

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

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

Upon the motion, dated July 19, 2015 (Docket No. 26) (the "Sale Motion")<sup>2</sup>, 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

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

<sup>2</sup> Capitalized terms used herein but not otherwise defined have the meanings given to them in the Lease Sale Agreement (as defined below) or, if not defined in the Lease Sale Agreement, the meanings given to them in the Sale Motion.

unexpired leases of the Debtors in connection therewith (including but not limited to any subleases identified in the Lease Purchase Agreement (defined below)) (the “Leases”); and the Court having taken into consideration this Court’s prior order, dated August 11, 2015 (Docket No. 495) (the “Global Bidding Procedures Order”), approving procedures for the sale or disposition of certain of the Debtors’ stores, including certain executory contracts, unexpired leases and assets related thereto (the “Global Bidding Procedures”); and KAM FOOD STORES INC., a New York corporation (the “Buyer”) having submitted a bid for the Acquired Assets, which was the successful bid for the Acquired Assets at an auction contemplated by such procedures (the “Auction”); and the Court having conducted a hearing on the Sale Motion (the “Sale Hearing”) on November 5, 2015, 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 Lease Sale Agreement, dated as of November 3, 2015 (the “Lease Sale 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 Lease Sale Agreement (the “Sale Transaction”), (iii) the Declaration of Stephen Goldstein in Support of the Sale Motion (Docket No. 251) and any supplements thereto, (iv) the declaration of Tim McDonagh (Docket No. 1425), (v) the declaration of Christopher McGarry (Docket No. 1427), (vi) the declaration of Dana Kaufman (Docket No. 1430), (vii) the declaration Jeffrey Feil (Docket No.1373), the Notice of Filing of Sale Order and Agreement Governing Transactions with KAM FOOD STORES INC., and (ix) 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”) was provided; and 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 pursuant to the Global Bidding Procedures Order, including, but not limited to, the following: (i) all non-Debtor parties to the Leases, (ii) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, (iii) all applicable federal, state, and local taxing and regulatory authorities, and (iv) all of the Debtors' known creditors.

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

F. **Sound Business Purpose.** The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of the Sale Motion, the Lease Sale Agreement, and the Sale Transaction and in entering into the Lease Sale Agreement and related Bill of Sale and Assignment and Assumption Agreement (the "Related Agreements"). The Debtors' entry into and performance under the Lease Sale 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 Lease Sale Agreement constitutes the highest and best offer received for the Acquired Assets, (ii) the Lease Sale Agreement presents the best opportunity to maximize the value of the Acquired Assets and avoid decline and devaluation of the Acquired Assets, (iii) unless the Sale Transaction and all of the other transactions contemplated by the Lease Sale Agreement are concluded expeditiously, as provided for pursuant to the Lease Sale 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 Lease Sale Agreement.

G. **Compliance with Global Bidding Procedures Order.** The Debtors and Buyer complied with the Global Bidding Procedures Order and the Global Bidding Procedures in all respects. Buyer was the successful bidder for the Acquired Assets in accordance with the Global Bidding Procedures.

H. **Highest and Best Value.** (i) The Debtors and their advisors, including Evercore Group LLC and Hilco Real Estate LLC, engaged in a robust and extensive marketing and sale process, both prior to the commencement of these chapter 11 cases and through the postpetition sale process pursuant to the Global Bidding Procedures Order, (ii) the Debtors conducted a fair and open sale process, (iii) the sale process, the Global 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 Global Bidding Procedures Order and the Global 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 Lease Sale 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 Lease Sale 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 Lease Sale Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Buyer is not an "insider" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders existed between Buyer and the Debtors.

L. **Notice.** As evidenced by the certificates of service filed with the Court: (i) proper, timely, adequate and sufficient notice of the Sale Motion, the bidding process (including the deadline for submitting bids and the Auction), the Sale Hearing, the Sale Transaction and the Proposed Sale Order was provided by the Debtors, (ii) such notice was good, sufficient and appropriate under the particular circumstances and complied with the Global Bidding Procedures Order, and (iii) no other or further notice of the Sale Motion, the Sale Transaction, the Global 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 Global Bidding Procedures Order, the Debtors have served, prior to the Sale Hearing, notice (the "Cure Notice") of the Debtors' intent to assume and

assign the Leases and of the related proposed cure amount (the “Cure Amount”) upon each non-Debtor counterparty to the Leases. The service of the Cure Notice was good, sufficient and appropriate under the circumstances and no further notice need be given with respect to the Cure Amounts for the assumption and assignment of the Leases. All non-Debtor parties to the Leases have had a reasonable opportunity to object both to the Cure Amounts listed on the applicable Cure Notice and to the assumption and assignment of the Leases to Buyer.

N. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Acquired Assets free and clear of all liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against the Debtors, and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors’ interests in the Acquired Assets, the operation of the Debtors’ businesses before the Closing, or the transfer of the Debtors’ interests in the Acquired Assets to Buyer (collectively, excluding any liabilities expressly assumed under the Lease Sale Agreement, the

“Claims”), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Without limiting the generality of the foregoing, “Claims” shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to (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 the Debtors or the Acquired Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Claims against Buyer or any of its assets, property, Affiliates, successors, assigns, or the Acquired Assets.

O. Buyer would not have entered into the Lease Sale Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors and their estates and their creditors, if the sale of the Acquired Assets was not free and clear of all Claims, or if Buyer would, or in the future could, be liable for any such Claims, including, as



applicable, certain liabilities related to the operation of stores by the Debtors that will not be assumed by Buyer, as described in the Lease Sale Agreement.

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

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

R. With respect to each of the Leases, the Debtors have met all requirements of section 365(b) of the Bankruptcy Code. Further, Buyer has provided adequate assurance of future performance under the Leases in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Leases. Accordingly, the Leases may be assumed by the Debtors and assigned to Buyer as provided for in the Lease Sale 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 Lease Sale 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 Lease Sale Agreement, and (iii) upon entry of this Order, other than any consents identified in the Lease Sale 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 Lease Sale Agreement is a valid and binding contract between the Debtors and Buyer and shall be enforceable pursuant to its terms. The Lease Sale 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 Lease Sale Agreement. Accordingly, there is sufficient cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regards to the transactions contemplated by this Order.

X. **Personally Identifiable Information.** As may be contemplated in the Lease Sale Agreement, and subject to the terms of this Order, the sale to Buyer under the Lease Sale Agreement of personally identifiable information (as such term is defined in section 101(41A) of the Bankruptcy Code) about individuals, if any, 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. **No Breach of Union Obligations.** The unions affected by the sale of the Acquired Assets did not object to such sale and have waived their rights to assert against any of Buyer, the Debtors, the Debtors' estates, or any other party any claims or other rights arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale.

Z. **No Breach of Union Obligations.** On the condition set forth in paragraph 30 of this Order, the unions affected by the sale of the Acquired Assets withdraw any objections to such sale and waive their rights to assert against any 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.

AA. **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.

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

1. **Motion is Granted.** The Sale Motion and the relief requested therein is granted and approved as set forth herein.
2. **Objections Overruled.** All objections (except for objections to Cure Amounts, if any, that have been adjourned (the “Adjourned Cure Objections”)), solely to the extent such objections relate to any asserted cure obligations pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code), 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.
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 Lease Sale Agreement is fair and reasonable.
5. **Approval of the Lease Sale Agreement.** The Lease Sale 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 Lease Sale Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Lease Sale 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 Lease Sale Agreement and to consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Lease Sale 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 Lease Sale 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 Lease Sale 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 Lease Sale 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 Lease Sale 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 Lease Sale Agreement, all Persons (and their respective successors and assigns) including, without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, former employees, pension plans, multiemployer pension plans, labor unions, trade creditors and any other creditors holding Claims against the Debtors or the Acquired Assets, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such Claims against Buyer, its Affiliates, successors or assigns, its property or the Acquired Assets, including, without limitation, taking any of the following actions with respect to a Claim (other than an Assumed Liability): (a) commencing or continuing in any manner any action or other proceeding against Buyer, its Affiliates, successors or assigns, assets or properties; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against Buyer, its Affiliates, successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Claims against Buyer, its successors or assigns, assets or properties; (d) asserting a Claim as a setoff, right of subrogation or recoupment of any kind against any obligation due Buyer or its successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order or the agreements or actions

contemplated or taken in respect thereof. No such Persons shall assert or pursue against Buyer or its Affiliates, successors or assigns any such Claim.

12. This Order (a) shall be effective as a determination that, as of the Closing, all Claims, have been unconditionally released, discharged and terminated as to Buyer and the Acquired Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing Persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Lease Sale 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 Lease Sale Agreement, Buyer and its successors and assigns shall have no liability for any Claim, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature or character whatsoever, including Claims arising under, without limitation: (a) any employment or labor agreements or the termination thereof; (b) any pension, welfare, compensation or other

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



common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory or any other theory of or related to successor liability.

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 Lease Sale 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. **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.

17. **Assumption and Assignment of Leases.** The Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign the

Leases to Buyer free and clear of all Claims, and to execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Leases to Buyer as provided in the Lease Sale Agreement. Upon the Closing, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Leases and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Leases. Buyer acknowledges and agrees that from and after the Closing, subject to and in accordance with the Lease Sale Agreement, it shall comply with the terms of each assumed and assigned Lease in its entirety, including any indemnification obligations expressly contained in such Lease that could arise as a result of events or omissions that occur from and after the Closing, unless any such provisions are not enforceable pursuant to the terms of this Sale Order.

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

19. An Adjourned Cure Objection (as such term is defined in the Global 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 Global Bidding Procedures Order).

20. **Ipsa Facto Clauses Ineffective.** The Leases shall be transferred to, and remain in full force and effect for the benefit of, Buyer in accordance with their respective terms, including all obligations of Buyer as the assignee of the Leases, notwithstanding any provision in any such

Leases (including, without limitation, those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There shall be no rent accelerations, escalations, assignment fees, increases or any other fees charged to Buyer or the Debtors as a result of the assumption or assignment of the Leases.

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

22. **Statutory Mootness.** The transactions contemplated by the Lease Sale 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.

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

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

25. **Personally Identifiable Information.** After giving due consideration to the facts, circumstances and conditions of the Lease Sale 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 any personally identifiable information contemplated in the Lease Sale Agreement, subject to the terms of this Order, would violate applicable nonbankruptcy law.

26. **Binding Effect of this Order.** The terms and provisions of the Lease Sale Agreement and this Order shall be binding in all respects upon, or shall inure to the benefit of, the Debtors, their estates and their creditors, Buyer, and their respective Affiliates, successors and assigns, and any affected third parties, including all Persons asserting Claims, notwithstanding any subsequent appointment of any trustee, examiner or receiver under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall

likewise be binding on such trustee, examiner or receiver and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors or any trustee, examiner or receiver.

27. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Order and the terms of (a) the Lease Sale 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 Lease Sale Agreement or the terms of this Order.

28. **Modification of Lease Sale Agreement.** The Lease Sale Agreement, and any related agreements, documents or other instruments, may be modified, amended or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment or supplement does not materially change the terms of the Lease Sale Agreement or any related agreements, documents or other instruments.

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

30. **No Breach of Union Obligations.** The unions affected by the sale of the Acquired Assets withdraw any objections to such sale and have waived their rights to assert against any of Buyer, the Debtors, the Debtors' estates, or any other party any claims or other rights arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale, and no union shall have any such claims or other rights against such parties arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale, provided that the Buyer shall use

reasonable, good faith, best efforts to make offers of employment to fill at least 25% of the new store workforce from former collective bargaining unit employees of the Debtors who are qualified for such positions.

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

32. **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 Lease Sale 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 Lease Sale Agreement (and such other related agreements, documents or other instruments) and to enforce the injunctions set forth herein.

Dated: November 9, 2015  
White Plains, New York

/s/Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

CONFIDENTIAL

STORE NO: 59-503  
2185 COYLE STREET  
BROOKLYN, NY 11235

### **LEASE SALE AGREEMENT**

THIS LEASE SALE AGREEMENT (this "**Agreement**") is made as of [●], 2015 by and between A&P Real Property, LLC, a Delaware limited liability company ("**Tenant**") and Food Basics, Inc. (together with Tenant, the "**Seller**"), and KAM FOOD STORES INC., a New York corporation ("**Buyer**"), and collectively with Seller, the "**Parties**").

#### WITNESSETH:

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

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

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

[X] all trade fixtures, shopping carts, aisle markers, store models, shelving, display racks and refrigeration equipment and other furnishings and equipment owned by Seller located at the Leased Premises ( "**FF&E**"); and all inventory owned by Seller located at the Leased Premises ("**Inventory**").

INITIAL AD

WHEREAS, Buyer desires to purchase and accept such assignment and assume all rights, title, interests and obligations of Tenant under the Lease, and any Subleases and FF&E to the extent set forth herein, subject to the conditions hereinafter set forth.



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

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

2. Lease Consideration. The consideration for the assignment of the Lease, together with the Subleases and FF&E to the extent set forth herein (the foregoing, as applicable, collectively, the "Acquired Assets"), shall be equal to THREE MILLION Dollars (\$3,000,000.00) plus the cost of Inventory, which Inventory shall be valued at Seller's Cost (the "Purchase Price") which shall be comprised of:

a. TWO MILLION NINE HUNDRED THOUSAND AND FIFTY Dollars (\$2,900,050.00) as consideration for the Lease, plus

b. NINETY-NINE THOUSAND NINE HUNDRED Dollars (\$99,900.00) as consideration for the FF&E, if any, plus

c. FIFTY Dollars (\$50.00) which shall be the Cure Amount (as more specifically described in Section 5 below), if any, plus

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

3. Payment of Purchase Price. The Purchase Price shall be paid to Seller by Buyer as follows:

a. Deposit. Concurrently herewith, Buyer shall deposit with ONE TitleVest Services, LLC, a New York limited liability company ("Escrowee") by a bank wire transfer of immediately available federal funds to an account designated by Escrowee the sum of ONE HUNDRED THOUSAND Dollars (\$100,000.00) (together with all interest thereon, the "Deposit"), which Deposit shall be held by Escrowee pursuant to the escrow agreement (the "Escrow Agreement") attached hereto as Exhibit D and hereby made a part hereof. Notwithstanding anything to the contrary set forth in this Agreement or in the Escrow Agreement, (i) all charges of Escrowee, if any, attendant to holding and/or disbursing the Deposit shall be paid by Buyer and (ii) all interest accrued in connection with the Deposit hereunder shall accrue for the sole benefit of the party to whom the Deposit is paid. The Parties agree that any payments made pursuant to this Section 3(a) in respect of accrued interest shall be deemed to be an adjustment to the Purchase Price for tax purposes to the extent permitted by applicable Law.

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

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

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

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

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

8. Assumption. On and after the Closing Date, Buyer shall assume all of the covenants, agreements, and obligations of Tenant as tenant under the Lease and as sublessor under the Subleases, if any. In further consideration of the above assignment, Buyer hereby agrees that it shall, as of the Closing Date: (a) perform all of the covenants, conditions and agreements of (i) the Lease (including making all payments) as if Buyer were the original tenant

under the Lease and (ii) the Subleases, if any, as if Buyer were the original sublessor under each of such Subleases, and (b) that the Lease and each of the Subleases, if any, shall remain in full force and effect. As of the Closing Date, Seller shall have no further liabilities or obligations with respect to the Lease, including, but not limited to, obligations related to rents, utilities, Taxes, insurance and common area maintenance, regardless of when due and payable, nor any of the Subleases, if any, and Seller shall be released from all such obligations and Buyer shall fully indemnify and hold harmless Seller with respect thereto. No Person, other than Buyer, shall be deemed a beneficiary of the provisions of this Section 8.

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

10. Free and Clear of All Liens. Pursuant to the Discrete Procedures Order or a sale order entered by the Bankruptcy Court as contemplated by the Global Bidding Procedures Order, Seller shall convey its rights and interests under the Lease to Buyer free and clear of all liens, claims, interests, or encumbrances (collectively, "Liens"), if any, with any such Liens attaching to the proceeds paid to Seller.

11. Closing Deliverables. On the Closing Date:

a. Seller shall deliver to Buyer a duly executed copy of: (i) an Assignment and Assumption of Lease in the form attached hereto as Exhibit F ("Assignment and Assumption"); (ii) a FIRPTA Certificate; (iii) if applicable, Transfer Tax forms or certifications provided by Buyer as more specifically described in subsection (b) below; (iv) if applicable, a Quitclaim Bill of Sale in the form attached hereto as Exhibit G; (v) a landlord notice and a subtenant notice (if applicable), each in the form attached hereto as Exhibit H; and (vi) if applicable, an assignment and assumption with respect to the Subleases, to the extent such Subleases are assignable and are in effect on the Closing Date, in the form attached hereto as Exhibit I ("Assignment of Subleases").

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

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

13. Closing Costs.

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

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

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

14. Conditions to Closing.

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

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

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

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

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

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

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

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

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

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

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

c. No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Subsection 14(a) or Subsection 14(b), as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliate's failure to use its reasonable best efforts (or commercially reasonable efforts, with respect to those matters contemplated by Section 17, as applicable) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach hereunder. The Parties agree that neither the failure to obtain a court order nor any action with respect to a Competing Bid (as defined below), to the extent permitted hereunder, shall be deemed to be a failure to use the efforts required to satisfy the conditions to consummation of the transactions contemplated hereunder nor a breach hereunder.

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

16. Termination of Agreement.

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

- (i) by the mutual written consent of the Parties;
- (ii) by any Party by giving written notice to the other Party if:

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

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

(iii) if (i)(x) Seller enters into a definitive agreement with respect to a higher or better competing bid in accordance with the Global Bidding Procedures Order or the Discrete Procedures Order in respect of the Lease or all or any part of the Acquired Assets (whether in combination with other assets of Seller or its Affiliates or otherwise) ("**Competing Bid**"), (y) the Bankruptcy Court enters an order approving a Competing Bid, and (z) the Person making the Competing Bid consummates the Competing Bid or (ii) the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

b. Seller may terminate this Agreement at any time prior to Closing if Buyer fails to satisfy any requirement set forth under Section 14(b)(v), including delivery of the Deposit required hereunder. In such case, the Agreement shall be rendered null and void, Seller shall be entitled to retain any and all consideration already paid to Seller, including, but not limited to, the Deposit.

c. Effect of Termination. If any Party terminates this Agreement pursuant to Section 16(a) or (b), all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Section 13, this Section 16, Sections 23 through 43, and Schedule I shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 16(b) and Section 17) to the other Party hereunder (except as may be provided in Section 4 and Subsection 16(b)); provided, however, that nothing in this Section 16 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, subject to Section 16(d) below, that other than in the case of fraud or willful misconduct, (a) the maximum Liability of Seller under

this Agreement shall not exceed the reasonable out of pocket expenses incurred by Buyer and (b) subject to subsection (d) below, the maximum liability of Buyer under this Agreement shall not exceed the Deposit.

d. Lease Indemnity. Notwithstanding anything contained herein to the contrary, if this Agreement is terminated pursuant to Section 16(a) or (b), Buyer shall indemnify Seller for all Liabilities and Damages arising out of any Lease assumed by Seller pursuant to section 365(k) of the Bankruptcy Code. This indemnity shall survive such early termination.

17. Bankruptcy Court Matters.

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

b. Bankruptcy Court Filings.

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

18. Regulatory Approvals<sup>1</sup>

a. To the extent required, each of the Parties hereto shall make its respective filing under the HSR Act with respect to the transactions contemplated hereby within five (5) Business Days of the date of this Agreement, unless otherwise extended by mutual agreement between the Parties. In addition, the Parties shall mutually agree to make any and all other filings required pursuant to other Antitrust Laws as promptly as reasonably practicable following the date of this Agreement.

b. Buyer shall use its best efforts to resolve as soon as reasonably practicable any inquiry or investigation by any Governmental Authority relating to the transactions contemplated by this Agreement under any Antitrust Law, including under the HSR Act. In connection with any such inquiry or investigation, Buyer further agrees to: (i) supply as promptly as reasonably practicable any additional information and documentary material that may be requested or required pursuant to any Antitrust Law; and (ii) keep Seller reasonably informed of any material communication to or from any Governmental Authority with respect to any inquiry or investigation under any Antitrust Law.

c. Seller shall have the right not to sell the Lease to Buyer if, and only if, any Governmental Authority with jurisdiction over the enforcement of an Antitrust Law, including the Federal Trade Commission, including its staff, or any state attorney general or its staff: (i) indicates orally or in writing that it has concerns that the acquisition of such Lease may violate any Antitrust Law; or (ii) threatens or initiates litigation challenging the acquisition of such Lease as violative of any Antitrust Law. In the event that, subject to the limitations set forth herein, Seller chooses to exercise its right not to sell such Lease to Buyer, Buyer shall have no further right to acquire such Lease, this Agreement shall be terminated and rendered null and void, and the Deposit shall be returned to Buyer.

d. Notwithstanding any other provision in this Agreement, Buyer shall, and shall cause its Affiliates to, promptly take and diligently pursue any or all 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 reasonably practicable, but in any event not later than the Outside Date. In furtherance of this obligation, and without limitation, Buyer agrees to: (i) offer, negotiate, effect, and agree to, by consent decree, hold separate order or otherwise, any sale, divestiture, license, or other disposition of or restriction on, any of the Acquired Assets or Buyer's assets; **provided, however**, that any such sale, divestiture, license, disposition, restriction on, holding separate, or other similar arrangement or action is conditioned on the occurrence of, and shall become effective only from and after, the Closing Date; and (ii) to take any and all actions to avoid and, if necessary, defend any threatened or initiated litigation under any Antitrust Law that would prevent or delay consummation of the transactions contemplated by this Agreement.

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<sup>1</sup> To be deleted if inapplicable.



19. Delivery; "AS IS" Transaction.

a. Buyer acknowledges that it has fully inspected or waived the right to inspect the Leased Premises prior to the execution of this Agreement and does hereby assume all of the risks, including, but not limited to, latent defects in the Leased Premises. Seller shall not be obligated to do any work or alter, restore, repair or develop the Leased Premises, but Seller shall deliver the Leased Premises in vacant, broom clean condition, and, if applicable, with all furnishings, fixtures, equipment, inventory, racks, aisle displays, refrigeration equipment and personal property removed from the Leased Premises. Any work (including demolition) which may be necessary to adapt the Leased Premises for Buyer's occupancy or for the operation of Buyer's business therein shall be the sole responsibility of Buyer and shall be performed by Buyer at its sole cost and expense, in accordance with the terms of the Lease.

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

HEREBY ACCEPTS THE LEASED PREMISES IN ITS "AS IS, WHERE IS," "WITH ALL FAULTS," CONDITION AND ALL LATENT OR PATENT DEFECTS.

20. Store Closed. The Parties acknowledge and agree that Seller has ceased (or will cease as of the Closing Date) operations at the Leased Premises.

21. Release; Indemnity. Pursuant to section 365(k) of the Bankruptcy Code, on and after the Closing Date, Buyer agrees to defend and indemnify Seller against, and hold Seller harmless from, any and all claims, actions, proceedings, suits, costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements), whether foreseen or unforeseen, in connection with the Lease, the Leased Premises (including, without limitation, the performance or observance or the failure or refusal to perform or observe any agreement or obligation of the tenant under the Lease or any term or provision thereof required to be performed by the tenant under the Lease), each Sublease, and this Agreement.

22. Casualty and Condemnation.

a. Seller agrees to give Buyer prompt written notice of any fire, flood or similar casualty affecting any portion of the Leased Premises or of any actual or threatened (to the extent that Seller has current knowledge thereof) taking or condemnation of all or any portion of any Leased Premises.

b. If prior to Closing there shall occur: (i) damage to any Leased Premises caused by fire or other casualty; or (ii) the taking or condemnation of all or any portion of the Leased Premises; then, in each case, the Closing Date shall occur as provided in this Agreement, and Buyer shall be assigned at the Closing Date (A) all interest of Seller in and to any insurance proceeds (including, but not limited to, any proceeds of business interruption insurance for the period after the date of the Closing Date), subject to all applicable deductible amounts or (B) condemnation awards payable to Seller on account of that event, less sums which Seller incurs before the Closing Date for the direct cost of the repair of any of the damage or taking that Seller may elect, in its sole discretion, to undertake or in pursuing the collection of any such insurance proceeds or participating in any condemnation proceeding.

c. The Parties hereby waive the provisions of the Uniform Vendor and Purchaser Risk Act (to the extent the same is applicable to the Leased Premises) and of any other Law to the same or similar effect, and agree that the same shall not apply to this Agreement.

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

on dealings or agreements with the Buyer. Any broker retained by or providing services to Buyer in connection with the transaction evidenced by this Agreement shall be compensated solely by Buyer without contribution from Seller.

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

25. Expenses. Except as otherwise expressly set forth herein, including but not limited to Section 11, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

26. Entire Agreement. This Agreement, any documents delivered at Closing pursuant hereto, and any confidentiality agreement entered into by Seller and [\_\_\_\_\_] in connection with this transaction, constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

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

28. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach. No conditions, course of dealing or performance, understanding, or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 28 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.

29. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of each other Party.

30. Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand,

claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) on the day such communication was sent by e-mail; or (d) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Seller:

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

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

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

If to Buyer:

KAM FOOD STORES CORP.  
739 Nostrand Ave  
Brooklyn, NY 11216  
Attention: Amin Dolah  
E-mail: amindolah@me.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 30.

31. 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.

32. 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. 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 30; provided, however, that nothing in this Section shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

33. Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

34. Specific Performance. Buyer acknowledges and agrees that Seller and its estate would be damaged irreparably in the event Buyer 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 Seller may have under law or equity, Seller 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.

35. 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.

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

37. 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 37.

38. 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.

39. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

40. 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.

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

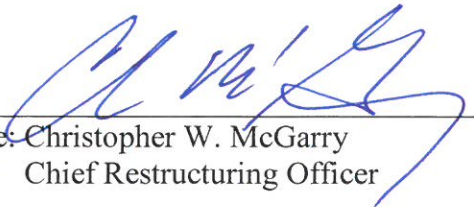
42. Assignment of Lease. The acceptance of the Assignment and Assumption by Seller shall be deemed to be a full performance of Seller and discharge of every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement.

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

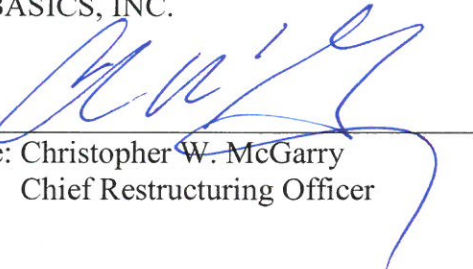
**[SIGNATURE PAGE FOLLOWS]**

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

A&P REAL PROPERTY, LLC

By:   
Name: Christopher W. McGarry  
Title: Chief Restructuring Officer

FOOD BASICS, INC.

By:   
Name: Christopher W. McGarry  
Title: Chief Restructuring Officer

[Signature pages to the Lease Sale Agreement]



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


A&P REAL PROPERTY, LLC

By: \_\_\_\_\_  
Name:  
Title:

FOOD BASICS, INC.

By: \_\_\_\_\_  
Name:  
Title:

KAM FOOD STORES CORP.

By:  \_\_\_\_\_  
Name: AMIN DOLAH  
Title: VP operations

(coyle)

**LIST OF SCHEDULE AND EXHIBITS**

**SCHEDULE**

Schedule I

**DESCRIPTION**

Definitions

**EXHIBIT**

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit F

Exhibit G

Exhibit H

Exhibit I

**DESCRIPTION<sup>1</sup>**

The Lease

Premises

Sublease(s)

Escrow Agreement

Wire Instructions

Form of Assignment and Assumption of Lease

Form of Quitclaim Bill of Sale

Form of Landlord Notice and Form of Subtenant Notice

Form of Assignment and Assumption of Subleases

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<sup>1</sup> NTD: WE HAVE NOT REVIEWED EXHIBITS D THROUGH I, WHICH WILL BE IN THE FORM PROVIDED ON THE MERRILL DATASITE.

## **Schedule I**

### **Definitions**

- (i) “Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.
- (ii) “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.
- (iii) “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.
- (iv) “Code” means the Internal Revenue Code of 1986, as amended.
- (v) “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)).
- (vi) “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.
- (vii) “FIRPTA Certificate” means a certificate from Tenant in compliance with applicable Treasury Regulations setting forth Tenant’s (or, if applicable, its regarded owner’s) name, address and federal tax identification number and stating that Tenant (or, if applicable, its regarded owner) is not a “foreign person” within the meaning of section 1445 of the Code and otherwise complying with the Treasury Regulations issued pursuant to section 1445 of the Code.
- (viii) “Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.
- (ix) “Inventory” means all food, beverages (including, to the extent transferrable to Buyer under applicable Law, alcohol), and other merchandise and products (including general merchandise items but excluding greeting cards) offered for sale to customers at the Store.
- (x) “Inventory Taker” means a nationally-recognized, independent inventory service.
- (xi) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

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

(xiii) “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, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

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

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

(xvi) “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.

(xvii) “Seller’s Cost” shall mean Seller’s current replacement cost for each item of Inventory. Seller, in certain departments, arrive at current replacement cost by applying a “Retail to Cost % of Spread” to the summation of regular retail prices (being non-promoted retail prices) counted by the Inventory Taker that reside within the electronic data file provided to the Inventory Taker. Seller’s replacement cost for DSD suppliers is the invoice cost from the vendor less all off-invoice allowances.

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

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

(xx) “Treasury Regulations” mean the Treasury regulations promulgated under the Code

**EXHIBIT A**

**The Lease**

STORE - 038-7646 (OLD 038-3503) - 2185 COYLE STREET, BROOKLYN, NY

LEASE DATED FEBRUARY 27, 2004 BETWEEN BROOKLYN GROCERY OWNERS, LLC AND BROOKLYN MARKET OWNERS, LLC, AS LANDLORD, AND A&P REAL PROPERTY, LLC (AS SUCCESSOR IN INTEREST TO FOOD BASICS, INC.), AS TENANT, AS EVIDENCED BY THAT MEMORANDUM OF LEASE FOR RECORDATION (NOTICE OF LEASE) DATED FEBRUARY 27, 2004, RECORDED APRIL 15, 2004 IN KINGS COUNTY IN CRFN 2004000227444, AS SUBJECT TO THAT CERTAIN ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED DECEMBER 23, 2011, AS ASSIGNED PURSUANT TO THAT CERTAIN ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012, AS SUBJECT TO THAT CERTAIN GUARANTY MARCH 13, 2012,

- LEASE DATED FEBRUARY 27, 2004
- GUARANTY DATED FEBRUARY 27, 2004
- MEMORANDUM OF LEASE DATED FEBRUARY 27, 2004 (RECORDED)
- ORDER OF THE UNITED STATES BANKRUPTCY COURT OF SDNY DATED DECEMBER 23, 2011
- ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012
- GUARANTY DATED MARCH 13, 2012 [NOTE: NOT EXECUTED BY BENEFICIARY]
- SITE ACCESS AGREEMENT DATED MAY 20, 2013
- ESTOPPEL DATED DECEMBER 10, 2013
- SNDA DATED DECEMBER 11, 2013
- PAYEE ADDRESS CHANGE WIRING INSTRUCTIONS DATED DECEMBER 18, 2013

AS THE SAME MAY HAVE BEEN AMENDED,

AND ALL OTHER DOCUMENTS LOCATED IN DATAROOM FOLDER 1.5.23 AS OF THE BUSINESS DAY IMMEDIATELY PRIOR TO THE DATE OF THE AGREEMENT THAT AFFECT OR AMEND THE AGREEMENTS IDENTIFIED ABOVE.

**EXHIBIT B**

**Leased Premises**

STORE - 038-7646 (OLD 038-3503) - 2185 COYLE STREET, BROOKLYN, NY

**EXHIBIT C**

**Sublease(s)**

**None**



**EXHIBIT D**

**Escrow Agreement**

(Attached hereto)

**Bidder ID No. 106**  
**Site No. 3524/ 59-524**

### **ESCROW RIDER TO ASSET PURCHASE AGREEMENT**

This Escrow Agreement dated this \_\_\_\_ day of September, 2015 (this “Escrow Agreement”), is entered into by and among The Great Atlantic and Pacific Tea Company, Inc., a Maryland corporation (“A&P”), Food Basics, Inc., a Delaware corporation, A&P Live Better, LLC, a Delaware limited liability company, and A&P Real Property, LLC, a Delaware limited liability company (each, a wholly-owned Subsidiary of A&P and, together with A&P, “Seller”), K.A.M. Food Store, Inc., a New York corporation (“Bidder”), and TITLEVEST SERVICES, LLC, a New York limited liability company, as escrow agent (“Escrow Agent”). Seller and Bidder are known herein, individually or collectively as the context may require as a “Party” or the “Parties”. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Sale Agreement (as defined below).

### **W I T N E S S E T H**

WHEREAS, the Bidder has executed that certain Asset Purchase Agreement (the “Sale Agreement”) as part of a bid for the acquisition of certain assets of Seller (the “Acquired Assets”);

WHEREAS, as part of the bid process, Bidder is required to wire to Escrow Agent a Deposit in the amount of \$100,000.00 (the “Escrow Funds”); and

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

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

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties and the Escrow Agent agree as follows:

#### **I. ESCROW FUNDS**

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

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

## II. **RELEASE OF ESCROW FUNDS**

A. **Potential Bidder**. If Bidder is determined by Seller not to meet the requirements for qualifying as a bidder in any auction for the Acquired Assets (the "**Auction**"), as confirmed by Seller, within three (3) business days after the deadline for Seller to make a determination regarding which bids have been determined to be qualified bids for such auction (the "**Designation Deadline**") ("**Unqualified Bidder**"), the Escrow Agent shall, upon joint notice from Seller and Bidder, return to Bidder the Escrow Funds.

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

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

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

E. **Neither Successful Nor Backup Bidder**. If Bidder is determined by Seller to be neither the Successful Bidder nor the Backup Bidder, then, within three (3) business days of execution by the Successful Bidder and Seller of the documentation memorializing the successful bid, the

Escrow Funds shall, upon joint written notice from Seller and Bidder, be promptly returned to Bidder by wire transfer in accordance with Bidder's wire instructions attached hereto as Exhibit A, less any applicable Nonrefundable Escrow Fees. Escrow Agent will notify Bidder by electronic mail at the time the refund wire transfer has been initiated. In the case of Subsections (C) and (D) of this Section II, Escrow Agent shall release the funds no later than the Outside Date except to the extent the Sale Agreement is executed by Seller with respect to a Backup Bidder prior to the Outside Date.

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

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

### **III. DUTIES OF THE ESCROW AGENT**

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

B. Attorneys and Agents. Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by Escrow Agent. Escrow Agent shall be reimbursed for any and all compensation (reasonable and documented fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees.

C. Reliance. Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents, representatives, successors and/or assigns. Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority.

Concurrently herewith, the Bidder shall deliver Exhibit C hereto, which contains authorized party designations.

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

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

#### **IV. PROVISIONS CONCERNING ESCROW AGENT**

A. Indemnification. The Parties, jointly and severally, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable and documented attorneys' fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating to (i) the Escrow Agent's execution and performance of this Escrow Agreement, except to the extent that such loss, liability or expense shall have been finally adjudicated to have directly resulted from the gross negligence or willful misconduct of the Escrow Agent (or any person through which its duties are performed, as provided in Section 3(C)) or (ii) the Escrow Agent's following any instructions or other directions from the Bidder or Sellers, except to the extent that its following any such instruction or direction is expressly forbidden by the terms of this Escrow Agreement. The provisions of this Section 4(A) shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

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

C. Resignation or Removal. Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and Seller may remove Escrow Agent by furnishing to Escrow Agent a written notice of Escrow Agent's removal along with payment of all reasonable and documented fees and expenses to which it is entitled through the date of termination or removal. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Funds and to deliver the same to a successor escrow agent as shall be appointed by the Seller, as evidenced by a written notice filed with Escrow Agent or in accordance with a court order. If the Seller fails to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties. Any such successor escrow agent shall deliver to

Seller and Bidder a written instrument accepting such appointment, and thereupon it shall succeed to all the rights and duties of the escrow agent hereunder and shall be entitled to receive possession of the Escrow Funds. Upon receipt of the identity of the successor escrow agent, the Escrow Agent shall deliver the Escrow Funds then held hereunder, less any reasonable and documented fees and expenses then due and owing to the Escrow Agent, to the successor escrow agent. In the event of the resignation or removal of the Escrow Agent, the resigning or removed Escrow Agent shall be absolved from any further duties as the Escrow Agent hereunder; provided, however, that the Escrow Agent or any successor escrow agent shall continue to act as the Escrow Agent until a successor is appointed and qualified to act as the Escrow Agent.

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

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

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

## V. MISCELLANEOUS

A. Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the

interest of the Parties shall be binding unless and until written notice of such assignment shall be delivered to other Party and Escrow Agent and shall require the prior written consent of such other Party and Escrow Agent (such consent not to be unreasonably withheld).

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

If to Seller:

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

with a copy (which shall not constitute notice to Seller) 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](mailto:gavin.westerman@weil.com)

Notices to Bidder:

K.A.M. FOOD STORE, INC.  
739 NOSTRAND AVE  
BROOKLYN, NY 11216  
Fax: 718-953-6069  
E-mail: AMINDOLAH@ME.COM

Notices to Escrow Agent:

TitleVest Services, LLC  
44 Wall Street – 10th Floor  
New York, NY 10005  
Attn: Sara Murray  
E-Mail: APBid@TitleVest.com

C. Governing Law; Jurisdiction. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the principles of conflict of laws thereof), except to the extent that the laws of such state are

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

D. Entire Agreement. This Escrow Agreement sets forth the entire agreement and understanding of the Parties and Escrow Agent related to the Escrow Funds.

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

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

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

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

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

J. Publication; disclosure. By executing this Escrow Agreement, the Parties and the Escrow Agent acknowledge that this Escrow Agreement (including related attachments) contains certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow

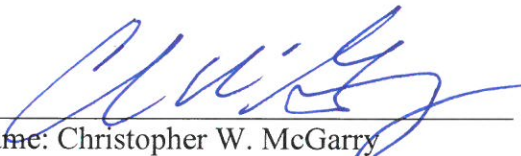


Agreement and related information to individuals or entities not a party to this Escrow Agreement. The Parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Escrow Agreement and information contained therein, including, without limitation,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

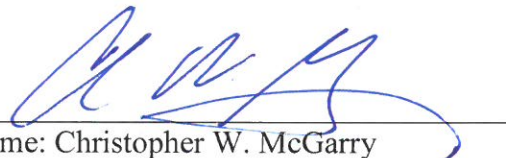
[Signature Page Follows]

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

A&P REAL PROPERTY, LLC

By:   
Name: Christopher W. McGarry  
Title: Chief Restructuring Officer

FOOD BASICS, INC.

By:   
Name: Christopher W. McGarry  
Title: Chief Restructuring Officer

[Signature Pages to the Escrow Agreement]

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APW SUPERMARKETS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PATHMARK STORES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**A&P REAL PROPERTY, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FOOD BASICS INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BIDDER**

By:  \_\_\_\_\_  
KAM FOOD STORES CORP  
Name: AMIN DOLAH  
Title: VICE PRESIDENT

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

**SELLER**

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

By: \_\_\_\_\_  
Name:  
Title:

**FOOD BASICS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**A&P LIVE BETTER, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**A&P REAL PROPERTY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**BIDDER**

**K.A.M. FOOD STORE, INC.**

By: **Amin Dolah**  
Name: AMIN DOLAH  
Title: VICE PRESIDENT

**ESCROW AGENT**

**TITLEVEST SERVICES, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

Wire Instructions

**EXHIBIT B**

**FEES OF ESCROW AGENT**

Preclosing

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

Closing

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

General

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

**EXHIBIT C**

**BIDDER AUTHORIZED PARTY**

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

For Buyer:

<u>Name</u>	<u>Business Telephone Numbers</u>	<u>Signature</u>
1.		
2.		
3.		

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

**EXHIBIT E**

**Wire Instructions**



**EXHIBIT F**

**Form of Assignment and Assumption of Lease**

**EXHIBIT G**

**Form of Quitclaim Bill of Sale**

**EXHIBIT H**

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

**Exhibit I**

**Form of Assignment and Assumption of Subleases**