TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM383987

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Bankruptcy court order releasing all liens, claims, interests, charges, liabilities and other encumbrances or security interests of any kind or nature

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
U.S. Bank National Association		07/19/2015	National Banking Association: MINNESOTA
Wells Fargo Bank, National Association		07/19/2015	National Banking Association: UNITED STATES
Wells Fargo, National Association		07/19/2015	National Banking Association: UNITED STATES
Fortress Credit Corp.		07/19/2015	Corporation: DELAWARE

RECEIVING PARTY DATA

Name:	The Great Atlantic & Pacific Tea Company, Inc.
Street Address:	2 Paragon Drive
City:	Montvale
State/Country:	NEW JERSEY
Postal Code:	10179
Entity Type:	Corporation: MARYLAND
Name:	Borman's Inc.
Street Address:	2 Paragon Drive
City:	Montvale
State/Country:	NEW JERSEY
Postal Code:	10179
Entity Type:	Corporation: DELAWARE
Name:	Pathmark Stores, Inc.
Street Address:	2 Paragon Drive
City:	Montvale
State/Country:	NEW JERSEY
Postal Code:	10179
Entity Type:	Corporation: DELAWARE

PROPERTY NUMBERS Total: 5

Property Type	Number	Word Mark
Registration Number:	2741163	THE FOOD EMPORIUM

CH $140.00 2741163

Property Type	Number	Word Mark
Registration Number:	2685875	THE FOOD EMPORIUM
Registration Number:	4429059	THE FOOD EMPORIUM NEW YORK TRADING COMPA
Registration Number:	4407322	THE FOOD EMPORIUM TRADING COMPANY
Registration Number:	4103323	YOUR NEW YORK MARKET

CORRESPONDENCE DATA

Fax Number: 6505664120

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 650-617-4057

Email: ronald.duvernay@ropesgray.com

Correspondent Name: Megan R. Baca

Address Line 1: 1900 University Avenue, 6th Floor

Address Line 2: Ropes & Gray LLP

Address Line 4: East Palo Alto, CALIFORNIA 94303

NAME OF SUBMITTER:	Ronald M. Duvernay
SIGNATURE:	/r duvernay/
DATE SIGNED:	05/11/2016

Total Attachments: 68

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
	:	
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*,	:	**Case No. 15-23007 (RDD)**
	:	
	:	**(Jointly Administered)**
Debtors.[1]	:	

ORDER (I) APPROVING THE ASSET PURCHASE AGREEMENT AMONG SELLERS AND FOOD EMPORIUM ACQUISITION CORP., (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")[2], filed by the above-captioned debtors and debtors in possession (the "Debtors"), seeking, among other things, entry of an order, pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules"), authorizing and approving the sale of the Acquired Assets and the assumption and assignment of certain executory contracts and

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

[2] Capitalized terms used herein but not otherwise defined have the meanings given to them in the 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 (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 Food Emporium Acquisition Corp. (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 Asset Purchase Agreement By and Among The Great Atlantic & Pacific Tea Company, Inc., Shopwell, Inc. and Food Emporium Acquisition Corp. dated as of November 3, 2015 (the "Asset Purchase Agreement"), a copy of which is attached hereto as Exhibit A, by and between Sellers and Buyer, whereby the Debtors have agreed, among other things, to sell the Acquired Assets to Buyer, including certain executory contracts and unexpired leases of the Debtors that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Lease Sale Agreement (the "Sale Transaction"), (iii) the declaration of Stephen Goldstein in support of the Sale Motion (Docket No. 251) and the supplements thereto, (iv) the declaration of Tim McDonagh (Docket No. 1425), (v) the declaration of Christopher McGarry (Docket No. 1427), (vi) the declaration of Dana Kaufman (Docket No. 1430), (vii) the declaration of Mark Kassner (Docket No. 1695), and (viii) 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

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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

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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.

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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

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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

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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,

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"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.

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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, with such assumption to be effective on the closing of the Sale Transaction.

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.

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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

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

Z. **No Breach of Union Obligations**. The unions affected by the sale of the Acquired Assets did not object to such sale and have waived their rights to assert against any of Buyer, the Debtors, the Debtors' estates, or any other party any claims or other rights arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale.

NOW THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted**. The Sale Motion and the relief requested therein is granted and approved as set forth herein.

2. **Objections Overruled**. All objections (except for objections to Cure Amounts, if any, that have been adjourned 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

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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

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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

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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

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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

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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

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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, with the assumption and assignment of the Leases to effective on the Closing. 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

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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 may be resolved after the Closing Date. Upon resolution of such Adjourned Cure Objection and the payment of the applicable Cure Amount pursuant to the Global Bidding Procedures Order, if any, the applicable Lease that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to Buyer as of the Closing Date without further order of the Court.

20. **Ipso 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

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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. **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, 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.

23. **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.

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24. **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.

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

26. **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.

27. **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

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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.

28. **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.

29. **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.

30. **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.

31. **Retention of Jurisdiction**. This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Order and the 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.

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Dated: November 9, 2015
White Plains, New York

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

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ASSET PURCHASE AGREEMENT

BY AND AMONG

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.,

SHOPWELL, INC.,

A&P REAL PROPERTY, LLC

AND

FOOD EMPORIUM ACQUISITION CORP.

NOVEMBER 3, 2015

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of November 3, 2015 by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P"), Shopwell, Inc., a Delaware corporation, and A&P Real Property, LLC, a Delaware limited liability company (together with A&P, "Sellers"), and Food Emporium Acquisition Corp., a New York corporation ("Buyer"). Sellers and Buyer are referred to collectively herein as the "Parties".

WITNESSETH

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

WHEREAS, Sellers operate the supermarket at the location set forth in Section 3.5 of the Disclosure Schedule (as defined below) under the name "The Food Emporium" (the "Store"); and

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

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

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement:

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

"Acquired Assets" means all of Sellers' right, title, and interest in and to all of the following assets of Sellers used or held for use primarily in the operation of the Store, including (to the extent applicable) assets located at the Store (unless otherwise specified herein) on the Closing Date:

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

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

(c) the Real Property Leases with respect to the Store set forth in Section 3.5 of the Disclosure Schedule, together with (to the extent of the Sellers' interest therein) the buildings, fixtures and improvements located on or attached to such real property, and all

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rights arising therefrom, and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto, subject to the rights of the applicable landlord (including rights to ownership or use of such property) under such Real Property Leases;

(d) all rights under those Contracts, including the Personal Property Leases, set forth on Section 3.5 of the Disclosure Schedule, other than those Contracts that expire or that are terminated prior to the Closing (such Contracts, together with the Real Property Leases, the "Transferred Contracts");

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

(f) to the extent requested by Buyer and to the extent assignable to Buyer under applicable Law, all Permits required for the operation of the Store (for the avoidance of doubt, solely to the extent the applicable Governmental Authority consents to or otherwise approves the assignment or transfer of the applicable Permit) (such permits contemplated by this clause (g), the "Transferred Permits");

(g) subject to applicable law (including the satisfaction of any requirements of the privacy ombudsman related to the Store, to the extent that the Bankruptcy Court requires the privacy ombudsman to file a report with respect to the Store), (i) the business records, whether located at the Store or elsewhere, related to the Business for the three-year period preceding the Closing Date, and (ii) a list of approximately seven thousand nine hundred (7,900) Store customers that are members of the Food Emporium branded loyalty promotion program that have conducted all of their Food Emporium purchases under such program exclusively at the Store during the period of one (1) year prior to the date hereof, including all pertinent information maintained for such Store customers in connection with the Food Emporium branded loyalty promotion program (the "Exclusive Customer List"); provided, however, if Buyer determines in its sole discretion to purchase documents subject to applicable Law regarding privacy related to the Business, all costs of a privacy ombudsman related to the Store, to the extent that the Bankruptcy Court requires a privacy ombudsman to be appointed with respect to the Store, shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers;

(h) all rights to telephone and fax lines and phone numbers used in the Store, to the extent transferable;

(i) all of Sellers' security deposits, prepaid rent, and prepaid expenses previously paid by any Sellers to fulfill Sellers' obligations under the Leases and, to the extent transferable, other deposits relating to the Store under any of the Transferred Contracts (collectively, the "Prepaid Expenses");

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

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

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

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

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

"Affected Labor Agreements" means the collective bargaining agreements covering any of the Covered Employees, each of which is listed on Section 6.3(a) the Disclosure Schedules.

"Affected Unions" means the unions identified on Section 6.3(b) of the Disclosure Schedules.

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

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

"Allocation Principles" has the meaning set forth in Section 2.7.

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

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

"Assumed Liabilities" means the following Liabilities of Sellers:

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

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

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

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

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Union enters into a Modified Labor Agreement with Buyer, all Liabilities arising under such Modified Labor Agreement;

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

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

"Back-up Termination Date" shall have the meaning ascribed to it in the Bidding Procedures Order.

"Bankruptcy Cases" means the Chapter 11 cases of Sellers and certain of their Affiliates.

"Bankruptcy Code" has the meaning set forth in the recitals.

"Bankruptcy Court" has the meaning set forth in the recitals.

"Bidding Procedures Order" means that certain order of the Bankruptcy Court 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, dated August 11, 2015 (ECF No. 495).

"Bill of Sale" has the meaning set forth in Section 2.5(b).

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

"Business" means the operation of the Store by Sellers.

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

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

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

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

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

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

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

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"COBRA" has the meaning set forth in Section 6.4(g).

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

"Confidentiality Agreement" means the confidentiality agreement entered into by Buyer and Sellers in connection with the transactions contemplated hereby.

"Contract" means any agreement, contract, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby, excluding Real Property Leases.

"Contracting Parties" has the meaning set forth in Section 9.14.

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

"Cure Costs" means any and all amounts or obligations that must be cured pursuant to section 365(b)(1) of the Bankruptcy Code to effectuate the assumption by the applicable Seller and assignment to Buyer of the Transferred Contracts, as defined by the Bankruptcy Court or agreed to by the Parties.

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

"Decree" means any judgment, decree, ruling, injunction, or any other order of any Governmental Authority.

"Disclosure Schedule" has the meaning set forth in Article III.

"Domain Name Assignment Agreement" has the meaning set forth in Section 2.5(b).

"Domain Names" means all domain name registrations.

"Employee Benefit Plans" has the meaning set forth in Section 3.13(a).

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

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

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

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

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

"Excluded Assets" means all assets of Sellers as of the Closing that are not expressly included in the Acquired Assets, including, but are not limited to:

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

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

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

(d) all Permits other than the Transferred Permits;

(e) all insurance policies and binders and all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders;

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

(g) all of Sellers' rights under any Contracts not included in the Transferred Contracts;

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

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

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

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(k) all leased equipment located at or used in the Store and all in-store processors, direct access storage devices, and electronic funds transfer devices;

(l) the Furnishings and Equipment described on Section 1.1(a) of the Disclosure Schedule (the "Excluded Furnishings and Equipment");

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

(n) all Excluded Inventory; and

(o) those items set forth on Section 1.1(b) of the Disclosure Schedule.

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

"Excluded Inventory" shall mean any inventory that is (i) damaged, spoiled, outdated, obsolete, or otherwise unsaleable at normal retail price in the Ordinary Course of Business at the Store; or (ii) not transferable to Buyer under applicable Law.

"Excluded Liabilities" means the following Liabilities of Sellers:

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

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

(c) any Liability of Sellers for Taxes (except as provided for in Section 2.8 and Section 6.5);

(d) all accounts payable;

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

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

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

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

(i) all Seller Transaction Expenses; and

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

"Exclusive Customer List" has the meaning set forth in the definition of Acquired Assets.

"Expense Calculation Date" has the meaning set forth in Section 2.6(d).

"Furnishings and Equipment" means all tangible personal property (other than Inventory) located at the Store, including machinery, equipment, shopping carts, displays, tools, forklifts, fixtures, trade fixtures, store models, computer hardware (including store mangers' personal computers), office equipment, scanning or order entry devices, furniture, shelving, exterior signs, refrigeration equipment, and delivery carts, in each case, owned by Sellers and located at the Store.

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

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

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

"Intellectual Property" means (a) all issued patents and patent applications, together with all reissuances, continuations, continuations-in-part, divisionals, extensions and reexaminations thereof; (b) any and all registered and unregistered trademarks, service marks, trade dress, logos, trade names, and Domain Names, together with all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) all copyrightable material, together with all registrations and applications for registration therefor and renewals in connection therewith, including, without limitation, marketing materials, web pages, newsletters, advertising materials and circulars; (d) all trade secrets, confidential and proprietary information, know-how, technology, technical information, customer lists (excluding the Exclusive Customer List), marketing data, improvements, inventions and any documents or materials relating thereto; and (e) all computer software, source code, object code and media storage devices (including data and databases).

"Inventory" means all usable and saleable food, beverages (including, to the extent transferable to Buyer under applicable Law, alcohol), and other merchandise and products

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(including general merchandise but excluding greeting cards) located at and offered for sale to customers at the Store on the Closing Date, but not including Excluded Inventory.

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

"IRS" means the Internal Revenue Service.

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

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

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

"Liability" means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether at law or equity, in contract or in tort or otherwise, and whether due or to become due) regardless of when arising.

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

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

"Material Adverse Effect" means any effect or change that, when considered individually or taken as a whole, together with all other adverse events, changes, facts, conditions, circumstances or occurrences with respect to which such phrase is used in this Agreement, has had or would be reasonably expect to have a material adverse effect on the condition of the Acquired Assets or the Business other than any events, changes, facts, conditions, circumstances or occurrences arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Store operates; (b) any condition or occurrence affecting retail grocery generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of

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any military or terrorist attack; (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or GAAP; (g) the taking of any action contemplated by this Agreement or any Related Agreement or taken with the consent of the other Party; (h) any effects or changes as a result of the announcement or pendency of this Agreement; (i) any strike or labor dispute; (j) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (k) the sale of any other assets or stores to any third parties by any Seller or any of its Affiliates; (l) any effects or changes arising from or related to the breach of the Agreement by Buyer; (m) any effect resulting from the filing of the Bankruptcy Cases; provided that the effects of the events described in clauses (a) through (f) shall be excluded only to the extent they do not materially disproportionately impact the Acquired Assets as compared to other entities engaged primarily in lines of business similar to the Business.

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

"Multiemployer Pension Plans" has the meaning set forth in Section 3.13(a).

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

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

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

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

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

"Permitted Lien" means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; (b) mechanic's, workmen's, repairmen's, warehousemen's, carrier's or other similar Liens, including all statutory liens, arising or incurred in the Ordinary Course of Business; (c) with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease or other occupancy agreement applicable thereto; (d) with respect to real property, zoning, building codes and other land use laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property; (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not reasonably be expected to have a Material Adverse Effect; (f) matters that would be disclosed on an accurate survey of the real property; (g) any liens shown in any title commitment, report or policy, or otherwise of record; and (h) other Liens that Buyer has expressly stated are acceptable to Buyer in a writing delivered to Sellers; with respect to each of the foregoing (a) through (h), to the extent in connection with a leased property, Permitted Liens shall include Liens not required

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to be removed or cured by the tenant under the applicable Lease and which were not otherwise created by such tenant.

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

"Personal Property Leases" has the meaning set forth in Section 3.12.

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

"Private Label Product" means any product sold by any Seller or Affiliates of any Seller as of the Closing Date under any brand name that is not under the name "The Food Emporium".

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

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

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

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

"Real Property Leases" means the Leases relating to the real property on which the Store is located.

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

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

"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.

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

"Sale Order" means an order of the Bankruptcy Court in substantially the form attached hereto as Exhibit E with such changes as are reasonably satisfactory to the Parties (a) approving (i) this Agreement and the execution, delivery, and performance by Sellers of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Buyer free and clear of all Liens, other than any Permitted Liens or any Assumed Liabilities; (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein; and (iv) the assumption and assignment to Buyer of the Transferred Contracts on the terms set forth herein; (b) determining that Buyer is a good faith purchaser; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

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

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

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

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

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

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

"TFE Service Marks" has the meaning set forth in the definition of Acquired Assets.

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

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

"Transferred Real Property" has the meaning set forth in the definition of Acquired Assets.

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

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

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

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

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

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

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

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

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

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

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

(j) References in this Agreement to materials or information "furnished to Buyer" and other phrases of similar import include all materials or information made available to Buyer or its Representatives in the data room prepared by Sellers or provided to Buyer or its Representatives in response to requests for materials or information.

ARTICLE II
PURCHASE AND SALE

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

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, Buyer will assume and become responsible for the Assumed Liabilities at the Closing. Buyer agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner. For the avoidance of doubt, Sellers shall remain liable for, and shall be obligated to pay or cause to be paid prior to the Closing, all Cure Costs other than those contemplated by clause (a) of the definition of Assumed Liabilities.

Section 2.3 Consideration; Deposit; Escrow Amount.

(a) The consideration for the Acquired Assets shall be an aggregate Dollar amount equal to One Million Eighty Thousand Dollars ($1,080,000) (the "Cash Purchase Price"), (which Cash Purchase Price reflects and includes the (1) (i) (A) the value of the Inventory and (B) the amount of the Prepaid Expenses (if any)), *plus* (ii) (A) the Seller Proration Amount, if any, *minus* (B) the Buyer Proration Amount, if any, *plus* (C) the Register Cash (such sum, the "Purchase Price"), and (2) Buyer's assumption of the Assumed Liabilities.

(b) Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Buyer shall immediately deposit with the Escrow Agent the sum of $100,000 by wire transfer of immediately available funds (the "Escrow Amount"), to be released by the Escrow Agent and delivered to either Buyer or Sellers, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Amount (together with all accrued investment income thereon, if any) shall be distributed as follows:

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

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

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

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

Section 2.5 Closing Payments and Deliveries.

(a) On the Closing Date, Buyer shall pay the Purchase Price (less the Escrow Amount, which shall be released to Sellers by the Escrow Agent) to Sellers, which shall

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be paid by wire transfer of immediately available funds into an account designated by Sellers.

(b) At the Closing, Sellers will deliver to Buyer (i) a duly executed Bill of Sale substantially in the form of Exhibit C (the "Bill of Sale"); (ii) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit D (the "Assignment and Assumption Agreement"); (iii) a duly executed certificate from an officer of each Seller to the effect that each of the conditions specified in Section 7.1(a) and Section 7.1(b) is satisfied; and (iv) the Exclusive Customer List.

(c) At the Closing, Buyer will deliver to Sellers (i) the Bill of Sale duly executed by Buyer; (ii) the Assignment and Assumption Agreement duly executed by Buyer; and (iii) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) are satisfied.

Section 2.6 Transferability. Buyers shall make application to the applicable authorities to transfer any alcohol included in the Inventory to Buyer, and any such application shall be made promptly after the execution of this Agreement and shall be diligently pursued by Buyer, at Buyer's sole cost and expense. Sellers, at no out-of-pocket cost or expense to Sellers, shall reasonably cooperate with Buyer and use their commercially reasonable efforts to provide any documents and/or information necessary to assist in effectuating said transfer and execute such consents or other papers as may reasonably be required.

Section 2.7 Allocation. Buyer and Sellers agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities, and all other relevant items among the Acquired Assets in accordance with section 1060 of the IRC and the Treasury Regulations thereunder (the "Allocation Principles"). No later than sixty (60) days after the Closing Date, Sellers shall deliver to Buyer an allocation of the Purchase Price and the Assumed Liabilities (and all other relevant items) as of the Closing Date among the Acquired Assets determined in a manner consistent with the Allocation Principles (the "Purchase Price Allocation") for Buyer's review and comment. Any reasonable comments provided by Buyer to the Sellers under this Section 2.7 shall be considered by the Sellers in good faith. The Purchase Price Allocation (inclusive of any reasonable comments accepted by the Sellers) shall be conclusive and binding on the parties, and Buyer and Sellers agree (and agree to cause their respective subsidiaries and Affiliate) to prepare, execute, and file IRS Form 8594 and all Tax Returns on a basis consistent with the Purchase Price Allocation. None of the Parties will take any position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, unless otherwise required by a final determination by a Governmental Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 2.7 shall survive the Closing without limitation.

Section 2.8 Proration.

(a) On the Closing Date all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges) under the Real Property Leases transferred at the Closing (the "Prorated Charges") shall be apportioned and prorated between Sellers and Buyer as of the Closing Date with (i)

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Buyer bearing the expense of Buyer's proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under the applicable Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date and paying such amount to Sellers to the extent payment for such Prorated Charges has been made by Sellers prior to the Closing, and (ii) Sellers bearing the remaining portion of such Prorated Charges (and paying the amounts thereof to Buyer to the extent payment for such Prorated Charges has not been previously made by Sellers). The net amount of all Prorated Charges owed to Buyer and Sellers under this shall be referred to as the "Buyer Proration Amount" if owed to Buyer or the "Seller Proration Amount" if owed to Sellers. Except as set forth in this Section 2.8 and in Section 6.5, no amounts paid or payable under or in respect of any Acquired Asset or group of Acquired Assets shall be apportioned and prorated between Sellers and Buyer.

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

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

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

(e) Following the Closing Date, Buyer agrees to reasonably cooperate with Sellers at no cost to Buyer in connection with all efforts by Sellers to collect such rent owed to Seller by any tenant allocable to the period up to and including the Closing Date.

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

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

ARTICLE III
SELLERS' REPRESENTATIONS AND WARRANTIES

Sellers represent and warrant to Buyer that the statements contained in this Article III are true and correct as of the date of this Agreement, except as (i) set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule") or (ii) disclosed in any forms, statements, or other documents filed with the Bankruptcy Court.

Section 3.1 Organization of Sellers; Good Standing. Each Seller is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the laws of the state of its formation. Each Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court's entry of the Bidding Procedures Order, the Sale Order and any other necessary order to close the sale of the Acquired Assets, each Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each Seller is a party have been duly authorized by such Seller. Upon due execution hereof by each Seller, this Agreement (assuming due authorization and delivery by Buyer) shall constitute, subject to the Bankruptcy Court's entry of the Bidding Procedures Order, the Sale Order and any other necessary order to close the sale of the Acquired Assets, the valid and legally binding obligation of such Seller, enforceable against

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such Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

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

Section 3.4 Title to Assets; Sufficiency of Assets. At the Closing, subject to any Permitted Liens, Sellers will have good and valid title to, or the right to use, the tangible Acquired Assets except to the extent the failure to have such title or right to use would not be expected to have a Material Adverse Effect. Pursuant to the Sale Order and any other necessary order to close the sale of the Acquired Assets, Sellers will convey at closing a good and valid title to, or rights to use, the tangible Acquired Assets and leasehold interest in all the Leases, free and clear of all Liens (other than Permitted Liens). The Acquired Assets will constitute all material assets that are used primarily in the conduct of the Business as conducted immediately prior to the Closing by Sellers (other than (a) the Excluded Assets and (b) assets, services and other obligations of the parties that will be provided pursuant to a Related Agreement).

Section 3.5 Real Property. Section 3.5 of the Disclosure Schedule sets forth the location of each Store, each of which is leased to a Seller by a third party, and a true and correct list of all Store addresses and related real property lease agreements. Sellers have made available to Buyer a true and complete copy of each Real Property Lease to the extent in their possession. With respect to each Real Property Lease, (a) assuming due authorization and delivery by the other party thereto, such Real Property Lease constitutes the valid and legally binding obligation of the Seller party thereto and, to any Seller's Knowledge, the counterparty thereto, enforceable against such Seller and, to any Seller's Knowledge, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency,

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moratorium or other similar laws relating to creditors' rights and general principles of equity, and (b) neither such Seller nor, to any Seller's Knowledge, the counterparty thereto, is in material breach or material default under such Lease, except (i) for those defaults that will be cured in accordance with the Sale Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Leases) or (ii) to the extent such breach or default would not reasonably be expected to have a Material Adverse Effect.

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

Section 3.7 Environmental, Health or Safety Matters.

(a) Sellers are, and during the three year period prior to the date hereof have been, in compliance with all Environmental Laws with respect to the Business and/or the Acquired Assets, except for such noncompliance as would not be reasonably expected to result in a Material Adverse Effect.

(b) Sellers have not, during the three year period prior to the date hereof, received any written notice from any Governmental Authority or third party claimant regarding any violation of Environmental Laws or any Liabilities arising under Environmental Laws with respect to the Business, in each of the foregoing cases, the subject matter of which_would be reasonably expected to result in a Material Adverse Effect.

Section 3.8 Labor Relations. Except as set forth in Section 3.8 of the Disclosure Schedule, neither Seller is a party to or bound by any collective bargaining agreement covering the Covered Employees.

Section 3.9 Brokers' Fees. Other than the fees and expenses payable to Evercore Group L.L.C. in connection with the transactions contemplated hereby, which shall be borne by Sellers, neither Seller has entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

Section 3.10 Taxes.

(a) Sellers have timely filed all material Tax Returns required to be filed in connection with the ownership or operation of the Business and/or Acquired Assets with the appropriate Tax Authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be

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obtained on behalf of Sellers); and (ii) all material amounts of Taxes shown as due on such Tax Returns have been paid (except as prohibited by the Bankruptcy Code).

(b) All Tax Returns filed by Sellers were correct and complete with respect to the ownership of operation of the Business and/or Acquired Assets in all material respects.

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

Section 3.11 Tangible Personal Property. Section 3.11 of the Disclosure Schedule sets forth all Transferred Contracts that constitute leases of personal property ("Personal Property Leases") relating to personal property used by Sellers in the Business. To the Knowledge of Sellers, Sellers have not received any written notice of any default or event that with notice or lapse of time or both would constitute a default by Sellers under any of the Personal Property Leases.

Section 3.12 Employee Benefits and Employees.

(a) Section 3.12(a) of the Disclosure Schedule contains a true and correct list as of the date hereof of all "employee benefit plans," as defined in section 3(3) of ERISA, including any multiemployer plans as defined in section 3(37) of ERISA (each a "Multiemployer Pension Plan"), and all other material employee benefit plans or arrangements (other than governmental plans and statutorily required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by Sellers with respect to Covered Employees (the "Employee Benefit Plans").

(b) Each Employee Benefit Plan sponsored, established or maintained by any Seller and under which any Covered Employee benefits has been operated in all material respects by such Seller in conformity with the terms of such plan and in conformity with applicable Law.

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

(d) Each of the Employee Benefit Plans sponsored by Sellers that is intended to qualify under section 401 of the IRC has been determined by the IRS to be so qualified, and, except as disclosed on Section 3.12(c) of the Disclosure Schedule, to the Knowledge of Sellers, nothing has occurred with respect to the operation of any such plan which could reasonably be expected to result in the revocation of such favorable determination.

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Section 3.13 Compliance with Laws; Permits.

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

(b) Sellers have all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not be reasonably expected to result in a Material Adverse Effect. Sellers are not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which they are parties, except where such default or violation would not be reasonably expected to result in a Material Adverse Effect.

Section 3.14 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article III (as modified by the Disclosure Schedule) or expressly contained in any Related Agreement, neither Sellers nor any other Person shall be deemed to have made any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding either Sellers, any Acquired Assets, any Assumed Liabilities or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article III or any Related Agreement, NEITHER SELLER MAKES ANY OTHER (AND HEREBY DISCLAIMS EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, BUYER WILL ACQUIRE THE ACQUIRED ASSETS AND ASSUME THE ASSUMED LIABILITIES IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH OR SAFETY MATTERS). Sellers disclaim all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant or representative of Sellers or any of their Affiliates.

ARTICLE IV
BUYER'S REPRESENTATIONS AND WARRANTIES

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

Section 4.1 Organization of Buyer; Good Standing. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of New York

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and has all requisite corporate or similar power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction. Buyer has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Sellers) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

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

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

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

Section 4.6 Sufficient Funds; Adequate Assurances. Buyer has, and upon the Closing will have, immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Buyer in connection with the transactions contemplated hereby. Buyer is and shall be capable of satisfying the conditions contained in

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sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Transferred Contracts and the related Assumed Liabilities.

ARTICLE V
PRE-CLOSING COVENANTS

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

Section 5.1 Efforts; Cooperation.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use (except as set forth in Section 5.3) its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby (including by giving, or causing to be given, any notices to, making any filings with, and using commercially reasonable efforts to obtain any consents of Governmental Authorities, as applicable, as are necessary and appropriate to consummate the transactions contemplated hereby). Without limiting the generality of the foregoing, (i) each Seller shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.1 that are within its control or influence to be satisfied or fulfilled, and (ii) Buyer shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.2 that are within its control or influence to be satisfied or fulfilled.

(b) Without limiting the generality of Section 5.1(a), none of the Parties shall take any action, or permit any of their respective Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

(c) Without limiting the generality of Section 5.1(a), each Seller shall use its commercially reasonable efforts to cooperate with Buyer with respect to the integration of each Seller's MIS system, and other computer systems that are necessary for the conduct of the Business as presently conducted, with Buyer's systems.

(d) Without limiting the generality of Section 5.1(a), each Seller shall use its commercially reasonable efforts to cooperate with Buyer and vendors, suppliers, distributors and other Persons engaged by Buyer or its Representatives with respect to the transition of the Business and/or the Acquired Assets from Sellers to Buyer.

Section 5.2 Conduct of the Business Pending the Closing.

(a) Prior to the Closing, except (i) as set forth on Section 5.2(a) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy

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Court, (iii) as otherwise expressly contemplated by this Agreement including in Section 5.2(c) or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller shall (A) conduct the Business only in the Ordinary Course of Business, including but not limited to, retaining and maintaining Furnishings and Equipment in the Ordinary Course of Business and maintaining a normal amount of Inventory, except for Excluded Inventory, on the shelves in the Store, it being understood and acknowledged that Sellers will not be required to maintain Inventory for post-Closing holiday periods, and (B) use its commercially reasonable efforts to (1) preserve the present business operations, organization and goodwill of the Business, and (2) preserve the present relationships with material vendors and suppliers of the Business.

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

(i) (x) other than in the Ordinary Course of Business or as required by any applicable collective bargaining agreement or Law, (A) materially increase the annual level of compensation of any Covered Employee or (B) materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan or (y) hire any employee or permit to be transferred to any Store any employee of Sellers or any other affiliate of Sellers, other than any hiring or transfer in replacement of an employee terminated for cause, or who otherwise resigned (which replacement employee will not be hired at a base salary or bonus amount greater than the terminated or resigned employee or be represented by a union or collective bargaining agreement other than the Affected Union);

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

(iii) except for any renewals amend, modify, or replace any Transferred Contracts, other than in the Ordinary Course of Business;

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

(v) other than in the Ordinary Course of Business, remove any tangible Acquired Assets from the Store; or

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

(c) For avoidance of doubt, the Cash Purchase Price includes an amount (Eighty Thousand Dollars ($80,000)) to be paid by Buyer to Sellers to induce Sellers to maintain reasonable levels of perishable Inventory through and including the Closing

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Date. In furtherance thereof, Sellers shall use their commercially reasonable efforts to maintain at the Store until the Closing (A) reasonable levels of A&P branded or other private label inventory and (B) reasonable levels of perishable Inventory having minimum code dates until the Closing as follows: (i) dairy Inventory, including fluid milk and by-products, having a code date of five (5) days including and following the Closing Date; (ii) produce Inventory having a code date of four (4) days including and following the Closing Date, (iii) all fresh cut meat Inventory having a code date of three (3) days including and following the Closing Date, (iv) packaged meat Inventory having a code date of four (4) days including and following the Closing Date, (v) packaged seafood Inventory having a code date of seven (7) days including and following the Closing Date, and (vi) packaged deli Inventory having a code date of four (4) days including and following the Closing Date.

Section 5.3 Reserved.

Section 5.4 Bankruptcy Court Matters.

(a) Bidding Procedures Order. This Agreement is subject to procedures set forth in the Bidding Procedures Order and the consideration by Sellers of higher or better competing bids in respect of all or any part of the Acquired Assets in accordance with the Bidding Procedures Order (whether in combination with other assets of the Sellers or their Affiliates or otherwise) (each a "Competing Bid"). From the date hereof (and any prior time) and until the transactions contemplated hereby are consummated, Sellers are permitted to and to cause their Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates and Representatives) in connection with a Competing Bid, including, to (and to cause their Representatives and Affiliates to) respond to any inquiries or offers to purchase all or any part of the Acquired Assets, (including supplying information relating to the Business and the assets of Sellers to prospective purchasers).

(b) Sale Order. Provided Buyer is selected as the winning bidder in respect of the Acquired Assets at the auction, if any, undertaken in accordance with the Bidding Procedures Order (the "Auction"), or if no Competing Bid is submitted with respect to the Acquired Assets, Sellers shall seek entry of the Sale Order and any other necessary orders to close the sale by the Bankruptcy Court in accordance with the terms and conditions of the Bidding Procedures Order. Buyer and Sellers understand and agree that the consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order including a finding of adequate assurance of future performance by Buyer, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the

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event the entry of the Bidding Procedures Order shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal. In the event the entry of the Sale Order is appealed, Sellers shall use commercially reasonable efforts to defend such appeal.

(i) Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude Sellers from filing such motions, including upon commencement of the Bankruptcy Cases, to reject any Contracts that are not Transferred Contracts.

(c) Back-up Bidder. Buyer agrees that, in the event that Buyer is not the winning bidder at the Auction, if and only if Buyer is notified that its bid at the Auction or the terms of this Agreement constitute the Back-Up Bid (as defined in the Bidding Procedures Order), Buyer shall be the Back-Up Bidder (as defined in the Bidding Procedures Order) and shall comply with the obligations of a Back-Up Bidder set forth in the Bidding Procedures Order.

Section 5.5 Notice of Developments. Each Seller and Buyer will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has Knowledge that would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.5 shall not be deemed to amend or supplement this Agreement and the failure to deliver any such notice shall not constitute a waiver of any right or condition to the consummation of the transactions contemplated hereby by any Party.

Section 5.6 Access. Upon the reasonable request of Buyer, and to the extent not otherwise prohibited by applicable Law, Sellers will permit Buyer and its Representatives to have, upon reasonable advance written notice, reasonable access to all premises, properties, personnel, books and records and Transferred Contracts included in the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of either Seller; provided, however, that, for avoidance of doubt, the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto. Prior to Closing, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, suppliers, landlords, or licensors of either Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of each Seller.

Section 5.7 Bulk Transfer Laws. Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer laws or similar laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

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Section 5.8 Replacement Bonding Requirements. On or prior to the Closing Date, Buyer shall provide replacement guarantees, standby letters of credit or other assurances of payment with respect to all Bonding Requirements set forth in Section 3.4(b) of the Disclosure Schedule, in form and substance satisfactory to the Parties and any banks or other counterparty thereto, and, both prior to and following the Closing Date, Buyer and Sellers shall cooperate to obtain a release in form and substance reasonably satisfactory to Buyer and Sellers with respect to all Bonding Requirements. To the extent Buyer is unable to make such arrangements with respect to any Bonding Requirements prior to the Closing, with Sellers' consent in lieu thereof, Buyer shall deliver to Sellers an irrevocable, unconditional standby letter of credit in favor of Sellers in an amount equal to the amount of such Bonding Requirements, issued by a bank rated "A" or better by Standard and Poor's, in form and substance reasonably satisfactory to Sellers.

Section 5.9 Electronic Pricing File. On or prior to the Closing Date, Sellers shall provide Buyer with Sellers' UPC 13 electronic pricing file for the Store.

ARTICLE VI
OTHER COVENANTS

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

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

Section 6.2 Access; Enforcement; Record Retention. From and after the Closing, upon request by either Seller, Buyer will permit Sellers and their Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Buyer, to all premises, properties, personnel, books and records, and Contracts of or related to the Acquired Assets or the Assumed Liabilities for the purposes of (a) preparing Tax Returns, (b) as may be reasonably requested by the other Party, monitoring or enforcing rights or obligations of either Seller under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable law, or (iii) providing such access or information would be reasonably expected to be disruptive to its normal business operations. Buyer agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for six (6) years following the Closing.

Section 6.3 Treatment of Affected Labor Agreements. With respect to Covered Employees under an Affected Labor Agreement identified on Section 6.3(a) of the

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Disclosure Schedule, Buyer shall engage in good faith negotiations, in coordination with Sellers, to reach mutually satisfactory modifications to the relevant Affected Labor Agreement with each of the Affected Unions identified on Schedule 6.3(b) of the Disclosure Schedule and to enter into a Modified Labor Agreement with each of the Affected Unions. Buyer may, at any time prior to the Sale Hearing, agree to have an Affected Labor Agreement assigned to it without modification by providing notice of such agreement to Sellers and the applicable Affected Union. To the extent Buyer is not assuming the Affected Labor Agreements, Buyer, in coordination with Sellers, shall propose a Modified Labor Agreement to each Affected Union that is consistent with the terms set forth on Exhibit F (each, a "Proposal"), which Proposal may be modified as a result of Buyer's and/or Sellers' good faith negotiations with the Affected Unions. Buyer agrees to cooperate with Sellers in providing each Affected Union with complete and reliable information to allow the Affected Unions to evaluate the Proposal. For all purposes under this Section 6.3, Buyer acknowledges the requirements of sections 1113 and 1114 of the Bankruptcy Code and agrees to use good faith reasonable best efforts to cooperate with Sellers in ensuring compliance with any applicable provisions thereof.

Section 6.4 Covered Employees.

(a) Offer of Employment. At least 10 days prior to the Closing Date, Buyer shall make an offer of employment, effective as of the Closing Date and contingent upon the Closing, to each of the Covered Employees who is then employed by Sellers at the Store which is covered by this Agreement (at the same location, at base wage or hourly rate and other terms and conditions of employment as determined by Buyer). With respect to union-represented Covered Employees, such offers shall also be consistent with the terms and conditions required by the governing Affected Labor Agreement or Modified Labor Agreements, as applicable. With respect to any Covered Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Covered Employee returning to active status. With respect to any Covered Employee that is not union represented, such offers of employment will be for employment at-will, and Buyer may terminate such employees at any time following the Closing Date. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable Law and the governing Affected Labor Agreement (but only if such Affected Labor Agreement has been specifically assumed by Buyer), or Modified Labor Agreements, as the case may be, at any time following the Closing Date.

(b) Compensation and Benefits. Commencing on the Closing Date and continuing through the first anniversary of the Closing Date, Buyer or its Affiliates shall provide or cause to be provided to the Covered Employees who are not union represented compensation and employee benefits commensurate with newly hired employees at their respective job positions. With respect to union-represented Covered Employees, Buyer or its Affiliates agrees to apply to all such Covered Employees the terms and conditions set forth in the applicable Affected Labor Agreements or Modified Labor Agreements, as the case may be, as they may be modified from time to time.

(c) Service Credit. Only in the event the Modified Labor Agreement so provides, each union-represented Covered Employee shall be given credit for all service

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with Sellers, and their respective predecessors under any employee benefit plans or arrangements of Buyer and its Affiliates maintained by Buyer or its Affiliates in which such Covered Employees participate following the Closing Date, for purposes of eligibility, vesting, and entitlement to benefits, including for severance benefits and vacation entitlement (but not for accrual of pension benefits). Notwithstanding the foregoing, nothing in this Section 6.4(c) shall be construed to require crediting of service that would result in a duplication of benefits.

(d) Waiver of Pre-Existing Conditions; Crediting of Deductibles. No later than the Closing Date, Buyer or its Affiliates shall establish or cause to be established, at its own expense, such benefit plans providing life insurance, health care, dental care, accidental death and dismemberment insurance, disability and other group welfare benefits for Covered Employees other than the union-represented employees as Buyer determines in its sole discretion. Provided such plans as adopted by Buyer specifically provide, Buyer or its Affiliates shall cause (i) the waiver of all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Covered Employees that is not union represented under any such welfare benefit plans to the extent that such conditions, exclusions or waiting periods would not apply under the Employee Benefit Plans, and (ii) for the plan year in which the Closing Date occurs (or, if later, in the calendar year in which Covered Employees and their dependents commence participation in the applicable welfare plans), the crediting of each Covered Employee that is not union represented with any co-payments and deductibles paid prior to participation in such welfare plans in satisfying any applicable deductible or out-of-pocket requirements thereunder.

(e) 401(k) Plan Rollovers. Buyer agrees to cause the Buyer's 401(k) plan to accept a "direct rollover" to Buyer's 401(k) plan of each Covered Employee's account balances (including promissory notes evidencing all outstanding loans) under Sellers' 401(k) plans if such rollover is elected in accordance with applicable Law by such Covered Employee.

(f) Accrued Vacation. Buyer or its Affiliates may, but are not obligated to provide each Covered Employee that is not union represented with credit for the same number of vacation and sickness benefit days such Covered Employee has accrued but not used in the calendar year in which the Closing Date occurs, provided that, to the extent required by Applicable law, such amount shall be paid by Buyer or its Affiliates to the applicable Covered Employee in cash. In the event that a Covered Employee is unable to use such carried over vacation and sickness days within the calendar year in which the Closing Date occurs, Buyer or its Affiliates shall allow such Covered Employee to carry over such vacation and sickness days to be used in the subsequent calendar year unless such Covered Employee requests payout at the end of the current calendar year or such payout is required by Applicable Law, in either of which events Buyer or its Affiliates will timely make such payments to such Covered Employee.

(g) Welfare Benefit Claims; COBRA. On the Closing Date, Sellers shall cease to provide welfare coverage to each Covered Employee and his or her covered dependents, and Buyer or its Affiliates may elect to commence providing such coverage

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to such individuals. Sellers shall be responsible in accordance with its applicable welfare plans in effect prior to the Closing Date for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) incurred, under Sellers' Employee Benefit Plans that are welfare benefit plans prior to the Closing Date by the Covered Employees and their dependents. In the event Buyer or its Affiliates elect to provide welfare plan coverage to Covered Employees, then Buyer or its Affiliates shall be responsible in accordance with the applicable welfare plans of Buyer or its Affiliates for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) incurred, on or after the Closing Date (or the date of commencement of employment with Buyer, if later) by Covered Employees who are not union represented and their dependents. For purposes of this Section 6.4(g), a claim shall be deemed to have been incurred as follows: (i) for health, dental and prescription drug benefits, upon provision of such services, (ii) for life, accidental death and dismemberment and business travel accident insurance benefits, upon the death, disability or accident giving rise to such benefits, and (iii) for hospital-provided health, dental, prescription drug or the benefits that become payable with respect to any hospital confinement, pro-rata based upon the number of days of such confinement occurring before and after the Closing Date. Sellers shall provide coverage required by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") under Sellers' Employee Benefit Plans that are group health plans with respect to qualifying events occurring prior to the Closing Date; provided, however, that to the extent that a dependent of a Covered Employee who is not union represented is receiving continuation coverage under a Seller's Employee Benefit Plans pursuant to COBRA as of the Closing Date, Buyer or its Affiliates shall be obligated to continue to provide COBRA continuation coverage to such dependent on and following the Closing Date for the period required under applicable Law. Buyer and its Affiliates shall provide coverage required by COBRA to Covered Employees who are not union represented and their eligible dependents or beneficiaries under Buyer's group health plans with respect to qualifying events occurring on and after the Closing Date.

(h) WARN Act. Provided that on or before the Closing Date A&P provides Buyer with a list, by date and location, of employee layoffs implemented by Sellers with respect to employees of the Store covered by this Agreement, Buyer shall indemnify and hold harmless each Seller and its Affiliates and their respective Representatives with respect to any Liability arising under the WARN Act with respect to employees of the Store covered by this Agreement who accept an offer of employment from Buyer and which arise in whole or part from the actions or omissions of Buyer after the Closing Date.

(i) Tax Reporting. Buyer shall adopt the "alternate procedure" for preparing and filing Internal Revenue Service Forms W-2 (Wage and Tax Statements), as described in Revenue Procedure 2004-53. Under this procedure, Buyer as the successor employer shall provide Forms W-2 to Covered Employees reflecting all wages paid and Taxes withheld with respect to such Covered Employees for the calendar year in which the Closing Date occurs. Sellers as the predecessor employers shall have no employment tax reporting responsibilities for the Covered Employees following the Closing Date. Buyer

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shall also adopt the "alternate procedure" of Revenue Procedure 2004-53 for purposes of Internal Revenue Service Forms W-4 (Employee's Withholding Allowance Certificate) and W-5 (Earned Income Credit Advance Payment Certificate).

(j) No Third Party Beneficiary Rights. The Parties agree that nothing in this Section 6.4, whether express or implied, is intended to create any third party beneficiary rights in any Covered Employee.

(k) Cooperation. After the Closing Date, Buyer shall, and shall cause its Affiliates to, cooperate with Sellers to provide such current information regarding the Covered Employees on an ongoing basis as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Covered Employees under any applicable employee benefit that continues to be maintained by A&P or its Affiliates. Buyer shall, and shall cause its Affiliates to, permit Covered Employees to provide such assistance to A&P as may be required in respect of claims against A&P or its Affiliates, whether asserted or threatened, to the extent that, in A&P's opinion, (i) a Covered Employee has knowledge of relevant facts or issues, or (ii) a Covered Employee's assistance is reasonably necessary in respect of any such claim.

Section 6.5 Certain Tax Matters.

(a) Transfer Taxes. Sellers on the one hand, and Buyer on the other hand, shall each pay fifty percent (50%) of any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge (a "Transfer Tax") imposed under applicable Law in connection with the transactions contemplated hereby. Accordingly, if either Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse such Seller for one-half the amount of such Transfer Taxes actually paid by such Seller. Buyer shall be entitled to receive such Tax Returns and other documentation reasonably in advance of filing by such Seller, but not less than ten (10) Business Days prior to the due date of such Tax Returns, and such Tax Returns and other documentation shall be subject to Buyer's approval, which shall not be unreasonably withheld, delayed, or conditioned. The party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall prepare and timely file such Tax Returns. Sellers and Buyer shall cooperate in making, in a timely manner, all Tax Returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with applicable Law in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such applicable Law, the amount of any such Transfer Taxes.

(b) Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Acquired Assets (including real estate Taxes (other than those subsumed in Section 2.8), personal property Taxes and similar Taxes) for the Tax period in which the Closing occurs (the "Proration Period") will be apportioned and prorated between Sellers and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and

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the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Sellers shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Sellers, and Buyer or Sellers, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Sellers.

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

Section 6.7 Acknowledgements.

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

(b) Except as set forth in Article III, neither Seller nor any other Person makes any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding either Seller, the Store, any Acquired Assets, any Assumed Liabilities or any other matter, and neither Seller nor any other Person will be subject to any Liability to Buyer or any other Person resulting from such matters or the distribution to Buyer, or the use of, any such information. Buyer acknowledges that, should the Closing occur, Buyer will acquire the Acquired Assets and assume the Assumed Liabilities in an "as is" condition and on a "where is" basis, without any representation or warranty of any kind, express or implied (including any with respect to environmental, health or safety matters) except such representations and warranties expressly set forth in Article III. Further, without limiting any representation, warranty, or covenant of either Seller expressly set forth herein, Buyer acknowledges that it has

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waived and hereby waives as a condition to the Closing any further due diligence reviews, inspections, or examinations with respect to either Seller, the Store, the Acquired Assets, the Assumed Liabilities, or any other matter, including with respect to engineering, environmental, title, survey, financial, operational, regulatory, and legal compliance matters.

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

Section 6.9 Seller Marks. The Seller Marks may appear on some of the Acquired Assets, including on signage. Buyer acknowledges and agrees that it does not have and, upon consummation of the transactions contemplated by this Agreement, will not have, any right, title, interest, license, or other right to use the Seller Marks. Buyer shall within three (3) Business Days after the Closing Date remove the Seller Marks from, or cover or conceal the Seller Marks on, any Acquired Assets, or otherwise refrain from the use and display of the Acquired Assets on which the Seller Marks are affixed.

ARTICLE VII
CONDITIONS TO OBLIGATION TO CLOSE

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

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

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

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

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

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

(f) each delivery contemplated by Section 2.5(b) to be delivered to Buyer shall have been delivered; and

(g) Sellers shall have complied with sections 1113 and 1114 of the Bankruptcy Code.

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

(a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

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

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

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

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

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

(g) Sellers shall have complied with sections 1113 and 1114 of the Bankruptcy Code.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was primarily caused by such Party's failure to perform its obligations hereunder.

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ARTICLE VIII
TERMINATION

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

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

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

(i) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to Buyer if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of such Party to have fulfilled any of its obligations under this Agreement; or

(ii) the Closing shall not have occurred prior to November 30, 2015 (the "Outside Date"); provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 8.1(b)(ii).

(c) by Buyer by giving written notice to each Seller if there has been a breach by either Seller of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Buyer at Closing set forth in Section 7.1(a) and Section 7.1(b), and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Seller prior to the earlier to occur of (A) ten (10) days after receipt of Buyer's notice of intent to terminate or (B) the Outside Date;

(d) by either Seller by giving written notice to Buyer and the other Seller if there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Sellers at Closing set forth in Section 7.2(a) and Section 7.2(b), and such breach has not been waived by such Seller, or, if such breach is curable, cured by Buyer prior to the earlier to occur of (A) ten (10) days after receipt of such Seller's notice of intent to terminate or (B) the Outside Date; or

(e) by Sellers or Buyer, if (i) (x) Sellers enter into a definitive agreement with respect to a Competing Bid, (y) the Bankruptcy Court enters an order approving a Competing Bid and (z) the Person making the Competing Bid consummates the Competing Bid or (ii) the Bankruptcy Court enters an order that precludes the

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consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

Section 8.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 3.12, Section 6.7, Section 8.3, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 8.3) to the other Party hereunder; provided, however, that nothing in this Section 8.2 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, that other than in the case of fraud or willful misconduct, that (a) the maximum Liability of Sellers under this Agreement shall not exceed Buyer's reasonable and documented out-of-pocket expenses up to an aggregate amount of $100,000 and (b) the maximum liability of Buyer under this Agreement shall not exceed the Escrow Amount.

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

ARTICLE IX
MISCELLANEOUS

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

Section 9.2 Expenses. Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants.

Section 9.3 Entire Agreement. This Agreement, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

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

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties. Notwithstanding the foregoing, Buyer shall be permitted to assign any and all of its rights and interests hereunder relating to any or all of the Acquired Assets to one or more of its Affiliates and to designate one or more of its Affiliates to perform its obligations under this Agreement and, in the event of such designation or assignment by Buyer to one of its Affiliates, Buyer shall cause such Affiliate to perform Buyer's obligations under this Agreement; provided that in no event shall Buyer be relieved or excused from any of its obligations under this Agreement.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) upon receipt of confirmation of receipt if sent by facsimile transmission; (d) on the day such communication was sent by e-mail; or (e) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

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

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue

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New York, New York 10153
Attention: Ray C. Schrock, P.C. and Gavin Westerman
Facsimile: (212) 310-8007
E-mail: ray.schrock@weil.com; gavin.westerman@weil.com

If to Buyer: Food Emporium Acquisition Corp.
c/o Red Apple Group, Inc.
800 Third Avenue, 5th Floor
New York, New York 10022
Attention: John Catsimatidis, Mark Kassner
Facsimilie: (212) 247-4509
E-mail: jacny@aol.com; Mknyc7@aol.com

With a copy (which shall not constitute notice to Buyer) to:
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
New York, New York 10105
Attention: Martin R. Bring
Facsimile: (212) 370-7889
E-mail: mbring@egsllp.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

Section 9.9 Submission to Jurisdiction; Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 9.7; provided, however, that nothing in this Section 9.9 shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be

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conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

Section 9.10 Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.11 Specific Performance. Buyer acknowledges and agrees that Sellers and their respective estates 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 Sellers may have under law or equity, each 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.

Section 9.12 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

Section 9.13 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns.

Section 9.14 Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or the Related Agreements may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing ("Non-Party Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by

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Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-party Affiliates with respect to the performance of this Agreement or the Related Agreements or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 9.14.

Section 9.15 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure for all purposes of this Agreement and all other sections of the Disclosure Schedule to which such matter relates, to the extent that such disclosure is reasonably apparent on its face. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

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

Section 9.18 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement

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or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

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

[Remainder of page intentionally left blank.]

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

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

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

SHOPWELL, INC.

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

A&P REAL PROPERTY, LLC

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

[Signature Page to Asset Purchase Agreement]

FOOD EMPORIUM ACQUISITION CORP.

By: _____
Name: Mark Kassner
Title: Vice President and Chief Financial Officer