflict of laws thereof), except to the extent that the laws of such state are superseded by chapter 11 of title 11 of the United States Code ("Chapter 11"). Without limiting any Party's right to appeal any order of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Escrow Agreement and to decide any claims (including with respect to Section) or disputes which may arise or result from, or be connected with, this Escrow Agreement, any breach or default hereunder, and (b) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereto hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated herein; provided, however, that if the contemplated Chapter 11 cases of Sellers and certain of its affiliates has closed, the parties hereto agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the state or federal courts of the State of New York, located in New York County for the resolution of any such claim or dispute. Each party hereto (i) expressly and irrevocably consents and submits to the jurisdiction of each such court; (ii) agrees that each such court shall be deemed to be a convenient forum; (iii) agrees that service of process in any such proceeding may be made by giving notice pursuant to Section V(B); and (iv) agrees not to assert, by way of motion, as a defense or otherwise, in any such proceeding commenced in any such court, any claim that such party is not subject personally to the jurisdiction of such court, that such proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Escrow Agreement or the subject matter of this Escrow Agreement may not be enforced by such court.

D. Entire Agreement. This Escrow Agreement (and the Sale Agreement, solely with respect to the Parties) sets forth the entire agreement and understanding of the Parties and Escrow Agent related to the Escrow Funds.

E. Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by all of the Parties and Escrow Agent.

F. Waivers. The failure of any Party at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any Party of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

G. Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

H. Counterparts. This Escrow Agreement and any notices or communications may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

I. Conflicts. In the event of any conflict between this Escrow Agreement and the Sale Agreement or any order of the Bankruptcy Court, the terms of the Sale Agreement and/or the order of the Bankruptcy Court shall govern, but only as between the Parties.

J. Publication; disclosure. By executing this Escrow Agreement, the Parties and the Escrow Agent acknowledge that this Escrow Agreement (including related attachments) contains certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow Agreement and related information to individuals or entities not a party to this Escrow Agreement. The Parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Escrow Agreement and information contained therein, including, without limitation, the redaction of the manual signatures of the signatories to this Escrow Agreement, or, in the alternative, publishing a conformed copy of this Escrow Agreement. If a Party must disclose or publish this Escrow Agreement or information contained therein pursuant to any regulatory, statutory, or governmental requirement, as well as any judicial, or administrative order, subpoena or discovery request, it shall notify in writing the other Party and the Escrow Agent at the time of execution of this Escrow Agreement of the legal requirement to do so. If any Party becomes aware of any threatened or actual unauthorized disclosure, publication or use of this Escrow Agreement, that Party shall promptly notify in writing the other Parties and the Escrow Agent and shall be liable for any unauthorized release or disclosure.

[Signature Page Follows]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of
the date first written above.

A&P REAL PROPERTY, LLC

By: _____
Name:
Title:

PATHMARK STORES, INC.

By: _____
Name:
Title:

APW SUPERMARKETS, INC.

By: _____
Name:
Title:

SHOPWELL, INC.

By: _____
Name:
Title:

BEST YET MARKET, INC.

By _____
Name: Aviv Raitses
Title: Chairman & President

TITLEVEST SERVICES, LLC

By: _____

Name:

Title:

EXHIBIT A

The Premises

STORE 027-7662 - 211 MIDDLE COUNTRY ROAD, SELDEN, NY

STORE 072-6639 – 155 ISLIP AVENUE, ISLIP, NY

STORE 027-7617 – 40 GREAT NECK ROAD, GREAT NECK, NY

STORE 072-6644 – 531 MONTAUK HWY., WEST BAYLON, NY

STORE 072-6646 – 800 MONTAUK HIGHWAY, SHIRLEY, NY

STORE 036-9777 – 316 1/2 GREENWICH STREET, NEW YORK, NY

EXHIBIT B

Wire Instructions

BBCN Bank
209-07 Northern Blvd
Branch 19
Bayside, NY 11361

ABA Routing: 026013246
Acct: 1910485001

EXHIBIT C

FEES OF ESCROW AGENT

Preclosing

- **Administration Fee: \$500.00**
The Administration Fee is payable with the bid submission.
- **Escrow Agreement Negotiation Fee: \$200**
For negotiation of this Escrow Agreement or review and negotiation of an alternative form of escrow agreement. Payable with bid submission.

Closing

- **Escrow Closing Fee: \$750** for attendance at Closing. Payable at Closing.
- **Preparation of Transfer Tax Forms: \$150/set** per property. Payable at Closing.

General

Out of Pocket Expenses: Actual Cost. Escrow Agent will charge for out-of-pocket expenses in response to specific tasks assigned by the client or provided for in the escrow agreement. Possible expenses would be, but are not limited to, express mail, Federal Express or other over-night carrier, messenger charges, wiring fees and travel fees and expenses to attend closing or other meetings. There are no charges for indirect out-of-pocket expenses. Payable at closing.

EXHIBIT D

BIDDER AUTHORIZED PARTY

Telephone Numbers and Authorized Signatures for
Person(s) Designated to Execute the Escrow Agreement, Give Joint Instruction and Confirm Funds
Transfer Instructions

For Buyer:

<u>Name</u>	<u>Business Telephone Numbers</u>	<u>Signature</u>
1. Or Raitses	516-870-7125	
2.		
3.		

To the extent required herein, all instructions to be delivered by Bidder, including but not limited to funds transfer instructions, whether transmitted by facsimile or otherwise, must include the signature of the Authorized Representative authorizing said funds transfer on behalf of Bidder.

EXHIBIT E

Wire Instructions

EXHIBIT F

Form of Assignment and Assumption of Lease

EXHIBIT B

Premises

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this “**Assignment**”) is entered into and effective as of [_____], 2015, by and between A&P Real Property, LLC whose address is Two Paragon Drive, Montvale, New Jersey 07645 (“**Seller**”), and Best Market of Great Neck, Inc., a New York corporation, whose address is One Lexington Avenue, Bethpage, New York 11714 (“**Buyer**”). Seller and Buyer are referred to collectively herein as the “**Parties**.”

WHEREAS, the Parties are parties to that certain Lease Sale Agreement, dated November __, 2015 (the “**Purchase Agreement**”) (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, the execution and delivery of this Assignment is contemplated by the Purchase Agreement; and

WHEREAS, Seller desires to assign, transfer, convey, and deliver to Buyer the Lease described in **Exhibit A** attached hereto including all amendments, modifications, and supplements thereto (collectively, the “**Lease**”), and Buyer desires to accept an assignment of the Lease together with all right, title, obligations and interest of Seller thereunder. The Lease encumbers all or a portion of certain property (the “**Leased Premises**”) which property is more specifically described on **Exhibit B** attached hereto (the “**Premises**”).

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, the Parties hereby agree as follows:

- 1) Assignment and Assumption of Lease. Effective as of the Closing, Seller hereby assigns, transfers, conveys, and delivers to Buyer all of Seller’s estate, right, title and interest as tenant of the leasehold estate described under the Lease, and Buyer hereby accepts the assignment, transfer, conveyance and delivery of Seller’s estate, rights, title and interest in, to and under such leasehold estate, and assumes all the obligations under the Lease as if Buyer were the original tenant named in the Lease and Buyer agrees to pay, discharge, and perform when due all of the Seller’s obligations under the Lease and all of the tenant’s obligations under the Lease including, but not limited to, all obligations related to payment of rents, Base rent, Percentage rent, Additional rent, utilities, taxes, insurance and common area maintenance etc., and all adjustments thereto, regardless of when such amounts became due and/or payable under the Lease and regardless of whether they arose or became due before or after the date of this Assignment and regardless of the period subject to any adjustment under the Lease; provided however, that under no circumstances shall Buyer be obligated to pay any amounts that, as of September 18, 2015, had been billed to Seller and were unpaid and in default under the Lease.
- 2) Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Assignment is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without

invalidating the remainder of such provisions or the remaining provisions of this Assignment.

- 3) Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by, or on behalf of, Buyer and Seller.
- 4) Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- 5) Governing Law. This Assignment shall be governed by the Laws of the State of New York, except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
- 6) Miscellaneous. This Assignment shall inure to the benefit of the Parties and the Landlord under the Lease, Great Neck Plaza, LP, its successors and assigns, and shall be binding upon the Parties and their respective successors and permitted assigns.
- 7) Recordation. Seller makes no representation regarding the recordability of this Assignment, nor the Lease or related documents. Seller shall bear no liability for the failure of the Lease or related documents to be recorded.
- 8) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment, including, without limitation, any other form of assignment agreement required in order to record this Assignment in the appropriate public records of the county in which the Leased Premises is located.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first above written.

SELLER:

A&P REAL PROPERTY, LLC

a Delaware corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____ }:
 }:SS
COUNTY OF _____ }:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

BUYER:

Best Market of Great Neck, Inc.,
a New York corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____ }:
 }:SS
COUNTY OF _____ }:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

Lease

EXHIBIT B

Premises

EXHIBIT G

Form of Quitclaim Bill of Sale

QUITCLAIM BILL OF SALE

THIS QUITCLAIM BILL OF SALE (this "Bill of Sale") is entered into and effective as of [_____], 2015, by and among [_____], a [_____] ("Seller") and [_____], a [_____] ("Buyer"). Seller and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Lease Sale Agreement, dated [_____], 2015 (the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement); and

WHEREAS, the execution and delivery of this Bill of Sale is contemplated by the Purchase Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, the Parties hereby agree as follows:

1. Sale and Acceptance of Acquired Assets. For true and lawful consideration paid by Buyer, the sufficiency of which is hereby acknowledged, effective as of the date hereof, (a) Seller hereby sells, assigns, transfers, conveys, grants and delivers to Buyer all of its right, title and interest in and to the Acquired Assets, and (b) Buyer hereby accepts the foregoing sale and assignment.

2. Conflict. In the event of a conflict between the terms and conditions of this Bill of Sale and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail.

3. No Representation. This Bill of Sale is made without any covenant, warranty or representation by, or recourse against, Seller or any of Seller's Affiliates of any kind whatsoever.

4. Severability. Whenever possible, each provision of this Bill of Sale shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Bill of Sale is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Bill of Sale.

5. Amendments. This Bill of Sale may not be amended or modified except by an instrument in writing signed by, or on behalf of, Buyer and Seller.

6. Counterparts; Facsimile and Electronic Signatures. This Bill of Sale may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Bill of Sale or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

7. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the internal Laws of the State of New York (without giving effect to the principles of conflicts of Laws thereof), except to the extent that the Laws of such state are

superseded by the Bankruptcy Code.

8. Third Party Beneficiaries and Obligations. This Bill of Sale shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Bill of Sale, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or liabilities under or by reason of this Bill of Sale.

9. Entire Agreement. This Bill of Sale, together with the Purchase Agreement and the exhibits and the documents referred to in the Purchase Agreement, contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, representations and statements, oral or written, between the Parties on the subject matter hereof, which such prior agreements, understandings, representations and statements, oral or written, shall be of no further force or effect.

* * * * *

IN WITNESS WHEREOF, the Parties have executed this Bill of Sale as of
the date first above written.

[SELLER]

By: _____
Name:
Title:

[Seller Signature Page to Bill of Sale]

[BUYER]

By: _____
Name:
Title:

[Buyer Signature Page to Bill of Sale]

EXHIBIT H

**Form of Landlord Notice
Form of Subtenant Notice**

NOTICE TO LANDLORD

[_____], 2015

Via Federal Express

[Name and Address of Landlord]

Re: Notice of assignment of lease at [_____] (the "Lease")

Ladies and Gentlemen:

Please be advised that on July 19, 2015, [_____], the tenant under the Lease ("Tenant"), and certain of its affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York.

Effective as of [_____], Tenant's interest in the Lease has been assigned to [_____] ("Assignee"), and Assignee has assumed all of the tenant's obligations under the Lease.

Any future inquiries regarding your Lease should be directed to the address below:

[Assignee's Name]
[Assignee's Notice Address]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Very truly yours,

[_____]

By: _____
Name:
Title:

NOTICE TO SUBTENANTS

[_____], 2015

Via Federal Express

[Name and Address of Subtenant]

Re: Notice of assignment of sublease at [_____] (the "Sublease")

Ladies and Gentlemen:

Please be advised that on July 19, 2015, [_____], the sublessor under the Sublease ("Sublessor"), and certain of its affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York.

Effective as of [_____], Sublessor's interest in the Sublease has been assigned to [_____] ("Assignee"), and Assignee has assumed all of the sublessor's obligations under the Sublease.

Any future inquiries regarding your Sublease should be directed to the address below:

[Assignee's Notice Name]
[Assignee's Notice Address]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Very truly yours,

[_____]

By:

Name:

Title:

Exhibit I

Form of Assignment and Assumption of Subleases

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153-0119
Attention: Samuel Zylberberg, Esq. (MM)

ASSIGNMENT AND ASSUMPTION OF SUBLEASE

This **ASSIGNMENT AND ASSUMPTION OF SUBLEASE** (this "Assignment") is entered into and effective as of [____], 2015, by and between [____], a [____] [____] having an address at [____] ("Assignor"), and [____], a [____] [____] having an address at [____] ("Assignee"). Assignor and Assignee are referred to collectively herein as the "Parties".

WHEREAS Assignor, as tenant, entered into a lease agreement with respect to certain premises more specifically described on Exhibit B attached hereto (the "Premises").

WHEREAS Assignor entered into that certain sublease dated [____] as more particularly described on Exhibit A (together with all amendments, modification, and renewals thereto, the "Sublease") with respect to all or a portion of the Premises; and

WHEREAS, Assignor desires to assign, transfer, convey and deliver to Assignee all of its right, title and interest in and to the Sublease, and Assignee desires to accept an assignment of the Sublease together with all right, title and interest of Assignor thereunder.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Assignment by Assignor. Assignor hereby assigns to Assignee all of Assignor's right, title, interest and obligations in, to and under the Sublease.
2. Assumption by Assignee. Assignee hereby expressly and unconditionally accepts the foregoing assignment and assumes and agrees to perform fully and faithfully each and every term, covenant, condition and obligation of Assignor under the Sublease and to meet Assignor's obligations under the Sublease.
3. Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.
4. Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by all of the parties hereto.
5. Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which

together will constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

6. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Premises are located, except to the extent that the laws of such state are superseded by the Bankruptcy Code.
7. Third Party Beneficiaries and Obligations. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or liabilities under or by reason of this Assignment.
8. Recordation. Subject to the following two sentences, this Assignment may be recorded in the appropriate public records of the county in which the Premises is located. Assignor makes no representation regarding the recordability of this Assignment, nor the Sublease or related documents. Assignor shall bear no liability for the failure of the Sublease or related documents to be recorded.
9. Entire Agreement. This Assignment, together with the Exhibits attached hereto, supersedes all prior agreements, understandings, representations, and statements, oral or written, between the Parties on the subject matter hereof, which such prior agreements, understandings, representations, and statements, oral or written, shall be of no further force or effect.
10. Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first
above written.

ASSIGNOR:

[•], a [•]

Witness Signature

Printed Witness Name

Witness Signature

Printed Witness Name

By: _____

Name: _____

Title: _____

[ACKNOWLEDGMENT]

Assignor Signature Page to Assignment and Assumption of Sublease –
[City], [State] (Store #[•]) ([doc#])

ASSIGNEE:

[•], a [•]

Witness Signature

Printed Witness Name

Witness Signature

Printed Witness Name

By: _____

Name: _____

Title: _____

[ACKNOWLEDGMENT]

Assignee Signature Page to Assignment and Assumption of Sublease -
[City], [State] (Store #[•]) ([doc#])

EXHIBIT A

Sublease

EXHIBIT B

Premises