

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

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<b>In re</b>	: <b>Chapter 11</b>
	:
<b>THE GREAT ATLANTIC &amp; PACIFIC TEA</b>	: <b>Case No. 15-23007 (RDD)</b>
<b>COMPANY, INC., <i>et al.</i>,</b>	:
	: <b>(Jointly Administered)</b>
<b>Debtors.</b>	:
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**ORDER (I) AUTHORIZING THE SALE OF THE MOUNT KISCO STORE  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND  
ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND  
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND LEASES IN  
CONNECTION THEREWITH AND (III) GRANTING RELATED RELIEF**

Upon the motion, dated July 19, 2015 (Docket No. 26) (the “Sale Motion”)<sup>1</sup>, filed by the above-captioned debtors and debtors in possession (the “Debtors”) seeking, among other things, the entry of an order (the “Sale 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 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 (the “Sale Transaction”); and the Court having taken into consideration this Court’s prior order, dated August 11, 2015 (Docket No. 495) (the “Bidding Procedures Order”), approving competitive bidding procedures for the Acquired Assets (the “Bidding Procedures”); and The Stop & Shop Supermarket Company, LLC (the “Buyer”) having submitted a bid for the Acquired Assets; and the Court having entered an

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<sup>1</sup> Capitalized terms used herein but not otherwise defined have the meanings given to them in the Amended Purchase Agreement (as defined below) or, if not defined in the Amended Purchase Agreement, the meanings given to them in the Sale Motion.

order, dated September 22, 2015 (Docket No. 1057) (the “Prior Sale Order”) (i) approving that certain Asset Purchase Agreement dated July 19, 2015 as amended on September 20, 2015, by and among Sellers and Buyer, and attached to the Prior Sale Order as **Exhibit A** (the “Purchase Agreement”) and (ii) authorizing, among other things, the sale to Buyer of the Acquired Assets other than those related to the Mount Kisco Store (the “Mount Kisco Assets”); and the Sellers having conducted an auction on October 1, 2015 with respect to the Mount Kisco Assets at which Buyer submitted the highest and best offer, as reflected in the amendment to the Purchase Agreement dated October 9, 2015 (the “Second Amendment”); and upon each of the objections and other pleadings filed in response to the Motion and the Debtors’ reply thereto; and the Court having conducted a hearing on the Sale Motion with respect to the Mount Kisco Assets on October 16, 2015 (the “Sale Hearing”), at which time all interested parties were offered an opportunity to be heard; and the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto, (ii) the Purchase Agreement, as amended by the Second Amendment (the “Amended Purchase Agreement”), a copy of which is attached hereto as **Exhibit A**, (iii) the declaration of Stephen Goldstein in support of the Sale Motion (Docket No. 251) and the supplements thereto, (iv) the declaration of Tim McDonagh (Docket No. 1425), (v) the declaration of Christopher McGarry (Docket No. 1427), (vi) the declaration of Dana Kaufman (Docket No. 1430), (vii) the declaration of Caroline Woodward in Support of the Sale (Docket No. 1021), and (viii) the arguments and representations of counsel made, and the evidence proffered and adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion and the form of this order (the “Proposed Sale Order”) having been provided in accordance with the Bidding Procedures Order; and it appearing that the relief requested in the Sale Motion 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 decide the Sale Motion and over the Sale Transaction, including the Mount Kisco Assets, 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 Sale Motion 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 Sale Motion 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 Sale Motion, the Sale Transaction and the relief requested in the Sale Motion has been given, as required by the Bankruptcy Code and the Bankruptcy Rules, to all Persons entitled to notice, including, but not limited to, the following: (i) all counterparties to the Leases, (ii) all other known creditors of the Debtors, (iii) all parties who have requested notice in

these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iv) all applicable federal, state and local taxing and regulatory authorities.

E. **Final Order**. This Sale 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 Sale Motion, the Amended Purchase Agreement, and the Sale Transaction and in entering into the Amended Purchase Agreement and related Bill of Sale, Deed, Assignment and Assumption Agreement and Lease Assignment and Assumption Agreements (the “Related Agreements”). The Debtors’ entry into and performance under the Amended 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 Transaction include, but are not limited to, the following: (i) the Amended Purchase Agreement constitutes the highest and best offer received for the Mount Kisco Assets; (ii) the Amended Purchase Agreement presents the best opportunity to maximize the value of the Mount Kisco Assets on a going concern basis and avoid decline and devaluation of the Mount Kisco Assets; (iii) unless the Sale Transaction and all of the other transactions contemplated by the Amended Purchase Agreement are concluded expeditiously, as provided for pursuant to the Amended Purchase Agreement, recoveries to creditors may be materially diminished; and (iv) the value of the Debtors’ estates will be maximized through the sale of the Mount Kisco Assets pursuant to the Amended Purchase Agreement.



G. **Compliance with Bidding Procedures.** The Debtors and Buyer complied with the Bidding Procedures and Bidding Procedures Order in all respects. Buyer was the Successful Bidder for the Mount Kisco Assets at the Auction conducted in accordance with the Bidding Procedures and Bidding Procedures Order.

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 over a period of over five months, both prior to the Petition Date and through the postpetition sale process pursuant to the Bidding Procedures Order and the Bidding Procedures, (ii) the Debtors conducted a fair and open sale process, (iii) the sale process, the Bidding Procedures and the Auction were non-collusive, duly noticed and provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Mount Kisco Assets, and (iv) the process conducted by the Debtors pursuant to the Bidding Procedures obtained the highest and best value for the Mount Kisco 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 to be paid by Buyer under the Amended Purchase Agreement constitutes fair and reasonable consideration for the Mount Kisco Assets.

J. **No Successor or Other Derivative Liability.** 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 between Buyer and the Debtors. The Sale Transaction does not amount to a consolidation, merger or *de facto* merger of Buyer and any of the Debtors.

K. **Good Faith; No Collusion.** The Amended 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. 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 that would cause or permit the Amended 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 Sale Motion, the bidding process (including the deadline for submitting bids and the Auction), the Sale Hearing, the Sale Transaction 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 Bidding Procedures Order; and (iii) no other or further notice of the Sale Motion, the Sale Transaction, the Bidding 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 Bidding Procedures Order, the Debtors have served prior to the Sale Hearing the Cure Notice and the revised Cure Notice, dated August 21, 2015 (together, the "**Cure Notice**"), which provided notice of the Debtors' intent to assume and assign the Leases and of the related proposed Cure Costs 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 Costs 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 Costs listed on the applicable Cure Notice and to the assumption and assignment of Leases to the Buyer.

N. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Mount Kisco 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 Mount Kisco Assets, including, without limitation, any 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 Mount Kisco Assets, the operation of the Debtors’ businesses before the date (the “Closing Date”) of the closing of the sale of the Mount Kisco Assets (the “Closing”) under the Amended Purchase Agreement, or the transfer of the Debtors’ interests in the Mount Kisco Assets to Buyer, and all Excluded Liabilities (collectively,

excluding any Assumed Liabilities, 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: (1) any of the employee benefit plans, including any Claims related to unpaid contributions or current or potential withdrawal or termination liability; (2) any of the Debtors’ collective bargaining agreements; (3) the Worker Adjustment and Retraining Notification Act of 1988; or (4) any of the Debtors’ current and former employees. Those holders of Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transaction or the Sale Motion 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 Mount Kisco 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 Mount Kisco Assets, if any, attach solely to the proceeds of the Sale Transaction 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 Mount Kisco 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 Mount Kisco Assets.

O. Buyer would not have entered into the Amended 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 Mount Kisco 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 Business that will not be assumed by Buyer, as described in the Amended Purchase Agreement.

P. The total consideration to be provided under the Amended 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 Mount Kisco 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 related to the Mount Kisco Assets<sup>2</sup> are integral to the Amended 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 Mount Kisco Assets to Buyer, (ii) allow the Debtors to sell their business to Buyer as a going concern, (iii) limit the losses suffered by counterparties to the Leases, and (iv) 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

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<sup>2</sup> For the avoidance of doubt, all references in this Sale Order to "Leases" shall refer only to those Leases related to the Mount Kisco Assets, and not those related to the other Acquired Assets. The assumption and assignment of the latter is governed by the Prior Sale Order.

counterparties to such Leases. Accordingly, the Leases may be assumed by the Debtors and assigned to Buyer as provided for in the Amended Purchase Agreement.

S. **Validity of the Transfer.** The transfer of the Mount Kisco Assets to Buyer as provided for under the Amended Purchase Agreement will be a legal, valid and effective transfer of the Mount Kisco Assets, and will vest Buyer with all right, title and interest of the Debtors in and to the Mount Kisco 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 Amended Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction 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 Amended Purchase Agreement, and (iii) upon entry of this Sale Order, other than any consents identified in the Amended Purchase Agreement (including with respect to antitrust matters), need no consent or approval from any other Person to consummate the Sale Transaction.

U. The Mount Kisco 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 Mount Kisco Assets, and no other Person has any ownership right, title, or interests therein.

V. The Amended Purchase Agreement is a valid and binding contract between the Debtors and Buyer and shall be enforceable pursuant to its terms. The Amended Purchase Agreement and the Sale Transaction itself, 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 Mount Kisco Assets must be approved and consummated promptly in order to preserve the value of the Mount Kisco Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtors and Buyer intend to close the Sale Transaction 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 Transaction as contemplated by the Amended 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 Sale Order.

X. **Personally Identifiable Information.** As contemplated in the Amended Purchase Agreement, and subject to the terms of this Order, the sale to Buyer under the Amended Purchase Agreement of personally identifiable information (as such term is defined in section 101(41A) of the Bankruptcy Code) about individuals is either consistent with the privacy policy of the Debtors in effect on the date of commencement of these chapter 11 cases or consistent with the recommendations of the consumer privacy ombudsman appointed in these chapter 11 cases.

Y. **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.

Z. **No Breach of Union Obligations.** The unions affected by the sale of the Mount Kisco Assets did not object 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.

**NOW THEREFORE, IT IS ORDERED THAT:**

1. **Motion is Granted.** The Sale Motion and the relief requested therein is granted and approved as set forth herein.
2. **Objections Overruled.** All objections (except for Cure Objections, if any, that have been adjourned, and solely to the extent such objections relate to any asserted cure obligations pursuant to section 365(b)(a)(A) and (B) of the Bankruptcy Code), if any, to the Sale Motion or the relief requested therein with respect to the Mount Kisco Assets that have not been 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 Amended Purchase Agreement is fair and reasonable.
5. **Approval of the Amended Purchase Agreement.** The Amended 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 Amended Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Amended Purchase Agreement be authorized and approved in its entirety; provided that this Sale Order is intended to apply solely with respect



to the Mount Kisco Assets and the Prior Sale Order with respect to all other Acquired Assets shall remain in full force and effect.

6. **Consummation of Sale Transaction.** 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 Amended Purchase Agreement and to consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Amended Purchase Agreement and this Sale 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 Amended 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 Mount Kisco Assets or (b) necessary or appropriate to the performance of the obligations contemplated by the Amended Purchase Agreement, all without further order of the Court.

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

9. All Persons are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Mount Kisco Assets to Buyer in accordance with the Amended Purchase Agreement and this Order; provided that the foregoing

restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

10. 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 Amended Purchase Agreement.

11. **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 Mount Kisco Assets in accordance with the terms of the Amended Purchase Agreement. The Mount Kisco Assets shall be transferred to Buyer, and upon 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 Mount Kisco 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 Transaction, in the same amount and order of their priority, with the same validity, force and effect which they have against the Mount Kisco Assets, and subject to any claims and defenses the Debtors may possess with respect thereto in each case immediately before Closing.

12. Except as otherwise provided in the Amended 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 Mount Kisco Assets, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such

Claims against Buyer, its Affiliates, successors or assigns, its property or the Mount Kisco 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 Sale 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.

13. This Sale Order (a) shall be effective as a determination that, as of the Closing Date, all Claims, have been unconditionally released, discharged and terminated as to Buyer and the Mount Kisco 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 Amended Purchase Agreement.

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

15. Except as expressly set forth in the Amended 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, including Claims arising under, without limitation: (a) any employment or labor agreements, including without limitation, any Affected Labor Agreement or the termination thereof; (b) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any 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, including, without limitation, the Employee Benefit Plans and any participation or other agreements related to the Employee Benefit Plans, 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 or (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.

16. 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 Mount Kisco Assets shall not have delivered to the Debtors prior to Closing, 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 Mount Kisco Assets or otherwise, then with regard to the Mount Kisco Assets that are purchased by Buyer pursuant to the Amended Purchase Agreement and this Sale 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 Mount Kisco Assets and (b) Buyer is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the Mount Kisco Assets. This Sale 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.

17. **No Successor or Other Derivative Liability.** By virtue of the Sale Transaction, 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 Amended Purchase Agreement. Upon 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, other than their obligation to establish and maintain any Cure Cost Reserve (as such term is defined in the Bidding Procedures Order) in accordance with the Bidding Procedures Order and this Order. Buyer acknowledges and agrees that from and after the Closing it shall comply with the terms of each of the assumed and assigned Leases in its entirety with respect to

obligations accruing from and after the Closing, including any indemnification obligations provided that they are based on events or omissions that occur on and after the Closing, unless any such provision is not enforceable pursuant to the terms of this Sale Order.

19. Upon Closing, each of the non-Debtor counterparties (including landlords) to the Leases are authorized and directed to execute and deliver such documents and take all other actions as may be necessary to implement the Amended Purchase Agreement and to assign and transfer the Leases to Buyer in accordance with the Amended Purchase Agreement and this Sale Order.

20. All Cure Costs shall be determined in accordance with the Bidding Procedures Order and paid in cash in accordance with the terms of the Amended Purchase Agreement after Closing. Payment of the Cure Costs shall be in full satisfaction and cure of any and all defaults under the Leases, whether monetary or non-monetary, and Buyer shall have no liability or obligation arising or accruing prior to the date of Closing, except as otherwise expressly provided in the Amended Purchase Agreement. 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. As set forth on the record of the Sale Hearing, Cure Costs for the post-Sale Hearing defaults asserted before the Closing shall either be reserved for future Court determination and payment as provided in paragraph 22 hereof or paid promptly after such Closing.

21. Subject to Sections 2.3 and 2.8 of the Amended Purchase Agreement, all valid property related expenses payable to the landlords pursuant to the terms of the Leases with respect to rent, common area maintenance fees, real estate taxes and utility charges that have

accrued but are not yet due and payable as of the Closing Date shall be paid by the Buyer in the normal course as they become due and the Purchase Price shall accordingly be adjusted in accordance with the Amended Purchase Agreement.

22. An Adjourned Cure Objection (as such term is defined in the Bidding Procedures Order) may be resolved after the Closing Date; provided that the Debtors maintain the Cure Cost Reserve. Upon resolution of such Adjourned Cure Objection and the payment of the applicable Cure Cost, if any, the applicable Lease that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to Buyer as of the Closing Date without further order of the Court, and Debtors' shall have no obligation to maintain the Cure Cost Reserve with respect to such Lease.

23. **Ipsso 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.

24. Upon the Debtors' assignment of the Leases to Buyer under the provisions of this Sale 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. 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.

25. The Leases shall, following the Closing under the Amended Purchase Agreement, remain in full force and effect for the benefit of Buyer, notwithstanding any provision in any such Lease (including those of the type described in sections 365(b)(2), 365(b)(3) and 365(f) of the Bankruptcy Code) that expressly or effectively (i) restricts, prohibits, conditions or limits the assignment by Sellers or the effectiveness of a Lease to Buyer or (ii) purports to terminate, recapture, impose any penalty, condition renewal or extension or modify any term or condition of the Leases upon the assignment of such Lease (each, an "Anti-Assignment Provision"), and such Anti-Assignment Provision shall be null, void and of no force and effect in connection with the assignment to Buyer pursuant to section 365(f) of the Bankruptcy Code. Anti-Assignment Provisions include, but are not limited to, the following:

- any provision of a Lease, any guarantee of any such Lease, any agreement ancillary thereto, including, without limitation any overlease agreement, master lease agreement or sublease agreement (a "Lease Agreement"), that purports to prohibit, condition, limit or otherwise restrict the assignment of such Lease by Sellers;
- any provision of a Lease Agreement that permits a Person other than a Debtor at any time to increase or reallocate payments under (including without limitation, any rent), declare a default with respect to, terminate, modify or cancel such Lease Agreement or right or obligation thereunder, by reason of (i) the release of Debtors from liability; (ii) premises going dark after the date a store operating under a Lease closes, until the date that is necessary to permit an assignee of such Lease to remodel, restock, refixture, and/or change signage at such premises; (iii) discontinuation of operations, interruption of business, tenant remodeling restrictions or minimum sales requirements during the period set forth in clause (ii) above; (iv) the Debtors ceasing to be a party to any Lease Agreement; or (v) the financial condition of the Debtors or any guarantor of the Debtors (the events in clauses (i)-(v), "Triggering Events");
- any provision of a Lease Agreement that permits a non-Debtor at any time to exercise a right of first refusal or rent recapture by reason of any Triggering Event;

- any provision of a Lease Agreement that permits a non-Debtor at any time to require payment of any fee, profit sharing or other payment by reason of any Triggering Event;
- any provision of a Lease Agreement that permits a non-Debtor at any time to impose a penalty or rental adjustment or allocation by reason of any Triggering Event;
- any provision of a Lease Agreement that permits a non-Debtor at any time to cancel, modify or restrict any assignee from exercising any renewal options by reason of any Triggering Event;
- any provision of a Lease Agreement that permits a non-Debtor at any time to seek damages or other relief by reason of any Triggering Event; and
- any provision of a Lease Agreement that purports to prohibit, restrict or condition (i) the removal of existing signage and the installation of standard signs (subject to applicable municipal codes) displaying the trade name of an assignee following an assignment; (ii) any and all alterations, additions, or improvements (including, without limitation, the front fascia of the premises) deemed necessary by such assignee (subject to applicable municipal codes) to renovate, construct, furnish, equip and conform the premises to a prototypical store of such assignee; or (iii) operation of the premises under such assignee's trade name.

26. **No Breach of Union Obligations.** The unions affected by the sale of the Mount Kisco Assets did not object 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.

27. **Statutory Mootness.** The transactions contemplated by the Amended 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 Transaction shall neither affect the validity of the Sale Transaction

nor the transfer of the Mount Kisco Assets to Buyer, free and clear of Claims, unless such authorization is duly stayed before the Closing Date pending such appeal.

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

29. **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 Sale 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 Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal will be foreclosed as moot.

30. **Personally Identifiable Information.** After appointment of the consumer privacy ombudsman in these chapter 11 cases, in accordance with section 332 of the Bankruptcy Code, and after giving due consideration to the facts, circumstances and conditions of the Amended Purchase Agreement, as well as the report of the consumer privacy ombudsman filed with the Court which Buyer agrees to comply with, no showing was made that the sale of personally identifiable information contemplated in the Amended Purchase Agreement, subject to the terms of this Order, would violate applicable nonbankruptcy law.

31. **Binding Effect of Sale Order.** The terms and provisions of the Amended Purchase Agreement and this Sale 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.

32. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Sale Order and the terms of (a) the Amended Purchase Agreement, or (b) any other order of this Court, the terms of this Sale Order shall control. Nothing contained in any chapter 11 plan hereinafter confirmed in these chapter 11 cases, or any order confirming such plan, shall conflict with or derogate from the provisions of the Amended Purchase Agreement or the terms of this Sale Order.

33. **Modification of Amended Purchase Agreement.** The Amended Purchase Agreement, and any related agreements, documents or other instruments, may be modified, amended or supplemented by the parties thereto, in a writing signed 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 Amended Purchase Agreement or any related agreements, documents or other instruments.

34. **Bulk Sales; Taxes.** No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Amended Purchase Agreement, the Sale Motion or this Sale Order, and Buyer shall not be liable for any taxes, penalties, interest, fines or other governmental charges imposed in connection with any such law, including, but not limited to New Jersey Statutes Annotated § 54:50-38, et seq., together with all

regulations, announcements, guidance and other administrative releases or requirements relating thereto.

35. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Sale Order and the Amended 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 Sale Order or the Amended Purchase Agreement (and such other related agreements, documents or other instruments) and to enforce the injunctions set forth herein.

Dated: October 29, 2015  
White Plains, New York

/s/Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.,**

**APW SUPERMARKETS, INC.,**

**PATHMARK STORES, INC.,**

**A&P REAL PROPERTY, LLC,**

**AND**

**THE STOP & SHOP SUPERMARKET COMPANY, LLC**

**JULY 19, 2015**

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### ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of July 19, 2015 by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P"), APW Supermarkets, Inc., a New York corporation, Pathmark Stores, Inc., a Delaware corporation, A&P Real Property, LLC, a Delaware limited liability company (each, a wholly-owned Subsidiary of A&P and, together with A&P, "Sellers"), and The Stop & Shop Supermarket Company, LLC, a Delaware limited liability company ("Buyer"). Sellers and Buyer are referred to collectively herein as the "Parties".

### WITNESSETH

WHEREAS, Sellers and certain of their affiliates contemplate filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on or about July 19, 2015 in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, Sellers operate the 25 supermarkets at the locations set forth in Schedule 3.5 of the Disclosure Schedule (as defined below) under the names "A&P", "Pathmark", and "Waldbaums" (each a "Store" and, collectively, the "Stores"); and

WHEREAS, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to purchase, acquire and assume from Sellers, all of the Acquired Assets (as defined below) and Assumed Liabilities (as defined below), all as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

### **ARTICLE I DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement:

"A&P" has the meaning set forth in the preamble.

"Acquired Assets" means all of Sellers' right, title, and interest in and to all of the following assets of Sellers used or held for use exclusively in the operation of the Stores and (to the extent applicable) located at the Stores on the applicable Closing Date, and to be acquired, in the aggregate, at the Closings:

- (a) the General Inventory (other than Excluded Inventory);
- (b) the Pharmacy Inventory (other than Excluded Inventory);
- (c) to the extent transferable under applicable Law, the Pharmacy Records; provided, however, if Buyer determines to purchase documents subject to applicable Law regarding privacy related to the Business, the costs of a privacy ombudsman relating solely to such documents purchased by Buyer, to the extent that the Bankruptcy Court requires a privacy ombudsman to be appointed, shall be borne equally between Buyer, on the one hand, and Sellers, on the other hand;
- (d) the Furnishings and Equipment owned by Sellers (other than Excluded Furnishings and Equipment);

(e) the Leases, together with (to the extent of the Sellers' interest therein) the buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto, subject to the rights of the applicable landlord (including rights to ownership or use of such property) under such Leases;

(f) the Affected Labor Agreements, solely to the extent assumed (collectively with the Leases, the "Transferred Contracts");

(g) without duplication of any Prorated Charges, all of Sellers' security deposits listed on Schedule 1.1(a), prepaid rent, and prepaid expenses previously paid by Sellers to fulfill Sellers' obligations under the Leases and, to the extent transferable, other deposits relating to the Stores under any of the Transferred Contracts (collectively, the "Prepaid Expenses");

(h) to the extent assignable or transferable, all warranties related to any of the foregoing;

(i) all rights, privileges, refunds, credits, claims, counterclaims, defenses, demands, causes of action, choses in action, indemnification rights, rights of recovery or setoff of any kind relating to the Acquired Assets or the Assumed Liabilities;

(j) subject to Section 5.11, all insurance claims pending, and any proceeds therefrom, in respect of any of the Acquired Assets or the Assumed Liabilities (the "Assigned Insurance Claims");

(k) all Permits of Sellers relating exclusively to the Stores that are assignable or transferable to Buyer pursuant to the Bankruptcy Code and other applicable Law (the "Assigned Permits") (for the avoidance of doubt, solely to the extent the applicable Governmental Authority consents to or otherwise approves the assignment or transfer of the applicable Permit (but only to the extent that such consent or approval is required by the terms of such Permit));

(l) all rights to the telephone and facsimile lines and numbers of the Stores (to the extent assignable or transferable to Buyer);

(m) copies of personnel files of the Covered Employees who accept offers of employment (excluding medical records and subject to employee consent to the extent required by applicable Law);

(n) subject to applicable customer protections, all customer data and information derived from branded loyalty promotion or co-branded credit card programs (to the extent in existence) and other similar information related to customer purchases at the Stores; provided, however, if Buyer determines to purchase data and records subject to applicable Law regarding privacy related to Sellers' business, the costs of a privacy ombudsman relating solely to such data and records purchased by Buyer, to the extent that the Bankruptcy Court requires a privacy ombudsman to be appointed, shall be borne equally between Buyer, on the one hand, and Sellers, on the other hand;

(o) all state lottery equipment which can be assigned or transferred with the consent of the state lottery (but subject to the receipt of such consent); and

(p) Improvements located at a Store;

provided, however, notwithstanding anything to the contrary set forth in this definition, the Acquired Assets shall not include any Excluded Assets.

“Additional Privacy Considerations” means any privacy or security requirements (other than HIPAA Commitments) imposed by federal or state Law on healthcare data, including state healthcare data breach notification Laws and related state consumer protection Laws.

“Affected Assets” has the meaning set forth in Section 5.11(a).

“Affected Labor Agreements” means the collective bargaining agreements covering any of the Covered Employees, each of which is listed on Schedule 1.1(b), other than any Affected Labor Agreement that is deemed an Excluded Asset pursuant to Section 6.3.

“Affected Unions” means the unions identified on Schedule 1.1(c).

“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.

“Agreement” has the meaning set forth in the preamble.

“Allocation Objection Notice” has the meaning set forth in Section 2.7.

“Allocation Principles” has the meaning set forth in Section 2.7.

“Antitrust Law” means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act, and all other laws and orders that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, whether in the United States or elsewhere.

“Assigned Insurance Claims” has the meaning set forth in the definition of Acquired Assets.

“Assigned Permits” has the meaning set forth in the definition of the Acquired Assets.

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.5(c).

“Assumed Liabilities” means the following Liabilities of each of the Sellers, which shall be assumed by Buyer, in the aggregate, at the Closings:

(a) all Liabilities under the Leases arising from and after the applicable Closing Date, excluding all applicable Cure Costs;

(b) all amounts allocated to Buyer under Section 2.8 and Section 6.5;

(c) all Liabilities relating to or arising out of the ownership or operation of the Stores or any Acquired Asset from and after the applicable Closing Date; and

(d) (i) to the extent Buyer agrees to assume an Affected Labor Agreement, all Liabilities under such Affected Labor Agreement to be assumed by Buyer in accordance with the provisions of Section 6.3 (for the avoidance of doubt, including any related Cure Costs) or (ii) to the extent that any Affected Union enters into a Modified Labor Agreement with Buyer, all Liabilities arising under such Modified Labor Agreement, in each case, arising from and after the applicable Closing Date.

“Auction” has the meaning set forth in Section 5.4(d).

“Back-up Termination Date” means the first to occur of (a) sixty (60) days after the entry of the sale order approving a Competing Bid, (b) consummation of the transaction with the winning bidder at the Auction, (c) Buyer’s receipt of notice from Sellers of the release by Sellers of Buyer’s obligations under Section 5.4(d), and (d) November 30, 2015.

“Bankruptcy Cases” means the contemplated Chapter 11 cases of Sellers and certain of their Affiliates.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bidding Procedures Order” means an order of the Bankruptcy Court, in substantially the form as set forth in Exhibit A with such changes as are reasonably acceptable to Buyer and Sellers that, among other things, (a) approves and authorizes the payment of the Termination Payment on the terms and conditions set forth in Section 5.4, (b) establishes procedures for the Auction process, and (c) establishes a date for a hearing on the Sale Order.

“Bill of Sale” has the meaning set forth in Section 2.5(c).

“Bonding Requirements” means standby letters of credit, guarantees, indemnity bonds and other financial commitment credit support instruments issued by third parties on behalf of Sellers or any of their respective Subsidiaries or Affiliates regarding any of the Acquired Assets.

“Break-Up Fee” has the meaning set forth in Section 5.4(a).

“Business” means the operation of the Stores by Sellers.

“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.

“Buyer” has the meaning set forth in the preamble.

“Buyer Labor Agreement” has the meaning set forth in Section 6.3.

“Buyer Proration Amount” has the meaning set forth in Section 2.8(a).

“Cash Equivalents” means cash, checks, money orders, funds in time and demand deposits or similar accounts, marketable securities, short-term investments, and other cash equivalents and liquid investments.

“Cash Purchase Price” has the meaning set forth in Section 2.3(a).

“Closing” has the meaning set forth in Section 2.4.

“Closing Cash Payment” shall mean, with respect to any Closing, an amount in cash equal to the sum of (a) the aggregate amount of the Per-Store Purchase Price for the Stores being acquired at the applicable Closing as set forth on Exhibit F hereto, *plus* (b) the aggregate Inventory Purchase Price for the Stores being acquired at the applicable Closing, *plus* (c) the aggregate Prepaid Expenses Amount in respect of the Stores being acquired at the applicable Closing, *plus* (d) the aggregate Seller Proration Amount in respect of the Stores being acquired at the applicable Closing, if any, *minus* (e) the aggregate Buyer Proration Amount in respect of the Stores being acquired at the applicable Closing, and *minus* (f) the aggregate Percentage Rent Reduction Amount in respect of the Stores being acquired at the applicable

Closing, if any (such sum, as may be adjusted pursuant to Section 2.3(c), Section 5.7, Section 5.11 and/or Section 6.5 at each Closing).

“Closing Date” has the meaning set forth in Section 2.4(b).

“Closing Statement” has the meaning set forth in Section 2.5(a).

“COBRA” has the meaning set forth in Section 6.4(f).

“Competing Bid” has the meaning set forth in Section 5.4(b).

“Confidentiality Agreement” means the confidentiality agreement, dated as of June 8, 2015, by and between A&P and Buyer.

“Consent” means any consent, approval, authorization, waiver, or notification of a Person.

“Contract” means any agreement, contract, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and any amendments thereto.

“Contracting Parties” has the meaning set forth in Section 9.14.

“Covered Employee” means an employee of A&P or any of its Subsidiaries at the Closing whose duties relate primarily to the operation of any of the Stores, including such employees who are on short-term disability or any other approved leave of absence as of the Closing.

“Cure Costs” means any and all amounts, costs or expenses that must be paid or actions or obligations that must be performed or satisfied pursuant to section 365(b)(1) of the Bankruptcy Code to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Buyer of the Transferred Contracts, as determined by the Bankruptcy Court or agreed to by Sellers and the non-Seller counterparty to the applicable Transferred Contract.

“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.

“Disclosure Schedule” has the meaning set forth in Article III.

“Employee Benefit Plan” has the meaning set forth in Section 3.11(a).

“Environmental Law” means any applicable foreign, federal, state or local statute, regulation, ordinance, or rule of common law currently in effect relating to pollution, the protection of the environment or natural resources.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” means Wells Fargo Bank, National Association, a national banking association.

“Escrow Agreement” means that certain Escrow Agreement, dated as of the date hereof, by and among Sellers, Buyer, and the Escrow Agent, a copy of which is attached hereto as Exhibit B.

“Escrow Amount” has the meaning set forth in Section 2.3(b).

“Excluded Assets” means all assets of Sellers as of each applicable Closing that are not expressly included in the Acquired Assets, including:

(a) any asset of Sellers that is (i) not located in the Stores and not used or held for use exclusively in the operation of the Stores or (ii) inseparable from any other business of Sellers or any of their Affiliates (other than the operation of the Stores), in each case, including (A) organizational documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates, and other documents relating to Sellers’ organization, maintenance, existence, and operation; (B) books and records related to (1) Taxes paid or payable by Sellers or (2) any claims, obligations or liabilities not included in Assumed Liabilities; (C) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of or with respect to either of the Sellers, other than a Tax refund or credit that is attributable to any Tax for which Buyer is responsible under Section 2.8 or Section 6.5; and (D) any assets not customarily based or located at the Stores;

(b) capital stock of any of A&P’s Subsidiaries;

(c) all Cash Equivalents and accounts receivable;

(d) all Permits other than the Assigned Permits;

(e) all insurance policies and binders and all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders, other than the Assigned Insurance Claims;

(f) all of Sellers’ rights under this Agreement or any Related Agreement;

(g) all of Sellers’ rights under any Contracts primarily related to any Excluded Asset and under all other Contracts other than the Transferred Contracts;

(h) any and all automobiles, trucks, tractors, and trailers;

(i) any other rebate or refund arising from the operation of the Stores prior to the applicable Closing;

(j) all Intellectual Property owned, used, or held for use by Sellers, including, for the avoidance of doubt, the names “A&P Liquors,” “A&P,” “Waldbaums,” “Superfresh,” “Food Emporium,” “Food Basics,” “Best Cellars,” “Pathmark,” “Foodmart” and all other marks set forth on Schedule 1.1(d) of the Disclosure Schedule, any name or trademark, service mark, trade name, logo, trade dress, Internet domain name or other indicia of origin that includes, relates to or derives from any such name, or any related abbreviations, acronyms or other formatives based on any such name, whether alone or in combination with any other words, phrases, or designs, and all registrations, applications and renewals thereof, all rights and goodwill associated therewith and any name or trademark, service mark, trade name, logo, Internet domain name, or other indicia of origin that is confusingly similar thereto or derived therefrom (collectively, the “Seller Marks”);

(k) all leased equipment located at or used in the Stores as listed on Schedule 1.1(e) and all POS/order entry equipment and other computer systems (including, but not limited to, front-end scanners, scales, keyboards, displays and store controllers; DSD receiving system; global equipment/check cashing system; Veriphone/RBS Lynk/credit processing; store time and attendance system (PC and clock); and store ordering handhelds (Telxons), if any), and other in-store processors, direct access storage devices, and electronic funds transfer devices;



(l) the Furnishings and Equipment described on Schedule 1.1(f) (the “Excluded Furnishings and Equipment”);

(m) all Contracts other than the Transferred Contracts;

(n) all Excluded Inventory;

(o) all other assets bearing any of the Seller Marks, other than Furnishings and Equipment; and

(p) those items, if any, set forth on Schedule 1.1(g).

“Excluded Furnishings and Equipment” has the meaning set forth in the definition of Excluded Assets.

“Excluded Inventory” has the meaning set forth in Section 2.6(a).

“Excluded Liabilities” means all Liabilities of Sellers that are not Assumed Liabilities, including, without limitation, the following:

(a) any Liability not relating to or arising out of the Stores or the Acquired Assets, including any Liability relating to or arising out of the Excluded Assets;

(b) any Liability for Taxes (that are not Assumed Liabilities) (i) attributable to the Acquired Assets or the operation of the Stores with respect to any taxable period or portion thereof that ends on or prior to the applicable Closing Date, (ii) imposed on Sellers, or (iii) allocated to Sellers pursuant to Section 2.8 and Section 6.5;

(c) except as provided in Section 6.4, all Liabilities relating to employees of Sellers or any of their respective Subsidiaries (including, without limitation, the Covered Employees) in connection with withheld payroll Taxes, payroll, workman’s compensation benefits, and employee withholding, or otherwise relating to such employees for periods on or prior to the applicable Closing Date;

(d) all accounts payable;

(e) all Liabilities of Sellers under this Agreement or any Related Agreement and the transactions contemplated hereby or thereby;

(f) all Liabilities allocable to the period prior to the applicable Closing Date under or with respect to the Transferred Contracts;

(g) all Cure Costs (other than those with respect to any Affected Labor Agreements, to the extent assumed by Sellers at the direction of Buyer);

(h) for the avoidance of doubt, all Liabilities relating to the ownership or operation of the Stores or any Acquired Asset prior to the applicable Closing Date, except as provided in Section 2.8 and Section 6.5; and

(i) except as provided in Section 6.4, all Liabilities of Sellers or any of their respective Subsidiaries or any ERISA Affiliate with respect to any Employee Benefit Plan or any other compensation or benefit plan, program, policy, agreement or arrangement of any Seller or any Subsidiary thereof.

“Excluded Store” has the meaning set forth in Section 5.3(c).

“Furnishings and Equipment” means all trade fixtures, shopping carts, aisle markers, store models, shelving, display racks and refrigeration equipment owned by Sellers and located at the Stores, but excluding any such items bearing any Seller Mark if such Seller Mark cannot be concealed or removed by Buyer in accordance with Section 6.9.

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

“General Inventory” means all usable and saleable food, beverages (including, to the extent transferable to Buyer under applicable Law, alcohol), and other merchandise and products (including general merchandise but excluding greeting cards) located at and offered for sale to customers at the Stores on the applicable Closing Date, but not including Excluded Inventory.

“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.

“Healthcare Governmental Authority” means the United States Department of Health and Human Services, the Centers for Medicare and Medicaid Services, the U.S. Drug Enforcement Administration, and any applicable state board of pharmacy.

“Healthcare Laws” means any applicable Law of any Healthcare Governmental Authority with respect to regulatory matters relating to the sale and dispensing of pharmaceuticals and controlled substances, and the provision, administration, and/or payment for pharmacy products or services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act.

“HIPAA Commitments” means any applicable data privacy or security requirements under HIPAA.

“HIPPA Privacy Standards” has the meaning set forth in Section 6.10(a).

“Hired Covered Employee” means a Covered Employee who is hired by, and commences work with, Buyer at a Store acquired by Buyer under this Agreement.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Improvements” means Seller’s interest in all of the buildings, building fixtures and improvements located on, attached to or within the Stores which are not Excluded Assets.

“Initial Closing” has the meaning set forth in Section 2.4(a).

“Initial Closing Date” has the meaning set forth in Section 2.4(a).

“Intellectual Property” means (a) all issued patents and patent applications, together with all reissuances, continuations, continuations-in-part, divisionals, extensions and reexaminations thereof; (b) all trademarks, service marks, trade dress, logos, trade names, and Internet domain names, together with all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) all copyrights, together with all registrations and applications for registration therefor and renewals in connection therewith; (d) all trade secrets, know-how, technology, improvements, and inventions; and (e) all computer software (including data and databases).

“Inventory” means all General Inventory and Pharmacy Inventory.

“Inventory Date” has the meaning set forth in Section 2.6(a).

“Inventory Purchase Price” has the meaning set forth in Section 2.6(a).

“Inventory Report” has the meaning set forth in Section 2.6(a).

“Inventory Taker” has the meaning set forth in Section 2.6(a).

“IRC” means the Internal Revenue Code of 1986, as amended.

“IRS” means the Internal Revenue Service.

“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.

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

“Lease Assignment and Assumption Agreement” has the meaning set forth in Section 2.5(c).

“Leases” means all master leases, leases, subleases, licenses, concessions, options, contracts, easements, reciprocal easements, termination agreements, subordination agreements, nondisturbance and attornment agreements, lease guarantees, estoppel certificates and other agreements (written or oral), and any amendments, assignments, extensions, renewals or supplements to the foregoing, and recorded memoranda of any of the foregoing, pursuant to which any Seller holds or has granted any leasehold or subleasehold estates and other rights to use or occupy any Store or any premises used exclusively in connection with a Store or a store or other premises located in a shopping center in which a Store is located.

“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.

“Lien” means (a) any mortgage, pledge, lien, charge, hypothecation, claim, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property, 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.

“Litigation” means any action, cause of action, suit, claim, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at law or in equity and whether before any Governmental Authority.

“Master Leases” means the master leases for the properties set forth on Section 1.1(h) of the Disclosure Schedules under the heading “Master Leases”.

“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 reasonably be expected to have, a material adverse effect on the business, assets, operation, condition (financial or otherwise) or results of operation of the Business or the Acquired Assets (excluding the Excluded Assets and the Excluded Liabilities), 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) the occurrence of any act of God or natural disaster, including any fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules; (g) the taking of any action expressly contemplated by this Agreement or any Related Agreement or taken with the prior written consent of Buyer; (h) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code with respect to any unions, employees, retirees, retiree benefits or collective bargaining agreements; (i) the sale of any other assets or stores (other than the Acquired Assets) to any third parties by any Seller or any of its Affiliates; (j) any effects or changes arising from or related to the breach of the Agreement by Buyer; or (k) the filing of the Bankruptcy Cases or (l) any strike or labor dispute; provided, however, that in the case of the foregoing clauses (a) through (f), 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 reasonably be expected to have, a disproportionate effect on the Business (excluding the Excluded Assets and the Excluded Liabilities) or the Acquired Assets relative to other participants operating in the retail grocery industry.

“Modified Labor Agreement” means a new collective bargaining agreement with an Affected Union that is entered into by Buyer and an Affected Union.

“Non-Party Affiliates” has the meaning set forth in Section 9.14.

“Ordinary Course of Business” means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice.

“Outside Date” has the meaning set forth in Section 8.1(b)(ii).

“Parties” has the meaning set forth in the preamble.

“Percentage Rent Reduction Amount” has the meaning set forth in Section 2.8(f).

“Permit” means any franchise, approval, authorization, permit, license, order, registration, certificate, variance or similar right obtained from any Governmental Authority.

“Permitted Lien” means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; (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 Course of Business, 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 leased or licensed real or personal property, the terms and conditions of the Lease applicable thereto; (d) with respect to real property, zoning, building codes and other land use laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property; (e) 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 do not or would not reasonably be expected to adversely affect the current occupancy or use of such real property in any material respect; (f) matters that would be disclosed on an accurate survey of the real property 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; (g) any liens shown in any title commitment, report or policy, or otherwise of record that do not or would not reasonably be expected to adversely affect the current occupancy or use of the real property in any material respect; (h) any other Liens that Buyer has expressly stated are acceptable to Buyer in a writing delivered to Sellers; and (i) any Liens on the fee property

underlying any Lease not created by such 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.

“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.

“Per-Store Purchase Price” shall mean the amount set forth opposite the name and store number for each Store on Exhibit F.

“Pharmacy Inventory” shall mean all pharmaceutical inventories owned by Sellers and located at the Stores as of the applicable Inventory Date, including (a) all legend drugs and controlled substances required by Law to be dispensed under the supervision of a registered or licensed pharmacist and (b) all over-the-counter pharmaceutical inventories, but excluding any proprietary branded products.

“Pharmacy Licenses” has the meaning set forth in Section 5.7(b).

“Pharmacy Records” shall mean all files, prescription records, customer records, lists and profiles, documents, instruments, papers, books, in-store computer files and records and all other records of Sellers and in any media solely to the extent exclusively related to the Stores; in each case, relating to the patients, doctors, pharmaceuticals, controlled substances and prescriptions dispensed by or filled at the Stores.

“Pre-Closing Loss” has the meaning set forth in Section 5.11(a).

“Prepaid Expenses” has the meaning set forth in the definition of Acquired Assets.

“Prepaid Expenses Amount” has the meaning set forth in Section 2.3(a).

“Proposal” has the meaning set forth in Section 6.3.

“Prorated Charges” has the meaning set forth in Section 2.8(a).

“Proration Period” has the meaning set forth in Section 6.5(b).

“Purchase Price” has the meaning set forth in Section 2.3(a).

“Purchase Price Allocation” has the meaning set forth in Section 2.7.

“Purchase Price Reduction” has the meaning set forth in Section 2.3(c).

“Related Agreements” means the Bills of Sale and the Assignment and Assumption Agreements.

“Removed Store” has the meaning set forth in Section 5.11(b)(iii)(x).

“Representative” means, when used with respect to a Person, such 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.

“Sale Hearing” means a hearing before the Bankruptcy Court to approve this Agreement and the Sale Order.

“Sale Order” means an order of the Bankruptcy Court, in substantially the form set forth in Exhibit E with such changes as are reasonably satisfactory to the Parties, (a) approving (i) this Agreement

and the execution, delivery, and performance by Sellers of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Buyer free and clear of all Liens, other than any Permitted Liens or any Assumed Liabilities; (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein; and (iv) the assumption and assignment to Buyer of the Transferred Contracts on the terms set forth herein; (b) determining that Buyer is a good faith purchaser; and (c) providing that the Closings will occur in accordance with the terms and conditions hereof.

“Second Request Recommendation” has the meaning set forth in Section 5.3(c).

“Second Requests” has the meaning set forth in Section 5.3(a).

“Seller Marks” has the meaning set forth in the definition of Excluded Assets.

“Seller Proration Amount” has the meaning set forth in Section 2.8(a).

“Sellers” has the meaning set forth in the preamble.

“Sellers’ Accounts” has the meaning set forth in Section 2.5(b).

“Separable Stores” means the Stores denoted with an asterisk (\*) set forth on Exhibit F.

“Store Withdrawal Deadline” has the meaning set forth in Section 5.3(c).

“Stores” has the meaning set forth in the recitals.

“Subsequent Closing” has the meaning set forth in Section 2.4(b).

“Subsequent Closing Date” has the meaning set forth in Section 2.4(b).

“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.

“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 IRC), 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.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Termination Payment” has the meaning set forth in Section 5.4(a).

“Transfer Tax” has the meaning set forth in Section 6.5(a).

“Transferred Contracts” has the meaning set forth in the definition of Acquired Assets.

“WARN Act” means, collectively, the Worker Adjustment and Retraining Notification Act of 1989 and any similar state or local law.

Section 1.2 Interpretations. Unless otherwise indicated herein to the contrary:

(a) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule, clause or subclause, such reference shall be to an Article, Section, Exhibit, Schedule, clause or subclause of this Agreement.

(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(d) The word “if” and other words of similar import shall be deemed, in each case, to be followed by the phrase “and only if.”

(e) The use of “or” herein is not intended to be exclusive.

(f) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa.

(g) All terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(h) References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Authority shall be deemed to include reference to any successor thereto.

(i) Any reference herein to “Dollars” or “\$” shall mean United States dollars.

(j) The Parties acknowledge and agree that the specification of any dollar amount in the representations, warranties, or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and no Party shall use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material.

(k) References in this Agreement to materials or information “furnished to Buyer” and other phrases of similar import include all materials or information (i) made available as of the date hereof to Buyer or its Representatives in the data room prepared by Sellers or (ii) provided to Buyer or its Representatives in response to written requests for materials or information.

## **ARTICLE II PURCHASE AND SALE**

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, Buyer will purchase from Sellers, and Sellers will sell, transfer, assign,

convey, and deliver to Buyer, all of the Acquired Assets, free and clear of all Liens (other than Permitted Liens) in accordance with this Agreement.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, effective as of the applicable Closing Date, Buyer will assume and become responsible for the Assumed Liabilities being assumed at such Closing. Buyer agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all such Assumed Liabilities in a timely manner in accordance with the terms thereof. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall not assume or become responsible for, and shall not be obligated to (or to cause any other Person to) pay, perform, honor or discharge the Excluded Liabilities.

Section 2.3 Consideration; Deposit; Escrow Amount.

(a) The consideration for the Acquired Assets shall be (i) an aggregate Dollar amount equal to the sum of (A) \$146,300,000 (the "Cash Purchase Price"), *plus* (B) the amount of the aggregate Inventory Purchase Price for the Stores being acquired at all the Closings, *plus* (C) the amount of the aggregate Prepaid Expenses (the "Prepaid Expenses Amount") for the Stores being acquired at all the Closings, *plus* (D) the aggregate Seller Proration Amount, if any, to be paid in respect of the Stores being acquired at all the Closings, *minus* (E) the aggregate Buyer Proration Amount, if any, to be paid in respect of the Stores being acquired at all the Closings, and *minus* (F) the aggregate Percentage Rent Reduction Amount in respect of the Stores being acquired at all the Closings, if any (such sum, as may be adjusted pursuant to Section 5.7, Section 5.11 and/or Section 6.5, the "Purchase Price"), and (ii) Buyer's assumption of the Assumed Liabilities. At Closing, all security deposits held by Sellers pursuant to the subleases on Schedule 3.5 shall be assigned and delivered to Buyer or an amount equal to such deposits credited to Buyer. All such security deposits (as of the date set forth on Schedule 3.5) are set forth on Schedule 2.3.

(b) Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Buyer shall immediately deposit with the Escrow Agent the sum of \$14,630,000 by wire transfer of immediately available funds (the "Escrow Amount"), to be released by the Escrow Agent and delivered to either Buyer or Sellers, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Amount (together with all accrued investment income thereon, if any) shall be distributed as follows:

(i) the Escrow Amount shall be held by the Escrow Agent and applied towards the Purchase Price payable by Buyer to Sellers under Section 2.3(a) at the final Subsequent Closing, and all accrued investment income thereon, if any, shall be delivered to Buyer at the final Subsequent Closing;

(ii) if this Agreement is terminated by Sellers pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, if any, shall be delivered to Sellers; and

(iii) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, shall in each case be returned to Buyer.

(c) Notwithstanding anything to the contrary contained in this Agreement, in the event that (i) after the Auction a sale order is entered pursuant to the Bidding Procedures Order in which any Person other than the Buyer purchases one or more of the Separable Stores, (ii) Buyer exercises its right to exclude any Excluded Store pursuant to Section 5.3(c), or (iii) Buyer or any Seller exercises its right to exclude any Removed Store pursuant to Section 5.11(b)(iii)(x), then



this Agreement shall be automatically amended to give effect to the following: (i) such Separable Stores, Excluded Stores and Removed Stores, as applicable, and all Acquired Assets related to such Separable Stores, Excluded Stores and Removed Stores, as applicable, shall be excluded from the Acquired Assets, (ii) all Assumed Liabilities related to such Separable Stores, Excluded Stores and Removed Stores, as applicable, shall be excluded from the Assumed Liabilities, and (iii) the Purchase Price and Closing Cash Payment shall be reduced by an aggregate amount equal to the sum of the Per-Store Purchase Price for each such Separable Store, Excluded Store and Removed Store, as applicable (the sum of such reduction, the "Purchase Price Reduction").

Section 2.4 Closings. The closings of the transactions contemplated by this Agreement (each, a "Closing") shall take place as follows:

(a) the first closing (the "Initial Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York (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 "Initial Closing Date") that is the second (2<sup>nd</sup>) Saturday following the entry of the Sale Order, provided, that all of the conditions to the obligations of Sellers and Buyer to consummate the transactions contemplated hereby at the Initial Closing set forth in Article VII (other than conditions that by their nature are to be satisfied at the Initial Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto; and

(b) each subsequent Closing (each, a "Subsequent Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York (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 and all Subsequent Closings shall take place no later than the earlier of (x) thirty (30) days following the Initial Closing and (y) November 15, 2015 (each such date of a Subsequent Closing, a "Subsequent Closing Date" and each Subsequent Closing Date and the Initial Closing Date is referred to as a "Closing Date") that is the next Business Day following the date upon which all of the conditions to the obligations of Sellers and Buyer to consummate the transactions contemplated hereby at such Subsequent Closing set forth in Article VII (other than conditions that by their nature are to be satisfied at such Subsequent Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. Buyer and Sellers agree to commence each Subsequent Closing as soon as practicable after the Initial Closing;

(c) within thirty (30) Business Days following the date hereof, Buyer shall provide to Sellers a schedule of the Stores and the related Acquired Assets to be acquired at the Initial Closing and at each Subsequent Closing; and

(d) for purposes of this Agreement and the transactions contemplated hereby, each Closing will be deemed to occur and be effective, and title to and risk of loss associated with the Acquired Assets to be acquired by Buyer at such Closing shall be deemed to occur at 12:01 am, New York City time, on each Closing Date.

Section 2.5 Pre-Closing Determinations; Closing Payments and Deliveries.

(a) The Parties shall cooperate in good faith to calculate and agree upon, no later than one (1) day prior to each Closing Date: (i) the aggregate Inventory Purchase Price in accordance with Section 2.6(a), for the Stores to be acquired at such Closing Date, (ii) the aggregate Prepaid Expenses Amount in accordance with Section 2.3(a), for the Stores to be acquired at such Closing Date, (iii) the aggregate Seller Proration Amount or the aggregate Buyer Proration Amount, as the case may be, in accordance with Section 2.8(a), for the Stores (and

Acquired Assets) to be acquired at such Closing Date, (iv) the Percentage Rent Reduction Amount, if any, in accordance with Section 2.8(f), for the Stores (and Acquired Assets) to be acquired at such Closing Date, and (v) a statement (the “Closing Statement”) setting forth the calculation of the items set forth in subparagraphs (i) through (iv) and the applicable Closing Cash Payment and the Purchase Price (as may be adjusted pursuant to Section 5.7, Section 5.11 and/or Section 6.5) based thereon.

(b) On the Initial Closing Date, Buyer shall pay to Sellers the applicable Closing Cash Payment (net of any Taxes required by Law to be withheld, if any) for the Stores (and Acquired Assets) being acquired at the Initial Closing Date, which shall be paid by wire transfer of immediately available funds into an account or accounts designated by Sellers at least three (3) Business Days prior to the Initial Closing (the “Sellers’ Accounts”). On each Subsequent Closing Date, Buyer shall pay the applicable Closing Cash Payment (net of any Taxes required by Law to be withheld, if any, and with respect to the final Subsequent Closing, less the Escrow Amount, which shall be released to Sellers by the Escrow Agent) to Sellers for the Stores (and Acquired Assets) being acquired at each such Subsequent Closing Date, which shall be paid by wire transfer of immediately available funds into the Sellers’ Accounts.

(c) At the Initial Closing, Sellers will deliver to Buyer (i) a duly executed Bill of Sale substantially in the form of Exhibit C (the “Bill of Sale”) for each Store and the Acquired Assets being acquired at the Initial Closing; (ii) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit D (the “Assignment and Assumption Agreement”) for each Transferred Contract (other than the Leases) being acquired at the Initial Closing; (iii) a duly executed certificate from an officer of each Seller to the effect that each of the conditions specified in Section 7.1(a) and Section 7.1(b) is satisfied; (iv) a certification of non-foreign status duly executed by each Seller dated as of the Initial Closing Date and satisfying the requirements of Treasury Regulation Section 1.1445-2(b)(2)(i); (v) a schedule of all lease agreements and related amendments of the Leases of the Stores acquired at such Closing and the original Lease files for such Stores in Sellers’ possession (including, to the extent in Sellers’ possession, all original, fully executed copies of all Leases, correspondence files, common area maintenance files, any waivers, consents or notices related to the Leases, all zoning/permitting related files and documents, and all other related documents); (vi) any estoppel certificates obtained in accordance with Section 5.5 in respect of such Stores; (vii) a duly executed Lease Assignment and Assumption Agreement substantially in the form of Exhibit G (the “Lease Assignment and Assumption Agreement”) for each Lease being acquired at the Initial Closing; and (viii) all assigned warranties, Assigned Permits and personnel files of the Covered Employees who accept offers of employment with Buyer, in each case included in the Acquired Assets and in Sellers’ possession for the Stores purchased at the Initial Closing.

(d) At each Subsequent Closing, Sellers will deliver to Buyer (i) the duly executed Bill of Sale for each Store and the Acquired Assets being acquired at such Closing; (ii) a duly executed Assignment and Assumption Agreement for each Transferred Contract (other than the Leases) being acquired at such Closing; (iii) a duly executed certificate from an officer of each Seller to the effect that each of the conditions specified in Section 7.3(a) and Section 7.3(b) is satisfied; (iv) a schedule of all lease agreements and related amendments of the Leases of the Stores acquired at such Closing and the original Lease files for such Stores in Sellers’ possession (including, to the extent in Sellers’ possession, all original, fully executed copies of all Leases, correspondence files, common area maintenance files, any waivers, consents or notices related to the Leases, all zoning/permitting related files and documents, and all other related documents); (v) any estoppel certificates obtained in accordance with Section 5.5 in respect of such Stores; (vi) a duly executed Lease Assignment and Assumption Agreement for each Lease being acquired at such Subsequent Closing; and (vii) all assigned warranties, Assigned Permits and

personnel files of the Covered Employees who accept offers of employment with Buyer, in each case included in the Acquired Assets and in Sellers' possession for the Stores purchased at such Subsequent Closing.

(e) At each Closing, Buyer will deliver to Sellers (i) the Bill of Sale duly executed by Buyer for each Store and the Acquired Assets being acquired at such Closing; (ii) the Assignment and Assumption Agreements duly executed by Buyer for each Transferred Contract (other than the Leases) being acquired at such Closing; (iii) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b), or in Section 7.4(a), as applicable, are satisfied; and (iv) the Lease Assignment and Assumption Agreements duly executed by Buyer for each Lease being acquired at such Closing.

#### Section 2.6 Inventory.

(a) A physical count of the Inventory, and a calculation of the value thereof, at each of the Stores shall be made by Retail Grocery Inventory Service or another nationally-recognized, independent inventory service (the "Inventory Taker") mutually agreed to by the Parties, after the close of business on the day that is two (2) days prior to the Initial Closing Date or any Subsequent Closing Date, as applicable, or on such other date as the Parties may mutually agree (the date of each such inventory count being an "Inventory Date"). The Inventory Taker will conduct the physical inventory in accordance with instructions set forth in Schedule 2.6(a) and otherwise in accordance with the terms and conditions of this Section 2.6. Each Party shall be entitled to have Representatives present during each inventory count and the fees and expenses of the Inventory Taker shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers. The Inventory Taker shall promptly upon completion of each inventory count, but in no event later than the close of business on the date that is one (1) day prior to each Closing, deliver a report (each, an "Inventory Report") of the Inventory to be acquired at the applicable Closing and the net value of the Inventory to be acquired at the applicable Closing determined in accordance with the procedures and using the retail-to-cost conversions set forth on Schedule 2.6(a) as of the date it conducted such inventory (the net value as reported in each such Inventory Report, the "Inventory Purchase Price") to each Party. The physical inventory (and the Inventory Purchase Price to be paid by Buyer for the Inventory to be acquired at the applicable Closing) shall not include Inventory that is (i) A&P branded or other private label inventory; (ii) damaged, defective, spoiled, perishable (the term "perishable" to include, without limitation, such merchandise as fresh, smoked or processed meats, produce, deli items, bakery items, frozen food and dairy items needing refrigeration), outdated (any merchandise that has a manufacturer's date by which it must be sold that is less than thirty (30) days after the applicable Inventory Date being deemed outdated for this purpose), obsolete, expired, consignment, continuity, recalled or otherwise unsaleable at normal retail price in the Ordinary Course of Business at the Stores; (iii) not transferable to Buyer under applicable Law; (iv) direct store delivery vendor products; (v) promotional or seasonal merchandise; (vi) books or greeting cards; (vii) tobacco and cigarette products; (viii) non-matched inventory (*i.e.*, inventory of a size, brand or variety that Buyer does not carry); (ix) Inventory ordered in the Ordinary Course of Business at the Stores not received at the Stores on or before the applicable Inventory Date; or (x) supplies, maintenance supplies, containers, labels, spare parts and supply items, such as paper bags, polyfilm, and the like (collectively, the "Excluded Inventory").

(b) Buyer shall make application to the applicable authorities to transfer any alcohol included in the Inventory to Buyer, and any such application shall be made promptly after the execution of this Agreement and shall be diligently pursued by Buyer, at Buyer's sole cost and expense. Sellers, at no out of pocket cost or expense to Sellers, shall reasonably cooperate with Buyer and use their commercially reasonable efforts to provide any documents and/or

information necessary to assist in effectuating said transfer and execute such consents or other papers as may reasonably be required. Notwithstanding anything to the contrary contained in this Agreement, if the approval of the applicable authorities to transfer such alcohol to Buyer is not obtained prior to each applicable Closing, such alcohol will be deemed Excluded Inventory for all purposes in this Agreement.

(c) The complete inventory prepared by the Inventory Taker shall be prepared in accordance with the usual and customary practices of the industry (and otherwise consistent with Schedule 2.6(a)), and each Inventory Report shall set forth the portion of the Inventory Purchase Price attributable to the Inventory for each Store being acquired at the applicable Closing, determined in the manner provided above. In the event that the Parties do not agree on the value of the Inventory for any Store because the Parties disagree as to whether certain items should be counted as Excluded Inventory or as to Sellers' cost of Inventory, the opinion of the Inventory Taker shall be final and binding.

Section 2.7 Allocation. Buyer and Sellers agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities, and all other relevant items among the Acquired Assets in accordance with section 1060 of the IRC and the Treasury Regulations thereunder (the "Allocation Principles"). No later than ninety (90) days after the last Subsequent Closing Date, Buyer shall deliver to Sellers an allocation of the Purchase Price and the Assumed Liabilities (and all other relevant items) as of the last Subsequent Closing Date among the Acquired Assets determined in a manner consistent with the Allocation Principles (the "Purchase Price Allocation") for Sellers' review. Sellers shall have an opportunity to review the proposed Purchase Price Allocation for a period of twenty (20) days after receipt of the proposed Purchase Price Allocation. If Sellers disagree with any aspect of the proposed Purchase Price Allocation, Sellers shall notify Buyer in writing prior to the end of such twenty (20)-day period (an "Allocation Objection Notice"), setting forth Sellers' proposed Purchase Price Allocation and specifying, in reasonable detail, any good faith dispute as to Buyer's Purchase Price Allocation. Buyer and Sellers shall use commercially reasonable efforts to resolve any objection by Sellers to the proposed Purchase Price Allocation. If, within ten (10) days after Buyer receives an Allocation Objection Notice, the Parties have not resolved all objections and agreed upon a final Purchase Price Allocation, the Parties shall engage an independent accounting firm mutually acceptable to Buyer and Sellers to resolve any outstanding disputes, and such resolution shall be final, conclusive and binding on each of the Parties. The fees and disbursements of such independent accounting firm shall be shared equally by Buyer, on the one hand, and Sellers, on the other hand. Buyer and Sellers shall make appropriate adjustments to the Purchase Price Allocation to reflect any adjustments to the Purchase Price. Buyer and Sellers agree (and agree to cause their respective subsidiaries and Affiliate) to prepare, execute, and file IRS Form 8594 and all Tax Returns on a basis consistent with the Purchase Price Allocation. None of the Parties will take any position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, unless otherwise required by Law or a final determination by a Governmental Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 2.7 shall survive the Closings without limitation.

Section 2.8 Proration.

(a) On each Closing Date all property related expenses including rent (other than any percentage rent) paid or received, common area maintenance fees, real estate taxes, utility charges (unless final meter readings are obtained) and similar items under each of the Leases transferred at such Closing (the "Prorated Charges") shall be apportioned and prorated between Sellers and Buyer as of such Closing Date with (i) Buyer bearing the expense of Buyer's proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under such Lease for the applicable month (or installment period as to real estate taxes, water, sewer and vault charges or

assessments) and the denominator being the total number of days in the lease month or installment period in which such Closing occurs, times (B) the number of days in such lease month or installment period, as applicable, following the day that immediately precedes such Closing Date and paying such amount to Sellers to the extent payment for such Prorated Charges has been made by Sellers prior to such Closing, and (ii) Sellers bearing the remaining portion of such Prorated Charges (and paying the amounts thereof to Buyer to the extent payment for such Prorated Charges has not been previously made by Sellers). The net amount of all Prorated Charges owed to Buyer and Sellers as determined pursuant to this Section 2.8(a) shall be referred to as the "Buyer Proration Amount" if owed to Buyer or the "Seller Proration Amount" if owed to Sellers. Sellers shall, not less than five (5) Business Days prior to the applicable Closing Date, provide Buyer with a statement setting forth in reasonable detail its calculation of (x) the Prepaid Expenses Amount as of such Closing Date and (y) the Prorated Charges and the Buyer Proration Amount or Seller Proration amount, if any and as the case may be. Buyer shall give notice to Sellers within three (3) days after delivery of such statement of any disputes Buyer has with Sellers' calculation therein, and the Parties shall negotiate in good faith to determine and agree upon, no later than one (1) day prior to the applicable Closing Date, the Prepaid Expenses Amount and the amount of the Buyer Proration Amount or Seller Proration Amount, if any and as the case may be. In the event the Parties are unable to resolve any such dispute, the Parties shall request the Bankruptcy Court to make a determination on an expedited basis.

(b) As to real estate Taxes and assessments, if the applicable Closing shall occur before a new real estate or personal property Tax rate is fixed for the applicable property, the apportionment of Taxes for such property at the applicable Closing shall be upon the basis of the old Tax rate for the preceding fiscal year applied to the latest assessed valuation. Promptly after the new Tax rate is fixed, the apportionment of Taxes shall be recomputed and any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at the applicable Closing shall be promptly corrected and the proper party reimbursed.

(c) If on the applicable Closing Date any tenant is in arrears in the payment of rent or has not paid the rent payable by it and which is attributable to the month in which the applicable Closing occurs (whether or not it is in arrears for such month on the applicable Closing Date), any rent received by Buyer or Sellers after the applicable Closing shall be applied to amounts due and payable by such tenant in the following order of priority: first, to rent attributable to the month in which the applicable Closing occurred, and, thereafter, ratably, between rent attributable to the months following the month in which the applicable Closing occurred and rent attributable to the months preceding the month in which the applicable Closing occurred. If rent or any portion thereof received by Sellers or Buyer after the applicable Closing is due and payable to the other party by reason of the foregoing allocation, the appropriate sum shall be promptly paid to such other party.

(d) Following the applicable Closing Date, at no cost to Sellers, Buyer shall use commercially reasonable efforts to collect rent owed to Sellers by any tenant allocable to the period up to and including the applicable Closing Date. Buyer agrees to reasonably cooperate with Sellers at no cost to Buyer in connection with all efforts by Sellers to collect such rent. Notwithstanding the foregoing, Buyer shall not be obligated to pursue, be involved in or cooperate in connection with any Litigation regarding the efforts to collect rent owed to Sellers by any tenant allocable to the period up to and including the applicable Closing Date.

(e) If any of the items subject to apportionment under the foregoing provisions cannot be apportioned at the applicable Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the applicable Closing are discovered subsequent to the applicable Closing,

then such item shall be reapportioned and such errors and omissions corrected as soon as practicable after the applicable Closing Date and the proper party reimbursed.

(f) Sellers shall, not less than five (5) Business Days prior to the applicable Closing Date, provide Buyer with a statement setting forth in reasonable detail: (i) each Lease (and the corresponding Store) which provides for the payment of percentage rent by Sellers; (ii) the sales of such Store during the current lease year or other applicable current percentage rent period and projected sales through the applicable Closing Date; (iii) the sales of such Store annualized through the end of the current lease year; (iv) a calculation of the amount of percentage rent payable under such Lease based on such annualized sales, if any; (v) a calculation of Sellers' pro rata share of such percentage rent based upon the number of days of the current fiscal year Sellers occupied such Store; and (vi) the aggregate amount of such pro rata shares of percentage rent for all such Stores being acquired at the applicable Closing (such aggregate amount, the "Percentage Rent Reduction Amount"). Buyer shall give notice to Sellers within three (3) days after delivery of such statement of any disputes Buyer has with Sellers' calculations therein, and the Parties shall negotiate in good faith to determine and agree upon, no later than one (1) day prior to the applicable Closing Date, the Percentage Rent Reduction Amount. In the event the Parties are unable to resolve any such dispute, the Parties shall request the Bankruptcy Court to make a determination on an expedited basis.

Section 2.9 Possession of Stores; Removal of Excluded Assets. Possession of the Stores and other Acquired Assets being transferred hereunder shall be delivered to Buyer at each applicable Closing, free and clear of (a) all Excluded Assets (which shall be removed by Sellers within twenty four (24) hours of the Inventory count for such Closing at Sellers' sole cost and expense) and (b) rubbish and debris, and shall be broom clean. The keys to the Stores and the combinations to all safes at the Stores shall be delivered to Buyer or its designated Representative at the applicable Closing. Prior to each applicable Closing, the Parties shall cooperate in effecting a transfer of the utilities servicing the Stores from Sellers to Buyer so as to avoid any interruption of utility service to the Stores. Sellers shall continue to operate all heat and air conditioning and all refrigerators and freezers in the Stores through and including the applicable Closing Date, in the Ordinary Course of Business.

### **ARTICLE III SELLERS' REPRESENTATIONS AND WARRANTIES**

Sellers represent and warrant to Buyer that the statements contained in this Article III are true and correct as of the date of this Agreement, except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule").

Section 3.1 Organization of Sellers; Good Standing. Each Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of its incorporation and has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate 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.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court's entry of the Sale Order, each Seller has full power and authority (including 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 each Seller is a party have been duly authorized by such Seller. Upon due execution hereof by each Seller, this Agreement (assuming due

authorization and delivery by Buyer) shall constitute, subject to the Bankruptcy Court's entry of the Sale Order, the valid and legally binding obligation of such Seller, enforceable against such Seller 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.

Section 3.3 Noncontravention; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will (a) conflict with or result in a breach of the organizational documents of either Seller, (b) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, violate any Law or Decree to which either Seller is subject in respect of the Acquired Assets, (c) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which either Seller is a party or to which any of the Acquired Assets is subject, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other than (x) the applicable requirements of the HSR Act, and (y) as required or pursuant to the Bankruptcy Code, the Bidding Procedures Order, the Sale Order or the Confirmation Order, neither Seller is required to give any notice to, make any filing with, or obtain any Consent of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such Consent has not had and would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay either Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 3.4 Title to Assets. Immediately prior to the applicable Closing, Sellers will have good and valid title to, or the right to use, the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens). Pursuant to the Sale Order, Sellers will convey to Buyer such title to or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens), at each applicable Closing.

Section 3.5 Real Property.

(a) Schedule 3.5 of the Disclosure Schedule sets forth the location of each Store, each of which is leased to a Seller by a third party, and a list of all leases with respect to such property. Sellers have made available to Buyer a true and complete copy of each Lease, to the extent in their possession, prior to the date hereof. With respect to each Lease: (i) such Lease is in full force and effect and constitutes the valid and legally binding obligation of the Seller party thereto and, to Sellers' Knowledge, the counterparty thereto, enforceable against such Seller and, to Sellers' Knowledge, the counterparty thereto 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; (ii) neither such Seller nor, to Sellers' Knowledge, the counterparty thereto is in breach or default under such Lease, except for those defaults that will be cured in accordance with the Sale Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Leases); (iii) no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a default or breach under any Lease, and (iv) except under valid subleases, sublicenses or licenses made available to Buyer and as set forth in Schedule 3.5 of the Disclosure Schedule, the applicable Seller party is the sole occupant of the Store and no Seller has entered into any agreement with any other Person for occupancy of any Store or any portion thereof.

(b) None of the Improvements materially encroach on any land that is not the subject of the Lease or on any easement or servitude, and there are no encroachments on any portion of such real property by any buildings or improvements from adjoining real property, which encroachment would materially interfere with the use or occupancy of such real property or the applicable Store or the continued operation of the Acquired Assets. To Sellers' Knowledge, (i) use of the Improvements for a grocery store (and current ancillary uses) is permitted under all applicable zoning and other land use Law; and (ii) all Improvements are in material compliance with all applicable Law, including those pertaining to zoning, building and the disabled.

(c) To Sellers' Knowledge, there is no legal impediment (whether arising out of any matter of record, title, or out of any building, zoning, fire, health, safety or Environmental Law, or otherwise, or any other lease of premises in any shopping center) to the use of any Store as a food supermarket and/or pharmacy or to the exercise and enjoyment by Buyer of its rights and privileges as tenant under the Leases.

Section 3.6 Litigation; Decrees. Except as set forth in Schedule 3.6 of the Disclosure Schedule and other than the Bankruptcy Case, there is no material Litigation pending or, to Sellers' Knowledge, threatened, (a) with respect to any Acquired Asset or (b) that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Other than the Bankruptcy Case, neither Seller is subject to any outstanding Decree that (a) would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (b) would prevent or materially delay such Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.7 Labor Relations. Except as set forth in Schedule 3.7 of the Disclosure Schedule, neither Seller is a party to or bound by any collective bargaining agreement covering the Covered Employees.

Section 3.8 Brokers' Fees. Other than the fees and expenses payable to Evercore Group L.L.C. in connection with the transactions contemplated hereby, which shall be borne by Sellers, neither Seller 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.

Section 3.9 Taxes.

(a) (i) In each case with respect to the operation of the Stores or ownership of the Acquired Assets, Sellers have timely filed all material Tax Returns required to be filed with the appropriate Tax Authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Sellers); and (ii) all Taxes shown as due on such Tax Returns have been paid (except as prohibited by the Bankruptcy Code).

(b) All material Taxes that Sellers were required by Law to withhold or collect with respect to the operation of the Stores or ownership of the Acquired Assets in connection with amounts paid or owing to any employee, independent contractor, creditor or other third party, in all material respects, have been duly withheld or collected and have been timely paid to the appropriate authorities to the extent due and payable (except as prohibited by the Bankruptcy Code).

(c) Sellers are not foreign persons within the meaning of section 1445 of the IRC.



Section 3.10 Tangible Personal Property. Schedule 3.10 of the Disclosure Schedule sets forth all Transferred Contracts that constitute leases of personal property used by Sellers in the Business.

Section 3.11 Employee Benefits.

(a) Schedule 3.11(a) of the Disclosure Schedule lists all “employee benefit plans,” as defined in section 3(3) of ERISA, including any multiemployer plans as defined in section 3(37) of ERISA, and all other material employee benefit plans or arrangements (other than governmental plans and statutorily required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, employment, change in control, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by Sellers and their Subsidiaries with respect to Covered Employees (the “Employee Benefit Plans”).

(b) True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans, have been made available to Buyer (A) any plan documents, and all material amendments thereto, (B) the most recent Forms 5500 and (C) the most recent summary plan descriptions (including letters or other documents updating such descriptions).

(c) Each of the Employee Benefit Plans sponsored by Sellers and its Subsidiaries that is intended to qualify under section 401 of the IRC has received a favorable determination letter from the IRS that such plan is so qualified, and, except as disclosed on Schedule 3.11(c) of the Disclosure Schedule, to the Knowledge of Sellers, nothing has occurred with respect to the operation of any such plan which could reasonably be expected to result in the revocation of such favorable determination.

(d) Each of the Employee Benefit Plans has been maintained, in all material respects, in accordance with its terms and all provisions of applicable Law. No Seller has incurred, and no event has occurred and no condition or circumstance exists that could result, directly or indirectly, in, any unsatisfied Liability (including, without limitation, any indirect, contingent or secondary Liability) of any Seller under Title IV of ERISA or Section 412 or 430 of the Code or Section 302 or 303 of ERISA.

Section 3.12 Compliance with Laws; Permits.

(a) Except as set forth on Schedule 3.12(a) of the Disclosure Schedule, Sellers are in compliance in all material respects with all Laws (including Environmental Laws and employment Laws, but except for Laws addressed in Section 3.13 and Section 3.14) and Decrees applicable to the Business. Sellers have not received any written notice of or been charged with the violation of any Laws (including Environmental Laws and employment Laws) or Decrees, which remain outstanding or otherwise could be considered material. To Sellers’ Knowledge, there is no pending or threatened, action, investigation or inquiry of any sort (other than non-material routine or periodic inspections or reviews) regarding the possible material breach or violation of any Laws applicable to the Business. Except as set forth on Schedule 3.12(a) of the Disclosure Schedule, to Sellers’ Knowledge, Sellers have not conducted any dry cleaning operations at any of the Stores. With respect to the environmental issues for which Sellers were responsible at Store 658 (Long Beach, NY) on Schedule 3.12(a) of the Disclosure Schedule, Sellers have accomplished full closure of such issues to the satisfaction of all applicable Governmental Authorities such that no further monitoring, reporting or remediation is required. To Sellers’ Knowledge, with respect to Store 626 (Ozone Park, NY), there are no current conditions, which would reasonably be expected to result in the Sellers incurring material

liabilities under Environmental Laws, including liabilities related to investigation or remediation of the Store.

(b) Schedule 3.12(b) of the Disclosure Schedule sets forth a Store-by-Store list of all material Permits held, used or intended to be used by Sellers, or otherwise required, in connection with or related to the Business, in each case that are in effect on the date hereof. Sellers are in compliance in all material respects with all such Permits. Sellers hold all of such material Permits and such Permits constitute all Permits which are required for the Business as presently conducted. Each such Permit is in full force and effect and has not expired. Sellers are not in material default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a material default or violation) of any term, condition or provision of any such Permit to which they are parties.

Section 3.13 Pharmacy Records. The Pharmacy Records that are included in the Acquired Assets are true and complete in all material respects and have been maintained in all material respects in accordance with all applicable Laws, including all Healthcare Laws.

Section 3.14 Pharmacy Operations.

(a) Sellers are duly qualified for participation in the Medicare and Medicaid programs with respect to all pharmacy operations conducted at the Stores. Sellers have not received any written notice indicating that such qualification may be terminated or withdrawn. Sellers are in material compliance with all filing requirements with respect to claims or other reports required to be filed with respect to the purchase of products or services by third-party payors (including, without limitation, Medicare and Medicaid), and Sellers do not have any material Liability to any payor with respect thereto.

(b) With respect to pharmacy operations at the Stores, Sellers have complied in all material respects with all applicable Laws, including Healthcare Laws and the regulations issued pursuant thereto and all statutes and regulations relating to the possession, distribution, maintenance and documentation of controlled substances.

Section 3.15 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article III (as modified by the Disclosure Schedule) or expressly contained in any Related Agreement, neither Sellers nor any other Person shall be deemed to have made any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding either Seller, any Acquired Assets, any Assumed Liabilities or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article III (as modified by the Disclosure Schedule) or any Related Agreement, NEITHER SELLER MAKES ANY OTHER (AND HEREBY DISCLAIMS EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSINGS OCCUR, BUYER WILL ACQUIRE THE ACQUIRED ASSETS AND ASSUME THE ASSUMED LIABILITIES IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Sellers disclaim all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant, or representative of Sellers or any

of their Affiliates), except for the representations and warranties contained in this Article III (as modified by the Disclosure schedule) or expressly contained in any Related Agreement.

#### **ARTICLE IV**

#### **BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to each Seller that the statements contained in this Article IV are true and correct as of the date of this Agreement.

Section 4.1 Organization of Buyer; Good Standing. Buyer is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State of Delaware and has all requisite corporate or similar power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction. Buyer has full power and authority (including full corporate or other entity 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.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II) will (a) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (b) violate any Law or Decree to which Buyer is, or its assets or properties are, subject or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer. Other than the applicable requirements of the HSR Act, Buyer is not required to give any notice to, make any filing with, or obtain any Consent of any Governmental Authority in order for Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such Consent would not reasonably be expected to, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Litigation; Decrees. There is no Litigation pending or, to Buyer's knowledge, threatened in writing that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Buyer nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Brokers' Fees. Buyer has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Sellers or any of their Affiliates could become liable or obligated to pay.

Section 4.6 Sufficient Funds; Adequate Assurances. Buyer has, and at the Initial Closing (and each Subsequent Closing) will have, immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Buyer in connection with the transactions contemplated hereby. Buyer is and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Transferred Contracts and the related Assumed Liabilities.

Section 4.7 HIPAA. Buyer is a "Covered Entity" as defined HIPAA. The transactions contemplated by this Agreement will not violate any of the HIPAA Commitments or any Additional Privacy Requirements.

## **ARTICLE V PRE-CLOSING COVENANTS**

The Parties agree as follows with respect to the period between the execution of this Agreement and the applicable Closing (except as otherwise expressly stated to apply to a different period):

### **Section 5.1 Efforts; Cooperation.**

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby (including by giving, or causing to be given, any notices to, making any filings with, and using commercially reasonable efforts to obtain any Consents of Governmental Authorities, as are necessary and appropriate to consummate the transactions contemplated hereby). Without limiting the generality of the foregoing, (i) each Seller shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.1 and Section 7.3 that are within its control or influence to be satisfied or fulfilled, and (ii) Buyer shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.2 and Section 7.4 that are within its control or influence to be satisfied or fulfilled.

(b) Without limiting the generality of Section 5.1(a) (but for the avoidance of doubt, subject to Section 5.3) no Party shall take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

### **Section 5.2 Conduct of the Business Pending the Closing.**

(a) Prior to the Closing applicable to any given Store or Acquired Asset, except (i) as set forth on Schedule 5.2(a) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as otherwise expressly contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller shall (A) conduct the Business only in the Ordinary Course of Business, (B) use its commercially reasonable efforts to (1) preserve the present business operations, organization and goodwill of the Business, and (2) preserve the present relationships

with material vendors and suppliers of the Business, and with the Stores' landlords, (C) maintain the Acquired Assets in their existing condition and repair, subject to ordinary wear and tear; (D) other than in the Ordinary Course of Business, not add or remove any Furnishing and Equipment to or from any Store except (i) in accordance with the terms hereof or (ii) if broken or in need of repair; (E) except for Excluded Inventory, not transfer any Inventory to or from the Stores from or to other stores or supermarkets operated by Sellers or their Affiliates or to any third parties (except sales of Inventory to customers in the ordinary course of business); (F) not amend, modify, waive, or replace any Transferred Contract (for the avoidance of doubt, excluding any renewal options contained in any Leases on the date hereof); (G) keep all insurance policies currently maintained with respect to the Stores and the Acquired Assets, or suitable replacements or renewals, in full force and effect through the close of business on the applicable Closing Date; (H) maintain all Permits used in the Business, including Pharmacy Licenses, file all applicable renewals in connection therewith, and use commercially reasonable efforts to prevent termination or expiration of any existing Permit (including Pharmacy Licenses) or Medicare and Medicaid provider numbers related to any such Store.

(b) Except (i) as set forth on Schedule 5.2(b) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as otherwise contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), neither Seller shall, solely as it relates to the Business:

(i) (x) other than as required by any applicable collective bargaining agreement or by Law, (A) materially increase the annual level of compensation of any Covered Employee, (B) materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan; (y) announce, implement or effect any material reduction in force, lay-off, early retirement program, severance program or other program or effort concerning the termination of employment of employees (other than routine employee terminations for cause); or (z) hire any employee or permit to be transferred to any Store any employee of Sellers or any other affiliate of Sellers, other than any hiring or transfer in replacement of an employee terminated for cause, or who otherwise resigned (which replacement employee will not be hired at a base salary or bonus amount greater than the terminated or resigned employee);

(ii) subject any of the Acquired Assets to any Lien, except for Permitted Liens and any Lien securing any debtor in possession loan facility or granted in an order authorizing use of cash collateral;

(iii) agree to do anything prohibited by this Section 5.2.

(c) Notwithstanding anything in this Section 5.2 to the contrary, with respect to each Store, during the period commencing on the date that is (i) thirty (30) days prior to the anticipated Closing Date for such Store in the case of Excluded Inventory described in Sections 2.6(a)(v), (vi) and (vii), and (ii) ten (10) days prior to the anticipated Closing Date for such Store in the case of all other categories of Excluded Inventory, Seller will have no obligation to purchase or maintain levels of such Excluded Inventory at each such Store.

### Section 5.3 Regulatory Approvals.

(a) Each of the Parties hereto shall make, to the extent required, its respective filing under the HSR Act with respect to the transactions contemplated hereby on or before July 31, 2015. In addition, the Parties shall mutually agree to make any and all other filings required pursuant to other Antitrust Laws as promptly as reasonably practicable following the date that this

Agreement is executed. Further, Buyer shall use its reasonable best efforts to: (i) supply as promptly as reasonably practicable any additional information and documentary material that may be requested or required pursuant to any Antitrust Law, including the HSR Act; and (ii) cause the expiration or termination of any applicable waiting periods under the HSR Act or any other Antitrust Law as soon as reasonably practicable. Immediately prior to the end of the initial fifteen (15) day HSR waiting period, Buyer may pull and refile its filing under the HSR Act so as to re-start the Federal Trade Commission's initial waiting period, unless staff of the Federal Trade Commission notifies the Parties during the initial fifteen (15) day waiting period that it will allow the applicable HSR waiting period to expire without the need for issuance of Requests for Additional Information and Documentary Material ("Second Requests").

(b) In connection with seeking all requisite approvals and authorizations for the transactions contemplated by this Agreement under any Antitrust Law or any state Law, the Parties shall use reasonable best efforts to: (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) as promptly as reasonably practicable after the date on which this Agreement is executed, jointly contact and meet with the staff of the Federal Trade Commission regarding the transactions contemplated hereby; (iii) keep each other reasonably informed in all material respects of any material communication received by such Party from, or given by such Party to, any Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, in each case, regarding any of the transactions contemplated hereby; and (iv) permit each other to review any material communication given to it by, and, to the extent reasonably practicable, consult with each other in advance of any meeting or conference with, any Governmental Authority, including in connection with any proceeding by a private party. The foregoing obligations in this Section 5.3(b) shall be subject to the Confidentiality Agreement and any attorney-client, work product, or other privilege. Sellers shall be permitted to communicate privately with any Governmental Authority regarding Sellers' financial condition and, on a confidential basis and without divulging any confidential information regarding the Buyer, matters relating to competing bidders for the Stores, and Buyer and Buyer's outside counsel shall not have the right to attend or participate in such meetings, conferences, or proceedings, and shall not have access to material prepared by Sellers relating to such matters.

(c) Buyer shall have the right not to acquire, and Sellers shall have the right not to sell, any or all of the Stores if, and only if: (i) any Governmental Authority with jurisdiction over the enforcement of any Antitrust Law, including the Federal Trade Commission, including its staff, or any state attorney general, indicates in writing that it has recommended or made the determination to issue Second Requests or similar subpoenas to further investigate whether the acquisition of such Store(s) may violate any Antitrust Law (a "Second Request Recommendation"), issues a Second Request or similar subpoena seeking information concerning such Store(s), or indicates that such Store(s) at present raise or may raise competitive issues; or (ii) if any Litigation is threatened or instituted by any Governmental Authority or private party challenging the acquisition of any such Store(s) as violative of any Antitrust Law. In the event that, subject to the limitations set forth herein, Buyer or Sellers choose to exercise their right not to acquire any Store(s), the Party exercising such right shall notify the other Party in writing and identify any such Store(s) ("Excluded Stores") by no later than 11:59 p.m. New York Time on August 31, 2015 ("Store Withdrawal Deadline"), and Buyer shall have no further right or obligation to acquire, and Seller shall have no further right or obligation to sell, such Store(s) or any Acquired Assets associated with such Store(s), or assume any Assumed Liabilities associated with such Store(s). For the avoidance of doubt, except as provided in Section 5.3(d) below, if there is a Second Request Recommendation, Second Requests or similar subpoena as set forth

above, or if any Litigation is threatened or instituted by any Governmental Authority or private party challenging the acquisition, ownership or operation of any such Store(s) (or the continued ownership and operation of Buyer's other assets) as violative of any Antitrust Law, neither Buyer nor its Affiliates shall have any obligation to: (A) seek to resolve such objections or challenges as such Governmental Authority or private party may have to such transactions, including to vacate, lift, reverse, or overturn any order, whether temporary, preliminary, or permanent, so as to permit consummation of the transactions contemplated by this Agreement, (B) respond to or otherwise resolve any Second Requests or similar subpoenas received from any Governmental Authority or any other Person in connection with the transactions contemplated by this Agreement, (C) prosecute or otherwise pursue any Litigation under any Antitrust Law seeking clearance or approval of the transactions contemplated by this Agreement, or (D) offer, negotiate or agree to, by consent decree, hold separate order or otherwise, any sale, divestiture, license, or other disposition of or restriction on, any of Sellers' or Buyer's respective assets (including the Acquired Assets), Stores, or interests therein, so as to permit consummation of the transactions contemplated by this Agreement.

(d) Notwithstanding any other provision in this Agreement, with respect to any Stores that Buyer or Sellers have not withdrawn pursuant to their rights under Section 5.3(c) on or before the Store Withdrawal Deadline, Buyer shall use its reasonable best efforts to eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Authority or any other Person in opposition to the consummation of any transaction contemplated hereby, so as to enable the Parties to consummate the transactions contemplated by this Agreement as soon as practicable, but in any event not later than the Outside Date, including, without limitation, by offering, negotiating, effecting, and agreeing to, by consent decree, hold separate order or otherwise, any sale, divestiture, license, or other disposition of or restriction on, any of the Acquired Assets, Stores, or interests therein (but excluding, for the avoidance of doubt, any of the Buyer's other assets); provided, however, that any such sale, divestiture, license, disposition, restriction on, holding separate, or other similar arrangement or action is conditioned on the occurrence of, and shall become effective only from and after, the Closing Date; and provided, further, that nothing in this Section 5.3(d) shall require Buyer to defend or initiate any Litigation with any Person.

(e) Actions or agreements required of Buyer pursuant to this Section 5.3 shall under no circumstances be considered a Material Adverse Effect.

#### Section 5.4 Bankruptcy Court Matters.

(a) Approval of Break-Up Fee and Expense Reimbursement. In the event that a Competing Bid is consummated (except for a Competing Bid with respect to a Separable Store), in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers, Sellers shall pay Buyer, in accordance with the terms hereof (including Article VIII) and the Bidding Procedures Order, a break-up fee in an amount equal to (i) 3% of the sum of Cash Purchase Price less the Purchase Price Reduction, if any (the "Break-Up Fee"), *plus* (ii) up to \$1,000,000 of the reasonable and documented expenses of Buyer incurred in connection with the transactions contemplated hereby (such expense reimbursement, together with the Break-Up Fee, the "Termination Payment"). For the avoidance of doubt, the Termination Payment shall be calculated without any reduction or proration of any kind if a Competing Bid is consummated with respect to all or any part, including any individual Store(s) other a Separable Store, of the Acquired Assets. The Termination Payment shall be paid on the first Business Day following the date of consummation of a Competing Bid (except for a Competing Bid with respect to a Separable Store) from the proceeds of a Competing Bid if no material breach by Buyer of this

Agreement has occurred. Nothing in this Section 5.4 shall relieve Buyer or Sellers of any Liability for a breach of this Agreement prior to the date of termination; provided, that, except in the case of fraud or willful misconduct, (x) Sellers' Liability hereunder for any and all such breaches shall be capped at an amount equal to the Termination Payment and (y) Buyer's Liability hereunder for any and all such breaches shall be capped at an amount equal to the Escrow Amount (as set forth in Section 8.3(a)). Upon payment of the Termination Payment to Buyer in accordance with this Section 5.4(a), Sellers and their respective Representatives and Affiliates, on the one hand, and Buyer and its Representatives and Affiliates, on the other, will be deemed to have fully released and discharged each other from any Liability resulting from the termination of this Agreement and neither Sellers, their Representatives or Affiliates, on the one hand, nor Buyer, its Representatives or Affiliates, on the other hand, or any other Person will have any other remedy or cause of action under or relating to this Agreement or any applicable Law, including for reimbursement of expenses.

(b) Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better competing bids in respect of all or any part of the Acquired Assets (whether in combination with other assets of the Sellers or their Affiliates or otherwise) (each a "Competing Bid"). Subject to the provisions of the Bidding Procedures Order, from the date of entry of such order and until the transactions contemplated hereby are consummated, Sellers are permitted to and to cause their Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates and Representatives) in connection with any sale or other disposition of the Acquired Assets. In addition, Sellers and their Representatives and Affiliates shall have the authority to respond to any inquiries or offers to purchase all or any part of the Acquired Assets (whether in combination with other assets of the Sellers or their Affiliates or otherwise) and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the assets of Sellers to prospective purchasers.

(c) Bankruptcy Court Filings.

(i) As soon as reasonably practicable following the execution of this Agreement and not later than two (2) Business Days following the commencement of the Bankruptcy Cases, Sellers shall file with the Bankruptcy Court a motion seeking entry of the Bidding Procedures Order (which shall, among other things, approve and authorize payment of the Termination Payment in accordance with this Section 5.4) and Sale Order. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to obtain the Bankruptcy Court's entry of the Bidding Procedures Order and Sale Order, including a finding of adequate assurance of future performance by Buyer, including by furnishing affidavits or other documents or information for 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, except to the extent necessary to further the terms of this Agreement. In the event the entry of the Bidding Procedures Order shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(ii) Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of



the Cure Costs; provided, that nothing herein shall preclude Sellers from filing such motions, including upon commencement of the Bankruptcy Cases, to reject any Contracts that are not Transferred Contracts.

(d) Back-up Bidder. Sellers and Buyer agree that, in the event that Buyer is not the winning bidder at the auction undertaken pursuant to the Bidding Procedures Order (the "Auction"), if and only if (i) Buyer submits the second highest or second best bid at the Auction or the terms of this Agreement constitute the second highest or best bid, and (ii) Sellers give written notice to Buyer on or before the Back-up Termination Date, stating that Sellers (A) failed to consummate the sale of the Acquired Assets with the winning bidder, and (B) terminated the purchase agreement with the winning bidder, Buyer shall, subject to the fulfillment or waiver of the conditions set forth in Section 7.1 and Section 7.3, promptly consummate the transactions contemplated hereby upon the terms and conditions as set forth herein, including the Purchase Price, as the same may be increased by Buyer at the Auction.

(e) Sale Order. Provided Buyer is selected as the winning bidder in respect of the Acquired Assets at the Auction, Sellers shall seek entry of the Sale Order and any other necessary orders to close the sale by the Bankruptcy Court as soon as reasonably practicable following the closing of the Auction in accordance with the terms and conditions hereof. Buyer and Sellers understand and agree that the transaction is subject to approval by the Bankruptcy Court. Buyer and Sellers agree to use their respective commercially reasonable efforts to, and promptly take all actions as are reasonably necessary to, obtain the entry of the Sale Order. In the event the entry of the Sale Order shall be appealed, Sellers shall use commercially reasonable efforts to defend such appeal.

(f) Other Matters. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall be permitted to exercise all rights set forth in paragraph 18 of the Confidentiality Agreement in the manner described therein.

Section 5.5 Estoppel Certificates. Sellers shall use their commercially reasonable efforts to deliver to any landlord under a Lease specified in writing by Buyer, an estoppel certificate, in a completed form provided to Sellers by Buyer (and reasonably acceptable to Sellers).

Section 5.6 Notice of Developments. Each Seller and Buyer will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has Knowledge that would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.6 shall not be deemed to amend or supplement this Agreement and the failure to deliver any such notice shall not constitute a waiver of any right or condition to the consummation of the transactions contemplated hereby by any Party.

Section 5.7 Pharmacy Records; Pharmacy Licenses.

(a) Promptly as practicable after the execution of this Agreement, Buyer shall make application to the applicable authorities to transfer the Pharmacy Records, if and as necessary, from Sellers to Buyer. Such application shall be made on a timely basis and shall be pursued by Buyer, at its sole cost and expense. Sellers, at Buyer's cost and expense, shall cooperate with Buyer and provide any documents and/or information necessary to assist in effectuating such transfer and execute such consents or other papers as may reasonably be required subject to

applicable patient privacy rights. At each applicable Closing, Sellers shall, subject to applicable patient privacy rights and to the extent not otherwise prohibited by applicable Law, assign, transfer, and convey to Buyer all of their right, title, and interest in and to the applicable Pharmacy Records, and Buyer hereby agrees to purchase and accept from Sellers all of the applicable Pharmacy Records as of each applicable Closing. Notwithstanding the foregoing, in the event all or any portion of the Pharmacy Records will not be transferred to Buyer at the applicable Closing (whether due to a denial of Buyer's application by the applicable authority or otherwise), Buyer may elect, at its sole option (i) for such non-transferred Pharmacy Records to be deemed Excluded Assets, and the Parties shall negotiate in good faith to agree on a reduction of the Purchase Price that appropriately reflects the value of such non-transferred Pharmacy Records or (ii) to proceed with the Closing, in which event Sellers shall continue to cooperate with Buyer and shall transfer any such non-transferred Pharmacy Records to Buyer after such transfer to Buyer becomes permissible.

(b) Buyer or a designee of Buyer will file, or cause to be filed, all applications necessary, and will use its commercially reasonable efforts, to obtain all permits, licenses or approvals (including, without limitation, all applicable state permits, United States Drug Enforcement Agency numbers, National Council for Prescription Drug Programs numbers, National Provider Identifier numbers, CDS numbers and Medicare and Medicaid numbers) (collectively, the "Pharmacy Licenses") necessary to operate any pharmacy within any Store within ten (10) Business Days after the entry of the Sale Order. In the event that any Pharmacy License necessary for the Buyer's operation of any pharmacy within an applicable Store is not obtained prior to the applicable Closing, Sellers acknowledge and agree that, beginning on each applicable Closing Date and subject to the immediately following sentence, Buyer shall be entitled to utilize, only in connection with Buyer's operation of any pharmacy located within any Store and only to the extent permitted by applicable Law, the Pharmacy Licenses of Sellers related to such pharmacy. To affect the foregoing authorization, at or prior to each applicable Closing and only to the extent that Buyer has not obtained the applicable Pharmacy License, Sellers and Buyer shall (i) enter into a Pharmacy Permit Agreement on terms and conditions satisfactory to Buyer and Sellers and (ii) execute such documents, if any, as may be required or requested by a Governmental Authority, including any affidavits of sale. As a condition precedent to the Sellers' execution of such Pharmacy Permit Agreement or any other documents required or requested by a Governmental Authority, Buyer shall also agree that (i) during the period of Buyer's use of Sellers' Pharmacy Licenses Buyer shall own and/or operate the Acquired Assets or any Store in accordance with applicable Law and (ii) Buyer shall indemnify the Sellers against all losses arising out of Buyer's use of such Pharmacy Licenses, instruments or Pharmacy Permit Agreement. Buyer's use of the Pharmacy Licenses with respect to any pharmacy shall automatically terminate upon the issuance to Buyer of all of the Pharmacy Licenses necessary for Buyer to lawfully operate such pharmacy.

Section 5.8 Access; No Contact. Upon the reasonable request of Buyer and to the extent not otherwise prohibited by applicable Law, Sellers will permit Buyer and its Representatives to have, upon reasonable advance written notice, reasonable access to all premises, properties, books and records and the Acquired Assets, including the Transferred Contracts, and the Stores after normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of any Seller; provided, however, that, for avoidance of doubt, (i) the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto and (ii) any access to Pharmacy Records shall be provided in accordance with HIPAA and any other applicable federal or state privacy or disclosure laws as determined by each Seller in its sole discretion. Sellers shall have the right to have a Representative of Seller present at any such visit. Prior to the applicable Closing, except as otherwise required, contemplated or permitted by this Agreement, Buyer

shall not, and shall cause its Representatives not to, contact any employees (other than in connection with Buyer's obligations under Section 6.4), vendors, suppliers, landlords, or licensors of any Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of each Seller. Notwithstanding anything to the contrary contained in this Agreement, no investigation conducted by Buyer or its Affiliates or their respective Representatives, or any knowledge acquired (or capable of being acquired) by Buyer, its Affiliates or their respective Representatives, at any time, shall affect the representations and warranties of Sellers contained in this Agreement or Buyer's obligation to consummate the transactions contemplated hereby.

Section 5.9 Bulk Transfer Laws. Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer Laws or similar Laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

Section 5.10 Replacement Bonding Requirements. Schedule 5.10 of the Disclosure Schedule sets forth a true and complete list of all Bonding Requirements. On or prior to each applicable Closing Date, Buyer shall provide replacement guarantees, standby letters of credit or other assurances of payment with respect to all relevant Bonding Requirements for such Closing, in form and substance reasonably satisfactory to Sellers and any banks or other counterparty thereto, and, both prior to and following the applicable Closing Date, Buyer and Sellers shall cooperate to obtain a release in form and substance reasonably satisfactory to Buyer and Sellers with respect to all Bonding Requirements. To the extent Buyer is unable to make such arrangements with respect to any Bonding Requirements prior to the applicable Closing, Buyer shall deliver to Sellers an irrevocable, unconditional standby letter of credit in favor of Sellers in an amount equal to the amount of such relevant Bonding Requirements, issued by a bank rated "A" or better by Standard and Poor's, in form and substance reasonably satisfactory to Sellers.

Section 5.11 Damage or Destruction; Insurance Matters.

(a) In the event of any material damage to, or condemnation or destruction of, any Acquired Asset (other than normal wear and tear) prior to the applicable Closing for such Acquired Asset (a "Pre-Closing Loss"), Sellers shall promptly give notice thereof to Buyer. If any such Pre-Closing Loss is covered by insurance policies, all right and claim of Sellers to any proceeds of insurance for such Pre-Closing Loss shall be assigned and (if previously received by Sellers and not used prior to the applicable Closing Date to repair such damage or destruction or negate the effect of such condemnation or for collection of such proceeds or awards) paid to Buyer at Closing, and Buyer shall not be entitled to any reduction in the Purchase Price with respect to such Pre-Closing Loss. If all or any portion of such Pre-Closing Loss is not covered by insurance policies, Buyer shall have the right to reduce the Purchase Price by an amount equal to (i) the estimated cost to repair or restore the Acquired Assets affected by such Pre-Closing Loss not covered by insurance policies (the "Affected Assets") to substantially their condition immediately prior to the occurrence of such Pre-Closing Loss or (ii) if such Affected Assets are destroyed or damaged beyond repair or reconstruction or if such condemnation has a material adverse effect on the use of such Affected Assets, the replacement cost of the Affected Assets and, in either case, all compensation payable on account of such Pre-Closing Loss shall be retained by Sellers. If Buyer elects to reduce the Purchase Price pursuant to this Section 5.11(a), the amount of such reduction shall be equal to the value assigned to such Affected Asset in the Purchase Price Allocation or, if no such value is assigned therein, an equitable amount determined by the Parties in good faith.

(b) Notwithstanding Section 5.11(a), if as a result of a Pre-Closing Loss, (i) a Store is destroyed or damaged beyond repair or reconstruction, (ii) a Store is damaged and the repair or restoration of such Store to substantially its condition immediately prior to such damage is (A) estimated to cost in excess of US\$1,000,000 or (B) reasonably expected to take more than six (6) months, or (iii) any portion of the real property on which the Store is located is condemned and such condemnation has a

material adverse effect on Buyer's ability to operate such Store in its usual manner, then Buyer may, at its sole discretion, opt to (x) treat such Store and all related Acquired Assets as Excluded Assets (such Store, a "Removed Store"), or (y) continue to treat such Store and all related Acquired Assets as Acquired Assets, in which case at the applicable Closing, Sellers shall remit to Buyer any insurance proceeds received in respect of such Pre-Closing Loss and, if such proceeds received as of the applicable Closing are insufficient to restore such Store and its related Acquired Assets to substantially their condition immediately prior to the occurrence of such Pre-Closing Loss, Buyer shall have the right to offset against the applicable Closing Cash Payment an amount equal to the amount by which such proceeds are insufficient to so restore such Store and its related Acquired Assets, and Sellers shall be entitled to retain any additional compensation received after the applicable Closing in respect of such Pre-Closing Loss.

(c) Sellers shall pursue all Assigned Insurance Claims with reasonable diligence (or at the request of Buyer, Sellers shall use their commercially reasonable efforts to cause Buyer to be subrogated in respect of any such Assigned Insurance Claims), including filing claims with respect to any Pre-Closing Loss. Promptly following the resolution of any Assigned Insurance Claim, whether before or after the applicable Closing, Sellers shall remit any proceeds (net of any deductible, costs of recovery, and other costs required to be paid, or incurred, by Sellers with respect thereto) received in respect of such Assigned Insurance Claim to Buyer by the later to occur of (i) the applicable Closing and (ii) the third (3rd) Business Day after the receipt of such proceeds (but only to the extent such amount was not deducted from the Closing Cash Payment at the applicable Closing). The Parties shall cooperate in good faith in the resolution with the insurance companies of any Assigned Insurance Claim, and Sellers shall provide notice to Buyer of any correspondence received in connection with any Assigned Insurance Claim.

## **ARTICLE VI OTHER COVENANTS**

The Parties agree as follows with respect to the period from and after the Closing applicable to any given Store:

Section 6.1 Further Assurances. In the event at any time after the applicable Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer all of the Acquired Assets or to confirm Buyer's assumption of the Assumed Liabilities.

Section 6.2 Access; Enforcement; Record Retention. Until the Bankruptcy Cases are closed pursuant to the Bankruptcy Code (or with respect to Tax matters, a period of three (3) years) after the applicable Closing, Buyer and Sellers agree to provide or cause to be provided to each other (or their Representatives) upon reasonable advance written notice and at the sole cost and expense of the requesting Party, reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Buyer or Sellers, as the case may be, to all premises, properties, personnel, books and records, and Transferred Contracts of or related to the Acquired Assets or the Assumed Liabilities for the purposes of (a) preparing Tax Returns, or (b) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer or Sellers to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable Law, or (iii) providing such access or information would be reasonably expected to be disruptive to its normal business operations. Buyer and Sellers agree to maintain the files or records which are contemplated by the first (1st) sentence of this Section 6.2 in a manner consistent in all material

respects with its document retention and destruction policies, as in effect from time to time, for six (6) months following the applicable Closing.

**Section 6.3 Treatment of Affected Labor Agreements.** With respect to Covered Employees under an Affected Labor Agreement, Buyer may (a) agree to assume the Affected Labor Agreement with respect to the applicable Stores without modification and thereafter comply with the obligations set forth in Section 6.4 with respect to Covered Employees under such assumed Affected Labor Agreement, (b) meet with Affected Union representatives at reasonable times, and confer and negotiate in good faith with the Affected Unions to reach mutually satisfactory modifications to the relevant Affected Labor Agreement with each of the Affected Unions and to enter into a Modified Labor Agreement with each of the Affected Unions, or (c) negotiate with the Affected Unions to arrange a transfer at the applicable Closing of all or any Covered Employees from any Affected Labor Agreement to any collective bargaining agreement that Buyer may have with the applicable Affected Union or any collective bargaining agreement that Buyer may have with another union that represents Buyer's employees at Buyer's existing stores located in the same area as the relevant Stores (each, a "Buyer Labor Agreement"). Buyer shall keep Sellers reasonably informed as to the status of its negotiations with the Affected Unions. Buyer may, at any time prior to the Sale Hearing, agree to have an Affected Labor Agreement assigned to it without modification by providing notice of such agreement to Sellers and the applicable Affected Union. Upon the commencement of the Bankruptcy Cases, to the extent Buyer is not assuming the Affected Labor Agreements, Buyer shall, in coordination with Sellers, (i) propose a Modified Labor Agreement to each Affected Union that is consistent with the terms set forth on Exhibit H (each, a "Proposal"), which Proposal may be modified as a result of Buyer's and/or Sellers' good faith negotiations with the Affected Unions, or (ii) pursue such negotiations as Buyer deems appropriate in connection with transferring Covered Employees to a Buyer Labor Agreement. The Parties agree to cooperate with each other in providing each Affected Union with complete and reliable information to allow the Affected Unions to evaluate the Proposal. For all purposes under this Section 6.3, the Parties acknowledge the requirements of sections 1113 and 1114 of the Bankruptcy Code and agree to use good faith efforts to cooperate with each other (and to negotiate in good faith with the Affected Unions) in ensuring compliance with any applicable provisions thereof. If the applicable Affected Union (x) agrees to the transfer from an Affected Labor Agreement of all Covered Employees thereunder to a Buyer Labor Agreement, at the applicable Closing, or (y) does not reach agreement with the Buyer on the terms of a Modified Labor Agreement or a transfer to a Buyer Labor Agreement, then Buyer shall have the right, at its sole discretion, to deem such Affected Labor Agreement an Excluded Asset, such Affected Labor Agreement shall not be assumed by Buyer, and Sellers shall take all reasonable actions to the extent required under sections 1113 and 1114 of the Bankruptcy Code.

**Section 6.4 Covered Employees.**

(a) **Offer of Employment.** Sellers shall provide Buyer with details regarding the Covered Employees' salaries, wages, incentive compensation, benefits and employment records as Buyer within ten (10) days of the date hereof and shall provide an updated schedule of the same upon Buyer's request. At least the (10) days prior to the Initial Closing Date, Buyer shall make an offer of at-will employment, effective as of the applicable Closing Date and contingent upon such applicable Closing, to substantially all of the union-represented Covered Employees who are then employed by Sellers or their respective Subsidiaries (at the same base wage or hourly rate as in effect immediately prior to the applicable Closing), subject to and in accordance with Buyer's business needs and normal hiring process; provided, however, that any offer of employment shall be contingent upon the applicable Closing actually occurring. With respect to union-represented Covered Employees, such offers shall also be consistent with the terms and conditions required by the governing Affected Labor Agreements, Modified Labor Agreements or Buyer Labor Agreements, if any, or otherwise consistent with the terms and conditions of the Proposal if the Buyer exercises its right to treat as an Excluded Asset any

Affected Labor Agreement in accordance with the last sentence of Section 6.3. Prior to the applicable Closing Date, Buyer may, in its sole discretion, interview and make an offer of at-will employment, effective as of such Closing Date, to any of the Covered Employees who are not union-represented who are selected by Buyer in its sole discretion, subject to and in accordance with Buyer's business needs and normal hiring practices; provided, however, that any offer of employment shall be contingent upon such Closing actually occurring. Prior to the applicable Closing Date, Sellers shall permit, and cause their respective Subsidiaries to permit, Buyer to contact, interview and make arrangements with Covered Employees regarding employment or prospective employment by Buyer after the applicable Closing. The employment by Sellers or their respective Subsidiaries of each Hired Covered Employee shall terminate effective as of the applicable Closing Date. Sellers shall waive and assign to Buyer any non-competition or other restrictions that might prevent or restrict any Hired Covered Employee from accepting any such offer of employment, including by forwarding a letter to each Hired Covered Employee, upon request by Buyer and in a form satisfactory to Buyer, expressly releasing such Hired Covered Employee from any obligations he or she may have to Sellers or their Affiliates. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Hired Covered Employee, consistent with applicable Law and the governing Affected Labor Agreements, the Modified Labor Agreements or Buyer Labor Agreements, as applicable, at any time following the applicable Closing Date.

(b) Compensation and Benefits. Commencing on the applicable Closing Date and continuing through the first anniversary of the applicable Closing Date, Buyer or its Affiliates shall provide or cause to be provided to the Hired Covered Employees who are not union represented and who receive offers of employment from Buyer or its Affiliates compensation and employee benefits that are in the aggregate (including base salary and incentive bonus opportunities) substantially comparable to the compensation and employee benefits provided by Buyer to similarly situated employees of Buyer from time to time (excluding for purposes of this sentence, equity-based compensation, pension, post-retirement welfare benefits, change in control, severance, retention or similar benefits or compensation). With respect to union-represented Hired Covered Employees, Buyer or its Affiliates agrees to apply to all such Hired Covered Employees the terms and conditions set forth in the governing Affected Labor Agreements, the Modified Labor Agreements or Buyer Labor Agreements, if applicable, or as otherwise set forth in the Proposal, as they may be modified or further modified from time to time.

(c) Service Credit. Each Hired Covered Employee who is not represented by a union and receives an offer of employment from Buyer or its Affiliates shall be given credit for all service with Sellers and their Subsidiaries, and their respective predecessors under any employee benefit plans of Buyer and its Affiliates maintained by Buyer or its Affiliates in which such Hired Covered Employees participate following the applicable Closing Date, for purposes of eligibility, vesting, and entitlement to benefits, including for severance benefits and vacation entitlement (but not for accrual of pension benefits). With respect to union-represented Hired Covered Employees, Buyer or its Affiliates agree to apply to all such Hired Covered Employees the service date set forth in the governing Affected Labor Agreements, the Modified Labor Agreements or Buyer Labor agreements, if applicable, or as otherwise set forth in the Proposal. Notwithstanding the foregoing, nothing in this Section 6.4(c) shall be construed to require crediting of service that would result in a duplication of benefits to the extent such service is credited for similar purposes under any similar Employee Benefit Plan.

(d) Waiver of Pre-Existing Conditions; Crediting of Deductibles. Buyer shall cause (i) the waiver of all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Hired Covered Employees

under any welfare benefit plans maintained by Buyer in which any such Hired Covered Employee participates, to the extent that such conditions, exclusions or waiting periods would not apply under the Employee Benefit Plans, and (ii) for the plan year in which the applicable Closing Date occurs, the crediting of each Hired Covered Employee with any co-payments and deductibles paid prior to participation in such welfare plans in satisfying any applicable deductible or out-of-pocket requirements thereunder, to the extent so credited under the similar Employee Benefit Plans. Sellers shall promptly provide all information requested by Buyer regarding the Hired Covered Employees in order for Buyer to comply with the provisions of this Section 6.4(d).

(e) 401(k) Plan Rollovers. Sellers shall take such action as is necessary to provide that all Hired Covered Employees who are participants in Sellers' 401(k) plans have a fully vested and non-forfeitable interest in their entire respective account balances under such plans as of the applicable Closing Date (regardless of their years of vesting credit under such plans). On or prior to the applicable Closing Date, with respect to all of the Hired Covered Employees, Sellers shall contribute all contributions to Sellers' 401(k) plans (i) which are required to be made on or before the applicable Closing Date under any such plans, and (ii) which relate to service or employee salary deferral contributions on or prior to the applicable Closing Date, whether or not required to be made on prior to the applicable Closing Date under Sellers' 401(k) plans. Buyer agrees to cause the Buyer's 401(k) plan to accept a "direct rollover" to Buyer's 401(k) plan of each Hired Covered Employee's account balances (including promissory notes evidencing all outstanding loans) under Sellers' 401(k) plans if such rollover is elected in accordance with applicable Law by such Hired Covered Employee; provided, that prior to the applicable Closing Date Sellers provide Buyer with evidence satisfactory to Buyer in its sole discretion of the tax-qualified status of Sellers' 401(k) Plan.

(f) Welfare Benefit Claims; COBRA. On the applicable Closing Date, Sellers and their Subsidiaries shall cease to provide welfare coverage to each relevant Covered Employee and his or her covered dependents. Sellers shall be responsible in accordance with its applicable welfare plans (and the applicable welfare plans of their Subsidiaries) in effect prior to the applicable Closing Date for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) incurred, under Sellers' or their Subsidiaries' Employee Benefit Plans that are welfare benefit plans prior to the applicable Closing Date by the Covered Employees and their dependents. Buyer or its Affiliates shall be responsible in accordance with the applicable welfare plans of Buyer or its Affiliates for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) incurred, on or after the applicable Closing Date (or the date of commencement of employment with Buyer, if later) by Hired Covered Employees and their dependents. For purposes of this Section 6.4(f), a claim shall be deemed to have been incurred as follows: (i) for health, dental and prescription drug benefits, upon provision of such services or benefits, (ii) for life, disability, accidental death and dismemberment and business travel accident insurance benefits, upon the death, disability or accident giving rise to such benefits, and (iii) for the benefits that become payable with respect to any hospital confinement, upon the commencement of such confinement. Sellers or their Subsidiaries shall provide coverage required by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") under Sellers' or their Subsidiaries' Employee Benefit Plans that are group health plans with respect to qualifying events occurring prior to the applicable Closing Date; provided, however, that to the extent that a dependent of a Hired Covered Employee is receiving continuation coverage under COBRA as of the applicable Closing Date, Buyer or its Affiliates shall be obligated to continue to provide COBRA continuation coverage to such dependent on and following the applicable Closing Date for the period required under applicable Law. Buyer and its Affiliates shall provide coverage required by COBRA to Hired Covered

Employees and their eligible dependents or beneficiaries under Buyer's group health plans with respect to qualifying events occurring on and after the applicable Closing Date.

(g) WARN Act. Prior to the applicable Closing Date, Sellers shall provide to any current or former employee of Sellers any notice required (or anticipated to be required) pursuant to the WARN Act. Provided that on or before the applicable Closing Date A&P provides Buyer with a complete and accurate list, by date and location, of employee layoffs implemented by Sellers with respect to employees of the Stores in the ninety (90) day period preceding the applicable Closing Date, Buyer shall indemnify and hold harmless each Seller and its Affiliates and their respective Representatives with respect to any Liability arising under the WARN Act with respect to Hired Covered Employees of the Stores arising after the applicable Closing Date in whole or part from the actions or omissions of Buyer from and after the applicable Closing Date. Sellers shall indemnify and hold harmless Buyer and its Affiliates and their respective Representatives with respect to any Liability arising under the WARN Act (i) with respect to current or former employees of the Stores arising on, prior to or after the applicable Closing Date (but only arising on or prior to the applicable Closing Date with respect to Covered Employees except as set forth in clause (ii)) or (ii) arising in whole or part at any time from (A) A&P's failure to provide the list referenced in the first (1st) sentence of this paragraph and/or any inaccuracies contained in such list, (B) any other obligations of Sellers' and/or their Affiliates' contained in this Section 6.4(g) and/or under the WARN Act and/or (C) any other obligations arising as a result of or in connection with the consummation of the transactions contemplated by this Agreement.

(h) Tax Reporting. Buyer shall use commercially reasonable efforts to adopt the "alternate procedure" for preparing and filing Internal Revenue Service Forms W-2 (Wage and Tax Statements), as described in Revenue Procedure 2004-53, with respect to the Covered Employees for the calendar year in which the applicable Closing Date occurs. Under this procedure, Buyer as the successor employer shall provide Forms W-2 to Hired Covered Employees reflecting all wages paid and Taxes withheld with respect to such Hired Covered Employees for the calendar year in which the applicable Closing Date occurs. Sellers as the predecessor employers shall have no employment tax reporting responsibilities for the Covered Employees following the applicable Closing Date. Buyer shall also use commercially reasonable efforts to adopt the "alternate procedure" of Revenue Procedure 2004-53 for purposes of Internal Revenue Service Forms W-4 (Employee's Withholding Allowance Certificate) and W-5 (Earned Income Credit Advance Payment Certificate). Sellers shall provide Buyer with such wage, wage withholding and other human resources and payroll-related information as is reasonably required for Buyer to implement the "successor employer" regulations relating to wage withholding contained in Treasury Regulation § 31.3121(a)(1)-1(b) and Revenue Procedure 2004-53 (including, without limitation, the transfer to Buyer all Forms W-4 and W-5 with respect to the Hired Covered Employees for the calendar year in which the applicable Closing Date occurs) and transition payroll processing and employer recordkeeping with respect to the Hired Covered Employees to Buyer as of the applicable Closing Date. Notwithstanding the foregoing, Buyer shall not assume any Liabilities with respect to such information, and all such Liabilities shall be the sole responsibility of Sellers. Sellers shall pay all such Liabilities as and when due. Sellers and Buyer shall cooperate in good faith to adopt procedures under applicable state, municipal, county, local, or other Laws.

(i) No Third Party Beneficiary Rights. The Parties agree that nothing in this Section 6.4, whether express or implied, is intended to (i) create any third party beneficiary rights in any Covered Employee or any other employee of Buyer, Sellers or their respective Affiliates, (ii) amend or alter any benefit plan of any Buyer, Seller or any of their Subsidiaries or (iii)



prevent Buyer from amending or terminating any benefit plans from and after the applicable Closing Date.

(j) Cooperation. After the applicable Closing Date, Buyer shall reasonably cooperate with Sellers to provide such current information regarding the Hired Covered Employees on an ongoing basis as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Hired Covered Employees under any applicable employee benefit that continues to be maintained by A&P or its Affiliates. After the applicable Closing Date, Sellers shall, and shall cause their Affiliates to, reasonably cooperate with Buyer and its Affiliates to provide such current information regarding the Hired Covered Employees on an ongoing basis as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Hired Covered Employees under any applicable employee benefit plan that continues to be maintained by Buyer or its Affiliates.

#### Section 6.5 Certain Tax Matters.

(a) Transfer Taxes. All 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 hereby (a "Transfer Tax") shall be borne equally between Buyer, on the one hand, and Sellers, on the other hand. The Party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes shall prepare and timely file such Tax Returns; provided, however, that the other Parties shall be entitled to receive such Tax Returns and other documentation reasonably in advance of filing by such preparing Party, but not less than ten (10) Business Days prior to the due date of such Tax Returns, and such Tax Returns and other documentation shall be subject to the other Parties' approval, which shall not be unreasonably withheld, delayed, or conditioned. Sellers and Buyer shall cooperate in making, in a timely manner, all 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.

(b) Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Acquired Assets being sold at the applicable Closing (including real estate Taxes (other than those subsumed in Section 2.8), personal property Taxes and similar Taxes) for the Tax period in which the applicable Closing occurs (each, a "Proration Period") will be apportioned and prorated between Sellers and Buyer as of the applicable Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the applicable Closing Date, and Sellers shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the applicable Closing Date, apportionment and proration shall be computed on the applicable Closing Date on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Sellers, and Buyer or Sellers, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment (including in respect of any refund) so that the correct prorated amount is paid by each of Buyer and Sellers.

Section 6.6 Insurance Matters. Buyer acknowledges that all insurance coverage provided in relation to Sellers, the applicable Stores, or the applicable Acquired Assets that is maintained by either Seller or its Affiliates (whether such policies are maintained with third party insurers or with such Seller or its Affiliates) shall cease to provide any coverage to Buyer, the applicable Stores, or the applicable Acquired Assets as of the Closing Date in which such Store or the Acquired Assets are to be acquired, and no further coverage shall be available to Buyer, the applicable Stores, or the applicable Acquired Assets under any such policies.

Section 6.7 Acknowledgements.

(a) Buyer acknowledges that it has received from Sellers certain projections, forecasts, and prospective or third party information relating to Sellers, the Stores, the Acquired Assets, the Assumed Liabilities, and other related topics. Buyer acknowledges that (i) there are uncertainties inherent in attempting to make such projections and forecasts and in such information; (ii) Buyer is familiar with such uncertainties and is taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections, forecasts, and information so furnished; and (iii) neither Buyer nor any other Person shall have any claim against either Seller or any of its respective directors, officers, Affiliates, agents, or other Representatives with respect thereto. Accordingly, without limiting the generality of Section 3.15 or Section 9.1, Buyer acknowledges that neither Seller nor any other Person makes any representations or warranties with respect to such projections, forecasts, or information, except, to the extent applicable, the representations and warranties of Sellers set forth in Article III.

(b) Buyer acknowledges that, except for the representations and warranties expressly set forth in Article III (as modified by the information referenced on the Disclosure Schedule (which representations and warranties shall terminate and be of no further force or effect as of the Closing), and without limiting the generality of Section 3.15, neither Seller nor any other Person makes any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding either Seller, the Stores, any Acquired Assets, any Assumed Liabilities or any other matter and neither Seller nor any other Person will be subject to any Liability to Buyer or any other Person resulting from such matters or the distribution to Buyer, or the use of, any such information. Buyer acknowledges that, should the Closings occur, Buyer will acquire the Acquired Assets and assume the Assumed Liabilities in an “as is” condition and on a “where is” basis, without any representation or warranty of any kind, express or implied (including with respect to environmental, health or safety matters). Buyer acknowledges that it has waived and hereby waives as a condition to each Closing any further due diligence reviews, inspections, or examinations with respect to either Seller, the Stores, the Acquired Assets, the Assumed Liabilities, or any other matter, including with respect to engineering, environmental, title, survey, financial, operational, regulatory, and legal compliance matters.

Section 6.8 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by applicable Law or a Decree of the Bankruptcy Court or, in the case of Buyer, is otherwise consistent with paragraph 18 of the Confidentiality Agreement. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party required to make such announcement or disclosure shall give the other Parties prior notice of, and an opportunity to comment on, the proposed announcement or disclosure, which shall be reasonably satisfactory to all of the Parties. The Parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Bidding Procedures Order and/or the Sale Order.

Section 6.9 Seller Marks. The Seller Marks may appear on some of the Acquired Assets, including on signage. Buyer acknowledges and agrees that it does not have and, upon consummation of the transactions contemplated by this Agreement, will not have, any right, title, interest, license, or other right to use the Seller Marks. Buyer shall within ten (10) Business Days after the applicable Closing Date remove the Seller Marks from, or cover or conceal the Seller Marks on, any Acquired Assets, or otherwise refrain thereafter from the use and display of the Acquired Assets on which the Seller Marks remain affixed and visible.

Section 6.10 HIPAA Privacy Standards.

(a) After the Closing, Buyer shall make all Pharmacy Records available for access and amendment to individuals in accordance with HIPAA privacy standards (the “HIPAA Privacy Standards”) and other applicable Laws. Buyer shall respond to individuals’ requests for accountings of disclosures of protected health information for periods prior to the Closing in accordance with HIPAA Privacy Standards. Buyer shall maintain the Pharmacy Records and all protected health information transferred by Sellers in accordance with HIPAA. All inquiries and responses by Buyer relating to patient rights under HIPAA relating to uses and disclosures of health information made prior to the Closing shall be forwarded to Sellers pursuant to Section 9.7.

(b) In addition, Buyer shall maintain the Pharmacy Records and all protected health information transferred by the Sellers in accordance with HIPAA security standards governing electronic protected health information.

(c) All inquiries and responses by Buyer relating to patient rights under HIPAA Privacy Standards relating to uses or disclosures of health information made prior to the Closing Date shall be forwarded to the Seller in accordance with the notice provisions set forth herein.

Section 6.11 Master Leases. Between the date hereof and the date of the entry of the Bidding Procedures Order by the Bankruptcy Court, Sellers and Buyer agree to discuss in good faith to assess whether any additional consideration may be appropriate in respect of the sale of the Master Leases to Buyer (including after taking into account, among other factors, the rights, obligations and liabilities of the tenants under the Master Leases, the Per-Store Purchase Price for each relevant Store, and the value ascribed by Buyer to the sublease income and other revenue streams from subtenants in developing its Per-Store Purchase Price for such Stores).

## ARTICLE VII CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1 Conditions to Buyer’s Obligations to the Initial Closing. Buyer’s obligation to consummate the transactions contemplated hereby in connection with the Initial Closing is subject to the satisfaction of, or the waiver in writing by Buyer of, the following conditions:

(a) (x) the representations and warranties set forth in Article III (other than the representations and warranties set forth in Section 3.4) shall have been true and correct on the date hereof and as of the Initial 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 (y) the representations and warranties set forth in Section 3.4 shall have been true and correct, on the date hereof and as of the Initial closing Date, in all material respects;

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

(c) the Bankruptcy Court shall have entered (i) the Bidding Procedures Order, and (ii) the Sale Order, and no order staying, reversing, modifying or amending the Sale Order shall be in effect on the Initial Closing Date;

(d) all applicable waiting periods under any Antitrust Law shall have expired or otherwise been terminated;

(e) no Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement;

(f) Sellers shall have, consistent with section 365(b)(1)(A) of the Bankruptcy Code, paid all Cure Costs consistent with the terms of the Sale Order or other Bankruptcy Court order;

(g) the Parties shall have agreed on a Closing Statement for the Initial Closing in accordance with Section 2.5(a); and

(h) each delivery contemplated by Section 2.5(c) to be delivered to Buyer shall have been delivered with respect to the Initial Closing.

Section 7.2 Conditions to Sellers' Obligations to the Initial Closing. Sellers' obligations to consummate the transactions contemplated hereby in connection with the Initial Closing are subject to the satisfaction of, or the waiver in writing by Sellers of, the following conditions:

(a) (x) the representations and warranties set forth in Article IV (other than the representations and warranties set forth in Section 4.6) shall have been true and correct on the date hereof and as of the Initial 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 Initial Closing; (y) the representations and warranties set forth in Section 4.6 shall have been true and correct, on the date hereof and as of the Initial closing Date, in all material respects;

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

(c) the Bankruptcy Court shall have entered (i) the Bidding Procedures Order, and (ii) the Sale Order, and no Order staying, reversing, modifying, or amending the Sale Order shall be in effect on the Initial Closing Date;

(d) all applicable waiting periods under any Antitrust Law shall have expired or otherwise been terminated;

(e) no Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement;

(f) the Parties shall have agreed on a Closing Statement for the Initial Closing in accordance with Section 2.5(a); and

(g) each payment contemplated by Section 2.5(b) to be made to Sellers shall have been made, and each delivery contemplated by Section 2.5(e) to be delivered to Sellers shall have been delivered with respect to the Initial Closing.

Section 7.3 Conditions to Buyer's Obligations to each Subsequent Closing. Buyer's obligation to consummate the transactions contemplated hereby in connection with each Subsequent Closing is subject to the satisfaction of, or the waiver in writing by Buyer of, the following conditions:

- (a) (x) each representation and warranty set forth in Section 3.1 (Organization of Sellers; Good Standing) and Section 3.2 (Authorization of Transaction) shall have been true and correct as of the date hereof and as of the applicable Subsequent Closing Date in all respects, 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 (y) each representation and warranty set forth in Section 3.4 (Title to Assets) shall have been true and correct as of the date hereof and as of the applicable Subsequent Closing Date in all material respects;
- (b) each Seller shall have performed and complied with its covenants and agreements hereunder with respect to the Acquired Assets and the Stores subject to the applicable Subsequent Closing through the applicable Subsequent Closing Date, in all material respects;
- (c) no Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement;
- (d) Sellers shall have paid all Cure Costs consistent with the terms of the Sale Order or other Bankruptcy Court order; and
- (e) each delivery contemplated by Section 2.5(d) to be delivered to Buyer shall have been delivered with respect to such Subsequent Closing.

Section 7.4 Conditions to Sellers' Obligations to each Subsequent Closing. Sellers' obligations to consummate the transactions contemplated hereby in connection with each Subsequent Closing are subject to the satisfaction of, or the waiver in writing by Sellers of, the following conditions:

- (a) (x) the representations and warranties set forth in Section 4.1 and Section 4.2 shall have been true and correct as of the date hereof and as of the applicable Subsequent Closing 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 such Subsequent Closing; (y) the representations and warranties set forth in Section 4.6 shall have been true and correct as of the date hereof and as of the applicable Subsequent Closing Date in all material respects;
- (b) Buyer shall have performed and complied with its covenants and agreements hereunder with respect to the Acquired Assets and the Stores subject to the applicable Subsequent Closing through the applicable Subsequent Closing Date, in all material respects;
- (c) no Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement; and
- (d) each payment contemplated by Section 2.5(b) to be made to Sellers shall have been made, and each delivery contemplated by Section 2.5(e) to be delivered to Sellers shall have been delivered with respect to such Subsequent Closing.

Section 7.5 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 Section 7.1, Section 7.2, Section 7.3 or Section 7.4, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its commercially reasonable efforts (or, in the case of Section 5.3, reasonable best efforts) to satisfy the conditions to the

consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

## **ARTICLE VIII TERMINATION**

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Initial Closing (or, to the extent provided below, any Subsequent Closing) as provided below:

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

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

(i) 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 Section 8.1(b)(i) shall not be available to Buyer or any Seller, as the case may be, if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of Buyer or any Seller, as the case may be, to have fulfilled any of its material obligations under this Agreement;

(ii) (x) the Initial Closing shall not have occurred on or before October 31, 2015 or (y) the final Closing shall not have occurred on or before November 15, 2015 (as applicable, the "Outside Date"); provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 8.1(b)(ii); or

(iii) if all Stores have been deemed Excluded Stores by Buyer in accordance with Section 5.3(c).

(c) by Buyer by giving written notice to each Seller:

(i) prior to the Initial Closing, if there has been a breach by any Seller 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 7.1(a) or Section 7.2(b), as the case may be, and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Seller 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;

(ii) following the Initial Closing and prior to the final Closing, if there has been a breach by any Seller 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 7.3(a) or Section 7.3(b), as the case may be, and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Seller 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;

(iii) upon the conversion of any Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or the dismissal of any Bankruptcy Case;

(iv) upon the entry of an order of the Bankruptcy Court for the appointment of a trustee or examiner with expanded powers, other than at the request of Buyer or any of its Affiliates, under Bankruptcy Code section 1104 and such trustee or examiner takes any action to interfere with or impair the transactions contemplated by this Agreement;

(v) the Bankruptcy Court has not entered the Bidding Procedures Order by the forty-fifth (45th) day following the date on which Sellers shall have commenced the Bankruptcy Cases in the Bankruptcy Court; or

(vi) if Sellers have not commenced the Bankruptcy Case by July 31, 2015.

(d) by Sellers by giving written notice to Buyer:

(i) prior to the Initial Closing, if 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 7.2(a) or Section 7.2(b), as the case may be, and such breach has not been waived by 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 Seller's notice of intent to terminate or (B) the Outside Date; or

(ii) following the Initial Closing and prior to the final Closing, if 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 7.4(a) or Section 7.4(b), as the case may be, and such breach has not been waived by 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 Seller's notice of intent to terminate or (B) the Outside Date; or

(e) by Sellers or Buyer, if (i) (x) Sellers enter into a definitive agreement with respect to a Competing Bid (except for a Competing Bid with respect to a Separable Store), (y) the Bankruptcy Court enters an order approving a Competing Bid (except for a Competing Bid with respect to a Separable Store) and (z) the Person making the Competing Bid (except for a Competing Bid with respect to a Separable Store) 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, in each case, subject to Buyer's right to payment of the Termination Payment, if applicable, in accordance with the provisions of Section 5.4.

(f) by Buyer, if the Back-up Termination Date has occurred, subject to Buyer's right to payment of the Termination Payment, if applicable, in accordance with the provisions of Section 5.4.

Section 8.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 3.15, Section 6.7, Section 8.3, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 5.4 and Section 8.3) to the other Party hereunder; provided, however, that nothing in this Section 8.2 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, that, other than in the case of fraud or willful misconduct, (a) the maximum Liability of Sellers under this Agreement shall not exceed the amount of the Termination Payment and (b) the maximum Liability of Buyer under this Agreement shall not exceed the Escrow Amount. Buyer acknowledges and agrees that payment and delivery of the Termination Payment pursuant to Section 5.4(a) will constitute liquidated damages and not a penalty and, except in the case of fraud or willful misconduct, be the sole and exclusive remedy of Buyer and its Representatives and Affiliates, whether at Law or in equity, and upon the payment and delivery thereof to Buyer, Buyer and its Representatives and Affiliates will be deemed to have fully released and discharged Sellers and their respective Representatives and Affiliates from any Liability resulting from the termination of this Agreement

Section 8.3 Return of Escrow Amount.

(a) If this Agreement is terminated by Sellers pursuant to Section 8.1(d), Sellers shall be entitled to the Escrow Amount as liquidated damages and not a penalty and, except in the case of fraud or willful misconduct, as Sellers' sole and exclusive remedy, which shall be paid to Sellers in accordance with the Escrow Agreement (and Buyer shall instruct the Escrow Agent to distribute the Escrow Amount to Sellers by wire transfer of immediately available funds to Sellers' bank account(s) set forth in the Escrow Agreement) and without further order of the Bankruptcy Court.

(b) If this Agreement is terminated under any circumstances other than the circumstance set forth in Section 8.3(a), the Escrow Amount shall be returned to Buyer in accordance with the Escrow Agreement (and Sellers shall instruct the Escrow Agent to return the Escrow Amount to Buyer by wire transfer of immediately available funds to Buyer's bank account set forth in the Escrow Agreement) and without further order from the Bankruptcy Court.

**ARTICLE IX  
MISCELLANEOUS**

Section 9.1 Survival. Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the applicable Closing, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.5(c) or Section 2.5(d) shall survive, and each of the same shall terminate and be of no further force or effect as of, the applicable Closing.

Section 9.2 Expenses. Except as otherwise expressly set forth herein, 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.

Section 9.3 Entire Agreement. This Agreement, the Related Agreements and the Confidentiality Agreement 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.

Section 9.4 Incorporation of Exhibits and Disclosure Schedule. The Exhibits to this Agreement and the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 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 of warranty or covenant 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 of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. 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 9.5 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.

Section 9.6 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 the other Parties; provided, that Buyer may assign its rights, interests and obligations hereunder to any Affiliate of Buyer (provided, that no such assignment to any such Affiliate shall in any way relieve Buyer of its obligations under this Agreement). Any attempted assignment in violation of this Section 9.6 will be void.

Section 9.7 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) upon receipt of confirmation of receipt if sent by facsimile transmission; (d) on the day such communication was sent by e-mail; or (e) 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 either Seller: The Great Atlantic & Pacific Tea Company, Inc.  
2 Paragon Drive  
Montvale, New Jersey 07645  
Attention: Christopher W. McGarry  
Matthew Bennett  
E-mail: [mcgarryc@aptea.com](mailto:mcgarryc@aptea.com); [bennettm@aptea.com](mailto: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 Gavin Westerman  
Facsimile: (212) 310-8007  
E-mail: [ray.schrock@weil.com](mailto:ray.schrock@weil.com); [gavin.westerman@weil.com](mailto:gavin.westerman@weil.com)

If to Buyer: The Stop & Shop Supermarket Company, LLC  
1385 Hancock Street  
Quincy, MA 02169  
Attention: Thomas Hippler  
E-mail: [thippler@aholdusa.com](mailto:thippler@aholdusa.com)

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

White & Case LLP  
1155 Avenue of the Americas  
New York, NY 10036  
Attention: John Reiss, John Cunningham and Dan Latham  
E-mail: [jreiss@whitecase.com](mailto:jreiss@whitecase.com); [jcunningham@whitecase.com](mailto:jcunningham@whitecase.com);  
[dlatham@whitecase.com](mailto:dlatham@whitecase.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 9.7.

Section 9.8 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.

Section 9.9 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 Related Agreement 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 Related Agreement or the transactions contemplated hereby or thereby in any other court; provided, however, that if the Bankruptcy Cases have not been commenced, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. 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 9.7; provided, however, that nothing in this Section 9.9 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 Related Agreement or the transactions contemplated hereby or thereby.

Section 9.10 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 RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.11 Specific Performance. The Parties acknowledge and agree that the other Parties and their respective estates, as applicable, would be damaged irreparably in the event the Parties do not perform their respective obligations under this Agreement in accordance with its specific terms or otherwise breach this Agreement, so that, in addition to any other remedy that the Parties 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.

Section 9.12 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.

Section 9.13 No Third Party Beneficiaries. Except as set forth in Section 9.14, this Agreement shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns.

Section 9.14 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 the Related Agreements may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (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 the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements 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 the Related Agreements or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 9.14.

Section 9.15 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.

Section 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure for all other sections of the Disclosure Schedule to the extent the relevance of such matter to such other sections is readily apparent from the face of such disclosure. The listing of any matter shall expressly not be deemed to constitute an

admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

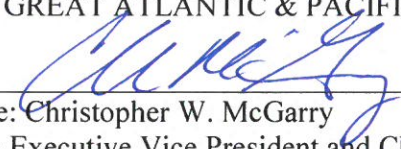
Section 9.17 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.18 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.

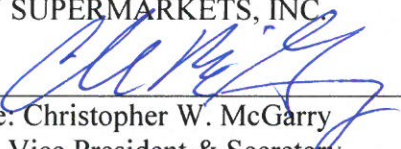
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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

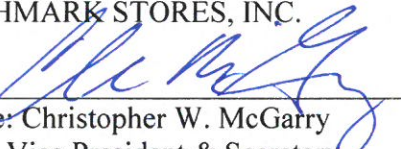
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

By:   
Name: Christopher W. McGarry  
Title: Executive Vice President and Chief Administrative Officer

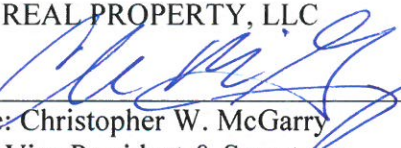
APW SUPERMARKETS, INC.

By:   
Name: Christopher W. McGarry  
Title: Vice President & Secretary

PATHMARK STORES, INC.

By:   
Name: Christopher W. McGarry  
Title: Vice President & Secretary

A&P REAL PROPERTY, LLC

By:   
Name: Christopher W. McGarry  
Title: Vice President & Secretary

THE STOP & SHOP SUPERMARKET COMPANY, LLC

By: Thomas A. Hippler  
Name: Thomas A. Hippler  
Title: General Counsel and Secretary

**AMENDMENT NO. 1**  
**TO**  
**ASSET PURCHASE AGREEMENT**

This Amendment No. 1 (this “Amendment”) to that certain Asset Purchase Agreement (the “Purchase Agreement”), dated as of July 19, 2015, by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation (“A&P”), APW Supermarkets, Inc., a New York corporation, Pathmark Stores, Inc., a Delaware corporation, A&P Real Property, LLC, a Delaware limited liability company (each, a wholly-owned Subsidiary of A&P and, together with A&P, “Sellers”), and The Stop & Shop Supermarket Company, LLC, a Delaware limited liability company (“Buyer”), is entered into on this 20th day of September, 2015. Buyer and each of the Sellers are sometimes referred to collectively herein as the “Parties” and individually as a “Party.” Capitalized terms used in this Amendment but not defined in this Amendment shall have the meanings assigned to such terms in the Purchase Agreement.

WHEREAS, the Parties have agreed to amend the Purchase Agreement in order to provide that (a) Buyer not acquire any General Inventory (or make any payment therefor), (b) in lieu of acquiring the General Inventory, Buyer will pay to Seller an amount equal to \$80,000 per Store, (c) Buyer not acquire any customer data and information derived from branded loyalty promotion or co-branded credit card programs and other similar information related to customer purchases at the Stores and (d) set forth their agreement with respect to the timing of the Initial Closing and each Subsequent Closing.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) The definition of “Acquired Assets” is hereby amended by deleting from clause (a) of such definition the reference to “the General Inventory (other than the Excluded Inventory)” and replacing it with “[Reserved]”.

(b) The definition of “Acquired Assets” is hereby amended by deleting clause (n) therein in its entirety and replacing it with “(n) [Reserved]”.

(c) The definition of “Excluded Assets” is hereby amended by adding in clause (n) of such definition the words “all General Inventory and” in front of the words “all Excluded Inventory”.

(d) The definition of “Excluded Assets” is hereby amended by adding the following language to the end of clause (p) “and all customer data and information derived from branded loyalty promotion or co-branded credit card programs (to the extent in existence) and other similar information related to customer purchases at the Stores.”

(e) The definition of “Inventory” is hereby replaced in its entirety with the following language: “‘Inventory’ means all Pharmacy Inventory”.

(f) The definition of “Closing Cash Payment” is hereby amended by adding in clause (b) of such definition the words “plus \$80,000 per Store” after the words “Inventory Purchase Price”.

2. Section 2.3(a)(i)(A). Section 2.3(a)(i)(A) of the Purchase Agreement is hereby amended by adding the following language directly following the definition of “Cash Purchase Price”: “plus \$80,000 per Store for each Store being acquired at the Closings”. The Parties hereby acknowledge and agree that the additional \$80,000 paid for each Store being acquired at the Closings is in lieu of any obligation of the Buyer to purchase the General Inventory under the Purchase Agreement.

3. General Inventory. Sellers hereby waive all obligations of Buyer under the Purchase Agreement with respect to General Inventory including all obligations under Section 2.6(b) of the Purchase Agreement. The Parties hereby agree that the procedures relating to General Inventory set forth on Schedule 2.6(a) of the Purchase Agreement are hereby deleted (but, for the avoidance of doubt, the Parties agree that none of the procedures set forth in Section 2.6(a) of the Purchase Agreement are being amended or modified in any respect hereunder with respect to the Pharmacy Inventory).

4. Section 5.2(c). Section 5.2(c) of the Purchase Agreement is hereby amended and restated in its entirety with the following language: “Notwithstanding anything in this Section 5.2 to the contrary, with respect to each Store, during the period commencing on the date that is thirty (30) days prior to the anticipated Closing Date, Seller will have no obligation to purchase or maintain levels of such Excluded Inventory or General Inventory at each such Store (but shall purchase and maintain any Pharmacy Inventory to be sold in the pharmacy of such Store through the Closing for such Store).”.

5. Closings. Notwithstanding anything in the Purchase Agreement to the contrary and subject to obtaining the Bankruptcy Court’s entry of the Sale Order, the Parties hereby agree that (a) if there is no Auction for the Stores, each Closing shall take place on the dates set forth on Schedule 1 to this Amendment (the “Closing Schedule”) and include such Stores (and related Acquired Assets) set forth on Schedule 1, as such Closing Schedule may be amended to remove each Separable Store, Excluded Store and/or Removed Store not acquired by Buyer, and (b) if there is an Auction for the Stores and the Buyer is the successful bidder for the Stores at such Auction, then the Closing Schedule shall be modified by the mutual agreement of the Parties to take into account the dates upon which such Auction occurs and the Sale Order is entered, as such Closing Schedule may be amended to remove each Separable Store, Excluded Store and/or Removed Store not acquired by Buyer, and the Parties further agree that in such case the reference to “November 15, 2015” in each of Section 2.4(b)(y) of the Purchase Agreement and Section 8.1(b)(ii)(y) of the Purchase Agreement shall automatically be deleted and replaced with “November 30, 2015”.

6. Effect of Amendment. This Amendment shall modify and amend the Purchase Agreement to the extent, and only to the extent, expressly set forth herein (it being the intent of the Parties that all of the terms and provisions of the Purchase Agreement that are not amended,



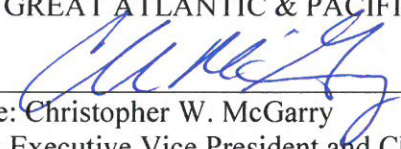
modified, waived or replaced hereunder shall be unaltered and shall remain in full force and effect).

7. Governing Law; Forum; Jury Trial. This Amendment 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. The Parties agree that all disputes under this Amendment shall be resolved in accordance with Section 9.9 of the Purchase Agreement and hereby waive their right to a jury in accordance with Section 9.10 of the Purchase Agreement, in each case as if both Sections were specifically set forth herein.

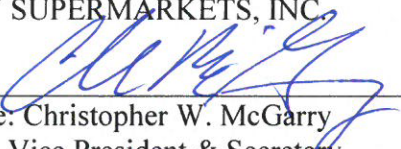
8. Counterparts; Facsimile and Electronic Signatures. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Amendment or any counterpart may be executed and delivered by facsimile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

[Signature Page Follows]

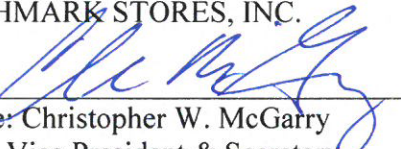
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

By:   
Name: Christopher W. McGarry  
Title: Executive Vice President and Chief Administrative Officer

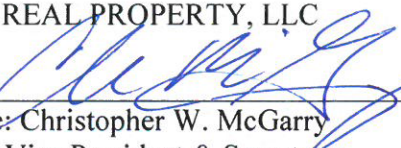
APW SUPERMARKETS, INC.

By:   
Name: Christopher W. McGarry  
Title: Vice President & Secretary

PATHMARK STORES, INC.

By:   
Name: Christopher W. McGarry  
Title: Vice President & Secretary

A&P REAL PROPERTY, LLC

By:   
Name: Christopher W. McGarry  
Title: Vice President & Secretary

BUYER

THE STOP & SHOP SUPERMARKET  
COMPANY, LLC

By: 

Name:

Title:

Timothy M. MAHONEY  
SENIOR VICE PRESIDENT

**AMENDMENT NO. 2**  
**TO**  
**ASSET PURCHASE AGREEMENT**

This Amendment No. 2 (this "Amendment") to that certain Asset Purchase Agreement dated as of July 19, 2015 (as amended by that certain Amendment No. 1 dated as of September 20, 2015, the "Purchase Agreement", such amendment, "Amendment No. 1") by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P"), APW Supermarkets, Inc., a New York corporation, Pathmark Stores, Inc., a Delaware corporation, A&P Real Property, LLC, a Delaware limited liability company (each, a wholly-owned Subsidiary of A&P and, together with A&P, "Sellers"), and The Stop & Shop Supermarket Company, LLC, a Delaware limited liability company ("Buyer"), is entered into on this 9<sup>th</sup> day of October, 2015. Buyer and each of the Sellers are sometimes referred to collectively herein as the "Parties" and individually as a "Party." Capitalized terms used in this Amendment but not defined in this Amendment shall have the meanings assigned to such terms in the Purchase Agreement.

WHEREAS, Buyer was the winning bidder at the Auction for the store owned by Sellers and located at 195 North Bedford Rd, Mount Kisco, NY (the "Mount Kisco Store") and will purchase the Mount Kisco Store at the final Subsequent Closing in accordance with the Purchase Agreement as set forth on Schedule 1 to Amendment No. 1, as further modified hereby;

WHEREAS, A&P Live Better, LLC, a Delaware limited liability company and a wholly-owned Subsidiary of A&P, ("A&P Live Better") owns all or part of the Acquired Assets contained in pharmacies located at the Stores; and

WHEREAS, the Parties have agreed to amend the Purchase Agreement with respect to the acquisition by Buyer of the Mount Kisco Store, as agreed at the Auction, and add A&P Live Better as a party to the Purchase Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Section 2.3(a)(i)(A). Section 2.3(a)(i)(A) of the Purchase Agreement is hereby amended by deleting the reference to "\$146,300,000" and replacing it with "\$148,389,000".

2. Closing. Subject to Section 5 of Amendment No. 1, the Closing for the Mount Kisco Store shall take place on November 13, 2015. Schedule 1 of Amendment No. 1 is hereby amended by (i) deleting the reference to "11/5/2015" under the "Date of Closing" column opposite to Mount Kisco's name and replacing it with "11/13/2015" and (ii) deleting the reference to "5" under the "Closing Wave" column opposite to Mount Kisco's name and replacing it with "6".

3. Exhibit F. Exhibit F of the Purchase Agreement is hereby amended by (i) deleting the reference to "\$23.3" opposite to Mount Kisco's name under the "Purchase Price (Millions)" column and replacing it with "\$25.389" and (ii) deleting the reference to "\$146.3" opposite to

the "Total Bid 25 Stores" under the "Purchase Price (Millions)" column and replacing it with "\$148.389".

4. Joinder of A&P Live Better. Buyer and Sellers hereby agree that by signing this Amendment, A&P Live Better, LLC, a Delaware limited liability company and a wholly owned subsidiary of A&P, shall become a Party to the Purchase Agreement.

5. Effect of Amendment. This Amendment shall modify and amend the Purchase Agreement to the extent, and only to the extent, expressly set forth herein (it being the intent of the Parties that all of the terms and provisions of the Purchase Agreement that are not amended, modified, waived or replaced hereunder shall be unaltered and shall remain in full force and effect).

6. Governing Law; Forum; Jury Trial. This Amendment 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. The Parties agree that all disputes under this Amendment shall be resolved in accordance with Section 9.9 of the Purchase Agreement and hereby waive their right to a jury in accordance with Section 9.10 of the Purchase Agreement, in each case as if both Sections were specifically set forth herein.

7. Counterparts; Facsimile and Electronic Signatures. This Amendment 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 Amendment 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.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment as of the date hereof.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

By: 

Name: Christopher W. McGarry

Title: Executive Vice President and Chief Administrative Officer

APW SUPERMARKETS, INC

By: 

Name: Christopher W. McGarry

Title: Vice President & Secretary



PATHMARK STORES, INC.

By: 

Name: Christopher W. McGarry

Title: Vice President & Secretary



A&P REAL PROPERTY, LLC

By: 

Name: Christopher W. McGarry

Title: Vice President & Secretary

A&P LIVE BETTER, LLC

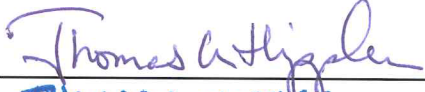
By: 

Name: Christopher W. McGarry

Title: Vice President & Secretary

BUYER

THE STOP & SHOP SUPERMARKET  
COMPANY, LLC

By:   
cw Name: THOMAS A. HIPPLER  
Title: SVP & GENERAL COUNSEL

Signature Page to Amendment No. 2  
to Purchase Agreement