UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*,	:	**Case No. 15-23007 (RDD)**
Debtors.	:	**(Jointly Administered)**

ORDER (I) APPROVING THE PURCHASE AGREEMENT AMONG SELLERS AND BUYER (II) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND LEASES IN CONNECTION THEREWITH AND (IV) GRANTING RELATED RELIEF

(Key Food Stalking Horse Agreement)

Upon the motion, dated July 19, 2015 (Docket No. 26) (the "Sale Motion")[1], filed by the above-captioned debtors and debtors in possession (the "Debtors") seeking, among other things, entry of an order, pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules"), authorizing and approving the sale of the Acquired Assets and the assumption and assignment of certain executory contracts and unexpired leases of the Debtors in connection therewith; and the Court having taken into consideration this Court's prior order, dated August 11, 2015 (Docket No. 495) (the "Bidding Procedures Order"), approving competitive bidding procedures for the Acquired Assets (the "Bidding Procedures"); and Key Food Stores Co-Operative, Inc. (the "Buyer") having submitted a stalking horse bid for the

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

Acquired Assets; and the Court having conducted a hearing on the Sale Motion on October 16, 2015 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto, (ii) the Asset Purchase Agreement, dated as of July 19, 2015 (as amended by that certain amendment, dated September 30, 2015 filed at ECF No. 1125, and further amended by that certain letter agreement, dated October 20, 2015 to reflect, among other things, (i) staggering of the closings of the Acquired Assets, (ii) the removal of the assets relating to store number 70849, located at 375 Tompkins Avenue, Staten Island, NY (the "**Store 70849 Assets**") from the package of Acquired Assets to be acquired thereunder, and (iii) payment to Buyer of $80,000 (the "**Store 70849 Payment**") from any proceeds the Debtors receive from the sale of the Store 70849 Assets (the "**Purchase Agreement**")), a copy of which is attached hereto as Exhibit A, by and between Sellers and Buyer, whereby the Debtors have agreed, among other things, to sell the Acquired Assets to Buyer, including certain executory contracts and unexpired leases of the Debtors that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Purchase Agreement (the "Sale Transaction"), (iii) the Declaration of Stephen Goldstein in Support of the Sale Motion (Docket No. 251) and the supplements thereto, (iv) the objections to the Sale Motion, and (v) the arguments 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") has been provided in accordance with the Bidding Procedures Order; and for the reasons stated on the record of the Sale Hearing all objections to the Sale Motion having been withdrawn, resolved or overruled as provided in this 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 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 Transferred Contracts, (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 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 Purchase Agreement, and the Sale Transaction and in entering into the Purchase Agreement and related Bill of Sale and Assignment and Assumption Agreement (the "Related Agreements"). The Debtors entry into and performance under the Purchase Agreement and Related Agreements (i) constitute a sound and reasonable exercise of the Debtors' business judgment, (ii) provide value to and are beneficial to the Debtors' estates, and are in the best interests of the Debtors and their stakeholders, and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale Transaction include, but are not limited to, the following: (i) the Purchase Agreement constitutes the highest and best offer received for the Acquired Assets; (ii) the Purchase Agreement presents the best opportunity to maximize the value of the Acquired Assets on a going concern basis and avoid decline and devaluation of the Acquired Assets; (iii) unless the Sale Transaction and all of the other transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for pursuant to the Purchase Agreement, recoveries to creditors may be materially diminished; and (iv) the value of the Debtors' estates will be maximized through the sale of the Acquired Assets pursuant to the 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 Acquired Assets 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 six 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 Acquired Assets, and (iv) the process conducted by the Debtors pursuant to the Bidding Procedures obtained the highest and best value for the Acquired Assets for the Debtors and their estates, and any other transaction would not have yielded as favorable an economic result.

I. **Fair Consideration**. The consideration to be paid by Buyer under the Purchase Agreement constitutes fair and reasonable consideration for the Acquired 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**. The Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtors and Buyer in good faith, without collusion and from arm's-length bargaining positions. 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 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. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors. Neither the Debtors nor Buyer is entering into the Purchase Agreement, or proposing to consummate the Sale Transaction, fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

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, which provided notice of the Debtors' intent to assume and assign the Transferred Contracts and of the related proposed Cure Costs upon each non-debtor counterparty to the Transferred Contracts. 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 Transferred Contracts. All non-debtor parties to the Transferred Contracts 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 the Transferred Contracts to Buyer.

N. **Satisfaction of Section 363(f) Standards**. The Debtors may sell the Acquired Assets free and clear of all liens, claims (including those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, including, without limitation, any 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, property litigation claims, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against the Debtors, and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Acquired Assets, the operation of

the Debtors' businesses before the Closing, or the transfer of the Debtors' interests in the Acquired Assets to Buyer, 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 Acquired Assets fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Claims that constitute interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale 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 or in respect of the Debtors or the Acquired Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Claims against Buyer or any of its assets, property, Affiliates, Members, successors, assigns, or the Acquired Assets.

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

P. The total consideration to be provided under the Purchase Agreement reflects Buyer's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Acquired Assets free and clear of all Claims (including, without limitation, any potential derivative, vicarious, transferee or successor liability claims).

Q. **Assumption and Assignment of Transferred Contracts**. The assumption and assignment of the Transferred Contracts are integral to the Purchase Agreement, are in the best interests of the Debtors and their estates, and represent the reasonable exercise of the Debtors' sound business judgment. Specifically, the assumption and assignment of the Transferred Contracts (i) is necessary to sell the Acquired 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 Transferred Contracts, 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 Transferred Contracts.

R. With respect to each of the Transferred Contracts, the Debtors have met all requirements of section 365(b) of the Bankruptcy Code. Further, Buyer or its permitted assignees have provided adequate assurance of future performance under the Transferred

Contracts in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Transferred Contracts. Accordingly, the Transferred Contracts may be assumed by the Debtors and assigned to Buyer or its permitted assignees as provided for in the Purchase Agreement.

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

T. The Debtors (i) have full corporate or limited liability company (as applicable) power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale 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 Purchase Agreement, and (iii) upon entry of this Order, other than any consents identified in the Purchase Agreement (including with respect to antitrust matters), need no consent or approval from any other Person to consummate the Sale Transaction.

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

V. The Purchase Agreement is a valid and binding contract between the Debtors and Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement and 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 Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Sale 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 Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regards to the transactions contemplated by this Order.

X. **Personally Identifiable Information**. As contemplated in the Purchase Agreement, and subject to the terms of this Order, the sale to Buyer under the Purchase Agreement of personally identifiable information (as such term is defined in section 101(41A) of the Bankruptcy Code), if any, 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 Acquired Assets did not file an objection 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 to the extent set forth herein.

2. **Objections Overruled**. All objections (except for Cure Objections, if any, that have been adjourned), if any, to the Sale Motion or the relief requested therein 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. Without limiting the foregoing, the objections of (i) ESRT 10 Union Square LLC (ECF No. 859) relating to Store No. 36715)) and (ii) Joseph Angelone (ECF No. 913 and 1400) relating to Store No. 70292), seeking to enforce purported "profit sharing" provisions of the applicable leases are overruled and such parties shall not be entitled to receive any portion of the purchase price paid to the Debtors under the Purchase Agreement.

3. **Notice.** Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

4. **Fair Purchase Price**. The consideration provided by Buyer under the Purchase Agreement is fair and reasonable.

5. **Approval of the Purchase Agreement**. The Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved. The failure specifically to include any particular provision of the Purchase Agreement

in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

6. **Consummation of Sale 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 Purchase Agreement and to consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Order.

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

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

9. Each and every any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

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

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

successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Claims against Buyer, its Members, 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 Affiliates, Members, successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order or the agreements or actions contemplated or taken in respect thereof. No such Persons shall assert or pursue against Buyer or its Affiliates, Members, successors or assigns any such Claim.

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

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

14. Except as expressly set forth in the Purchase Agreement, Buyer and its Affiliates, Members, 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, contributed to or required to have been contributed to or otherwise 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, employee benefits, 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; (f) any antitrust laws; (g) any product liability or similar laws, whether state or federal or otherwise; (h) 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; (i) any bulk sales or similar laws; (j) any federal, state or local tax statutes, regulations or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (k) 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.

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

Claims against the Acquired Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office.

16. To the maximum extent permitted under applicable law, Buyer shall be authorized, as of the Closing, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing.

17. No governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the Acquired Assets on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale Transaction to the extent that any such action by a governmental unit or any representative thereof would violate section 525 of the Bankruptcy Code.

18. **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.

19. **Assumption and Assignment of Transferred Contracts**. The Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign the Transferred Contracts to Buyer or its permitted assignees free and clear of all Claims, and to execute and deliver to Buyer and its permitted assignees such documents or other

instruments as may be necessary to assign and transfer the Transferred Contracts to Buyer or its permitted assignees as provided in the Purchase Agreement. Upon the Closing, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Transferred Contracts and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Transferred Contracts. Buyer acknowledges and agrees that from and after the Closing Date, subject to and in accordance with the Purchase Agreement, it shall comply with the terms of each assumed and assigned Transferred Contract in its entirety, including any indemnification obligations expressly contained in such Transferred Contract that could arise as a result of events or omissions that occur from and after the Closing Date, unless such provisions are not enforceable pursuant to the terms of 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 Purchase Agreement after the Closing. Payment of the Cure Costs shall be in full satisfaction and cure of any and all defaults under the Transferred Contracts, whether monetary or non-monetary. Each non-debtor party to a Transferred Contract 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.

21. 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 (as such term is defined in the Bidding Procedures Order). Upon resolution of such Adjourned Cure Objection and the payment of the applicable Cure Cost, if any, the Debtors shall

have no obligation to maintain the Cure Cost Reserve with respect to such Transferred Contract and Lease or Additional Contract and Lease.

22. **Ipso Facto Clauses Ineffective**. The Transferred Contracts 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 Transferred Contracts, notwithstanding any provision in any such Transferred Contracts (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 Transferred Contracts.

23. Upon the Debtors' assignment of Transferred Contracts to Buyer under the provisions of this Order, no default shall exist under any Transferred Contracts, and no counterparty to any Transferred Contracts 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 Transferred Contract. Any provision in a Transferred Contract that prohibits or conditions the assignment or sublease of such Transferred Contract (including without limitation, the granting of a lien therein) or allows the counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. The failure of the Debtors or Buyer to enforce at any time one or more terms or conditions of any Transferred Contract 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 Transferred Contract.

24. **No Breach of Union Obligations**. The unions affected by the sale of the Acquired Assets did not file an objection 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.

25. **Statutory Mootness**. The transactions contemplated by the Purchase Agreement are undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Acquired Assets to Buyer, free and clear of Claims, unless such authorization is duly stayed before the Closing pending such appeal.

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

27. **Waiver of Bankruptcy Rules 6004(h) and 6006(d)**. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply, *provided* that the closing on Store No. 70292 located at Flatbush Avenue in Brooklyn, NY shall not occur before October 26, 2015. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a

stay within the time prescribed by law and prior to the Closing, or risk its appeal will be foreclosed as moot.

28. **Personally Identifiable Information**. After giving due consideration to the facts, circumstances and conditions of the Purchase Agreement, as well as the applicable reports 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 Purchase Agreement, subject to the terms of this Order, would violate applicable nonbankruptcy law.

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

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

31. **Modification of Purchase Agreement**. The Purchase Agreement, and any related agreements, documents or other instruments, may be modified, amended or supplemented

by the parties thereto, in a writing signed each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment or supplement does not materially change the terms of the Purchase Agreement or any related agreements, documents or other instruments.

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

33. **Non-Severability.** The provisions of this Order and the Purchase Agreement are non-severable and mutually dependent.

34. **Store 70849 Payment**. The Debtors are authorized and directed to pay the Store 70849 Payment, to the extent payable under the Purchase Agreement, without further order of the Court. The Store 70849 Termination Payment, to the extent payable under the Purchase Agreement, shall constitute an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b) and 507(a)(2) of the Bankruptcy Code. Subject to the foregoing, the Store 70849 Payment shall be paid in cash from the proceeds of any approved sale of the Store 70849 Assets.

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

Order or the Purchase Agreement (and such other related agreements, documents or other instruments) and to enforce the injunctions set forth herein.

Dated: October 21, 2015
White Plains, New York

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

(Purchase Agreement)

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

BY AND AMONG

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.,

FOOD BASICS, INC.,

APW SUPERMARKETS, INC.,

SHOPWELL, INC.,

PATHMARK STORES, INC.,

A&P REAL PROPERTY, LLC

AND

KEY FOOD STORES CO-OPERATIVE, INC.

July 19, 2015

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"), Food Basics, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Food Basics"), APW Supermarkets, Inc., a New York corporation and a wholly-owned subsidiary of A&P ("APW"), Shopwell, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Shopwell"), Pathmark Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Pathmark"), A&P Real Property, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P ("A&P Real Property" and, together with A&P, Food Basics, APW, Shopwell and Pathmark, "Sellers"), and Key Food Stores Co-Operative, Inc., a New York corporation or any of its permitted assignees ("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 20, 2015 in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, Sellers operate the nineteen (19) supermarkets at the locations set forth in Section 3.5 of the Disclosure Schedule (as defined below) under the names "A&P," "Food Basics," "Food Emporium," "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 primarily in the operation of the Stores, including (to the extent applicable) assets located at the Stores (unless otherwise specified herein) on the Closing Date:

(a) the Inventory (other than Excluded Inventory);

(b) the Furnishings and Equipment owned by Sellers (other than Excluded Furnishings and Equipment);

(c) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, the Leases, other than those Leases that expire or that are terminated prior to Closing, together with (to the extent of 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;

(d) the Owned Real Property;

(e) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, all rights under those Contracts set forth on Schedule 1.1(b), other than those Contracts that expire or that are terminated prior to the Closing (such Contracts, together with the Leases (but, for the avoidance of doubt, excluding all Affected Labor Agreements), the "Transferred Contracts");

(f) all of Sellers' security deposits, 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");

(g) an amount equal to $100 in cash in each till and point of sale register for each Store ("Register Cash");

(h) to the extent requested by Buyer and to the extent assignable to Buyer under applicable Law, all Permits required for the operation of the Stores (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);

(i) all books, records, files and papers, whether in hard copy or electronic format, including sales and promotional literature, manuals and data, sales and purchase correspondence, customer lists (including, but not limited to, all 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 to the extent permitted under applicable Law and Sellers' privacy policies), lists of suppliers, personnel and employment records, in each case that are primarily used in the operation of the Stores; provided, however, if Buyer determines in its sole discretion to purchase documents subject to applicable Law regarding privacy related to the Business, all costs of a privacy ombudsman related to the Stores, to the extent that the Bankruptcy Court requires a privacy ombudsman to be appointed with respect to the Stores, shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers;

(j) all goodwill of Sellers arising, directly or indirectly, primarily out of the operation or conduct of the Business;

(k) all of Sellers' causes of action, claims, credits, demands, remedies or rights of set-off against third parties arising out of the operation of the Business;

(l) all of Sellers' rights under warranties, indemnities and all similar rights against third parties to the extent related to any Acquired Assets;

(m) all assets related to the in-store pharmacies, including all non-expired Pharmaceutical Inventory, scripts, prescription lists, Furnishings and Equipment and Permits of certain Stores to the extent transferable under applicable Law as set forth on Schedule 1.1(c); provided, however, if Buyer determines in its sole discretion to purchase documents subject to applicable Law regarding privacy related to the Business, all costs of a privacy ombudsman related to the Stores, to the extent that the Bankruptcy Court requires a privacy ombudsman to be appointed with respect to the Stores, shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers;

(n) trailers identified on Schedule 1.1(d) ("Transferred Trailers"); and

(o) to the extent transferable, all warranties related to any of the foregoing;

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

"Affected Labor Agreements" means the collective bargaining agreements covering any of the Covered Employees, each of which is listed on Schedule 1.1(e).

"Affected Union Covered Employees" has the meaning set forth in Section 6.4(a).

"Affected Unions" means the unions identified on Schedule 1.1(f).

"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.

"Allocated Amount" has the meaning set forth in Section 5.3(c).

"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.

"Assignment and Assumption Agreement" has the meaning set forth in Section 2.5(b).

"Assumed Liabilities" means the following Liabilities of Sellers:

(a) all Liabilities under the Transferred Contracts (excluding all Cure Costs thereof, other than those with respect to any Affected Labor Agreements, to the extent assumed);

(b) all amounts allocated to Buyer under Section 2.8 and all Transfer Taxes and other Taxes allocated to Buyer pursuant to Section 6.5;

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

(d) (i) to the extent Buyer agrees to assume an Affected Labor Agreement, all Liabilities under such Affected Labor Agreement(s) to be assumed by Buyer in accordance with the provisions of Section 6.4, 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;

provided, however, that notwithstanding anything to the contrary set forth in this definition, the Assumed Liabilities shall not include any Excluded Liabilities.

"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 Seller of the release by Seller 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 attached hereto as 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(b).

"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, as set forth on Schedule 1.1(m).

"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 Proration Amount" has the meaning set forth in Section 2.8(a).

"Cap" has the meaning set forth in Section 8.1(k)(iii).

"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).

"Casualty / Condemnation Store" has the meaning set forth in Section 2.10(a).

"Challenge Recommendation" has the meaning set forth in Section 5.3(c).

"Closing" has the meaning set forth in Section 2.4.

"Closing Date" has the meaning set forth in Section 2.4.

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

"Confidentiality Agreement" means the confidentiality agreement, dated as of May 15, 2015, by and between A&P and Buyer.

"Contract" means any agreement, contract, license, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and to which each of the parties are subject and intend to be bound, other than the Leases.

"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, long-term disability or any other approved leave of absence as of the Closing.

"Cure Costs" means any and all amounts or obligations that must be cured pursuant to section 365(b)(1) of the Bankruptcy Code to effectuate the assumption by the applicable Seller

and assignment to Buyer of the Transferred Contracts, as defined by the Bankruptcy Court or agreed to by the Parties.

"Damages" means any actual losses, claims, liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out-of-pocket expenses (including reasonable fees and expenses of counsel)).

"Debt Commitment Letter" has the meaning set forth in Section 5.9.

"Debt Financing" means the debt financing incurred or intended to be incurred pursuant to the Debt Commitment Letter, as amended, supplemented or replaced in compliance with this Agreement.

"Debt Financing Commitment" has the meaning set forth in Section 5.9.

"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 Plans" 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, N.A.

"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 the Closing that are not expressly included in the Acquired Assets, including, but not limited to:

(a) any asset of Sellers that is (i) not (A) located in the Stores and/or (B) used or held for use primarily in the operation of the Stores or (ii) inseparable from any other business of Sellers or any of their Affiliates (other than (x) the operation of the Stores and (y) only to the extent not used or held for use primarily in the operation of the Stores), in each case, including (1) 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; (2) books and

records related to (a) Taxes paid or payable by Sellers or (b) any claims, obligations or liabilities not included in Assumed Liabilities; and (3) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of Sellers (excluding such items that are Prepaid Expenses);

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

(c) all cash and Cash Equivalents (other than Register Cash) and accounts receivable;

(d) all Permits that are not part of the Acquired Assets as provided herein;

(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;

(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;

(h) any and all automobiles, trucks, tractors, and trailers (other than the Transferred Trailers);

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

(j) all Intellectual Property owned, used, or held for use by Sellers, including, for the avoidance of doubt, the name "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(g), 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) the Furnishings and Equipment described on Schedule 1.1(h) (the "Excluded Furnishings and Equipment");

(l) all Contracts and Leases other than the Transferred Contracts;

(m) all Excluded Inventory;

(n) all other assets bearing any of the Seller Marks, other than Furnishings and Equipment (subject to Section 6.9); and

(o) those items set forth on Schedule 1.1(i).

"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 expressly assumed by Buyer as an Assumed Liability, including, but not limited to:

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

(b) (i) any Liability of Sellers for Taxes (except for those Taxes allocated to Buyer pursuant to Section 2.8 and Section 6.5, but including those Taxes allocated to Sellers pursuant to Section 2.8 and Section 6.5) whether or not relating to Sellers or any of their Affiliates and whether or not incurred prior to the Closing; (ii) any Liability of Sellers or any of their Affiliates for the unpaid Taxes of any Person (including Taxes imposed on Sellers or any of their Affiliates) as a transferee or successor, by contract or otherwise; (iii) any Liability for Taxes related to the Acquired Assets apportioned to Sellers under Section 6.5 and (iv) any Liability of Sellers relating to escheat or unclaimed property obligations;

(c) all accounts payable;

(d) all Cure Costs (other than those with respect to any Affected Labor Agreement, to the extent assumed);

(e) any withdrawal liability incurred by Sellers (or either of them) or any of their Affiliates in connection with a complete withdrawal or partial withdrawal from a Multiemployer Plan under Title IV of ERISA (or any similar contractual Liability imposed by the terms of a Multiemployer Plan), including, for the avoidance of doubt, any such withdrawal liability or similar contractual Liability arising out of the transactions contemplated by this Agreement or any Related Agreement (and, for the further avoidance of doubt, nothing herein shall be construed as requiring Buyer to take or cause to be taken any measures or to agree to any undertakings to avoid or limit any such withdrawal liability or similar contractual Liability of Sellers (or either of them) or any of their Affiliates);

(f) all Liabilities relating to or arising out of pre-Closing periods, including, but not limited to, any indebtedness, Litigation, product liability claims and any other indemnification claims, in each case except as otherwise described herein in Section 2.8 and Section 6.5 and other than Assumed Liabilities;

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

(h) all Liabilities under or relating to any assumed Affected Labor Agreements arising at or prior to the Closing; provided that nothing in this subsection (h) shall be construed as limiting the generality or scope of subsection (e) above; and

(i) and all Transfer Taxes allocated to Sellers pursuant to Section 6.5;

(j) all Seller Transaction Expenses; and

(k) all Liabilities arising at or prior to the Closing with respect to any Covered Employee.

"Excluded Stores" has the meaning set forth in Section 5.3(c).

"Fee Letters" has the meaning set forth in Section 5.9(a).

"Financing Commitment Notice" has the meaning set forth in Section 5.9(a).

"Financing Failure" has the meaning set forth in Section 8.1(b)(2).

"Fundamental Representations" has the meaning set forth in Section 7.1(a).

"Furnishings and Equipment" means all trade fixtures, store models, shelving, refrigeration equipment and point of sale equipment owned by Sellers and located at the Stores, including those items listed on Schedule 1.1(j).

"GAAP" means United States generally accepted accounting principles consistently applied.

"Governmental Authority" means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, arbitrator, mediator, department, or other governmental entity.

"Hazardous Substance" means any substance, material or waste that is defined, classified or otherwise characterized under Environmental Laws as "toxic," or "hazardous" or as a "pollutant" or "contaminant," including petroleum, or any fraction thereof.

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

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

"Initial Escrow Amount" has the meaning set forth in Section 2.3(b).

"Intellectual Property" means intellectual property of any type or nature however denominated, throughout the world, including (a) all issued patents and patent applications, together with all reissuances, continuations, continuations-in-part, divisionals, extensions and reexaminations thereof; (b) all brands and symbols used as indicia of quality, source or nature, including 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 rights of privacy and publicity; (d) all proprietary works of authorship, including designs and copyrights, together with all registrations and applications for registration therefor and renewals in connection therewith; (e) all trade secrets, know-how,

technology, improvements, and inventions; (f) all computer software (including data and databases); and (g) all rights of action and remedies arising from or relating to the foregoing.

"Inventory" means all food, beverages (including, to the extent transferable to Buyer or its designee under applicable Law, alcohol and Pharmaceutical Inventory), and other merchandise and products (including general merchandise items described in Schedule 1.1(k) but excluding greeting cards) offered for sale to customers at the Stores (including any such Inventory held at a warehouse or offsite location primarily used at or as supply to the Stores).

"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 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 persons holding a position of senior vice president or senior thereto at Sellers, in each case assuming reasonable inquiry by each such person. "Knowledge" of Buyer (and other words of similar import) means the actual knowledge of Dean Janeway, in each case assuming reasonable inquiry by each such person.

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

"Leases" means all leases, subleases, licenses, concessions, options, contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, nondisturbance agreements, estoppel certificates and other agreements (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, pursuant to which any Seller holds any leasehold or subleasehold estates and other rights in respect of any Store.

"Lenders" has the meaning set forth in Section 5.9.

"Liability" means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether directly incurred or consequential, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

"Lien" means any mortgage, pledge, lien, charge, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property; provided, however, that "Lien" shall not be deemed to include any license of Intellectual Property.

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

"Material Adverse Effect" means any effect or change that, when considered individually or taken as a whole, together with all other adverse events, changes, facts, conditions, circumstances or occurrences with respect to which such phrase is used in this Agreement, has had or would be reasonably expect to have a material adverse effect on the condition of the Acquired Assets or the Business other than any events, changes, facts, conditions, circumstances or occurrences 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 other calamity or force majeure events (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or GAAP; (g) the taking of any action expressly contemplated by this Agreement or any Related Agreement or taken with the written consent of the other Party; (h) any effects or changes as a result of the announcement or pendency of this Agreement; (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (j) the sale of any other assets or stores to any third parties by any Seller or any of its Affiliates; (k) any effects or changes arising from or related to the breach of the Agreement by Buyer; (l) or (m) any effect resulting from the filing of the Bankruptcy Cases; provided that the effects of the events described in clauses (a) through (f) shall be excluded only to the extent they do not materially disproportionately impact the Acquired Assets as compared to other entities engaged primarily in lines of business similar to the Business.

"Material Event" has the meaning set forth in Section 2.10(a).

"Member" means a member of Buyer.

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

"Multiemployer Plan" means a multiemployer plan as defined in section 3(37) or section 4001(a)(3) of ERISA.

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

"Order" means any decree, order, injunction, rule, judgment, decision or consent of or by any Governmental Authority.

"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).

"Owned Real Property" means the fee-owned real property, including, without limitation, all buildings, structures, improvements and fixtures located thereon, easements, rights-of-way and all other appurtenant rights thereto (such as appurtenant rights in and to public streets) to the extent of Sellers' interest therein, as more particularly described on Schedule 1.1(l).

"Parties" has the meaning set forth in the preamble.

"Permit" means any franchise, approval, permit, consent, license, order, registration, certificate, privilege, variance or similar right issued by or otherwise obtained from any Governmental Authority.

"Permitted Lien" means (a) statutory Liens for Taxes not yet delinquent; (b) mechanic's, workmen's, repairmen's, warehousemen's, carrier's or other similar Liens, including all statutory liens, arising or incurred in the Ordinary Course of Business; (c) with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease or other occupancy agreement 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 that do not or would not reasonably be expected to have a Material Adverse Effect; (f) matters that would be disclosed on an accurate survey of the real property; (g) any liens shown in any title commitment, report or policy, or otherwise of record; and (h) other Liens that Buyer has expressly stated are acceptable to Buyer in a writing delivered to Sellers; with respect to each of the foregoing (a) through (h), to the extent in connection with a leasehold property, Permitted Liens shall include Liens not required to be removed or cured by the tenant under the applicable Lease and which were not otherwise created by such tenant.

"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.

"Personal Property Leases" has the meaning set forth in Section 3.10.

"Petition Date" means the date Sellers file petitions commencing the Bankruptcy Cases.

"Pharmaceutical Inventory" means prescription pharmaceuticals and prescription products.

"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).

"Proceeds" has the meaning set forth in Section 2.10(a).

"Proposal" has the meaning set forth in Section 6.3.

"Proposed Debt Commitment Letter" has the meaning set forth in Section 5.9(a).

"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.

"Register Cash" has the meaning set forth in the definition of Acquired Assets.

"Related Agreements" means the Bill of Sale and the Assignment and Assumption Agreement.

"Related Party" has the meaning set forth in Section 8.2(b).

"Removed Store Escrow Amount" has the meaning set forth in Section 2.3(b)(iv).

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

"Reserved Amount" has the meaning set forth in Section 2.6(b).

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

"Sale Motion" means the motion of Sellers, in a form reasonably acceptable to Buyer, seeking Bankruptcy Court approval of the Agreement and the transactions contemplated hereby.

"Sale Order" means an order of the Bankruptcy Court in substantially the form attached hereto as 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 the transactions contemplated hereby are fair and reasonable, entered into on an arms-length basis, and that Buyer is a good faith purchaser; (c) determining that Buyer is not a successor to any of Sellers and incurs no successor liability, and (d) providing that the Closing will occur in accordance with the terms and conditions hereof.

"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).

"Seller Transaction Expenses" means all costs, fees and expenses incurred in connection with or in anticipation of the negotiation, execution and delivery of this Agreement and the Related Agreements or the consummation of the transactions contemplated by this Agreement, in each case to the extent unpaid at the time of determination (which, unless otherwise expressly indicated herein, will be the Closing), including but not limited to (i) the fees and expenses of the Inventory Taker to be borne by Sellers pursuant to Section 2.6(a), (ii) the portion of the Change in Control Payments to be borne by Sellers and (iii) the portion of the cost of the privacy ombudsman to be borne by Sellers.

"Sellers" has the meaning set forth in the preamble.

"Specified Environmental Stores" means the Stores set forth on Schedule 2.11.

"Specified Liquor Store" means those Stores set forth on Schedule 2.6(b).

"Store Alcohol Licenses" has the meaning set forth in Section 2.6(b).

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

"Stores" has the meaning set forth in the recitals.

"Subsequent Escrow Amount" has the meaning set forth in Section 2.3(b).

"Subsidiary" means, with respect to any Person, means, on any date, any 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 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 of the profits or losses of which are, as of such date, owned, controlled or held by the applicable 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) References in this Agreement to materials or information "furnished to Buyer" and other phrases of similar import include all materials or information made available to Buyer or its Representatives in the data room prepared by Sellers or provided to Buyer or its Representatives in response to 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, (a) Buyer or its permitted designees will purchase from Sellers, and Sellers will sell, transfer, assign, convey, and deliver to Buyer or its permitted designees at the Closing all of the Acquired Assets and (b) Sellers will assume the Transferred Contracts and assign to Buyer all such Transferred Contracts to the maximum extent permitted by the Bankruptcy Code.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, Buyer will assume and become responsible for the Assumed Liabilities at the Closing. Buyer agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof.

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) $27,550,000 (the "Cash Purchase Price"), *plus* (B) the amount of the Inventory Purchase Price, *plus* (C) the amount of the Prepaid Expenses (the "Prepaid Expenses Amount"), *plus* (D) the Seller Proration Amount, if any, *minus* (E) the Buyer Proration Amount, if any, *plus* (F) the amount that Sellers are required to pay as Cure Costs up to $150,000, *plus* (G) the Register Cash (such sum, the "Purchase Price") and (ii) Buyer's assumption of the Assumed Liabilities.

(b) Upon the execution of this Agreement, Buyer shall immediately deposit with the Escrow Agent the sum of $1,377,500 by wire transfer of immediately available funds (the "Initial 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. Upon the approval of the Proposed Debt Commitment Letter, then on the immediately following Business Day, by Sellers and the execution thereof by Buyer, pursuant to the terms of the Escrow Agreement, Buyer shall immediately deposit with the Escrow Agent the sum of $2,066,250 by wire transfer of immediately available funds (the "Subsequent Escrow Amount" and, together with the Initial Escrow Amount, 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. If any deposit is required on a day that is not a Business Day, such deposit shall be made on the immediately following Business Day. Pursuant to the Escrow Agreement and subject to the terms of this Agreement, the Escrow Amount (together with all accrued investment income thereon, if any) shall be distributed as follows:

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

(ii) if this Agreement is terminated by Sellers pursuant to Section 8.1(d) or Section 8.1(f) or by Buyer pursuant to Section 8.1(b)(ii) in a situation where Sellers also have a right to terminate pursuant to Section 8.1(f) (and, for the avoidance of doubt, assuming that Sellers could provide the notices set forth therein rather than such notices already having been provided), the Escrow Amount, together with all accrued investment income thereon, if any, shall be delivered to Sellers;

(iii) if this Agreement is terminated for any reason other than the circumstances described in the foregoing clause (ii), the Escrow Amount, together with all accrued investment income thereon, if any, shall be delivered to Buyer; or

(iv) if any Store is excluded from the list of Stores pursuant to Section 2.10 (Damaged or Destroyed Store Closing), Section 5.3 (Antitrust), Section 5.4(b) (Competing Transaction) or Section 8.1(k) (Exclusion of Certain Stores), an amount equal to five percent (5%) of the Purchase Price (or twelve and a half percent (12.5%) of the Purchase Price, after the Subsequent Escrow Amount is deposited) allocated to such Store as set forth on Section 3.5 of the Disclosure Schedule (the "Removed Store Escrow Amount") shall be returned to Buyer within three (3) Business Days of notice to the Escrow Agent of such removal, and the Sellers shall provide Joint Written Instructions authorizing the release of such funds pursuant to the Escrow Agreement accordingly.

Section 2.4 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York (or such other location as shall be mutually agreed upon by Sellers and Buyer) commencing at 10:00 a.m. local time on a date (the "Closing Date") that is the third (3rd) Business Day following the date upon which all of the conditions to the obligations of Sellers and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that by their nature are to be satisfied at the 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. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective, and title to and risk of loss associated with the Acquired Assets, shall be deemed to occur at 12:01 am, New York City time, on the Closing Date.

Section 2.5 Closing Payments and Deliveries.

(a) On the Closing Date, Buyer shall pay the Purchase Price (less the Escrow Amount, which shall be released to Sellers by the Escrow Agent) to Sellers, which shall be paid by wire transfer of immediately available funds into an account designated by Sellers.

(b) At the Closing, Sellers will deliver to Buyer (i) a duly executed Bill of Sale substantially in the form of Exhibit C (the "Bill of Sale"); (ii) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit D (the "Assignment and Assumption Agreement"); (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 and (iv) a quitclaim deed for the Owned Real Property substantially in the form of Exhibit F.

(c) At the Closing, Buyer will deliver to Sellers (i) the Bill of Sale duly executed by Buyer; (ii) the Assignment and Assumption Agreement duly executed by Buyer; and (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) are satisfied.

(d) At the Closing, each Seller will deliver to Buyer a duly executed certificate meeting the requirements of Section 1.1445-2(b)(2) of the Treasury Regulations stating that such Seller is not a "foreign person" as defined in Section 1445 of the Code.

Section 2.6 Inventory.

(a) A physical count of the Inventory, and calculation of the value thereof, at each of the Stores shall be made by a nationally-recognized, independent inventory service (the "Inventory Taker") selected and engaged by Sellers, in their sole discretion, two (2) days prior to the anticipated Closing Date, or on such other date as the Parties may mutually agree (the date of such inventory being the "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 a Representative present during the inventory and the fees and expenses of the Inventory Taker shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers. The physical inventory (and the Inventory Purchase Price to be paid by Buyer for the Inventory) shall not include Inventory that (i) is A&P branded (including any of Sellers' Affiliates' branded) private label inventory; (ii) is damaged, spoiled, perishable, outdated (any merchandise that has a manufacturer's date by which it must be sold that is less than fourteen (14) days after the Inventory Date being deemed outdated for this purpose), obsolete, or otherwise unsaleable at normal retail price in the Ordinary Course of Business at the Stores; or (iii) is not transferable to Buyer under applicable Law (collectively, the "Excluded Inventory"). The Inventory Taker shall value all Inventory carried in the Stores on the Inventory Date, excluding the Excluded Inventory (but including any portion or all of the Excluded Inventory described in clause (ii) or (iii) above that Buyer deems Inventory), at the percentages of the segment retail price set forth in Schedule 2.6(a) (such value, the "Inventory Purchase Price").

(b) Buyer shall make application to the applicable authorities to (A) transfer any alcohol included in the Inventory to Buyer, (B) transfer to Buyer any licenses held by any Seller or any of its Subsidiaries or issuance of new licenses to Buyer, in each case, permitting the sale of alcohol in the applicable Stores (the "Store Alcohol Licenses"), 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. With respect to the Stores listed on Schedule 2.6(b), no later than August 9, 2015, Buyer shall notify Seller of its election to (x) purchase such Store in accordance with the terms hereof; (y) not purchase the Store Alcohol Licenses and alcohol constituting such inventory at such Stores and accordingly reduce the

Purchase Price by an amount specified opposite the applicable Specified Liquor Store (the "Reserved Amount"), with such Reserved Amount being payable to Seller, if and when the applicable Store Alcohol License is obtained or (z) exclude the Store in accordance with Section 8.1(k)(ii) of this Agreement. If Buyer does not make such election prior to August 9, 2015, Buyer shall be deemed to have elected to purchase such Stores in accordance with the terms of 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 shall show the total cost of the Inventory for each Store 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 sixty (60) days after the 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 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 proposed Purchase Price Allocation. If prior to the conclusion of such twenty (20)-day period, Sellers notify Buyer in writing that they will not provide any Allocation Objection Notice or if Sellers do not deliver an Allocation Objection Notice within such twenty (20)-day period, then the proposed Purchase Price Allocation shall be deemed final, conclusive and binding on each of the Parties. 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 Affiliates) to prepare, execute, and file IRS Form 8594 and all Tax Returns on a basis consistent with the final Purchase Price Allocation. For the avoidance of doubt, the Parties shall cooperate in determining the portion of the Purchase Price allocable to the Acquired Assets that are subject to a Transfer Tax prior to the due date of the Tax Return required to be filed in connection with such Transfer Taxes; provided, that if the parties do not agree with respect to such determination, such matter shall be resolved in accordance with the process outlined in this

Section 2.7, provided further, that such Tax Return shall be amended if the Purchase Price Allocation is subsequently adjusted pursuant to the procedures described above. None of the Parties will take any position inconsistent with the final Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, in each case unless otherwise required by applicable Law or by 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 Closing without limitation.

Section 2.8 Proration.

(a) On the Closing Date all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges) under the Leases transferred at the Closing (the "Prorated Charges") shall be apportioned and prorated between Sellers and Buyer as of the 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 the applicable Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date and paying such amount to Sellers to the extent payment for such Prorated Charges has been made by Sellers prior to the 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 under this shall be referred to as the "Buyer Proration Amount" if owed to Buyer or the "Seller Proration Amount" if owed to Sellers. Except as set forth in this Section 2.8 and in Section 6.5, no amounts paid or payable under or in respect of any Acquired Asset or group of Acquired Assets shall be apportioned and prorated between Sellers and Buyer.

(b) As to all non-monthly real estate related payments or any other Prepaid Expenses, the same shall be apportioned between Sellers and Buyer as of 12:01 a.m. on the Closing Date. If any amounts are payable in installments, all installments due through the Closing together with the accrued but unpaid portion of any other installments not yet due as of the Closing shall be prorated based on the periods of time covered by such installments occurring before and after the Closing Date.

(c) As to real estate Taxes and assessments, if the 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 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 by the Parties and any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at the Closing shall be promptly corrected and the proper party reimbursed within ten (10) days following such recomputation.

(d) If on the 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 Closing occurs (whether or not it is in arrears for such month on the Closing Date), any rent received by

Buyer or Sellers after the 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 Closing occurred, and, thereafter, ratably, between rent attributable to the months following the month in which the Closing occurred and rent attributable to the months preceding the month in which the Closing occurred. If rent or any portion thereof received by Sellers or Buyer after the 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.

(e) Following the 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 owed to Seller by any tenant allocable to the period up to and including the Closing Date.

(f) If any of the items subject to apportionment under the foregoing provisions cannot be apportioned at the Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the Closing are discovered subsequent to the Closing, then such item shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date and the proper party reimbursed.

Section 2.9 Removal of Excluded Assets. As promptly as practicable following the Closing Date (and in any event within ten (10) Business Days), Buyer shall allow Sellers to remove at Sellers' sole cost and expense all Excluded Assets that are located at the Stores and, if requested by Sellers, Buyer shall arrange transportation of such Excluded Assets to a location designated by Sellers at Sellers' sole cost and expense (an estimated amount of which shall be paid in advance by Sellers based on Buyer's good faith estimate) from the real property. Such removal shall be done in a manner so as to avoid any damage to the Stores and any unreasonable disruption of the business operations to be conducted by Buyer after the Closing. If Sellers have not removed such Excluded Assets as described above, Buyer in its sole discretion may dispose of such Excluded Assets at Sellers' sole cost and expense or sell such Excluded Assets to any Person without paying any consideration or incurring any liability thereof.

Section 2.10 Damaged or Destroyed Store Closing.

(a) If, during the period beginning on the date hereof and ending on the Closing Date, any Acquired Assets (but not including Inventory) or any Stores (such store, the "Casualty / Condemnation Store") are materially damaged, or destroyed, by fire or other casualty or subject to a taking such that restoration of such Store to substantially the same condition prior to such casualty/condemnation would (i) take nine (9) months or longer, (ii) in the case of a condemnation, such Store cannot be substantially restored to the condition prior to such condemnation or (iii) the applicable landlord of such Store shall have the right to terminate the applicable Lease as a result of such casualty or condemnation (each of the foregoing, a "Material Event"), then Sellers shall remit to the applicable Buyer any insurance proceeds or condemnation awards ("Proceeds") received by Sellers in respect of any such damage or destruction on the later of (x) the Closing and (y) the third (3rd) Business Day after Sellers' receipt of such proceeds, and shall, upon the request of Buyer, assign to such Buyer, effective upon the Closing Date, Sellers' rights to receive any such Proceeds (but, in each case, only if the applicable Purchase Price has

not been reduced as a result of such damage or destruction pursuant to this Section 2.10 and then only to the extent such amount was not applied by Sellers toward the repair or replacement of such Acquired Assets prior to Closing). Notwithstanding the foregoing, subject to the consent of Sellers as to the assets proposed to be excluded, upon the occurrence of a Material Event, Buyer may elect to treat all or a portion of the damaged Acquired Assets related to such Casualty / Condemnation Store as Excluded Assets, and all or a portion of the Assumed Liabilities related to such Excluded Assets, other than any portion of the Leased space, as Excluded Liabilities, in which case the applicable Purchase Price shall be reduced by an amount equal to the portion of the original Purchase Price allocated to such assets or group of assets (excluding any applicable insurance proceeds received with respect thereto), and any insurance proceeds related to such Excluded Assets shall be property of Sellers. To the extent Sellers do not agree to the exclusion of the assets proposed to be excluded by Buyer pursuant to this Section 2.10(a), upon Buyer's election (a) the entire Casualty / Condemnation Store and related Acquired Assets shall be deemed to be Excluded Assets, and the Purchase Price shall be reduced by the amount allocated to such Store as set forth on Section 3.5 of the Disclosure Schedule or (b) the Proceeds received by Sellers shall be remitted to Buyer as provided in this Section 2.10(a). For the avoidance of doubt, the foregoing shall be subject to any rights of the applicable landlord or its lender(s) as to any affected Store.

(b) Other than any casualty and condemnation events that are Material Events as set forth above, this Agreement shall stay in full force and effect, with respect to any Store subject to a casualty or condemnation. Sellers may elect to restore such Store but shall have no obligation to do so.

(c) Any assignment of Proceeds under this Section 2.10 shall not include any Proceeds to the extent attributable to lost rents or similar costs applicable to any period prior to the Closing, nor any uncollected Proceeds which Sellers may be entitled to receive from such damage, destruction or taking, and shall be reduced by (i) the amount of all costs incurred by Sellers in connection with any repair of such damage or destruction, (ii) the collection costs of Sellers with respect to any Proceeds and (iii) any amounts required to be paid to the applicable landlord under the applicable Lease or to any lender pursuant to any financing, as applicable, in each case with respect to such damage, destruction or taking.

Section 2.11 Specified Environmental Stores. With respect to the Specified Environmental Stores, no later than August 9, 2015, Buyer shall notify Seller of its election to (x) purchase such Store in accordance with the terms hereof; (y) renegotiate the Purchase Price to reflect the value of each such Store (including without limitation taking into account any escrow or other deposits, any reserves or accruals or other amounts set aside for remediation or similar costs), or (z) exclude the Store in accordance with Section 8.1(k)(iv) of this Agreement. If Buyer does not make such election prior to August 9, 2015, Buyer shall be deemed to have elected to purchase such Stores in accordance with the terms of this Agreement.

ARTICLE III
SELLERS' REPRESENTATIONS AND WARRANTIES

Sellers represent and warrant to Buyer that the statements contained in this Article III are true and correct, 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 or limited liability company, as applicable, duly organized, validly existing and in good standing under the laws of the state of its formation. Each Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority 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 Bidding Procedures Order, the Sale Order and any other necessary order to close the sale of the Acquired Assets, each Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each 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 Bidding Procedures Order, the Sale Order and any other necessary order to close the sale of the Acquired Assets, 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. Except as set forth on Section 3.3 of the Disclosure Schedule, 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, or (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 material 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 as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other than as required or pursuant to the Bankruptcy Code, the Bidding Procedures Order, the Sale Order and any other necessary order to close the sale of the Acquired Assets, neither Seller is required to give any notice to, make any filing with, or obtain any authorization, consent or approval 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 authorization, consent or approval 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; Sufficiency of Assets. At the Closing, subject to any Permitted Liens, Sellers will have good and valid title to, or the right to use, the tangible Acquired Assets and valid leasehold interests in the Leases and sole and exclusive, good and insurable fee simple title to the Owned Real Property. Pursuant to the Sale Order and any other necessary order to close the sale of the Acquired Assets, Sellers will convey at closing a good and valid title to, or rights to use, the tangible Acquired Assets and leasehold interest in all the Leases, free and clear of all Liens (other than Permitted Liens). The Acquired Assets will constitute all material assets that are used primarily in the conduct of the Business as conducted immediately prior to the Closing by Sellers (other than (a) the Excluded Assets and (b) assets, services and other obligations of the parties that will be provided pursuant to a Related Agreement).

Section 3.5 Real Property. Section 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 Store lease agreements and related amendments. Sellers have made available to Buyer a true and complete copy of each Lease in Sellers' possession. With respect to each Lease, (a) assuming due authorization and delivery by the other party thereto, such Lease constitutes the valid and legally binding obligation of 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, and (b) neither such Seller nor, to Sellers' Knowledge, the counterparty thereto is in material breach or material default under such Lease, except (i) 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) or (ii) to the extent such breach or default would not reasonably be expected to have a Material Adverse Effect.

Section 3.6 Litigation; Decrees. Except as set forth in Section 3.6 of the Disclosure Schedule and other than the Bankruptcy Case, there is no Litigation pending or, to the Knowledge of Sellers, threatened that (a) would reasonably be expected to have a Material Adverse Effect or (b) 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 would (a) reasonably be expected to have a Material Adverse Effect or (b) 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 Section 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) Except for matters that would not be reasonably expected to result in a Material Adverse Effect, (i) Sellers have timely filed all Tax Returns required to be filed by Sellers or with respect to the Business or the Acquired Assets 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); and (ii) all Taxes (whether or not shown due on such Tax Returns) owed by Seller or with respect to the Business or the Acquired Assets have been timely paid in full (except as prohibited by the Bankruptcy Court).

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

(c) There are no Liens with respect to a material amount of Taxes upon the Acquired Assets, except for Permitted Liens.

(d) Except with respect to any proof of claim filed by a Tax authority in the Bankruptcy Cases, (i) there are no material amounts of Taxes or assessments in respect of a material amount of Taxes with respect to the Acquired Assets that are outstanding or unpaid, other than amounts not yet due and payable; and (ii) to Sellers' Knowledge, no such assessments or levies are pending or threatened in respect of a material amount of Taxes.

(e) There is not now pending any proceeding or application for a material reduction in the real estate tax assessment of the Acquired Assets to the extent such action could be binding on, or adversely affect, Buyer.

Section 3.10 Tangible Personal Property. Section 3.10 of the Disclosure Schedule sets forth all Transferred Contracts that constitute leases of personal property ("Personal Property Leases") relating to personal property used by Sellers in the Business. To the Knowledge of Sellers, Sellers have not received any written notice of any default or event that with notice or lapse of time or both would constitute a default by Sellers under any of the Personal Property Leases.

Section 3.11 Employee Benefits.

(a) Section 3.11(a) of the Disclosure Schedule lists all "employee benefit plans," as defined in section 3(3) of ERISA, including all Multiemployer Plans, and all other

material employee benefit plans, policies, agreements or arrangements (other than governmental plans and statutorily required benefit arrangements), whether written or unwritten, covering one or more persons and whether subject to ERISA or not, including bonus or incentive plans, deferred compensation arrangements, employment agreements, fringe benefit plans, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by one or more of Sellers and their Subsidiaries, or with respect to which one or more of Sellers and their Subsidiaries could have any Liability, with respect to one or more Covered Employees (the "Employee Benefit Plans").

(b) True, correct and complete copies of the following documents, as applicable, with respect to each of the Employee Benefit Plans, have been made available to Buyer: (A) any plan documents, and all material amendments thereto (or in the case of each unwritten Employee Benefit Plan, a written summary of its material terms), (B) the most recent Forms 5500, (C) the most recent summary plan descriptions (including letters or other documents updating such descriptions), (D) in the case of any Employee Benefit Plan that is intended to be qualified under IRC section 401(a), a copy of the most recent determination or opinion letter from the IRS and any related correspondence, and a copy of any pending request for such a determination letter, and (E) with respect to each Employee Benefit Plan that is a Multiemployer Plan, for which documents are in the possession of Sellers, (i) all documents related to the funded status of the Multiemployer Plan, (ii) the current rehabilitation plan or funding improvement plan, as applicable, (iii) all correspondence to or from the Multiemployer Plan, and (iv) all information available to Sellers regarding a restructuring or amendment of the Multiemployer Plan that could affect future contributions or contributing-employer liability for prior or future periods.

(c) Sellers and each Person that is (or at any relevant time, was) considered a single employer with a Seller under ERISA have made all required contributions to each Multiemployer Plan to which any of them has an obligation to contribute.

(d) Each of the Employee Benefit Plans sponsored by one or more of Sellers and its Subsidiaries that is intended to qualify under section 401 of the IRC is the subject of a current favorable determination letter from the IRS that it is so qualified, and, except as disclosed on Section 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 or otherwise adversely affect such qualification.

(e) Each of the Employee Benefit Plans has been maintained, in all material respects, in accordance with its terms and all provisions of applicable Law.

Section 3.12 Compliance with Laws; Permits.

(a) Sellers are in compliance in all material respects with all material Laws applicable to the Business. Sellers have not received any written notice of or been charged with the violation of any Laws, except where such violation would not be reasonably expected to result in a Material Adverse Effect.

(b) Sellers have all material Permits which are required for the operation of the Business as presently conducted and the ownership and use of the Acquired Assets in all material respects. Schedule 3.12(b) describes each material Permit, including all pharmacy licenses, affecting, or relating to, the Acquired Assets or the Business together with the Governmental Authority responsible for issuing such Permit. 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 material Permit to which they are parties or give any Governmental Authority grounds to suspend, revoke or terminate any such Permit.

Section 3.13 Contracts.

(a) The attached Schedule 3.13(a) contains an accurate and complete list of each of the material Contracts to which either Seller is a party (or is subject to or participates in) that is primarily used or held for use in the conduct of the Business.

(b) Except at set forth on Schedule 3.13(b), there is no material breach of or material default under any of the Contracts listed on Schedule 3.13(a) by any Seller or, to the Knowledge of Sellers, by any other party thereto, and Sellers have not received any written notice of any default or event that with notice or lapse of time or both would constitute a default by Sellers under any such Contract, except for defaults that would not be material to the Business.

Section 3.14 Condemnation. To Sellers' Knowledge, no condemnation proceedings are pending as to any Store.

Section 3.15 Inventory. All of the Inventory consists of a quantity and quality usable and salable in the Ordinary Course of Business, and is not obsolete, expired, defective or damaged, and is merchantable and fit for its intended use. Each of the Stores has an appropriate amount of Inventory to conduct the Business in the Ordinary Course of Business. The attached Schedule 3.14 sets forth the physical location of Inventory relating to the Stores (other than the Stores).

Section 3.16 Environmental Matters. Except as set forth in Schedule 3.16 or except as would not reasonably be expected to result in Sellers incurring material Liabilities under Environmental Laws: (a) the Stores are in compliance with Environmental Laws, (b) to Sellers' Knowledge, there has been no release of any Hazardous Substance on, upon, into or from the Stores by Sellers in quantities greater than those allowed under Environmental Laws, (c) to Sellers' Knowledge, there have been no Hazardous Substances generated by the Stores that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local "superfund" site list or any other similar list of hazardous or toxic waste sites published by any Governmental Authority in the United States, (d) to Sellers' Knowledge, there are no underground storage tanks controlled by Sellers and located on, and no hazardous waste as defined by the Resource Conservation and Recovery Act stored on, the Stores, except for the storage of hazardous waste in compliance with Environmental Laws and (e) Sellers have made available to Buyer accurate and complete copies of all material and non-privileged environmental records, reports, certificates of need, permits, pending permit applications, and

environmental studies or assessments for each Store to the extent such documents are in Sellers' possession or reasonable control.

Section 3.17 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 Sellers, 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 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 CLOSING 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).

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.

Section 4.1 Organization of Buyer; Good Standing. Buyer is a cooperative corporation duly organized, validly existing, and in good standing under the laws of the State of New York 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, have a material adverse effect on Buyer. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval 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 authorization, consent or approval would not, 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. At the Closing, assuming the funding in full of the Debt Financing contemplated by the Commitments Letters on the Closing Date, Buyer 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. At the Closing, Buyer will 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. As of the Closing Date, Buyer will be a "Covered Entity" as defined by HIPAA. The transactions contemplated by this Agreement will not violate any applicable data privacy or security requirements under HIPAA or any other privacy or security requirements imposed by federal or state Law on the healthcare data held, collected, used or disclosed by Sellers, including state healthcare data breach notification Laws and related state consumer protection Laws.

ARTICLE V
PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the 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 (except as otherwise set forth in Section 5.3) 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 applicable, 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 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 that are within its control or influence to be satisfied or fulfilled.

(b) Without limiting the generality of Section 5.1(a), neither 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, except (i) as set forth on Section 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, including but not limited to, retaining and maintaining Furnishings and Equipment in the Ordinary Course of Business and maintaining a normal amount of Inventory, except, in anticipation of the Closing, for Excluded Inventory, on the shelves in the Stores, it being understood and acknowledged that Sellers will not be required to maintain Inventory for post-Closing holiday periods, and (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.

(b) Except (i) as set forth on Section 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 in the Ordinary Course of Business or as required by any applicable collective bargaining agreement or Law or pursuant to any Contract or policy in effect as of the date of this Agreement, (A) materially increase the annual level of compensation of any Covered Employee or independent contractor or (B) materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan (or plan, policy, agreement or arrangement that would be an Employee Benefit Plan if in existence on the date hereof) or (y) 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 or be represented by a union or collective bargaining agreement other than the Affected Union);

(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) sell, transfer, assign, license, sub-license, or otherwise dispose of any Acquired Asset, except in the Ordinary Course of Business;

(iv) other than in the Ordinary Course of Business, remove any tangible Acquired Asset from the Stores; or

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

Section 5.3 Regulatory Approvals.

(a) Each of the Parties hereto shall use its best efforts to cooperate in connection with any filing or submission and to resolve any inquiry or investigation by any Governmental Authority, and any proceeding initiated by a private party, relating to the transactions contemplated by this Agreement under any Antitrust Law or any state law.

(b) With respect to any such investigation, inquiry, or proceeding, the Parties hereby agree to: (i) cooperate with each other in connection with any submissions and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep each other informed in all material respects of any material communication received by them from, or given by them 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 (iii) permit the other Party to review any material communication given to it by, and consult with the other Party in advance of any meeting or conference with, any Governmental Authority, including in connection with any proceeding by a private party, and, unless prohibited by an applicable

Governmental Authority, provide the opportunity to attend or participate in such meeting, conference, or proceeding. 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. The Parties expect their outside counsel to enter into a joint defense agreement or common interest agreement to facilitate the exchange of such privileged materials without waiving any such privilege. Notwithstanding anything to the contrary in this Section 5.3(b) or in this Agreement, however, Sellers shall be permitted to communicate privately with any Governmental Authority regarding Sellers' financial condition and matters relating to competing bidders for Sellers' 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 any of the Stores and Sellers shall have the right not to sell any such Stores if, and only if, 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, (i) indicates in writing that it has concerns that the acquisition of any such Store(s) may violate any Antitrust Law ("Challenge Recommendation"), or (ii) threatens or initiates litigation 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 chooses to exercise its right not to acquire any Store(s), Buyer shall notify Sellers in writing and identify any such Store(s) ("Excluded Stores") by no later than August 31, 2015 ("Store Withdrawal Deadline"), and Buyer shall have no further right to acquire such Store(s). Further, for any Store(s) Buyer elect not to acquire pursuant to this Section 5.3(c), the Purchase Price shall be reduced by the amount of the Purchase Price allocated to such Store(s) as set forth on Section 5.3(c) of the Disclosure Schedule ("Allocated Amount"). For the avoidance of doubt, except as provided in Section 5.3(c) below, if there is a Challenge Recommendation, or if any suit 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, neither Buyer nor its Affiliates shall have any obligation to (i) 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, (ii) 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, (iii) prosecute or otherwise pursue any Litigation under any Antitrust Law seeking clearance or approval of the transactions contemplated by this Agreement, or (iv) 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 either Buyer or Seller have not withdrawn pursuant to its rights under Section 5.3(c) on or before the Store Withdrawal Deadline, Buyer shall, and shall cause its Affiliates to, promptly take and diligently pursue any or all other actions to the extent necessary 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, the Acquired Assets, Stores, or interests therein; 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.

(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. The Parties hereby agree that this Section 5.4 shall only be deemed effective in the event that the Proposed Debt Commitment Letter has been approved by Sellers in accordance with Section 5.9 hereof.

(a) Approval of Termination Payment. 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, upon consummation of a Competing Bid, a break-up fee in an amount equal to (x) 3% of the Cash Purchase Price (the "Break-Up Fee"), *plus* (y) the amount of the reasonable and documented expenses of Buyer incurred in connection with the transactions contemplated hereby up to an aggregate amount of $250,000 (such expense reimbursement, together with the Break-Up Fee, the "Termination Payment"). The Termination Payment shall be due and owing and payable on the first Business Day following the date of consummation of a Competing Bid from the proceeds of such Competing Bid, if no material breach by Buyer of this Agreement has occurred. Subject to the terms of Section 8.2(b), 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 Sellers' Liability hereunder for any and all such breaches shall be capped at an amount equal to the Termination Payment and Buyer's liability shall be capped at the Escrow Amount in accordance with Section 8.2(b), in each case, except in the case of fraud or willful misconduct. 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. From the date hereof until entry of the Bidding Procedures Order by the Bankruptcy Court, Sellers are not permitted to and are not permitted 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 a Competing Bid; provided, however, that Sellers shall be

permitted and shall have the authority to (and to cause their Representatives and Affiliates to) respond to any inquiries or offers to purchase all or any part of the Acquired Assets, including supplying information relating to the Business and the assets of Sellers to prospective purchasers. Upon entry of the Bidding Procedures Order by the Bankruptcy Court, Sellers shall be permitted to perform all of the foregoing activities with respect to all or any part of the Acquired Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law. This Agreement shall be subject to approval by the Bankruptcy Court and, after entry of the Bidding Procedures Order, 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 Sellers or their Affiliates or otherwise) (any such competing bid, a "Competing Bid").

(c) Bankruptcy Court Filings.

(i) As soon as reasonably practicable following the execution of this Agreement and the commencement of the Bankruptcy Cases, Sellers shall file with the Bankruptcy Court a motion seeking entry of the Bidding Procedures Order (which shall be substantially in the form attached hereto as Exhibit A, and among other things, approve and authorize payment of the Termination Payment in accordance with this Section 5.4) and a proposed Sale Order, substantially in the form attached hereto as Exhibit E. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Bidding Procedures Order and, if Buyer is selected as the winning bidder at the Auction, entry of the 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 approval 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 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 agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining 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.

Section 5.5 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 5.5 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 5.6 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 Transferred Contracts included in the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of either Seller, including, without limitation, reasonable access to Sellers' information technology systems and infrastructure and personnel responsible for such systems in order to facilitate transition post-Closing; provided, however, that, for avoidance of doubt, (a) 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 (b) any access to assets related to the in-store pharmacies, including scripts and prescription lists 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. Prior to the Closing, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, suppliers, landlords, or licensors of either Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of each Seller (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 5.7 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 5.8 Replacement Bonding Requirements. On or prior to the Closing Date, Buyer shall provide replacement guarantees, standby letters of credit or other assurances of payment with respect to all Bonding Requirements, in form and substance reasonably satisfactory to Sellers and any banks or other counterparty thereto, and, both prior to and following the 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 Closing, with Sellers' consent in lieu thereof, 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 Bonding Requirements, issued by a bank rated "A" or better by Standard and Poor's, in form and substance reasonably satisfactory to Sellers.

Section 5.9 Financing.

(a) Commencing on the date hereof, Buyer shall use reasonable best efforts to enter into a commitment letter (a "Proposed Debt Commitment Letter" and, following its submission to Sellers and its approval, or deemed approval, by Sellers as provided below, "Debt Commitment Letter") from one or more lenders to be determined by Buyer (the "Lenders"), pursuant to which the Lenders shall commit (subject to the terms and conditions set forth therein) to provide to Buyer Debt Financing in an available amount equal to the difference between (x) the Purchase Price minus (y) the Escrow Amount minus (z) an amount equal to the cash certified to Sellers by Buyer as held by Buyer and reserved to pay the balance of the Purchase Price, on terms and conditions described in the Debt Commitment Letter (the "Debt Financing Commitment"). Upon execution of a Proposed Debt Commitment Letter, Buyer shall submit the same to Sellers for review and approval (the "Financing Commitment Notice"), together with any related fee letters (the "Fee Letters"), which approval shall not be unreasonably withheld, conditioned or delayed; provided, that if Sellers fail to provide a response to Buyer either approving or rejecting the Proposed Debt Commitment Letter within three (3) calendar days (with reasonable specificity of the bases for rejection), the Proposed Debt Commitment Letter shall be deemed accepted by the Sellers and shall thereafter be the "Debt Commitment Letter". If Sellers reject the Proposed Debt Commitment Letter, Buyer shall have the right to make modifications to the rejected Proposed Debt Commitment Letter and re-submit such modified Proposed Debt Commitment Letter for Sellers' review no later than the Business Day immediately following the date of such rejection in accordance with the procedure outlined in the foregoing sentence, provided, that, if Sellers fail to provide a response to Buyer either approving or rejecting the modified Proposed Debt Commitment Letter within two (2) calendar days (with reasonable specificity of the bases for rejection), the modified Proposed Debt Commitment Letter shall be deemed accepted by Sellers and shall thereafter be the "Debt Commitment Letter". In the event a modified Proposed Debt Commitment Letter has been submitted for Sellers' review, Sellers shall have a right to terminate the Agreement pursuant to Section 8.1(j) only upon the later of 11:59 pm on August 11, 2015 or the two (2) calendar day period after the submission of such modified Proposed Debt Commitment Letter (which for the avoidance of doubt shall be no later than 11:59 pm on August 13, 2015). Buyer shall keep Sellers informed of the progress of obtaining the Proposed Debt Commitment Letter and to the extent practicable, share any drafts thereof with Sellers.

(b) Following Buyer's execution of a Debt Commitment Letter, Buyer shall, and shall cause its Affiliates to, use its reasonable best efforts to obtain the Debt Financing at Closing on the terms and conditions described in the Debt Commitment Letter (provided that Buyer may (i) amend the Debt Commitment Letter to add lenders, lead arrangers, bookrunners, syndication agents or similar entities who had not executed the original Debt Commitment Letter, (ii) amend the Debt Commitment Letter, and the Fee Letters, as applicable, to implement any flex provisions applicable thereto or (iii) otherwise replace or amend, or agree to any waivers in respect of, the Debt Commitment Letter or the Fee Letters so long as, in each case, such action would not reasonably be expected to delay or prevent the Closing or impair the availability of the Debt Financing and the terms are not less beneficial to Buyer, with respect to conditionality or enforcement, than those in the Debt Commitment Letter as in effect on Sellers' approval thereof, thereof), including using, and causing its Affiliates to use, reasonable best efforts to (A) take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable in connection therewith, (B) maintain in effect the Debt Financing Commitment for as long as the transactions contemplated by this Agreement are required to be consummated, (C) satisfy on a timely basis all conditions applicable to Buyer in the Debt Commitment Letter and otherwise comply in all material respects with its obligations thereunder, (D) negotiate definitive agreements with respect thereto on the terms and conditions (including, to the extent the same are exercised, the flex provisions) contemplated by the Debt Commitment Letter or the Fee Letters, as applicable, or on other terms acceptable to Buyer that would not (x) reduce the aggregate amount of the Debt Financing or (y) impose new or additional conditions precedent to the receipt of the Debt Financing, (E) if all of the conditions to Buyer's obligations under Section 7.1 (other than those conditions that, by their terms, will be satisfied on the Closing Date) have been satisfied or waived, consummate the Debt Financing at Closing and (F) enforce their rights under the Debt Commitment Letter and the Fee Letters, including through litigation pursued in good faith. Without limiting the generality of the foregoing, Buyer shall give Sellers prompt notice: (1) of any material breach or default by any party to either Debt Commitment Letter or any Fee Letter and (2) of the receipt of any written notice or other written communication from any person with respect to any: (x) breach, default, termination or repudiation by any party to either Debt Commitment Letter or any Fee Letter or (y) material dispute between or among any parties to either Debt Commitment Letter or any Fee Letter. If any portion of the Debt Financing becomes unavailable on the terms and conditions (including the flex provisions) contemplated in the Debt Commitment Letter or the Fee Letters, Buyer shall use its reasonable best efforts to obtain alternative financing from alternative sources in an amount sufficient to consummate the transactions contemplated by this Agreement as promptly as practicable following the occurrence of such event; it being understood that Buyer shall have no obligation to accept terms that are materially less favorable, taken as a whole (after taking into account any flex provisions), to Buyer than those included in the Debt Commitment Letter or the Fee Letters, as applicable, as of the date of the original Debt Commitment Letter.

(c) Buyer shall keep Seller informed on a reasonably current basis in reasonable detail of the status of its efforts to arrange the Debt Financing, and, after obtaining the Debt Financing Commitment, to complete the Debt Financing (subject to any applicable restrictions in the Debt Commitment Letter).

ARTICLE VI
OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 Further Assurances. In case at any time after the 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. From and after the Closing, upon request by either Seller, Buyer will permit Sellers and their Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Buyer, to all premises, properties, personnel, books and records, and Contracts of or related to the Acquired Assets or the Assumed Liabilities for the purposes of (a) preparing Tax Returns (b) as may be reasonably requested by the other Party, monitoring or enforcing rights or obligations of either Seller under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer 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 agrees to maintain the files or records which are contemplated by the first 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) years following the Closing.

Section 6.3 Treatment of Affected Labor Agreements. With respect to Covered Employees under an Affected Labor Agreement, Buyer shall either (a) agree to assume the Affected Labor Agreement 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 or (b) engage in good faith negotiations, in coordination with Sellers, toward reaching 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. 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, in coordination with Sellers, shall propose a Modified Labor Agreement on a Store-by-Store basis to each Affected Union (each, a "Proposal"), which Proposal may be modified as a result of Buyer's and/or Sellers' good faith negotiations with the Affected Unions. Buyer agrees to cooperate with Sellers 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, Buyer acknowledges the requirements of sections 1113 and 1114 of the Bankruptcy Code and agrees to

use good faith reasonable best efforts to cooperate with Sellers in ensuring compliance with any applicable provisions thereof.

Section 6.4 Covered Employees.

(a) Obligations of Buyer. With respect to Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were employed immediately prior to the Closing ("Affected Union Covered Employees"), at least ten (10) days prior to the Closing Date, Buyer shall make an offer of employment, which shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and conditions required by the governing Affected Labor Agreements or Modified Labor Agreements, to the extent applicable. With respect to any Affected Union Covered Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, at any time following the Closing Date. Buyer shall have no obligation with respect to any Covered Employee, including making any offer of employment to any such Covered Employee, who, as of immediately prior to the Closing, is not represented by an Affected Union.

(b) WARN Act. Provided that on or before the Closing Date A&P provides Buyer with a 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 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 employees of the Stores arising in whole or part from the actions or omissions of Buyer that occur after the Closing.

(c) Tax Reporting. The Parties shall cooperate in good faith to determine the method of preparing and filing Internal Revenue Service Forms W-2 (Wage and Tax Statements), W-4 (Employee's Withholding Allowance Certificate) and W-5 (Earned Income Credit Advance Payment Certificate) consistent with Revenue Procedure 2004-53 for the year in which the Closing occurs.

(d) No Third Party Beneficiary Rights. The Parties agree that nothing in this Section 6.4, whether express or implied, is intended to, or shall, (i) create any third party beneficiary rights in any Covered Employee or (ii) serve as an amendment to, or the adoption of, any employee benefit plan, policy, policy, agreement or arrangement of Sellers, Buyer or any Affiliate of any of the foregoing.

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

Affiliates. Buyer shall, and shall cause its Affiliates to, permit Affected Union Covered Employees to provide such assistance to A&P as may be required in respect of claims against A&P or its Affiliates, whether asserted or threatened, to the extent that, in A&P's reasonable opinion, (i) an Affected Union Covered Employee has knowledge of relevant facts or issues, or (ii) an Affected Union Covered Employee's assistance is reasonably necessary in respect of any such claim.

Section 6.5 Certain Tax Matters.

(a) Transfer Taxes. Buyer, on the one hand, and Sellers, on the other hand, shall each pay fifty percent (50%) of any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge imposed under applicable Law in connection with the transactions contemplated hereby (a "Transfer Tax"). Accordingly, if either Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse such Seller for Buyer's fifty percent (50%) of the amount of such Transfer Taxes actually paid by such Seller. Buyer shall be entitled to receive such Tax Returns and other documentation reasonably in advance of filing by such Seller, 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 Buyer's approval, which shall not be unreasonably withheld, delayed, or conditioned. The party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall, subject to Section 2.7, prepare and timely file such Tax Returns. Buyer and Sellers 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 (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 Closing occurs (the "Proration Period") will be apportioned and prorated between Sellers and Buyer as of the 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 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 Closing Date, apportionment and proration shall be computed 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 promptly 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 or refund so that the correct prorated amount is paid by each of Buyer and Sellers.

Section 6.6 Insurance Matters. Buyer acknowledges that, upon Closing, all insurance coverage provided in relation to Sellers, the Stores, or the 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 Stores, or the Acquired Assets and no further coverage shall be available to Buyer, the Stores, or the 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 3.13 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.

(b) Buyer acknowledges that, except for the representations and warranties expressly set forth in Article III (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 3.14, 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 Closing 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). Further, without limiting any representation, warranty, or covenant of either Seller expressly set forth herein, Buyer acknowledges that it has waived and hereby waives as a condition to the 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. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers

shall file this Agreement with the Bankruptcy Court in connection with obtaining the Bidding Procedures Order and/or 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 Closing Date remove the Seller Marks from, or cover or conceal the Seller Marks on, any Acquired Assets, or otherwise refrain from the use and display of the Acquired Assets on which the Seller Marks are affixed.

Section 6.10 Certain Litigation Matters. Promptly after the Closing, Sellers shall or shall cause the action pending in New York Supreme Court, Kings County, bearing Index No. 50667/2015 A&P Real Property LLC, and Waldbaum, Inc. against 81-21 New Utrecht LLC, Blanche Ezrol, Wendy K Sherbert, Terri Anderson, Brandi M. Seda, Renae M. Tedesco, and the Estate of Peggy Anderson, to be voluntarily discontinued with prejudice.

ARTICLE VII
CONDITIONS TO OBLIGATION TO CLOSE

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

(a) The representations and warranties set forth in Article III (other than those contained in Section 3.1 (Organization of Sellers; Good Standing), Section 3.2 (Authorization of Transaction), the first and third sentences of Section 3.4 (Title to Assets) and Section 3.8 (Brokers' Fees) (collectively, the "Fundamental Representations")) shall have been true and correct on the date hereof and on and as of the Closing Date as those made on such 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. The Fundamental Representations shall be true and correct (without giving effect to any limitation as to "material" or "Material Adverse Effect" set forth therein) in all material respects on the date hereof and on and as of the Closing Date as those made on such 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).

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

(c) the Bankruptcy Court shall have entered (i) the Bidding Procedures Order, (ii) the Sale Order and (iii) any other order necessary to close the sale of the Acquired Assets, and no order staying, reversing, modifying or amending such orders shall be in effect on the Closing Date;

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

(e) each delivery contemplated by Section 2.5(b) to be delivered to Buyer shall have been delivered.

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

(a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (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);

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

(c) the Bankruptcy Court shall have entered (i) the Bidding Procedures Order, (ii) the Sale Order and (iii) any other order necessary to close the sale of the Acquired Assets, and no order staying, reversing, modifying or amending such orders shall be in effect on the Closing Date;

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

(e) each payment contemplated by Section 2.5(a) to be made to Sellers shall have been made, and each delivery contemplated by Section 2.5(c) to be delivered to Sellers shall have been delivered.

Section 7.3 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 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts (or best efforts, with respect to those matters contemplated by Section 5.3, as applicable) 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 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 if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(ii) the Closing shall not have occurred prior to October 31, 2015 (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); provided, further, that Buyer's failure to consummate the transactions contemplated by this Agreement in accordance with the terms of this Agreement as a result of the Lenders being unwilling or unable to provide the Debt Financing at or prior to the time of the Closing was required to occur pursuant to the terms of this Agreement (a "Financing Failure") shall not in any way limit Buyer's termination right pursuant to this Section 8.1(b)(ii).

(c) by Buyer by giving written notice to each Seller if there has been a breach by either Seller of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Buyer at Closing set forth in Section 7.1(a) and Section 7.1(b), 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;

(d) by either Seller by giving written notice to Buyer and the other Seller 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 the conditions to the obligations of Sellers at Closing set forth in Section 7.2(a) and Section 7.2(b), and such breach has not been waived by such Seller, 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;

(e) by Sellers or Buyer, if (i) (x) Sellers enter into a definitive agreement with respect to a Competing Bid, (y) the Bankruptcy Court enters an order approving a Competing Bid and (z) the Person making the winning Competing Bid consummates the Competing Bid or (ii) the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement, 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 Sellers, if (i) all of the conditions set forth in Section 7.1 have been satisfied (other than those conditions which are to be satisfied by actions taken at the Closing and

which were, at the time of termination, capable of satisfaction), (ii) Sellers have indicated in writing to Buyer that all of the conditions set forth in Section 7.2 (other than those conditions that by their nature are to be satisfied by actions taken at the Closing) have been satisfied or that Sellers are willing to waive such conditions, (iii) Sellers have confirmed to Buyer in writing that they are ready, willing and able to consummate the Closing, and (iv) Buyer fails to consummate the Closing within two (2) Business Days after the date of receipt of such notice from Sellers;

(g) by Buyer, if (i) the Bidding Procedures Order shall not have been approved by the Bankruptcy Court by the date that is forty-five (45) days after the Petition Date unless waived or such date is extended by Buyer or (ii) a Sale Order approving this Agreement shall not have been approved by the Bankruptcy Court by the day that is one-hundred and five (105) days after the Petition Date unless waived or such date is extended by Buyer; or (iii) Sellers withdraw the Sale Motion or file any motion with the Bankruptcy Court that seeks (A) termination of this Agreement or (B) withdrawal of the Sale Motion; or

(h) by Buyer upon entry of any order of the Bankruptcy Court prior to the Closing Date dismissing the Bankruptcy Case;

(i) by Buyer, at any time after 11:59 pm on August 11, 2015 and prior to the approval of a Proposed Debt Commitment Letter in accordance with Section 5.9, provided that Buyer is in compliance with its covenants and agreements under this Agreement, including under Section 5.9;

(j) by Seller, subject to Section 5.9 (a), at any time after 11:59 pm on August 11, 2015 if a Debt Commitment Letter has not been entered into by Buyer and approved (or deemed approved) by Sellers; or

(k) by Buyer:

(i) with respect to any Excluded Store, at any time prior to August 31, 2015;

(ii) with respect to any Specified Liquor Store at any time prior to August 9, 2015 in accordance with Section 2.6(b); or

(iii) with respect to a maximum of five (5) Stores (the "Cap") at any time prior to August 9, 2015 if Buyer has not entered into a Modified Labor Agreement with the applicable Affected Union, in form and substance reasonably satisfactory to Buyer;

(iv) with respect to the Specified Environmental Stores, at any time prior to August 9, 2015.

provided, that with respect to any termination with respect to a particular Store pursuant to this Section 8.1(k), (i) Section 3.5 (or Section 1.1(l) as to the Owned Real Property) of the Disclosure Schedule, as applicable, shall be amended to delete such Store from such schedule, which for the avoidance of doubt shall mean that such Store shall be treated as an Excluded Asset and all of the Liabilities related to such Store shall thereafter be treated as Excluded Liabilities, (ii) the

Purchase Price shall be reduced (1) for each Excluded Store under Section 5.3(c), by the applicable Allocated Amount and (2) for any Store excluded pursuant to Section 8.1(k)(ii), Section 8.1(k)(iii) or Section 8.1(k)(iv), by the amount allocated to such Store as set forth on Section 3.5 (or Section 1.1(l) as to the Owned Real Property) of the Disclosure Schedule, (iii) the Termination Payment shall be recalculated to take into account such reduction in the Purchase Price and (iv) an amount equal to Removed Store Escrow Amount shall be released from the Escrow Amount and be delivered to Buyer promptly after such removal. For the avoidance of doubt, if any Store is excluded pursuant to this Section 8.1(k), no Party shall have a right to seek specific performance with respect to such excluded Stores and no amount(s) shall be due or owing with respect to such excluded Stores.

Section 8.2 Effect of Termination.

(a) 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 3.13, Section 5.4, 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, in the aggregate, the Escrow Amount.

(b) Each of the parties hereto acknowledges and agrees that the agreements contained in this Section 8.2(b) are an integral part of this Agreement, and that, without these agreements, the parties would not have entered into this Agreement, and (a) the Escrow Amount, when delivered to Sellers pursuant to Section 2.3(b)(ii), and (b) the Termination Payment, if delivered to Buyer pursuant to Section 5.4(a), in each case, is not a penalty, but rather constitutes liquidated damages in a reasonable amount that will compensate Sellers or Buyer, as the case may be, in the circumstances in which the Escrow Amount is not returned or the Termination Payment is paid, as applicable. In no event shall Buyer be required to pay more than one Escrow Amount, and in no event shall Sellers be required to pay more than one Termination Payment. Notwithstanding anything to the contrary in this Agreement, if Buyer fails to effect the Closing when required by this Agreement for any or no reason or otherwise breaches this Agreement (whether willfully, intentionally, unintentionally or otherwise) or fails to perform hereunder (whether willfully, intentionally, unintentionally or otherwise), then other than in the case of fraud or willful misconduct, (i) except for the right of Sellers to seek an injunction, specific performance or other equitable relief pursuant to, and only to the extent expressly permitted by, Section 9.11, Sellers' and each of their respective Affiliates' sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) against Buyer or any of its former, current and future direct or indirect equity holders, members, controlling persons, stockholders, directors, officers, employees, agents, representatives, Affiliates, members, managers, general or limited partners, lenders or assignees (each a "Related Party" and collectively, the "Related Parties") or any Related Party of any Related Party of Buyer for any breach, loss or damage shall be to terminate this Agreement and keep the Escrow Amount, in each case, only to the extent provided

by Section 2.3(b)(ii) and this Section 8.2(b) (subject to the limitations contained therein), and (ii) except as provided in the immediately foregoing clause (i), none of the Related Parties of Buyer or any Related Party of a Related Party of Buyer will have any liability to Sellers or any of its Affiliates or any other party to this Agreement or any of their Affiliates relating to or arising out of this Agreement, the Debt Financing Commitment or in respect of any other document or theory of law or equity or in respect of any oral representations made or alleged to be made in connection herewith or therewith, whether at law or equity, in contract, in tort or otherwise. Other than in the case of fraud or willful misconduct, upon delivery of the Escrow Amount to Sellers pursuant to Section 2.3(b)(iii), none of the Related Parties of Buyer or any Related Party of any Related Party of Buyer shall have any further liability to Sellers or any of its Affiliates or any other party to this Agreement or any of their Affiliates relating to or arising out of this Agreement, the Debt Financing Commitment or in respect of any other document, or any transaction contemplated hereby or thereby or any theory of law or equity or in respect of any oral representations made or alleged to be made in connection herewith or therewith, whether at law or equity, in contract, in tort or otherwise, and none of the Related Parties of Buyer or any Related Party of any Related Party of Buyer shall have any further liability to Sellers or any of their Affiliates or any other party to this Agreement or any of their Affiliates relating to or arising out of this Agreement or the transactions contemplated hereby. Other than in the case of fraud or willful misconduct, in the event of delivery of the Termination Payment to Buyer pursuant to Section 5.4(a), none of the Related Parties of Sellers or any Related Party of any Related Party of Sellers shall have any further liability to Buyer or any of its Affiliates or any other party to this Agreement or any of their Affiliates relating to or arising out of this Agreement or in respect of any other document, or any transaction contemplated hereby or thereby or any theory of law or equity or in respect of any oral representations made or alleged to be made in connection herewith or therewith, whether at law or equity, in contract, in tort or otherwise, and none of the Related Parties of Sellers or any Related Party of any Related Party of Sellers shall have any further liability to Buyer or any of their Affiliates or any other party to this Agreement or any of their Affiliates relating to or arising out of this Agreement or the transactions contemplated hereby.

Section 8.3 Lease Indemnity. If this Agreement is terminated pursuant to Section 8.1(b) or Section 8.1(d) due to a material failure of Buyer to have fulfilled any of its obligations under this Agreement, Buyer shall indemnify Sellers for all Liabilities and Damages arising out of any Lease assumed by Sellers pursuant to section 365(k) of the Bankruptcy Code; provided, however, that maximum Liability of Buyer under this Agreement in the aggregate (except Liability with respect to breaches that are willful or fraudulent as provided in Section 8.2 above) shall not exceed the Escrow Amount.

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 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(b)(iii) or Section 2.5(c)(iii) shall survive, and each of the same shall terminate and be of no further force or effect as of, the 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 the preparation and execution of this Agreement, the Related Agreements, the compliance herewith and therewith 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 together with any documents, instruments and certificates explicitly referred to herein, 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; provided that, Sections 8.2(b) (Effect of Termination), 9.5 (Amendments), 9.10 (Waiver of Jury Trial) and 9.12 (No Third Party Beneficiaries) may only be amended with the consent of the Lenders. 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 and transfer this Agreement and (A) any of its rights and obligations under this Agreement, in whole or in part, without the prior written consent of any Party hereto, to one or more of the Members, or designate one or more of the Members to perform its obligations hereunder, in whole or in part, and (B) following the Closing, any of its rights to any of the financing sources of Buyer (including the Lenders), to the extent necessary for purposes of creating a security interest herein or otherwise assigning as collateral in respect of the Debt Financing; provided, that no such transfer or assignment will relieve Buyer of any of its obligations hereunder.

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; 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; gavin.westerman@weil.com

If to Buyer: Key Food Stores Co-Operative, Inc.
1200 South Avenue
Staten Island, NY 10314
Attention: Dean Janeway
Facsimile: (718) 697-8296
E-mail: DeanJ@HQ.Keyfoods.com

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

Ropes & Gray, LLP
1211 Avenue of the Americas
New York, New York 10036-8704
Attention: Robert S. Fischler and Jane D. Goldstein
Facsimile: (696) 728-1625
and
(617) 235-0376
E-mail: Robert.Fischler@ropesgray.com or
Jane.Goldstein@ropesgray.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 (INCLUDING THE DEBT FINANCING) OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING IN ANY ACTION, PROCEEDING OR COUNTERCLAIM AGAINST ANY LENDERS AND ANY OF THEIR RESPECTIVE FORMER, CURRENT OR FUTURE EQUITY HOLDERS, CONTROLLING PERSONS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, MEMBERS, MANAGERS, MANAGEMENT COMPANIES, ARRANGERS, GENERAL OR LIMITED PARTNERS, ASSIGNEES OR AFFILIATES. EACH OF THE PARTIES HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH

OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

Section 9.11 Specific Performance.

(a) Each of the Parties acknowledges and agrees that the other Party and in the case of Sellers, their respective estates, would be damaged irreparably in the event such Party does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that such other Party may have under law or equity, such 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.

(b) Notwithstanding anything to the contrary contained in Section 9.11(b), it is explicitly agreed that the right of Sellers to seek specific performance or other equitable remedies to cause Buyer to consummate the Closing shall be subject to the requirements that (i) all of the conditions to Closing set forth in Section 7.1 have been satisfied or waived (other than those conditions that by their terms are to be satisfied by actions taken at Closing) at the time when the Closing would have been required to occur in accordance with Section 2.4, (ii) the Debt Financing has been funded in accordance with the terms thereof or will be funded in accordance with the terms thereof at the Closing, and (iii) Sellers have irrevocably committed to Buyer in writing that, if the Debt Financing is funded, Sellers will consummate the Closing. For the avoidance of doubt, notwithstanding anything to the contrary contained in Section 9.11(a), it is hereby acknowledged and agreed that (i) Sellers shall not be entitled to seek specific performance or other equitable remedies to cause Buyer to enforce, including against anticipatory breach, the obligations of the Lenders to fund the Debt Financing under the Debt Commitment Letter and (ii) only Buyer (and not Sellers or any Affiliate of the foregoing) shall be permitted to bring or support any action against any Lender for failure to satisfy any obligations to fund any debt financing pursuant to the terms of any Debt Commitment Letter (provided in any event, that the Lenders are intended to be express third party beneficiaries of Section 9.11(b)). For the avoidance of doubt, while Sellers may pursue both a grant of specific performance or other equitable remedies to the extent permitted by this Section 9.11 and the payment of the Escrow Amount, under no circumstances shall Sellers be permitted or entitled to receive both (A) a grant of specific performance or other equitable remedies to require Buyer to consummate the Closing and (B) payment of the Escrow Amount. If, prior to the Outside Date, any Party brings an action to enforce specifically the performance of the terms and provisions of this Agreement by another Party, the Outside Date shall automatically be extended by the amount of time during which such action is pending.

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. This Agreement shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns; provided that the Lenders are intended third-party beneficiaries of, and may enforce, Sections 8.2(b) (Effect of Termination), 9.5 (Amendments), 9.10 (Waiver of Jury Trial) and 9.11(b) (Specific Performance) and the Related Parties are intended third party beneficiaries of Section 8.2(b) (Effect of Termination) and 9.11(b) (Specific Performance).

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 purposes of this Agreement and all other sections of the Disclosure Schedule to which such matter relates to the extent that such disclosure is reasonably apparent on its face. 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.

Section 9.19 Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, Sellers' obligations hereunder shall be subject to limitations under applicable Law, including, without limitation, Sections 1113 and 1114 of the Bankruptcy Code.

[Remainder of page intentionally left blank.]

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

FOOD BASICS, INC.

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

APW SUPERMARKETS, INC.

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

SHOPWELL, 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

KEY FOOD STORES CO-OPERATIVE, INC.

By:_____

Name: Dean Janeway

Title: Chief Executive Officer

Execution Version

AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS AMENDMENT, dated as of September 30, 2015 (this "Amendment"), by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P"), Food Basics, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Food Basics"), APW Supermarkets, Inc., a New York corporation and a wholly-owned subsidiary of A&P ("APW"), Shopwell, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Shopwell"), Pathmark Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Pathmark"), A&P Real Property, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P ("A&P Real Property"), A&P Live Better, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P (together with A&P, Food Basics, APW, Shopwell, Pathmark and A&P Real Property, "Sellers"), and Key Food Stores Co-Operative, Inc., a New York corporation or any of its permitted assignees ("Buyer"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Asset Purchase Agreement, dated as of July 19, 2015, by and among Sellers and Buyer (as amended, the "APA"). Sellers and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties wish to amend certain provisions of the APA;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein and in the APA, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

Section 1. Amendments. The APA is hereby amended as follows:

(a) The second recital of the APA is hereby amended and restated in its entirety to read as follows:

> "WHEREAS, Sellers operate the sixteen (16) supermarkets at the locations set forth in Section 3.5 of the Disclosure Schedule (as defined below) under the names "A&P," "Food Basics," "Food Emporium," "Pathmark" and "Waldbaums" (each a "Store" and, collectively, the "Stores"); and";

(b) Clause (d) in the definition of "Acquired Assets" is hereby amended by deleting clause (d) in its entirety and replacing it with "(d) [Reserved];";

(c) Clause (i) in the definition of "Acquired Assets" is hereby amended and restated in its entirety to read as follows:

> "all books, records, files and papers, whether in hard copy or electronic format, including sales and promotional literature, manuals and data, sales and purchase correspondence, lists of suppliers, personnel and employment records, in each case that are primarily used in the operation of the Stores;";

(d) The definition of "Excluded Assets" is hereby amended by (i) deleting "and" at the end of clause (n), (ii) inserting "; and" at the end of clause (o) and inserting the following new clause (p):

> "customer lists (including, but not limited to, all 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).";

(e) The definition of "Owned Real Property" is hereby deleted in its entirety;

(f) Section 2.3(a) is hereby amended by deleting the reference to "$27,550,000" in its entirety and replacing it with "28,500,000";

(g) Section 2.5(b) is hereby amended by (i) deleting clause (iv) in its entirety, (ii) inserting "and" in front of clause (iii) thereof and (iii) deleting "and" at the end of clause (iii) thereof;

(h) Section 3.4 is hereby amended by deleting the words "and sole and exclusive, good and insurable fee simple title to the Owned Real Property";

(i) Section 5.4(a) is hereby amended by deleting the reference to "3% of the Cash Purchase Price" in its entirety and replacing it with "$664,500";

(j) Section 5.4(b) is hereby amended by deleting the last sentence and replacing it with the following:

> "This Agreement shall be subject to approval by the Bankruptcy Court and, after entry of the Bidding Procedures Order, the consideration by Sellers of a higher or better competing bid (whether in combination with other assets of Sellers or their Affiliates or otherwise) that (i) includes all sixteen (16) of the Stores; (ii) is submitted as a single bid from a single bidder (i.e., partial bids may not be combined to form such competing bid and the single bidder may not be acting on behalf of, or assigning rights to, parties other than (A) Affiliates and (B) in the event the single bidder is an existing cooperative corporation operating in the supermarket industry that has not been specifically formed for purposes of such bid, the members of such single bidder, or otherwise circumventing the intent of this provision); and (iii) includes a cash purchase price and/or assumption of Liabilities that exceeds the Cash Purchase Price by a bid increment of the total amount of the Termination Payment plus $570,000 (such Dollar amount being two percent (2%) of the Cash Purchase Price) (any such competing bid, a "Competing Bid"). If Sellers receive a competing bid on the Stores that satisfies all of the criteria for a Competing Bid before 5:00 p.m. (ET) on October 6, 2015 (the "Key Food Bid Deadline"), Seller shall provide a copy of the purchase agreement with respect to such eligible Competing Bid to Buyer by noon (ET) on October 7, 2015 (redacted only with respect to information identifying the bidder). If Sellers do not receive an eligible Competing Bid by the Key Food Bid Deadline, Sellers shall seek approval of the transactions contemplated by this Agreement by the Bankruptcy Court at the hearing currently scheduled for October 16,

2015. Sellers agree that, notwithstanding any contrary provisions in the Bidding Procedures (as such term is defined in the Sale Order) or the Bidding Procedures Order, Sellers will not be entitled to extend the Key Food Bid Deadline without Buyer's express written consent. In addition, if Sellers receive an eligible Competing Bid before the Key Food Bid Deadline, Sellers shall conduct a single auction for all the Stores on October 8, 2015 (i.e., Stores shall not be auctioned individually).";

(k) Section 5.4 is hereby amended by adding the following as a new clause (f):

"Delivery of Notices. Notwithstanding anything to the contrary contained herein, no later than September 30, 2015, Sellers shall serve notice of the amended APA upon the parties required to receive the Global Sale Notice (as such term is defined in the Bidding Procedures Order).";

(l) Section 6.4(a) is hereby amended and restated in its entirety to read as follows:

"At least ten (10) days prior to the Closing Date, Buyer shall make an offer of employment to substantially all Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were employed immediately prior to the Closing ("Affected Union Covered Employees"). Such offer of employment shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and conditions required by the governing Affected Labor Agreements or Modified Labor Agreements, if any, that may then be in effect. If no Affected Labor Agreements or Modified Labor Agreements are in effect, the offer of employment to Affected Union Covered Employees will be on terms as are reflected in Buyer's last best offer (the "Employment Offer"). With respect to any Affected Union Covered Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six (6) months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable Law and the governing Affected Labor Agreements or the Modified Labor Agreements, if any, that may then be in effect, or if no Affected Labor Agreements or Modified Labor Agreements are in effect, the Employment Offer. Buyer shall have no obligation with respect to any Covered Employee, including making any offer of employment to any such Covered Employee, who, as of immediately prior to the Closing, is not represented by an Affected Union.";

(m) Section 6.10 is hereby amended and restated in its entirety as follows:

"New Utrecht Store. (a) Sellers shall conduct an auction for the store located at 18-21 New Utrecht Avenue, Brooklyn, New York (the "New Utrecht Store"), individually (i.e., not as part of any package with other stores). Buyer shall be deemed a Qualified Bidder (as such term is defined

in the Bidding Procedures Order) entitled to bid at such auction. Any bid in such auction with respect to the New Utrecht Store that Buyer submits upon substantially the same terms as those in Buyer's initial bid with respect to the New Utrecht Store shall be deemed a Qualified Bid (as such term is defined in the Bidding Procedures Order) in any such auction.

(b) Subject to compliance with other provisions of this Agreement, including, without limitation, Section 5.4(b) (as described in clause (j) above), in the event that the winning bidder for the New Utrecht Store is a bidder other than Buyer (such bidder, the "Winning Bidder"), Buyer shall cause the lease held by Utrecht 18 LLC dated May 8, 2015 (the "Utrecht Lease") to be assigned, no earlier than October 9, 2015, to the Winning Bidder (the "Utrecht Lease Assignment"), provided that the following two conditions are satisfied:

(i) Either (A) the Letter of Credit, dated May 8, 2015, issued by TD Bank (no. 20006878) for account party Utrecht 18 LLC in the amount of $816,250 (the "Existing LOC") shall be cancelled or (B) the Winning Bidder shall post a new letter of credit for the benefit of Utrecht 18 LLC, which may be drawn (in an amount equal to the amount drawn under the Existing LOC) if the Existing LOC is ever drawn; and

(ii) Either (A) Utrecht 18 LLC shall have no continuing obligations under the Utrecht Lease after the effective date of the Utrecht Lease Assignment or (B) the Winning Bidder shall indemnify Utrecht 18 LLC for all losses and liabilities incurred by Utrecht 18 LLC under the Utrecht Lease from and after the effective date of the Utrecht Lease Assignment; provided, that the Winning Bidder shall be selected in the sole discretion of Sellers so long as the Bankruptcy Court determines that the Winning Bidder has provided adequate assurance of future performance in accordance with section 365(f)(2)(B) of the Bankruptcy Code, and Buyer shall not object to or oppose the Winning Bidder's adequate assurance.

(c) In the event that the New Utrecht Store is sold to Buyer, then promptly after the closing of the sale of the New Utrecht Store to Buyer, Sellers shall or shall cause the action pending in New York Supreme Court, Kings County, bearing Index No. 50667/2015 A&P Real Property LLC, and Waldbaum, Inc. against 81-21 New Utrecht LLC, Blanche Ezrol, Wendy K Sherbert, Terri Anderson, Brandi M. Seda, Renae M. Tedesco, and the Estate of Peggy Anderson, to be voluntarily discontinued with prejudice.";

(n) Section 8.1(k) is hereby amended by deleting each use of the words "(or Section 1.1(l) as to the Owned Real Property)";

(o) Exhibit F is hereby deleted in its entirety;

(p) Schedule 1.1(l) is hereby deleted in its entirety;

(q) Schedule 3.4 is hereby amended and restated in its entirety as follows:

"None.";

(r) Schedule 3.5 is hereby amended by deleting paragraph 13 in its entirety;

(s) Schedule 3.6 is hereby amended by deleting the third (and final) paragraph in its entirety;

(t) Schedule 3.12 is hereby amended by deleting the following from the Permit Summary Chart attached thereto:

"7248
WALDBAUMS
81-21 N Utrecht Ave.
Brooklyn, NY
STATE TOBACCO LICENSE
CITY TOBACCO LICENSE
STATE LIQUOR LICENSE(GROCERY CHAIN, WINE PRODUCT)
$1,000 Liquor Bond
STATE FOOD PROCESSING LICENSE
COMBAT METHAMPHETAMINE EPIDEMIC ACT CERTIFICATION
WIC License
Lottery License"; and

(u) Schedule 5.3(c) is hereby amended by deleting row 19 in its entirety.

Section 2. Miscellaneous.

(a) Effect of Amendment. This Amendment shall modify and amend the APA 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 APA that are not amended, modified, waived or replaced hereunder shall be unaltered and shall remain in full force and effect).

(b) Further Assurances. In case any further action is required to carry out the purposes and intent of the term sheet attached hereto as Exhibit A (the "Term Sheet"), including any amendments to the APA, each of the Parties shall take such further action as the other Party may reasonably request to give effect to the terms set forth in the Term Sheet.

(c) 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 APA and hereby waive their right to a jury in accordance with Section 9.10 of the APA, in each case as if both Sections were specifically set forth herein.

(d) 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 HEREOF, the Parties have caused this Amendment to be duly executed and delivered as of the day and year first written above.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

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

FOOD BASICS, INC.

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

APW SUPERMARKETS, INC.

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

SHOPWELL, 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

KEY FOOD STORES CO-OPERATIVE, INC.

By:_____
Name: Dean Janeway
Title: Chief Executive Officer

Exhibit A

In re: The Great Atlantic & Pacific Tea Company, Inc., *et al*.,
Term Sheet for Key Food Stores Co-Operative, Inc.
Revised Stalking Horse Bid

This term sheet ("Term Sheet") is intended to be entitled to the protections of Rule 408 of the U.S. Federal Rules of Evidence and any other applicable statutes or doctrines protecting the use or disclosure of confidential information and information exchanged in the context of settlement discussions. This Term Sheet is provided in confidence and may be distributed only with the express written consent of the Parties (as defined below).[1]

Issue	Terms
The Revised Key Food Stalking Horse Package	The initial Stalking Horse Bid (the "Initial Bid") submitted by Key Food Stores Co-Operative, Inc. ("Key Food") to the Debtors (the "Debtors" or "A&P," and collectively with Key Food, the "Parties"), approved under the Bidding Procedures Order, shall be deemed amended (the "Revised Key Food SH Bid") to include only the 16 stores listed on Schedule A hereto (the "Revised Key Food SH Package"). The Revised Key Food SH Package includes the same stores identified in Key Food's Initial Bid, *minus* the Waldbaum's (Banner Number 70296) located at 81-21 N Utrecht Ave., Brooklyn, NY (the "New Utrecht Store").
Cash Purchase Price	$28.5 million for the 16-store Revised Key Food SH Package, inclusive of "boxes" and "scripts."
Eligible Competing Bids	A&P will not deem a competing bid for any stores in the Revised Key Food SH Package eligible as a Qualified Bid, unless such competing bid satisfies all of the following conditions: a. Includes all 16 of the stores in the Revised Key Food SH Package; b. Submitted as a single bid from a single bidder (*i.e.*, partial bids may not be combined to form a competing bid and the single bidder may not be acting on behalf of, or assigning rights to, parties other than (A) Affiliates (as such term is defined in the purchase agreement entered into in connection with the Initial Bid) and (B) in the event the single bidder is an existing cooperative corporation operating in the supermarket industry that has not been specifically formed for

[1] Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Global Bidding Procedures (the "Bidding Procedures") attached as Exhibit A to the *Order Approving (A) Global Bidding Procedures, (B) Bid Protections Granted to Certain Stalking Horse Purchasers, (C) the Form and Manner of Notice of Auctions, Sale Transactions and Sale Hearing, (D) the Assumption and Assignment Procedures, and (E) the Date for Auctions, if Necessary, and Sale Hearings* [Docket No. 495] entered in the entered by the bankruptcy cases of The Great Atlantic & Pacific Tea Company, Inc., et al. (the "Bidding Procedures Order").

	purposes of such bid, the members of such single bidder; and c. Includes a cash purchase price and/or assumption of liabilities that exceeds the value of the Revised Key Food SH Bid by a bid increment of the total amount of the Termination Payment (described below) plus $570,000 (2% of the Cash Purchase Price). A&P agrees, and the Bankruptcy Court will recognize that, notwithstanding any contrary provisions in the Bidding Procedures or the Bidding Procedures Order, A&P shall not accept or consider, or seek approval of, any bid for any store, or group of stores, in the Revised Key Food SH Package that does not satisfy all of the foregoing criteria.
Termination Payment	In the event A&P selects a Winning Bidder for the Revised Key Food SH Package other than Key Food, Key Food shall become entitled to the full "Termination Payment" approved under the Bidding Procedures Order, comprised of a break-up fee of 3% of the Initial Bid Cash Purchase Price ($664,500), plus reimbursement of up to $250,000 in reasonable and documented expenses.
Additional Revised Key Food SH Bid Terms	Terms of the Revised Key Food SH Bid shall remain substantively the same as terms of the Initial Bid, subject only to conforming changes to give effect to the terms of this agreement.
Notice of Revised KF SH Package and Auction Procedures	Within one business day of execution hereof, A&P shall serve notice of the Revised KF SH Bid and the terms governing auctions of the Revised KF SH Package and the New Utrecht store upon the parties required to receive the Global Sale Notice under the Bidding Procedures Order.
Qualified Bid Deadline for Revised Key Food SH Package and New Utrecht Store	If A&P receives a competing bid on the Key Food SH Package that satisfies all of the criteria for an Eligible Competing Bid described above before 5:00 p.m. (ET) on October 6, 2015 (the "Key Food Bid Deadline"), A&P must provide a copy of the Asset Purchase Agreement with respect to such Eligible Competing Bid to Key Food by Noon (ET) on October 7, 2015 (redacted only with respect to information identifying the bidder).
No Eligible Competing Bid Received	If A&P does not receive an Eligible Competing Bid by the Key Food Bid Deadline, A&P shall seek approval of the Revised Key Food SH Bid by the Bankruptcy Court at the hearing currently scheduled for October 16, 2015. A&P agrees, and the Bankruptcy Court will recognize that, notwithstanding any contrary provisions in the Bidding Procedures or the Bidding Procedures Order, A&P will not be entitled to extend the Key Food Bid Deadline without Key Food's express written consent.
Auction for Revised Key Food	If A&P receives an Eligible Competing Bid before the Key Food Bid Deadline, A&P shall conduct a single auction for the entire 16-store

SH Package	Revised Key Food SH Package on October 8, 2015 (*i.e.*, stores shall not be auctioned individually).
Auction for New Utrecht Store	A&P shall conduct an auction for the New Utrecht Store, individually (*i.e.*, not as part of any package with other stores). Key Food shall be deemed a Qualified Bidder entitled to bid at such auction. Any bid Key Food submits upon substantially the same terms as those in the Initial Bid with respect to the New Utrecht store shall be deemed a Qualified Bid in any such auction.
Assignment of New Utrecht Lease	In the event that the Winning Bidder for the New Utrecht Store is a bidder other than Key Food, Key Food shall cause the lease held by Utrecht 18 LLC dated May 8, 2015 (the "Lease") to be assigned to the Winning Bidder (the "Assignment"), *provided* that the following two conditions are satisfied: a. Either (i) the letter of credit dated May 8, 2015 issued by TD Bank (no. 20006878) for account party Utrecht 18 LLC in the amount of $816,250 (the "Existing LOC") shall be cancelled or (ii) the Winning Bidder shall post a new letter of credit for the benefit of Utrech 18 LLC which may be drawn if the Existing LOC is ever drawn in an equal amount; and b. Either (i) Utrecht 18 LLC shall have no continuing obligations under the Lease after the effective date of the Assignment or (ii) the Winning Bidder shall indemnify Utrech 18 LLC for all losses and liabilities incurred by Utrecht 18 LLC under the Lease from and after the effective date of the Assignment ; *provided* that the Winning Bidder shall be selected in the sole discretion of A&P so long as the Bankruptcy Court determines that the Winning Bidder has provided adequate assurance of future performance in accordance with section 365(f)(2)(B) of the Bankruptcy Code, and Buyer shall not object to or oppose the Winning Bidder's adequate assurance.
Union Employment Offer Requirement	Section 6.4(a) of the Asset Purchase Agreement provision regarding offer of employment to Affected Union Covered Employees shall be amended and restated as follows: At least ten (10) days prior to the Closing Date, Buyer shall make an offer of employment to substantially all Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were employed immediately prior to the Closing ("Affected Union Covered Employees"). Such, offer of employment shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and

	conditions required by the governing Affected Labor Agreements or Modified Labor Agreements, if any, that may then be in effect. If no Affected Labor Agreements or Modified Labor Agreements are in effect, the offer of employment to Affected Union Covered Employees will be on terms as are reflected in Buyer's last best offer ("Employment Offer"). With respect to any Affected Union Covered Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, if any, that may then be in effect, or if no Affected Labor Agreements or Modified Labor Agreements are in effect, the Employment Offer. Buyer shall have no obligation with respect to any Covered Employee, including making any offer of employment to any such Covered Employee, who, as of immediately prior to the Closing, is not represented by an Affected Union.
Court Approval	All of the terms in this Term Sheet are contingent on approval by the Bankruptcy Court, though a formal Order of the Court is unnecessary; if approval is not obtained for all terms, none of these terms shall apply.

Schedule A

16 Stores Included in Revised Key Food Stalking Horse Bid

Store	Banner	City	Address	State
1 59502	Food Basics	Paterson	465 Getty Ave	NJ
2 70295	Waldbaums	Flushing	196-35 Horace Harding Expressway	NY
3 70657	Waldbaums	Bayside	35-09 Francis Lewis Blvd	NY
4 70669	Waldbaums	Albertson	1050 Willis Avenue	NY
5 59504	Food Basics	Glen Rock	937 Lincoln Ave	NJ
6 70655	Waldbaums	Glen Head	1-1 Park Plaza	NY
7 70762	A&P	Bronx	5661 Riverdale Ave	NY
8 70442	Waldbaums	Howard Beach	82-35 153rd Ave	NY
9 36715	Food Emporium	New York	10 Union Sq 14th & Park	NY
10 70749	A&P	Harrison	355 Halsted Ave	NY
11 59524	Food Basics	Fairview	289 Bergen Blvd.	NJ
12 70641	Waldbaums	Jackson Heights	75-55 31St St.	NY
13 72637	Pathmark	Brooklyn	1525 Albany Avenue	NY
14 70292	Waldbaums	South Flatbush	2424 Flatbush Avenue	NY
15 70613	Waldbaums	Glen Oaks	259-01 Union Turnpike	NY
16 70849	Waldbaums	Rosebank	375 Tompkins Ave.	NY

Execution Version

Key Food Stores Co-Operative, Inc.
1200 South Avenue
Staten Island, NY10314

October 19, 2015

The Great Atlantic & Pacific Tea Company, Inc.
2 Paragon Drive
Montvale, New Jersey 07645

Re: Amendment No. 2 to Key Food/A&P Asset Purchase Agreement, dated July 19, 2015 and Amendment to Key Food/A&P Asset Purchase Agreement dated October 14, 2015.

Gentlemen:

Reference is made to that certain Asset Purchase Agreement, dated as of October 14, 2015 (the "Additional APA"), by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P"), Food Basics, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Food Basics"), APW Supermarkets, Inc., a New York corporation and a wholly-owned subsidiary of A&P ("APW"), Shopwell, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Shopwell"), Pathmark Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Pathmark"), A&P Real Property, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P ("A&P Real Property"), A&P Live Better, LLC, a Delaware limited liability company ("A&P Live Better" and, together with A&P, Food Basics, APW, Shopwell, Pathmark and A&P Real Property, "Sellers"), and Key Food Stores Co-Operative, Inc., a New York corporation or any of its permitted assignees ("Buyer").

Reference is also made to that certain Asset Purchase Agreement, dated as of July 19, 2015 (as amended, the "Stalking Horse APA" and, together with the Additional APA, the "APAs"), by and among A&P, Food Basics, APW, Shopwell, Pathmark, A&P Real Property and Buyer ("Buyer"). Capitalized terms used herein and not defined shall have the meanings ascribed to them in the applicable APA.

The Parties wish to acknowledge and agree to certain changes to the APAs, as follows:

1. The Stalking Horse APA is hereby amended by adding A&P Live Better as a "Seller" thereunder, and A&P Live Better hereby agrees to be bound by the terms and subject to the conditions set forth in the Stalking Horse APA with respect to Sellers.

2. Notwithstanding anything to the contrary contained in the APAs, the Parties agree that there shall be a separate Closing with respect to each Store, commencing at 3:00 p.m. on the applicable Closing Date, as more fully set forth in a closing schedule to be mutually agreed upon by the Parties in good faith. The APA is hereby deemed amended to reflect such separate Closings, and each reference to the Closing in the APAs shall be deemed a reference to the applicable Closing related to the applicable Store. Each Closing shall be deemed to occur and be effective, and title to and risk of loss associated with the applicable Acquired Assets shall be

deemed to shift to Buyer, at 3:00 p.m. Eastern time, or such other earlier time as shall be mutually agreed upon by the Parties prior thereto, on the applicable Closing Date. In accordance with the foregoing, and for the avoidance of doubt:

(a) On the applicable Closing Date with respect to a Store, Buyer shall (i) pay the Purchase Price applicable to such Store, including the Cash Purchase Price allocated to such Store as set forth in Schedule 5.3(c) of the Stalking Horse APA or Schedule 2.3 of the Additional APA, as applicable, and that portion of the (A) Inventory Purchase Price, (B) Prepaid Expenses, (C) amount that Sellers are required to pay as Cure Costs up to the applicable cap amount under the Additional APA or the Stalking Horse APA, (D) Register Cash and (E) Seller Proration Amount, if any (or less the Buyer Proration Amount, if any) applicable to such Store and (ii) assume the Assumed Liabilities with respect to such Store.

(b) With respect to each APA, Buyer and Sellers shall execute joint written instructions authorizing the release to Sellers, upon the applicable Closing on the applicable Closing Date with respect to the applicable Store, of a portion of the Escrow Amount equal to the Removed Store Escrow Amount with respect to such Store. In connection therewith, such Removed Store Escrow Amount shall be applied towards the Purchase Price payable by Buyer to Sellers pursuant to the foregoing clause (a), and the Escrow Amount shall be reduced accordingly. Notwithstanding anything to the contrary herein or under the APAs, the Escrow Amount under the Stalking Horse APA and the Cash Purchase Price under the Additional APA shall only be deemed reduced to the extent applicable pursuant to Section 2(e) and (f) below for the purposes of which such terms are used under Section 8.2(a) of the applicable APA with respect to the maximum liability of Buyer thereunder.

(c) With respect to each APA, Sellers and Buyer shall have the right to terminate the applicable APA with respect to a Store in accordance with Article VIII thereof to the extent such rights are deemed to be modified by Section 2 hereof (i.e., each reference to the Closing therein shall be deemed a reference to the applicable Closing with respect to a Store). For the avoidance of any doubt, the termination with respect to any Store by Sellers or Buyer shall not result in a termination of, or entitle the Seller or Buyer to terminate, the Agreement with respect to any other Stores.

(d) With respect to each APA, in the event of a termination with respect to any Store as set forth in the immediately foregoing Section 2(c), the reference to Escrow Amount in Section 2.3(b)(ii) of each APA shall be deemed to refer to the portion of the Escrow Amount that is due and payable to Sellers as illustrated and clarified in the following Sections 2(e) and 2(f).

(e) In the event that the Stalking Horse APA is terminated after the initial Closing under the Stalking Horse APA with respect to any particular Store in a manner such that a portion of the Escrow Amount would be due and payable to Sellers under Section 2.3(b)(ii) thereof, then the only amount that is due and payable to Sellers with respect to such Store in connection with such termination shall be an amount equal to the greater of (i) the Removed Store Escrow Amount as allocated to such Store and (ii) $700,000; provided, however, that other

than in the case of fraud or willful misconduct, the maximum aggregate Liability of Buyer with respect to all terminations of Stores under the Stalking Horse APA shall not exceed $3,547,500.

(f) In the event that the Additional APA is terminated after the initial Closing under the Additional APA with respect to any particular Store in a manner such that the Escrow Amount would be due and payable to Sellers under Section 2.3(b)(ii) thereof, and/or the Buyer's Break-Up Fee would be due and payable to Sellers under Section 8.2(b) thereof, then the only amount that is due and payable to Sellers with respect to such Store in connection with such termination shall be an amount equal to the greater of (i) ten percent (10%) of the Cash Purchase Price as allocated to such Store and (ii) $700,000; provided, however, that other than in the case of fraud or willful misconduct, the maximum aggregate Liability of Buyer with respect to all terminations of Stores under the Additional APA shall not exceed $4,557,000.

(g) The delivery by each Seller of a duly executed certificate meeting the requirements of Section 1.1445-2(b)(2) of the Treasury Regulations, as contemplated by Section 2.5(d) of the APAs, shall only be required for the initial Closing Date.

3. The Stalking Horse APA is hereby amended by deleting each instance of the words "October 31, 2015" and replacing it with "November 30, 2015."

4. Buyer hereby extends the period required for the approval of the Sale Order by the Bankruptcy Court under Section 8.1(g)(ii) of the Stalking Horse APA to October 26th, 2015.

5. Section 2.5(a) of the Stalking Horse APA is hereby amended and restated in its entirety as follows:

(a) "On the applicable Closing Date, Buyer shall pay the portion of the Purchase Price applicable to the Acquired Assets to be acquired on such Closing Date to Sellers, which shall be paid by wire transfer of immediately available funds into an account designated by Sellers; provided, that in the event that the Inventory Purchase Price applicable to the Inventory to be acquired at the applicable Closing is not finalized by mutual agreement of the Parties or is otherwise unavailable as of 3:30 p.m. Eastern time on the applicable Closing Date, Buyer shall (1) pay to Sellers, by wire transfer of immediately available funds, an amount equal to the Purchase Price applicable to the Acquired Assets minus the Inventory Purchase Price for the Inventory and (2) promptly upon mutual agreement of the Parties in writing with respect to the calculation of the Inventory Purchase Price applicable to the Inventory, and in any event no later than one Business Day following the applicable Closing Date, pay to Sellers, by wire transfer of immediately available funds, the Inventory Purchase Price."

6. Section 2.6(a) of the Stalking Horse APA is hereby amended and restated in its entirety as follows:

(a) "With respect to all Inventory for each Store, commencing at 6:00 a.m. Eastern time on the applicable Closing Date for the applicable Store, or on such other date as the Parties may mutually agree in writing (the date of such inventory with respect to the applicable

Closing being the "Inventory Date"), a physical count of the Inventory, and calculation of the value thereof, at each of the applicable Stores being acquired at such Closing Date shall be made by a nationally-recognized, independent inventory service (the "Inventory Taker") selected and engaged by Sellers, in their sole discretion. 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 a Representative present during the inventory and the fees and expenses of the Inventory Taker shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers. The physical inventory (and the Inventory Purchase Price to be paid by Buyer for the Inventory) shall not include Inventory that is (i) A&P branded (including any of Sellers' Affiliates' branded) private label inventory (the "A&P Private Label Inventory") that is shipped to any Store after the date hereof or (ii) not transferable to Buyer under applicable Law (collectively, the "Excluded Inventory"). The Inventory Taker shall value all Inventory carried in the Stores on the Inventory Date, excluding the Excluded Inventory (but including any portion or all of the Excluded Inventory described in clause (i) above that Buyer deems Inventory), at the percentages of the segment retail price set forth in Schedule 2.6(a) (such value, the "Inventory Purchase Price")."

7. Section 2.6(b) of the Stalking Horse APA is hereby amended and restated in its entirety as follows:

(a) "Buyer shall make application to the applicable authorities to (A) transfer any alcohol included in the Inventory to Buyer, (B) transfer to Buyer any licenses held by any Seller or any of its Subsidiaries or issuance of new licenses to Buyer, in each case, permitting the sale of alcohol in the applicable Stores (the "Store Alcohol Licenses"), 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 or new applications and execute such consents or other papers as may reasonably be required, including delivering the original license or permit in the possession of any applicable Seller to the applicable authority for safekeeping pending the issuance of any applicable Store Alcohol Licenses. Notwithstanding anything in this Agreement to the contrary, to the extent Buyer has not received the consent of all applicable Governmental Authorities to sell liquor or other alcoholic beverages from any particular Store that is part of the Acquired Assets, or if Buyer is prohibited by applicable Law from engaging in such sales as provided in the immediately preceding sentence, then, unless Buyer provides written notice to Sellers at least fourteen (14) days (or such shorter time as may be agreed to by Sellers in their sole discretion) prior to the then scheduled Closing Date containing evidence of Buyer's receipt of all such consents, Inventory shall not include, and the Inventory Purchase Price shall be reduced by the cost of, the liquor and alcoholic beverage inventory located at such Store."

8. Section 2.6(b) of the Additional APA is hereby amended by deleting the last sentence and replacing it with the following:

(a) "Notwithstanding anything in this Agreement to the contrary, to the extent Buyer has not received the consent of all applicable Governmental Authorities to sell liquor or other alcoholic beverages from any particular Store that is part of the Acquired Assets, or if Buyer is prohibited by applicable Law from engaging in such sales as provided in the immediately preceding sentence, then, unless Buyer provides written notice to Sellers at least fourteen (14) days (or such shorter time as may be agreed to by Sellers in their sole discretion) prior to the then scheduled Closing Date containing evidence of Buyer's receipt of all such consents, Inventory shall not include, and the Inventory Purchase Price shall be reduced by the cost of, the liquor and alcoholic beverage inventory located at such Store."

9. Section 2.5 of the Additional APA is hereby amended by deleting each use of the words "such later date" and replacing such instances with "the date on which such Closing was previously scheduled to occur."

10. In connection with the increase in the Aggregate Cash Purchase Price under the Stalking Horse APA pursuant to Amendment No. 1 to the Stalking Horse APA dated as of September 30, 2015, Schedule 5.3(c) of the Disclosure Schedules to the Stalking Horse APA is hereby amended to reflect the revised amount of Cash Purchase Price with respect to certain Stores as set forth on Exhibit A attached hereto.

11. The Stalking Horse APA is hereby amended by removing Store number 70849, located at 375 Tompkins Avenue, Staten Island, NY, from the package of Stores to be acquired thereunder. As such, (a) the Disclosure Schedule to the Stalking Horse APA is hereby amended by deleting all such references to Store number 70849, (b) the Cash Purchase Price under the Stalking Horse APA is deemed to be reduced by an amount equal to $120,000.00 and (c) as promptly as practicable following the closing of the sale and assignment of the Lease of such Store to a third party, Sellers hereby agree to remit $80,000.00 from the cash proceeds of such sale and assignment to Buyer.

12. Section 3.5 of the Disclosure Schedule to the Additional APA is hereby amended and restated in its entirety as set forth on Exhibit B attached hereto.

13. Except to the extent modified by this Letter Agreement, the APAs remain in full force and effect. In the event of any conflict between the terms of this Letter Agreement and the terms of the APAs, the terms of this Letter Agreement shall control. This Letter Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Letter Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this letter agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Letter Agreement as to the Parties and may be used in lieu of the original Letter Agreement for all purposes. The provisions of Article IX of the APAs are incorporated by reference herein and shall be deemed applicable to this Letter Agreement *mutatis mutandis*.

[Signature Page Follows]

KEY FOOD STORES CO-OPERATIVE, INC.

By: _____
Name: Dean Janeway
Title: Chief Executive Officer

CONSENTED AND AGREED TO
on this 19th day of October, 2015

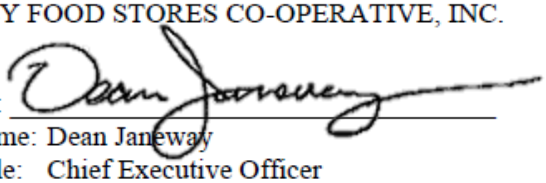
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

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

FOOD BASICS, INC.
APW SUPERMARKETS, INC.
SHOPWELL, INC.
PATHMARK STORES, INC.
A&P LIVE BETTER, LLC
A&P REAL PROPERTY, LLC

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

KEY FOOD STORES CO-OPERATIVE, INC.

By: 
Name: Dean Janeway
Title: Chief Executive Officer

CONSENTED AND AGREED TO
on this 19th day of October, 2015

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

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

FOOD BASICS, INC.
APW SUPERMARKETS, INC.
SHOPWELL, INC.
PATHMARK STORES, INC.
A&P LIVE BETTER, LLC
A&P REAL PROPERTY, LLC

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