

**Personal and Confidential**

August 16, 2015

Dear Prospective Bidder:

RE: The Great Atlantic & Pacific Tea Company, Inc.

On behalf of The Great Atlantic & Pacific Tea Company, Inc. and certain of its affiliates (collectively, “**A&P**” or the “**Company**”), as debtors and debtors in possession in the chapter 11 cases captioned *In re The Great Atlantic & Pacific Tea Company, Inc., et al.*, Case. No. 15-23007 (RDD), pending before the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), we would like to thank you for your interest in purchasing assets of the Company.

On August 11, 2015, the Bankruptcy Court entered an order approving certain procedures and deadlines (the “**Global Bidding Procedures**”)<sup>1</sup> governing the sale of 271 of the Company’s stores and related assets, including trademarks and trade names (the stores are identified on Schedule 1; each, a “**Store**”). The Company has received three stalking horse bids for the purchase of non-overlapping groups of 118 stores (collectively, the “**Stalking Horse Packages**”). The Stalking Horse Packages anchor the Global Bidding Procedures. Pursuant to the Global Bidding Procedures, subject to the receipt of “Qualified Bids,” the Debtors will conduct an auction on September 24 and 25, 2015 (the “Auction”) for (i) the Stalking Horse Packages and (ii) one or more of the remaining Stores not included in the Stalking Horse Packages (the “**Additional Stores**”), either individually or as part of a package of Additional Stores. Key dates and deadlines for the Global Bidding Procedures are set forth on Exhibit A.

**Indications of Interest**

If you are interested in purchasing any of the Stores for any purpose, whether a going concern, alternative use or a lease transaction, the Company encourages you to indicate your interest as soon as possible to their advisors, but **no later than August 28, 2015** (the “**Global Indication of Interest Date**”). An indication of interest is not binding and does not commit you to submit a binding bid, provide a deposit or make any commitment. In addition, the failure to submit an indication of interest by the Global Indication of Interest Date does **not** preclude you from submitting a bid before the bid deadline, which is September 11, 2015.

If you are interested in purchasing a Store as a going concern, whether individually, in combination or in connection with a Stalking Horse Package, please contact Evercore Group LLC (“Evercore”) and Hilco Real Estate, LLC (“Hilco”), by the Global Indication of Interest Date, expressing your interest and identifying Stores in which you are expressing such interest to:

---

<sup>1</sup> The “Global Bidding Procedures” are attached as Exhibit 1 to the *Order Approving (A) Global Bidding Procedures, (B) Bid Protections Granted to Certain Stalking Horse Purchasers, (C) the Form and Manner of Notice of Auctions, Sale Transactions and Sale Hearing, (D) the Assumption and Assignment Procedures, and (E) the Date for Auctions, if Necessary, and Sale Hearings*, dated August 11, 2015 [Docket No. 495]. Copies of the Global Bidding Procedures are included in this package and available at <https://cases.primeclerk.com/aptea/>. To the extent there is any conflict between this letter and the Global Bidding Procedures, the Global Bidding Procedures shall control.

- Stephen Goldstein and Paul Billyard (Stephen.Goldstein@Evercore.com, Billyard@Evercore.com);
- Gregory S. Apter (gapter@hilcoglobal.com); and
- APbids@weil.com.

If you are interested in purchasing leases or designation rights associated with an underlying lease (each, a “**Lease**”), whether individually or in combination, and with or without accompanying store assets (i.e., inventory, furniture, fixtures and equipment, prescription files and/or pharmacy inventory), please contact Hilco by no later than the Global Indication of Interest Date expressing your interest and identifying Leases in which you are expressing such interest to:

- Gregory S. Apter (gapter@hilcoglobal.com); and
- [APbids@weil.com](mailto:APbids@weil.com).

### **Access to Diligence**

To access diligence regarding any of the Stores, a party must submit to the Company or their advisors:

- (A) an executed confidentiality agreement in form and substance reasonably satisfactory to the Company; and
- (B) sufficient information, as reasonably determined by the Company, to allow the Company to reasonably determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction.

If the Company determines in its reasonable discretion that an interested party has satisfied the above requirements, the Company will deliver to such party: (A) an information package containing information and financial data with respect to the Stores in which such Potential Bidder has expressed an interest; and (B) access to the Company’s confidential electronic data room concerning the Stores.

Diligence will be available to potential bidders until the September 11, 2015 (the “**Global Bid Deadline**”) unless otherwise provided by the Global Bidding Procedures.

### **Bids**

If you desire to make a bid to acquire any of the Stores or Leases (a “**Bid**”), pursuant to the Global Bidding Procedures, you must deliver a written and electronic copy of your Bid in both PDF and MS-WORD format to the Notice Parties (as defined in the Global Bidding Procedures) and [APbids@weil.com](mailto:APbids@weil.com) so as to be received no later than **September 11, 2015 at 5:00 p.m. (Easter Time)** (the “**Global Bid Deadline**”). Each Bid must be a binding and irrevocable offer to acquire the Stores, Leases, and/or other assets reflected in such Bid and must include the information required to be considered a “Qualified Bid.” The requirements for a “Qualified Bid” are set forth in the Global Bidding Procedures and summarized on Exhibit B.

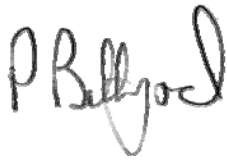
### **Form of Agreements**

The Company has posted two forms of transaction agreements to the Data Room, which are also attached hereto. If your Bid is to acquire one or more Stores on a **going concern basis**, please use the “going concern” form attached hereto as Exhibit C and include with your Bid a marked agreement to

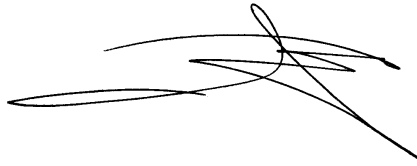
show proposed changes to the “going concern” form. If your Bid is to acquire one or more Stores for an **alternative use or Lease transaction**, please use the “alternative use or lease” form attached hereto as Exhibit D and include with your Bid a marked agreement to show proposed changes to the “alternative use or lease” form. To the extent you intend to submit a marked agreement containing any material revisions to the form provided, you are encouraged to speak with the Company’s financial and/or legal advisors before doing so.

We look forward to working with you.

Sincerely,

Handwritten signature of Paul Billyard in black ink.

Paul Billyard  
Managing Director  
Evercore

Handwritten signature of Gregory S. Apter in black ink.

Gregory S. Apter  
President  
Hilco Real Estate, LLC

on behalf of the Company

**Schedule 1**

Stores

**76 Stores Included in Stalking Horse Bid of Acme Markets, Inc.**

	Store	Banner	City	Address	State
1	70927	A&P	Wall Township	2007 State Route 35	NJ
2	70205	A&P	Yorktown	100 Triangle Center	NY
3	70620	A&P	Midland Park	137 Lake Street	NJ
4	70677	A&P	Mahwah	125 Franklin Tnpk	NJ
5	70408	A&P	New Providence	1260 Springfield Ave	NJ
6	70233	Superfresh	Philadelphia	180 West Girard Ave	PA
7	70787	A&P	Thornwood	610 Columbus Ave.	NY
8	70479	A&P	Fort Lee	2160 Lemoine Ave	NJ
9	70659	A&P	Woodcliff Lake	520 Chestnut Ridge Road	NJ
10	70186	A&P	Yonkers	660 Mclean Ave	NY
11	70107	A&P	Mohegan Lake	3105 East Main Street	NY
12	70649	A&P	Denville	123-125 Main Street	NJ
13	70640	A&P	Jersey City	125 18th Street	NJ
14	72112	Pathmark	Jersey City	321 Stadium Plaza	NJ
15	70639	A&P	Allendale	45 Demercurio Drive	NJ
16	70784	A&P	Croton on Hudson	2005 Albany Post Rd.	NY
17	70154	A&P	Brewster	1511 Rte 22	NY
18	70867	A&P	Kenilworth	801 Kenilworth Blvd	NJ
19	70650	A&P	South Plainfield	907D Oak Tree Road	NJ
20	70642	A&P	Jefferson Township	5774 Berkshire Valley Rd.	NJ
21	70621	A&P	Vernon	530 Rt 515 Unit 1	NJ
22	70185	A&P	Yonkers	1233 Nepperhan Ave.	NY
23	70821	A&P	Little Silver	507 Prospect Ave.	NJ
24	70606	A&P	Hoboken	614 Clinton St	NJ
25	70207	A&P	Goldens Bridge	Rt 22 and Rt 138	NY
26	70167	A&P	Hopewell Junction	829 Route 82	NY
27	72181	Pathmark	Elmwood Park	58 Broad Way	NJ
28	70768	A&P	Bronxville	12-14 Cedar Street	NY
29	70864	A&P	Montclair	510 Valley Road	NJ
30	70874	Superfresh	Ocean City	9507Coastal Hwy	MD
31	70780	A&P	Stamford	1201 High Ridge Road	CT
32	70773	A&P	Bedford	422 Old Post Road	NY
33	72190	Pathmark	Edgewater	481 River Road	NJ
34	70164	A&P	Mahopac	3 Village Center	NY
35	70826	A&P	Clark	1060 Raritan Road	NJ
36	70208	A&P	Millwood	230 Saw Mill River Road	NY
37	70908	A&P	Ortley Beach	5 Ortley Plaza	NJ
38	70684	A&P	Sussex	455 Rt23 North	NJ
39	70728	A&P	Rye Brook	261 South Ridge St.	NY
40	70740	A&P	Greenwich	160 West Putnam Avenue	CT
41	70763	A&P	Briarcliff Manor	1886 Pleasantville Road	NY
42	70456	A&P	Blairstown	152 Route 94	NJ
43	70750	A&P	Riverside	1261 East Putnam Avenue	CT

	Store	Banner	City	Address	State
44	76710	Pathmark	Philadelphia	2101-41 Cottman Ave.	PA
45	70766	A&P	Eastchester	777 White Plains Road	NY
46	70664	A&P	Park Ridge	199 Kinderkamack Rd	NJ
47	70786	A&P	Greenburgh	103 Knollwood Road	NY
48	70189	Superfresh	Haverton	1305 West Chester Pike	PA
49	70153	A&P	Shrub Oak	1366 East Main Street	NY
50	70761	A&P	West New York	55 Riverwalk Drive West	NJ
51	70516	A&P	New Rochelle	23 Quaker Ridge Road	NY
52	70094	A&P	Pleasant Valley	Rte 44 & North Ave	NY
53	70500	A&P	New Canaan	288 Elm Street	CT
54	70626	A&P	Tinton Falls	990 Shrewsbury Ave	NJ
55	72178	Pathmark	Weehawken	4100 Park Avenue	NJ
56	70811	A&P	Old Bridge	3500 Route #9	NJ
57	72194	Pathmark	Bergenfield	80 New Bridge Road	NJ
58	70471	Superfresh	Manahawkin	609 East Bay Avenue	NJ
59	70391	A&P	Saddle Brook	75 Mayhill Street	NJ
60	72186	Pathmark	Newark	281-295 Ferry Street	NJ
61	70252	Superfresh	Richboro	800 2nd Street Pike	PA
62	70584	Superfresh	Wilmington	1812 Marsh Rd	DE
63	70730	Superfresh	Philadelphia	305 S. Fifth St.	PA
64	70477	Superfresh	Ocean City	800 West Ave	NJ
65	72587	Pathmark	Ventnor	5100 Wellington Avenue	NJ
66	76725	Pathmark	Philadelphia	7700 Crittendan St	PA
67	70747	Superfresh	Philadelphia	1001 South Street	PA
68	70801	A&P	Warrenville	177 Washington Valley Rd.	NJ
69	70559	Superfresh	Rehoboth	18578 Coastal Highway	DE
70	72590	Pathmark	Newark	100 College Square	DE
71	72586	Pathmark	Wilmington	4365 Kirkwood Highway	DE
72	70474	Superfresh	Wildwood	2400 Delaware Avenue	NJ
73	76585	Pathmark	Boothwyn	643 Conchester Highway	PA
74	70293	Superfresh	Wynnewood	250 E Lancaster	PA
75	70294	Superfresh	Gladwynne	1025 Youngsford Road	PA
76	70588	Superfresh	Newark	401 New London Rd.	DE

**25 Stores Included in Stalking Horse Bid of The Stop & Shop Supermarket Company, LLC**

	Store	Banner	City	Address	State
1	70226	A&P	Mt Kisco	195 North Bedford Rd	NY
2	72270	Pathmark	South Orange	407 Valley Street	NJ
3	72633	Pathmark	Franklin Square	460 Franklin Avenue	NY
4	72608	Pathmark	Greenvale	130 Wheatley Plaza	NY
5	72667	Pathmark	Bronx	1720 Eastchester Road	NY
6	72647	Pathmark	Bronx	2136 Bartow Avenue	NY
7	72619	Pathmark	Brooklyn	625 Atlantic Avenue	NY
8	72638	Pathmark	Brooklyn	2965 Cropsey Avenue	NY
9	72616	Pathmark	Jamaica	134-40 Springfield Blvd	NY
10	72626	Pathmark	Ozone Park	92-10 Atlantic Avenue	NY
11	72622	Pathmark	Whitestone	31-06 Farrington Street	NY
12	70658	Waldbaums	Long Beach	85 E. Park Ave.	NY
13	70465	Waldbaums	Massapequa	702 Hicksville Road	NY
14	72625	Pathmark	Seaford	4055 Merrick Road	NY
15	70260	Waldbaums	Southampton	167 Main St. Jagger Lane	NY
16	70452	Waldbaums	Baldwin	905 Atlantic Ave.	NY
17	70651	Waldbaums	Howard Beach	156-01 Crossbay Blvd.	NY
18	70236	Waldbaums	Huntington	60 Wall Street	NY
19	72685	Pathmark	Staten Island	1351 Forest Avenue	NY
20	70257	Waldbaums	Easthampton	67 Newtown Lane	NY
21	70616	Waldbaums	Bell Harbor	112-15 Beach Channel Drive	NY
22	72661	Pathmark	Bronx	961 East 174th Street	NY
23	70632	Waldbaums	Bay Terrace	213-15 26th Avenue	NY
24	70695	A&P	Closter	400 Demarest Avenue	NJ
25	72284	Pathmark	Kinnelon	25 Kinnelon Road	NJ

**17 Stores Included in Stalking Horse Bid of Key Food Stores Co-Operative, Inc.**

	Store	Banner	City	Address	State
1	59502	Food Basics	Paterson	465 Getty Ave	NJ
2	70295	Waldbaums	Flushing	196-35 Horace Harding Expressway	NY
3	70657	Waldbaums	Bayside	35-09 Francis Lewis Blvd	NY
4	70669	Waldbaums	Albertson	1050 Willis Avenue	NY
5	59504	Food Basics	Glen Rock	937 Lincoln Ave	NJ
6	70655	Waldbaums	Glen Head	1-1 Park Plaza	NY
7	70762	A&P	Bronx	5661 Riverdale Ave	NY
8	70442	Waldbaums	Howard Beach	82-35 153rd Ave	NY
9	36715	Food Emporium	New York	10 Union Sq 14th & Park	NY
10	70749	A&P	Harrison	355 Halsted Ave	NY
11	59524	Food Basics	Fairview	289 Bergen Blvd.	NJ
12	70296	Waldbaums	Brooklyn	81-21 N Utrecht Ave.	NY
13	70641	Waldbaums	Jackson Heights	75-55 31St Ave.	NY
14	72637	Pathmark	Brooklyn	1525 Albany Avenue	NY
15	70292	Waldbaums	South Flatbush	2424 Flatbush Avenue	NY
16	70613	Waldbaums	Glen Oaks	259-01 Union Turnpike	NY
17	70849	Waldbaums	Rosebank	375 Tompkins Ave.	NY



### Additional Stores

	Store	Banner	City	Address	State
1	19243	Liquor	New Canaan	282 Elm Street	CT
2	19254	Liquor	Ridgefield	46B Danbury Rd.	CT
3	70074	A&P	Danbury	1 Padanaram Rd	CT
4	19129	Liquor	Old Lyme	28A Halls Rd (P.O. Box 491)	CT
5	70951	A&P	Mt Olive	7 Naughtright Rd	NJ
6	70806	A&P	Califon	431 County Road 513	NJ
7	72280	Pathmark	Montclair	35 Lackawanna Plaza	NJ
8	72198	Pathmark	Fairlawn	22-00 Maple Avenue	NJ
9	59036	Food Basics	East Paterson	498 East 30th St	NJ
10	72578	Pathmark	Brick Twp.	1930 Route 88	NJ
11	72223	Pathmark	Newark	167 Bergen Street	NJ
12	72609	Pathmark	New York	160 East 125th Street	NY
13	70611	Waldbaums	Rocky Point	245 Route 25A	NY
14	72624	Pathmark	Brooklyn	1245 61St Street	NY
15	72603	Pathmark	New York	300 West 145th Street	NY
16	72679	Pathmark	Staten Island	100 Greaves Lane	NY
17	72653	Pathmark	Bethpage	3901 Hempstead Turnpike	NY
18	72649	Pathmark	New Hyde Park	2335 New Hyde Park Road	NY
19	72646	Pathmark	Shirley	800 Montauk Highway	NY
20	72652	Pathmark	Massapequa	941 Carmans Road	NY
21	70298	Waldbaums	Melville	890 Walt Whitman Road	NY
22	72614	Pathmark	Patchogue	399 Route 112	NY
23	70232	Waldbaums	West Hampton	70 Sunset Ave	NY
24	70279	Waldbaums	Merrick	1686 Merrick Rd.	NY
25	70241	Waldbaums	N. Patchogue	440 W. Sunrise Highway	NY
26	72642	Pathmark	Brooklyn	1-37 12th Street	NY
27	72634	Pathmark	Brooklyn	111-10 Flatlands Avenue	NY
28	70263	Waldbaums	Mattituck	Rt.25 And Factory Ave.	NY
29	72600	Pathmark	Brentwood	101 Wicks Road	NY
30	70240	Waldbaums	Brooklyn	2149 Ralph Ave	NY
31	70235	Waldbaums	Brooklyn	3100 Ocean Ave	NY
32	70275	Waldbaums	College Point	133-11 20th Avenue	NY
33	70229	Waldbaums	Ctr Moriches	812 Montauk Hwy.	NY
34	70699	Waldbaums	Deer Park	1960 Deer Park Ave.	NY
35	72611	Pathmark	East Rockaway	492 East Atlantic Avenue	NY
36	70617	Waldbaums	Great Neck	40 Great Neck Road	NY
37	36703	Food Emporium	New York	1175 3rd Avenue	NY
38	36711	Food Emporium	New York	1331 1st Avenue	NY
39	36727	Food Emporium	New York	452 West 43 St.	NY
40	36732	Food Emporium	New York	810 8th Ave	NY
41	36707	Food Emporium	New York	969 Second Ave	NY
42	36777	Food Emporium	New York	316 Greenwich St	NY
43	36742	Food Emporium	New York	1066 3rd Avenue	NY
44	36706	Food Emporium	New York	1450 3rd Avenue	NY

45	36783	Food Emporium	New York	405 East 59th St.	NY
46	36708	Food Emporium	New York	2415 Broadway	NY
47	70662	Waldbaums	Selden	211 Middle Country Road	NY
48	72678	Pathmark	Staten Island	2730 Arthur Kill Road	NY
49	72682	Pathmark	Staten Island	2875 Richmond Avenue	NY
50	70813	Waldbaums	Tottenville	6400 Amboy Road	NY
51	70270	Waldbaums	Whitestone	153-01 10th Ave	NY
52	72558	Pathmark	Brookhaven	5005 Edgemont Avenue	PA
53	72569	Pathmark	Glenolden	140 North Mcdade Boulevard	PA
54	72552	Pathmark	Philadelphia	330 Oregon Avenue	PA
55	72550	Pathmark	Philadelphia	176-82 West Chelten Avenue	PA
56	72522	Pathmark	Philadelphia	3399 Aramingo Avenue	PA
57	19104	Liquor	Bristol	767 Pine Street	CT
58	19110	Liquor	Mystic	25 Broadway Ave.	CT
59	19119	Liquor	Newington	2400 Berlin Tpk.	CT
60	19106	Liquor	Newington	40 Fenn Road	CT
61	19246	Liquor	Riverside	1237 East Putnam Ave.	CT
62	19121	Liquor	Waterford	117 Boston Post Rd	CT
63	72593	Pathmark	New Castle	148 Sunset Boulevard	DE
64	70586	Superfresh	New Castle	2044 New Castle Avenue	DE
65	70888	Superfresh	Ocean City	12741 Ocean Gateway	MD
66	70417	A&P	Basking Ridge	407 King George Road	NJ
67	59506	Food Basics	Belleville	414 Main St.	NJ
68	70936	A&P	Belvidere	525 East Route 46	NJ
69	70752	A&P	Bloomfield	19 Bellville Ave.	NJ
70	70610	A&P	Boonton	550 Myrtle Ave	NJ
71	70802	A&P	Bricktown	64 Brick Plaza	NJ
72	70949	A&P	Clinton	49 Old Route 22	NJ
73	70515	A&P	Edison	1185 Amboy Ave	NJ
74	72288	Pathmark	Elizabeth	211 Elmora Avenue	NJ
75	70618	A&P	Fairview	425 Anderson Avenue	NJ
76	70895	A&P	Fanwood	105 South Ave	NJ
77	72450	Pathmark	Garwood	10 South Avenue	NJ
78	72153	Pathmark	Hackensack	405 State Route 17 South	NJ
79	37602	Liquor	Hackettstown	57 Route 46	NJ
80	37905	Liquor	Haskell	1069 Ringwood Ave	NJ
81	72573	Pathmark	Hazlet	3020 Route 35 & Bethany Road	NJ
82	72527	Pathmark	Hopelawn	95-101 New Brunswick Ave	NJ
83	72224	Pathmark	Irvington	474-79 Lyons Avenue	NJ
84	72114	Pathmark	Jersey City	420 Grand Street	NJ
85	72261	Pathmark	Landing	175 Lakeside Boulevard & Center	NJ
86	37993	Liquor	Ledgewood	1103 Howard Blvd	NJ
87	70956	A&P	Marlboro	460 County Line Road Route 520	NJ
88	37872	Liquor	Metuchen	45 Pearl Street	NJ
89	72436	Pathmark	Middlesex	242 Lincoln Boulevard	NJ

90	70924	A&P	Navesink	1002 Rte 36	NJ
91	59512	Food Basics	North Bergen	1425 Kennedy Blvd.	NJ
92	70887	A&P	North Brunswick	510 Milltown Road	NJ
93	70441	A&P	Old Tappan	216 Old Tappan Rd	NJ
94	37995	Liquor	Palisade Park	534 Bergen Blvd.	NJ
95	72282	Pathmark	Parsippany	1157 Route 46 East	NJ
96	59501	Food Basics	Passaic	514 Van Houten Ave.	NJ
97	70638	A&P	Pompton Lakes	47 Wanaque Avenue	NJ
98	37866	Liquor	Pt Pleasant	1205 Richmond Ave	NJ
99	72299	Pathmark	Ramsey	10 Triangle Plaza - Lake Road Ext.	NJ
100	70688	A&P	Randolph	148 Center Grove Road	NJ
101	37814	Liquor	Summit	23 Summit Ave	NJ
102	70807	A&P	Washington	459 Route 31 South	NJ
103	70439	A&P	Washington Township	315 Pascack Rd	NJ
104	70668	A&P	Wayne	560 Valley Road	NJ
105	70685	A&P	West Milford	1938 Union Valley Road	NJ
106	37661	Liquor	Westwood	30 Irvington Ave	NJ
107	72580	Pathmark	Woodbridge	1600 St Georges Avenue	NJ
108	70701	A&P	Woodland Park	1730 Route 46 West	NJ
109	72286	Pathmark	Woodport	757 Rt. 15	NJ
110	72602	Pathmark	Bayshore	2060 Sunrise Highway	NY
111	70203	Waldbaums	Commack	84 Jericho Tpke	NY
112	72664	Pathmark	Dix Hills	683 Old Country Road	NY
113	70434	Waldbaums	East Meadow	1530 Front Street	NY
114	70277	Waldbaums	East Setauket	4054 Nesconset Highway	NY
115	70223	Waldbaums	Garden City	2475 Jericho Turnpike	NY
116	70217	Waldbaums	Greenlawn	777 Pulaski Road	NY
117	70769	A&P	Hastings	87 Main Street	NY
118	70214	Waldbaums	Hauppauge	1236 Veterans Highway	NY
119	72641	Pathmark	Holbrook	5801 Sunrise Highway	NY
120	72639	Pathmark	Islip	155 Islip Avenue	NY
121	70289	Waldbaums	Jericho	336 North Broadway	NY
122	70003	A&P	Lagrange	1642 Route 82	NY
123	70251	Waldbaums	Lindenhurst	50 E. Hoffman	NY
124	70151	A&P	Mamaroneck	805 Mamaroneck Ave	NY
125	70256	Waldbaums	Massapequa	5508 Sunrise Hwy	NY
126	72292	Pathmark	Nanuet	195 Rockland Center East Rt 59	NY
127	72615	Pathmark	North Babylon	1251 Deer Park Avenue	NY
128	70288	Waldbaums	Oakdale	4560 Sunrise Hwy	NY
129	70126	A&P	Patterson	3101 Route 22	NY
130	70194	A&P	Peekskill	20 Welcher Ave	NY
131	72297	Pathmark	Port Chester	130 Midland Avenue	NY
132	72604	Pathmark	Port Jeff.Sta.	5145 Nesconset Highway	NY
133	70192	A&P	Scarsdale	668 Central Park Avenue	NY
134	72298	Pathmark	Scarsdale	2540 Central Park Avenue	NY
135	72171	Pathmark	Staten Island	2660 Hylan Avenue	NY
136	70601	Waldbaums	Stony Brook	2162 Nesconset Highway	NY
137	19918	Liquor	Unclassified	1175 Third Ave Suite A	NY

138	70794	A&P	Valley Cottage	14 Lake Ridge Plaza	NY
139	72644	Pathmark	West Babylon	531 Montauk Highway	NY
140	72293	Pathmark	Yonkers	1757 Central Park Avenue	NY
141	72528	Pathmark	Cheltenham	1000 Easton Road	PA
142	72529	Pathmark	Fairless Hills	500 Lincoln Highway	PA
143	70718	Superfresh	New Hope	323 West Bridge Street	PA
144	59530	Food Basics	Philadelphia	15501 Bustleton Ave.	PA
145	70982	Superfresh	Philadelphia	#N/A	PA
146	59510	Food Basics	Philadelphia	8920 Frankford Avenue	PA
147	72556	Pathmark	Philadelphia	4160 Monument Road	PA
148	72553	Pathmark	Philadelphia	8700 Frankford Avenue	PA
149	72532	Pathmark	Philadelphia	3021 Grays Ferry Avenue	PA
150	72557	Pathmark	Philadelphia	2900 N. Broad St. & Glenwood Ave.	PA
151	72568	Pathmark	Upper Darby	421 S. 69Th Street	PA
152	59503	Food Basics	Brooklyn	2185 Coyle Street	NY
153	72610	Pathmark	New York	410 West 207th Street	NY

**Exhibit A**

Sale Timeline

**TIMELINE FOR GLOBAL BIDDING PROCEDURES**

<b>August 13, 2015</b>	Debtors' Deadline to File and Serve Cure Notice for Transferred Contracts Included in Stalking Horse Bids
<b>August 20, 2015</b>	Debtors' Deadline to Provide Adequate Assurance Information to Counterparties of Transferred Contracts Included in Stalking Horse Bids
<b>August 28, 2015</b>	Global Non-Binding Indication of Interest Date
<b>September 11, 2015, at 5:00 p.m.</b>	Global Binding Bid Deadline
<b>September 11, 2015, at 5:00 p.m.</b>	Deadline to Object to Sale of Stores Included in Stalking Horse Bids Deadline to Object to Assumption and Assignment of Transferred Contracts to Stalking Horse Bidders, Including Proposed Cure Amounts
<b>September 21, 2015, at 5:00 p.m.</b>	Deadline for Debtors to Designate and Publish Qualified Bidders; Select Baseline Bids; and Publish Stores to Be Included in the Auction
<b>September 21, 2015</b>	Deadline for Debtors to File and Serve Cure Notice for Additional Contracts to Be Included in the Auction
<b>September 21, 2015, at 10:00 a.m.</b>	Sale Hearing if no Other Qualified Bids Received for Stalking Horse Store Package
<b>September 24 and 25, 2015</b>	Auction <u>Location:</u> To Be Announced
<b>September 26, 2015</b>	Deadline for Debtors to File and Serve Notice of Successful Bidders
<b>October 2, 2015, at 4:00 p.m.</b>	Deadline to Object to Sale of any Additional Stores / Assumption and Assignment of any Additional Contracts Deadline to Object to Assumption and Assignment of Transferred Contracts to Qualified Bidders Other than the Stalking Horse Bidders, Including Proposed Cure Amounts
<b>October 6, 2015, at 10:00 a.m.</b>	Debtors' Reply Deadline
<b>October 7, 2015, at 10:00 a.m.</b>	Sale Hearing if Auction is Conducted

**Exhibit B**

Prerequisites for a Qualified Bid under the Global Bidding Procedures

## **Prerequisites for a Qualified Bid under the Global Bidding Procedures**

The Debtors will determine whether a bid constitutes a “Qualified Bid” in accordance with the Global Bidding Procedures. Generally, the prerequisites for a “Qualified Bid” under the Global Bidding Procedures can be summarized as set forth herein.<sup>1</sup>

### **Prerequisites for All Parties**

A bid must take the form of a signed document received by **September 11, 2015 at 5:00 p.m. (Eastern Time)** that identifies the purchaser by its legal name (including any equity holders or other financial backers, if the bidder is an entity formed for the purpose of submitting bids or consummating a sale transaction), and any other party that will be participating in connection with the bid or the sale transaction, and includes, at a minimum, the following information:

- A. **Proposed Stores and Valuation.** A list of the stores, additional assets (such as inventory or prescriptions) and liabilities that the bidder seeks to acquire. The bid must identify, on a per-store basis, the valuations, in U.S. dollars, that the bidder associates with each of those stores, and a description of any significant assumptions on which such valuations are based. To the extent the bid proposes to purchase additional assets associated with the stores, such as inventory or prescriptions, the bid shall clearly identify the value, in U.S. dollars, associated with such assets.
- B. **Marked Agreement.** Each bid must include a copy of an asset purchase agreement reflecting the terms and conditions of its bid, which agreement must be marked to show any proposed amendments and modifications to the form of purchase agreement posted by the Debtors in the electronic data room (the “**Marked Agreement**”). Bids for going concern sales shall be marked against the going concern form. Bids for non-going concern sales shall be marked against the non-going concern form.
- C. **Unconditional Offer.** A statement that the bid is formal, binding and unconditional (except for those conditions expressly set forth in the applicable Marked Agreement) and is not subject to any due diligence or financing contingency and is irrevocable until the first business day following the closing of the proposed sale transaction, except as otherwise permitted by the Global Bidding Procedures.

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Global Bidding Procedures.



D. Form of Consideration. Unless the bid includes a credit bid, a statement confirming that the bid is based on an all-cash offer, including, in the case of a bid for a Stalking Horse Store Package, sufficient cash consideration to pay any applicable Termination Payment (as such term is defined in the applicable Stalking Horse Agreement).

E. Purchase Price; Minimum Bid.

1. Stalking Horse Store Package. Each bid submitted in connection with a Stalking Horse Store Package must (i) be a bid for all of the stores contained in the applicable Stalking Horse Store Package, (ii) exceed the applicable cash purchase price by the Minimum Overbid Amount and the applicable Termination Payment, and either (iii) propose an alternative transaction that provides substantially similar or better terms than the applicable Stalking Horse Bid, or (iv) propose to purchase the Stalking Horse Store Package for cash, and assume the corresponding liabilities on similar or better terms as the applicable Stalking Horse Bid.
2. Bids for Individual Stores or Combination of Stores. Bidders may also submit bids for individual stores or combinations of stores, whether or not such stores are included in a Stalking Horse Store Package (each a “Partial Bid”). Generally, for a Partial Bid to be considered a Qualified Bid, the Debtors must conclude that such Partial Bid, when taken together with other Partial Bids, satisfies the criteria for being a Qualified Bid.

If a bid includes one or more stores currently included in a Stalking Horse Store Package (other than a Separable Store), but is not for all of the Stores included in such Stalking Horse Store Package (not taking into account the Separable Store), such Bid will not be considered a “Qualified Bid” unless the Debtors receive one or more Bids for the remaining Stores in such Stalking Horse Store Package (other than the Separable Store) that, in combination with one or more other Bids, constitute a higher or better bid than the applicable Stalking Horse Bid.

F. Employee and Labor Terms. If the bid contemplates a going concern sale of stores, a statement of proposed terms for unionized and non-unionized employees, which shall include, alternatively: (i) a statement that the bidder will assume the applicable labor agreements without modification; or (ii) if the potential bidder will not assume the applicable labor agreements without modification, a statement that the bidder will enter into good faith negotiations with each of the affected unions to enter into modified labor agreements, including a term sheet, which shall be attached to the Marked Agreement, proposing post-closing work rules and conditions to be offered to unionized employees. Such statement shall also include an acknowledgment of the requirements of sections 1113 and 1114 of the Bankruptcy Code and an agreement to use good faith reasonable best efforts to cooperate with the Debtors in ensuring compliance with any applicable provisions

thereof in the event that mutually satisfactory modified labor agreements have not been entered into between the bidder and the affected unions prior to the closing of a sale contemplated by the Global Bidding Procedures.

- G. Pension Plans. Each bid must state whether or not the bidder intends to assume (i) sponsorship of all or any part of or (ii) any of the potential liabilities associated with The Great Atlantic & Pacific Tea Company Pension Plan, New York-New Jersey Amalgamated Pension Plan for A&P Employees, Delaware County Dairies, Inc. Hourly Employees Pension Plan, and Pathmark Stores, Inc. Pension Plan (collectively, the “Pension Plans”). If the bidder does not intend to assume sponsorship or liabilities of the Pension Plans in full, each bid must state whether the bidder intends to assume the assets and liabilities of the Pension Plan(s) relating to plan participants associated with the stores in the bid.
- H. Required Approvals. A statement or evidence (i) that the bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) of the bidder’s plan and ability to obtain all governmental and regulatory approvals to operate the business and stores included in its bid from and after closing the sale transaction and the proposed timing for the bidder to undertake the actions required to obtain such approvals.
- I. No Entitlement to Expense Reimbursement or Other Amounts. A statement that the bid does not entitle the bidder to any breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to the bidding.
- J. Adequate Assurance Information. Information supporting the bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the bidder’s financial wherewithal and willingness to perform under any contracts that are assumed and assigned to the bidders.

Additional Prerequisites. A Potential Bidder must also accompany its bid with: (A) a Deposit (as defined below); (B) the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the bidder; (C) written evidence of available cash, a commitment for financing (not subject to any conditions other than those expressly set forth in the applicable Marked Agreement) and such other evidence of ability to consummate the transaction contemplated by the applicable Marked Agreement, as acceptable in the Debtors’ business judgment, including a description of each investor and any additional party or parties investing in the transaction included in the applicable bid and such party’s financial position; (D) a copy of a board resolution or similar document demonstrating the authority of the bidder to make a binding

and irrevocable bid on the terms proposed and to consummate the transaction contemplated by the Marked Agreement; (E) a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements; (F) in the case of a bid for a Stalking Horse Package, if the value of the bid relative to the applicable Stalking Horse Agreement includes additional non-cash components (such as fewer contingencies), a detailed analysis of the value of any additional non-cash component of the bid and back-up documentation to support such value; and (G) if the bid includes an asset purchase agreement that is not executed, a signed statement that such bid is irrevocable until the first business day following the closing or closings of the applicable sale transaction.

Deposit Requirement. To qualify as a Qualified Bid, each bid must be accompanied by a good faith cash deposit in the amount of ten percent (10%) of the proposed purchase price (the "Deposit") for any store included in a Stalking Horse Package (or, for any store not included in a Stalking Horse Store Package, five percent (5%) of the proposed purchase price), to be deposited, prior to the Global Bid Deadline, with an escrow agent selected by the Debtors (the "Escrow Agent") pursuant to the escrow agreement to be provided by the Debtors to the Potential Bidders (the "Escrow Agreement")

### **Prerequisites for Certain Landlords**

If a bid for a store is submitted by the landlord under the real property lease for such store (a "Landlord Lease Bid"), such landlord need not satisfy the requirements set forth in subsections F, G, H, and J above; provided that such landlord must satisfy the requirements set forth in subsection F and G above if its Landlord Lease Bid contemplates a going concern purchase of the Store. For the avoidance of doubt, a Landlord Lease Bid will not be considered a "Qualified Bid" unless the requirements for a "Qualified Bid" set forth in subsection E.2 above are satisfied.

With respect to a Landlord Lease Bid, the landlord may deduct from its Deposit the amount of any undisputed monetary obligations that constitute the Cure Costs for the applicable real property lease.

**Exhibit C**

Form of Purchase Agreement for Going Concern Sales

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

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

**[•]**

**AND**

**[BUYER]**

**[•], 2015**

---

## Table of Contents

ARTICLE I	DEFINITIONS	1
Section 1.1	Definitions	1
Section 1.2	Interpretations	11
ARTICLE II	PURCHASE AND SALE	12
Section 2.1	Purchase and Sale of Assets	12
Section 2.2	Assumed Liabilities	12
Section 2.3	Consideration; Deposit; Escrow Amount	12
Section 2.4	Closing	13
Section 2.5	Closing Payments and Deliveries	13
Section 2.6	Inventory	14
Section 2.7	Allocation	15
Section 2.8	Proration	15
Section 2.9	Removal of Excluded Assets	16
ARTICLE III	SELLERS' REPRESENTATIONS AND WARRANTIES	16
Section 3.1	Organization of Sellers; Good Standing	17
Section 3.2	Authorization of Transaction	17
Section 3.3	Noncontravention; Government Filings	17
Section 3.4	Title to Assets	18
Section 3.5	Real Property	18
Section 3.6	Litigation; Decrees	18
Section 3.7	Labor Relations	18
Section 3.8	Brokers' Fees	18
Section 3.9	Taxes	18
Section 3.10	Employee Benefits	19
Section 3.11	Compliance with Laws; Permits	19
Section 3.12	Disclaimer of Other Representations and Warranties	20
ARTICLE IV	BUYER'S REPRESENTATIONS AND WARRANTIES	20
Section 4.1	Organization of Buyer; Good Standing	20
Section 4.2	Authorization of Transaction	20
Section 4.3	Noncontravention	21
Section 4.4	Litigation; Decrees	21
Section 4.5	Brokers' Fees	21
Section 4.6	Sufficient Funds; Adequate Assurances	21
Section 4.7	[HIPAA Information	21
ARTICLE V	PRE-CLOSING COVENANTS	22
Section 5.1	Efforts; Cooperation	22
Section 5.2	Conduct of the Business Pending the Closing	22
Section 5.3	Regulatory Approvals	23
Section 5.4	Bankruptcy Court Matters	24
Section 5.5	Notice of Developments	25
Section 5.6	Access; No Contact	25
Section 5.7	Bulk Transfer Laws	26
Section 5.8	Replacement Bonding Requirements	26
ARTICLE VI	OTHER COVENANTS	26
Section 6.1	Further Assurances	26
Section 6.2	Access; Enforcement; Record Retention	27

Section 6.3	Treatment of Affected Labor Agreements	27
Section 6.4	Covered Employees	27
Section 6.5	Certain Tax Matters	31
Section 6.6	Insurance Matters	32
Section 6.7	Acknowledgements	32
Section 6.8	Press Releases and Public Announcements	33
Section 6.9	Seller Marks	33
ARTICLE VII	CONDITIONS TO OBLIGATION TO CLOSE	33
Section 7.1	Conditions to Buyer's Obligations	33
Section 7.2	Conditions to Sellers' Obligations	34
Section 7.3	No Frustration of Closing Conditions	34
ARTICLE VIII	TERMINATION	34
Section 8.1	Termination of Agreement	34
Section 8.2	Effect of Termination	35
Section 8.3	Lease Indemnity	36
ARTICLE IX	MISCELLANEOUS	36
Section 9.1	Survival	36
Section 9.2	Expenses	36
Section 9.3	Entire Agreement	36
Section 9.4	Incorporation of Exhibits and Disclosure Schedule	36
Section 9.5	Amendments and Waivers	36
Section 9.6	Succession and Assignment	37
Section 9.7	Notices	37
Section 9.8	Governing Law	38
Section 9.9	Submission to Jurisdiction; Service of Process	38
Section 9.10	Waiver of Jury Trial	38
Section 9.11	Specific Performance	38
Section 9.12	Severability	38
Section 9.13	No Third Party Beneficiaries	39
Section 9.14	Non-Recourse	39
Section 9.15	Mutual Drafting	39
Section 9.16	Disclosure Schedule	39
Section 9.17	Headings; Table of Contents	40
Section 9.18	Counterparts; Facsimile and Electronic Signatures	40
Section 9.19	Limitations Under Applicable Law	40
Exhibit A – Bidding Procedures Order		
Exhibit B – Escrow Agreement		
Exhibit C – Form of Bill of Sale		
Exhibit D – Form of Assignment and Assumption Agreement		
Exhibit E – Form of Sale Order		
Exhibit F – Proposal		

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this “Agreement”) is entered into as of [●], 2015 by and among [The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation (“A&P”), [●], a [●] corporation and a wholly-owned Subsidiary of A&P (together with A&P, “Sellers”), and [Buyer], a [●] (“Buyer”).<sup>3</sup> 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 [●] supermarkets at the locations set forth in Section 3.5 of the Disclosure Schedule (as defined below) [under the name [“●”]] (each a “Store” and, collectively, the “Stores”); and

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

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

### **ARTICLE I DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement:

“A&P” has the meaning set forth in the preamble.

“Acquired Assets” means all of Sellers’ right, title, and interest in and to all of the following assets of Sellers used or held for use exclusively in the operation of the Stores and (to the extent applicable) located at the Stores on the Closing Date:

- (a) the Inventory (other than Excluded Inventory);
- (b) the Furnishings and Equipment owned by Sellers (other than Excluded Furnishings and Equipment);
- (c) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, the Leases, other than those Leases that expire or that

---

<sup>3</sup> NTD: If Buyer is a shell company or otherwise does not have sufficient assets to stand behind the obligations hereunder including adequate assurance of future performance under Transferred Contracts (as determined by A&P), A&P will require a guarantee from a creditworthy entity of all of Buyer’s obligations hereunder.



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

(d) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, all rights under those Contracts set forth on Schedule 1.1(a), other than those Contracts that expire or that are terminated prior to the Closing (such Contracts, together with the Leases (the "Transferred Contracts");

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

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

(g) [all assets related to the in-store pharmacies, including all non-expired Pharmaceutical Inventory, scripts, prescription lists, Furnishings and Equipment and Permits of certain Stores to the extent transferable under applicable Law as set forth on Schedule 1.1(b); provided, however, if Buyer determines in its sole discretion to purchase documents subject to applicable Law regarding privacy related to the Business, all costs of a privacy ombudsman related to the Stores, to the extent that the Bankruptcy Court requires a privacy ombudsman to be appointed with respect to the Stores, shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers;]<sup>4</sup> and

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

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

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

"Affected Unions" means the unions identified on Schedule [●].

"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.

---

<sup>4</sup> NTD: Applicable only to parties acquiring pharmacy products/scripts.

“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 all liabilities of each of the Sellers incurred exclusively in the operation of the Stores as of the Closing, including:

- (a) all Liabilities under the Transferred Contracts (including all Cure Costs);
- (b) all amounts allocated to Buyer under Section 2.8 and Section 6.5;
- (c) all Liabilities relating to or arising out of the ownership or operation of the Stores or any Acquired Asset from and after the Closing Date; and
- (d) (i) to the extent Buyer agrees to assume an Affected Labor Agreement, all Liabilities under such Affected Labor Agreement(s) to be assumed by Buyer in accordance with the provisions of Section 6.4, or (ii) to the extent that any Affected Union enters into a Modified Labor Agreement with Buyer, all Liabilities arising under such Modified Labor Agreement;

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

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

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

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

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

“Bidding Procedures Order” means 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, each dated [●], 2015 (ECF No. [●]).

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

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

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

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

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

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

“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.

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

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

“Confidentiality Agreement” means the confidentiality agreement, dated as of [●], 2015, by and between A&P and [●].

“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, other than the Leases.

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

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

“Cure Costs” means all amounts payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Buyer of the Transferred Contracts.

“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, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.

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

“Employee Benefit Plan” has the meaning set forth in Section 3.10(a).

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

“Escrow Agent” means Wells Fargo Bank, National Association.

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

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

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

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

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

(c) all Cash Equivalents and accounts receivable;

(d) all Permits;

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

- (f) all of Sellers' rights under this Agreement or any Related Agreement;
- (g) all of Sellers' rights under any Contracts primarily related to any Excluded Asset;
- (h) any and all automobiles, trucks, tractors, and trailers;
- (i) except as otherwise provided in this Agreement, any other payment, reimbursement, rebate or refund arising from the operation of the Stores prior to the Closing;
- (j) all Intellectual Property owned, used, or held for use by Sellers, including, for the avoidance of doubt, the name [“●”] 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”);
- (k) all leased equipment located at or used in the Stores and all in-store processors, direct access storage devices, and electronic funds transfer devices;
- (l) the Furnishings and Equipment described on Schedule 1.1(e) (the “Excluded Furnishings and Equipment”);
- (m) all Contracts and Leases other than the Transferred Contracts;
- (n) all Excluded Inventory;
- (o) all customer data and information derived from branded loyalty promotion or co-branded credit card programs and other similar information related to customer purchases at the Stores;
- (p) all other assets bearing any of the Seller Marks; and
- (q) those items set forth on Schedule 1.1(f).

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

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

“Excluded Liabilities” means the following Liabilities of Sellers:

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

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

(c) all accounts payable; and

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

“Furnishings and Equipment” means all trade fixtures, store models, shelving, and refrigeration equipment owned by Sellers and located at the Stores, including those items listed on Schedule 1.1(g).

“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.

[“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act.]<sup>5</sup>

“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) all trademarks, service marks, trade dress, logos, trade names, and Internet domain names, together with all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) all copyrights, together with all registrations and applications for registration therefor and renewals in connection therewith; (d) all trade secrets, know-how, technology, improvements, and inventions; and (e) all computer software (including data and databases).

“Inventory” means all food, beverages (including, to the extent transferable to Buyer under applicable Law, alcohol [and Pharmaceutical Inventory]), and other merchandise and products (including general merchandise items described in Schedule 1.1(h) but excluding greeting cards) offered for sale to customers at the Stores.

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

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

---

<sup>5</sup> NTD: Applicable only to parties acquiring pharmacy products/scripts.

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

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

“IRS” means the Internal Revenue Service.

“Knowledge” of Sellers (and other words of similar import) means the actual knowledge of persons holding a position of senior vice president or senior thereto at Sellers. “Knowledge” of Buyer (and other words of similar import) means the actual knowledge of [●].

“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 of use and occupancy of any Store.

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

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

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

“Material Adverse Effect” means any effect or change that has a material adverse effect on the condition of the Acquired Assets, taken as a whole, other than any effects or changes arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Stores operate; (b) any condition or occurrence affecting retail grocery generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules; (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 filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (j) the sale of any other assets or stores to any third parties by any Seller or any of its Affiliates; (k) any effects or changes arising from or related to the breach of the Agreement by Buyer; (l) the failure of Sellers to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby; (m) any strike or labor dispute, (n) any items set forth in the Disclosure Schedule; (o) any effect resulting from the filing of the Bankruptcy Cases; or (p) any matter of which Buyer is aware on the date hereof.

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

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

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

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

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

“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; (h) any other Liens that Buyer has expressly stated are acceptable to Buyer in a writing delivered to Sellers; and (i) other than any of the Liens set forth in the foregoing clauses (a) through (g) and other than any Lien that is required to be removed or cured by the applicable tenant under the applicable Lease or was created by such tenant, any Liens on the fee property underlying any Lease that do not or would not reasonably be expected to adversely affect the current occupancy or use of such real property in any material respect or impose any material adverse obligations on Buyer following the applicable Closing.

“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.



[“Pharmaceutical Inventory” means prescription pharmaceuticals and prescription products.]<sup>6</sup>

“Pre-Closing Period” has the meaning set forth in Section 6.5(c).

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

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

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

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

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

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

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

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

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

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

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

---

<sup>6</sup> NTD: Applicable only to parties acquiring pharmacy products/scripts.

“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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Buyer acknowledges and agrees that the specification of any dollar amount in the representations, warranties, or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and Buyer shall not use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material.

(k) References in this Agreement to materials or information “furnished to Buyer” and other phrases of similar import include all materials or information 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 in accordance with the terms thereof, including paying or causing to be paid, at or prior to the Closing, all Cure Costs. For the avoidance of doubt, Sellers shall not be liable for, and shall have no obligation to pay or cause to be paid, any Cure Costs.

Section 2.3 Consideration; Deposit; Escrow Amount.

(a) The consideration for the Acquired Assets shall be (i) an aggregate Dollar amount equal to the sum of (A) \$[●] (the “Cash Purchase Price”), *plus* (B) the amount of the Inventory Purchase Price, *plus* (C) the amount of the Prepaid Expenses, *plus* (D) the

Seller Proration Amount, if any, *minus* (E) the Buyer Proration Amount, if any (such calculation, the “Purchase Price”) and (ii) 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 \$[●]<sup>7</sup> 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 any Seller 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 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

---

<sup>7</sup> NTD: Amount to be equal to 10% of the Cash Purchase Price.

Assignment and Assumption Agreement substantially in the form of Exhibit D (the “Assignment and Assumption Agreement”); and (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.

(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 Inventory.

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

(b) Buyer shall make application to the applicable authorities to 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.

(c) The complete inventory prepared by the Inventory Taker shall be prepared in accordance with the usual and customary practices of the industry and shall show the total cost of the Inventory for each Store determined in the manner provided above. In the event that the Parties do not agree on the value of the Inventory for any Store because the Parties disagree as to whether certain items should be counted as Excluded Inventory

or as to Sellers' cost of Inventory, the opinion of the Inventory Taker shall be final and binding.

**Section 2.7 Allocation.** Buyer and Sellers agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities, and all other relevant items among the Acquired Assets in accordance with section 1060 of the IRC and the Treasury Regulations thereunder (the "Allocation Principles"). No later than sixty (60) days after the Closing Date, 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 Leases transferred at the Closing (the "Prorated Charges") shall be apportioned and prorated between Sellers and Buyer as of the Closing Date with (i) Buyer bearing the expense of Buyer's proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under the applicable Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date and paying such amount to Sellers to the extent payment for such Prorated Charges has been made by Sellers prior to the Closing, and (ii) Sellers bearing the remaining portion of such Prorated Charges (and paying the amounts thereof to Buyer to the extent payment for such Prorated Charges has not been previously made by Sellers). The net amount of all Prorated Charges owed to Buyer and Sellers under this shall be referred to as the "Buyer Proration Amount" if owed to Buyer or the "Seller Proration Amount" if owed to Sellers. Except as set forth in this Section 2.8 and in Section 6.5, no amounts paid or payable under or in respect of any Acquired Asset or group of Acquired Assets shall be apportioned and prorated between Sellers and Buyer. Notwithstanding the foregoing there shall be no apportionment nor reduction in Purchase Price for percentage rents, if any.

(b) Real estate taxes and assessments and water and sewer charges shall be adjusted in the manner set forth in Section 6.5.

(c) 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.

(d) If on the Closing Date any subtenant or licensee 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, at no cost to Sellers, Buyer shall use commercially reasonable efforts to collect rent owed to Seller by any tenant allocable to the period up to and including 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.

(f) Subtenant security deposits shall not be assigned and an amount equal to such security deposits shall be a credit to the Buyer.

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

Section 2.9 Removal of Excluded Assets. As promptly as practicable following the Closing Date (and in any event within ten (10) Business Days), Buyer shall allow Sellers to remove at Sellers' sole cost and expense all Excluded Assets that are located at the Stores and, if requested by Sellers, Buyer shall arrange transportation of such Excluded Assets to a location designated by Sellers at Sellers' sole cost and expense.

### **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 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 Sale Order and any other necessary order to close the sale of the Acquired Assets, the valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors’ rights and general principles of equity.

Section 3.3 Noncontravention; Government Filings. 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 any Seller, (b) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, materially violate any law or Decree to which any 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 material breach of, constitute a material 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 any 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 Sale Order and any other necessary order to close the sale of the Acquired Assets, no 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 any Seller’s ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.



Section 3.4 Title to 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, Sellers will convey such title to or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens).

Section 3.5 Real Property. Section 3.5 of the Disclosure Schedule sets forth the location of each Store, each of which is leased to a Seller by a third party, and a list of all Store lease agreements and related amendments. Sellers have made available to Buyer a true and complete copy of each Lease to the extent in their possession. With respect to each Lease, (a) assuming due authorization and delivery by the other party thereto, such Lease constitutes the valid and legally binding obligation of the Seller party thereto and, to Sellers' Knowledge, the counterparty thereto, enforceable against such Seller and, to Sellers' Knowledge, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity, and (b) neither such Seller nor, to Sellers' Knowledge, the counterparty thereto is in material breach or material default under such Lease, except (i) for those defaults that will be cured in accordance with the Sale Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Leases) or (ii) to the extent such breach or default would not reasonably be expected to have a Material Adverse Effect.

Section 3.6 Litigation; Decrees. Except as set forth in Section 3.6 of the Disclosure Schedule and other than the Bankruptcy Case, there is no Litigation pending or, to the Knowledge of Sellers, threatened, that (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Other than the Bankruptcy Case, no Seller is subject to any outstanding Decree that would (a) reasonably be expected to have a Material Adverse Effect or (b) prevent or materially delay such Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.7 Labor Relations. Except as set forth in Section 3.7 of the Disclosure Schedule, no Seller is a party to or bound by any collective bargaining agreement covering the Covered Employees.

Section 3.8 Brokers' Fees. Other than the fees and expenses payable to Evercore Group L.L.C. in connection with the transactions contemplated hereby, which shall be borne by Sellers, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

Section 3.9 Taxes.

(a) In each case with respect to the Acquired Assets and the Business and except for matters that would not be reasonably expected to result in a Material Adverse Effect, (i) Sellers have timely filed all Tax Returns required to be filed with the

appropriate Tax Authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Sellers); and (ii) all Taxes shown as due on such Tax Returns have been paid (except as prohibited by the Bankruptcy Code).

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

#### Section 3.10 Employee Benefits.

(a) Section 3.10(a) of the Disclosure Schedule lists all “employee benefit plans,” as defined in section 3(3) of ERISA, including any multiemployer plans as defined in section 3(37) of ERISA, and all other material employee benefit plans or arrangements (other than governmental plans and statutorily required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by Sellers and their Subsidiaries with respect to Covered Employees (the “Employee Benefit Plans”).

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

(c) Each of the Employee Benefit Plans sponsored by Sellers and its Subsidiaries that is intended to qualify under section 401 of the IRC has been determined by the IRS to be so qualified, and, except as disclosed on Section 3.10(c) of the Disclosure Schedule, to the Knowledge of Sellers, nothing has occurred with respect to the operation of any such plan which could reasonably be expected to result in the revocation of such favorable determination.

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

#### Section 3.11 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 3.12 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 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, SELLERS MAKE NO OTHER (AND HEREBY DISCLAIM 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 [●] duly organized, validly existing, and in good standing under the laws of the State of [●] 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. Other than the applicable requirements of the HSR Act, Buyer is not required to give any notice to, make any filing with, or obtain any 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 sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Transferred Contracts and the related Assumed Liabilities.

Section 4.7 [HIPAA Information]. Buyer is a "Covered Entity" as defined by HIPAA. The transactions contemplated by this Agreement will not violate any applicable data privacy or security requirements under HIPAA or any other privacy or security requirements imposed by federal or state Law on the healthcare data held, collected, used or disclosed by Sellers, including state healthcare data breach notification Laws and related state consumer protection Laws.]<sup>8</sup>

---

<sup>8</sup> NTD: Applicable only to parties acquiring pharmacy products/scripts.

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

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

Section 5.1 Efforts; Cooperation.

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

(b) Without limiting the generality of Section 5.1(a), neither Party shall take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

Section 5.2 Conduct of the Business Pending the Closing.

(a) Prior to the Closing, except (i) as set forth on Section 5.2(a) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as otherwise expressly contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller shall (A) conduct the Business only in the Ordinary Course of Business 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), no Seller shall, solely as it relates to the Business:

(i) other than in the Ordinary Course of Business or as required by any applicable collective bargaining agreement or Law or pursuant to any Contract or policy in effect as of the date of this Agreement, (A) materially increase the annual level of compensation of any Covered Employee or (B) materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan;

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

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

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

### Section 5.3 Regulatory Approvals.

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

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

(c) Sellers shall have the right not to sell any and all Stores to Buyer if, and only if, any Governmental Authority with jurisdiction over the enforcement of an Antitrust Law, including the Federal Trade Commission, including its staff, or any state attorney general or its staff: (i) indicates orally or in writing that it has concerns that the acquisition of any such Store(s) may violate any Antitrust Law; or (ii) threatens or

initiates litigation challenging the acquisition of any such Store(s) as violative of any Antitrust Law. In the event that, subject to the limitations set forth herein, Sellers choose to exercise their right not to sell any Store(s) to Buyer, Buyer shall have no further right to acquire such Store(s), and the Purchase Price shall be reduced by the amount of the Purchase Price allocated to such Store(s) as set forth in Section 5.3(c) of the Disclosure Schedule (“Allocated Amount”).

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

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

#### Section 5.4 Bankruptcy Court Matters.

(a) 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).<sup>9</sup>

---

<sup>9</sup> NTD: In the Debtors’ discretion, a sale of Acquired Assets may be consummated pursuant to the Order Approving Global Sale and Lease Rationalization Procedures, dated [●], 2015 (ECF No. [●]).

(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 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; No Contact. Upon the reasonable request of Buyer, and to the extent not otherwise prohibited by applicable Law, Sellers will permit Buyer and its



Representatives to have, upon reasonable advance written notice, reasonable access to all premises, properties, books and records and Transferred Contracts included in the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of any Seller; provided, however, that, for avoidance of doubt, [(a)] the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto [and (b) any access to assets related to the in-store pharmacies, including scripts and prescription lists, shall be provided in accordance with HIPAA and any other applicable federal or state privacy or disclosure Laws as determined by each Seller in its sole discretion.]<sup>10</sup> Prior to the Closing, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, suppliers, landlords, or licensors of any Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of each Seller.

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

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

## **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.

---

<sup>10</sup> NTD: Applicable only to parties acquiring pharmacy products/scripts.

Section 6.2 Access; Enforcement; Record Retention. From and after the Closing, upon request by any 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) monitoring or enforcing rights or obligations of any Seller under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable law, or (iii) providing such access or information would be reasonably expected to be disruptive to its normal business operations. Buyer agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for six (6) years following the Closing.

Section 6.3 Treatment of Affected Labor Agreements. With respect to Covered Employees under an Affected Labor Agreement, Buyer shall either (a) agree to assume the Affected Labor Agreement without modification and thereafter comply with the obligations set forth in Section 6.4 with respect to Covered Employees under such assumed Affected Labor Agreement or (b) engage in good faith negotiations, in coordination with Sellers, to reach mutually satisfactory modifications to the relevant Affected Labor Agreement with each of the Affected Unions and to enter into a Modified Labor Agreement with each of the Affected Unions. 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 [●] 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 or their respective Subsidiaries (at the same location, at the same base wage or hourly rate and on the same terms and conditions of employment as in effect immediately prior to the Closing). With respect to union-represented Covered Employees, such offers shall also be consistent with the terms and conditions required by the governing Affected Labor Agreements 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.

Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, at any time following the Closing Date.

(b) Compensation and Benefits.

(i) 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 that are in the aggregate (including base salary and incentive bonus opportunities) substantially comparable to the compensation and employee benefits provided by Sellers and their Subsidiaries to such Covered Employees immediately prior to the Closing. 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 governing Affected Labor Agreements, or the Modified Labor Agreements, as applicable, as they may be modified or further modified from time to time.

(ii) Buyer or its Affiliates shall provide each non-union Covered Employee with the severance benefits applicable to each such Covered Employee in accordance with the applicable underlying plans or agreements as in effect immediately prior to the Closing Date, and Buyer or its Affiliates shall provide to each Covered Employee who is union represented severance, as set forth in the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable.

(iii) As of the Closing Date, Buyer will honor the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, and shall indemnify and hold Sellers and their Affiliates harmless with respect to any Liability related to any such agreement.

(c) Service Credit. Each Covered Employee shall be given credit for all service with Sellers and their Subsidiaries, 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, benefit plans that provide life insurance, health care, dental care, accidental death and dismemberment insurance, disability and other group welfare benefits for Covered Employees. 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 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 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 shall provide each Covered Employee 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 and their Subsidiaries shall cease to provide welfare coverage to each Covered Employee and his or her covered dependents, and Buyer or its Affiliates shall commence providing such coverage to such individuals. Sellers shall be responsible in accordance with its applicable welfare plans (and the applicable welfare plans of their Subsidiaries) 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' or their Subsidiaries' Employee Benefit Plans that are welfare benefit plans prior to the Closing Date by the Covered Employees and their dependents. Buyer or its Affiliates shall be responsible in accordance with the applicable welfare plans of Buyer or its Affiliates for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) incurred, on or after the Closing Date (or the date of commencement of employment with Buyer, if later) by Covered Employees 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 or their Subsidiaries shall provide coverage required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) under Sellers’ or their Subsidiaries’ Employee Benefit Plans that are group health plans with respect to qualifying events occurring prior to the Closing Date; provided, however, that to the extent that a dependent of a Covered Employee is receiving continuation coverage under 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 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 Stores in the ninety (90) day period preceding the Closing Date, Buyer shall indemnify and hold harmless each Seller and its Affiliates and their respective Representatives with respect to any Liability arising under the WARN Act with respect to employees of the Stores arising in whole or part from the actions or omissions of Buyer from and 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 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. Buyer shall pay 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 any Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse such Seller for 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. The Parties hereto shall cooperate in making, in a timely manner, all Tax Returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with all applicable Laws in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such Transfer Taxes.

(b) Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Acquired Assets (including real estate Taxes (other than those subsumed in Section 2.8), personal property Taxes and similar Taxes) for the Tax period in which the Closing occurs (the "Proration Period") will be apportioned and prorated between Sellers and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Sellers shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be 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.

(c) Tax Refunds. In furtherance of Sellers' right to (c) retain those assets described in section (a)(C) of the definition of Excluded Assets, Sellers shall be entitled to receive from Buyer all refunds (or credits for overpayments) of Taxes, including any interest paid thereon, by a Governmental Authority, attributable to any tax period ending on or prior to the Closing Date (a "Pre-Closing Period") or the portion of any Proration Period ending on and including the Closing Date, net of any costs, fees, expenses or Taxes incurred in obtaining such refunds (or credits). Buyer and Sellers shall execute all

documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax refunds (or credits) contemplated by this Section 6.5(c). Buyer shall pay any such Tax refund (or the amount of any such credit) to the Sellers within five (5) calendar days after Buyer receives such Tax refund from a Governmental Authority or files a Tax Return claiming such credit.

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

Section 6.7 Acknowledgements.

(a) Buyer acknowledges that it has received from Sellers certain projections, forecasts, and prospective or third party information relating to Sellers, the Stores, the Acquired Assets, the Assumed Liabilities, and other related topics. Buyer acknowledges that (i) there are uncertainties inherent in attempting to make such projections and forecasts and in such information; (ii) Buyer is familiar with such uncertainties and is taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections, forecasts, and information so furnished; and (iii) neither Buyer nor any other Person shall have any claim against any Seller or any of its respective directors, officers, Affiliates, agents, or other Representatives with respect thereto. Accordingly, without limiting the generality of Section 3.12 or Section 9.1, Buyer acknowledges that neither Sellers nor any other Person makes any representations or warranties with respect to such projections, forecasts, or information.

(b) Buyer acknowledges that, except for the representations and warranties expressly set forth in Article III (which representations and warranties shall terminate and be of no further force or effect as of the Closing), and without limiting the generality of Section 3.12, neither Sellers nor any other Person makes any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding any Seller, the Stores, any Acquired Assets, any Assumed Liabilities or any other matter, and neither Sellers nor any other Person will be subject to any Liability to Buyer or any other Person resulting from such matters or the distribution to Buyer, or the use of, any such information. Buyer acknowledges that, should the Closing occur, Buyer will acquire the Acquired Assets and assume the Assumed Liabilities in an “as is” condition and on a “where is” basis, without any representation or warranty of any kind, express or implied (including any with respect to environmental, health or safety matters). Further, without limiting any representation, warranty, or covenant of any Seller expressly set forth herein, Buyer acknowledges that it has waived and hereby waives as a condition to the Closing any further due diligence reviews, inspections, or examinations with respect to any Seller, the Stores, the Acquired Assets, the Assumed Liabilities, or any other matter, including with respect to engineering, environmental, title, survey, financial, operational, regulatory, and legal compliance matters.

Section 6.8 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by applicable Law or a Decree of the Bankruptcy Court. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the 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;]<sup>11</sup>
- (e) no material Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement; and
- (f) each delivery contemplated by Section 2.5(b) to be delivered to Buyer shall have been delivered.

---

<sup>11</sup> NTD: Applicable only if HSR filing is required.



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;]<sup>12</sup>

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

(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.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts (or commercially reasonable efforts, with respect to those matters contemplated by Section 5.3, respectively, as applicable) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

## **ARTICLE VIII TERMINATION**

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

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

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

---

<sup>12</sup> NTD: Applicable only if HSR filing is required.

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

(ii) the Closing shall not have occurred prior to October 31, 2015 (the “Outside Date”); provided 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 any 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 any 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 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 \$[●] 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), 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.

## **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. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

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.

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

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

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

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Ray C. Schrock, P.C. and Gavin Westerman  
Facsimile: (212) 310-8007  
E-mail: [ray.schrock@weil.com](mailto:ray.schrock@weil.com); [gavin.westerman@weil.com](mailto:gavin.westerman@weil.com)

If to Buyer:             [Buyer]  
                                  [Street Address]  
                                  [City, State, Zip Code]  
                                  Attention: [Contact]  
                                  Facsimile: [Facsimile Number]  
                                  E-mail: [E-mail address]

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

[Firm]  
[Street Address]  
[City, State, Zip Code]  
Attention: [Contact]  
Facsimile: [Facsimile Number]

E-mail: [E-mail address]

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 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 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. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

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

Section 9.18 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

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

[Remainder of page intentionally left blank.]

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

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

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

[BUYER]

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



**Exhibit D**

Form of Purchase Agreement for Lease Sales

STORE NO: [XXXX]  
[STREET ADDRESS]  
[CITY, STATE]

**LEASE SALE AGREEMENT**

THIS LEASE SALE AGREEMENT (this "**Agreement**") is made as of [●], 2015 by and among [The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("**A&P**"), [●], a [●] corporation and a wholly-owned Subsidiary of A&P ("**Tenant**" together with A&P, "**Sellers**"), and [Buyer], a [●] ("**Buyer**", and collectively with Sellers, the "**Parties**").

WITNESSETH:

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

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

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

**[CHECK AND INITIAL WHERE INDICATED IF APPLICABLE]**

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

INITIAL [\_\_\_\_\_]

*[Note to bidder: Assets related to the in-store pharmacies, including all non-expired prescription pharmaceuticals, prescription products and scripts will be sold pursuant to a separate agreement and not as part of the transactions contemplated hereunder.]*

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

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

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

2. Lease Consideration. The consideration for the assignment of the Lease, together with the Subleases and FF&E to the extent set forth herein (the foregoing, as applicable, collectively, the "Acquired Assets"), shall be equal to [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) (the "Purchase Price") which shall be comprised of:

a. [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) as consideration for the Lease, plus

b. [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) as consideration for the FF&E, if any [**PLEASE WRITE "NONE" IF FF&E ARE NOT INCLUDED IN THIS SALE**], plus

c. [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) which shall be the Cure Amount (as more specifically described in Section 5 below).

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

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

a. Deposit. Concurrently herewith, Buyer shall deposit with [\_\_\_\_\_] ("Escrowee") by a bank wire transfer of immediately available federal funds to an account designated by Escrowee the sum of [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) (together with all interest thereon, the "Deposit"), which Deposit shall be held by Escrowee pursuant to the escrow agreement (the

“**Escrow Agreement**”) attached hereto as Exhibit D and hereby made a part hereof. Notwithstanding anything to the contrary set forth in this Agreement or in the Escrow Agreement, (i) all charges of Escrowee, if any, attendant to holding and/or disbursing the Deposit shall be paid by Buyer and (ii) all interest accrued in connection with the Deposit hereunder shall accrue for the sole benefit of the party to whom the Deposit is paid. The Parties agree that any payments made pursuant to this Section 3(a) in respect of accrued interest shall be deemed to be an adjustment to the Purchase Price for tax purposes to the extent permitted by applicable Law.

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

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

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

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

7. Assignment. As of the Closing Date, pursuant to sections 363 and 365 of the Bankruptcy Code and in accordance with the Discrete Procedures or a sale order entered

pursuant to the Global Bidding Procedures Order, Tenant shall grant, transfer and assign to Buyer, without representation or warranty of any kind, all of its right, title, and interest in and to the Lease, the Subleases, if any, and, to the extent provided herein, FF&E.

8. Assumption. On and after the Closing Date, Buyer shall assume all of the covenants, agreements, and obligations of Tenant as tenant under the Lease and as sublessor under the Subleases, if any. In further consideration of the above assignment, Buyer hereby agrees that it shall, as of the Closing Date: (a) perform all of the covenants, conditions and agreements of (i) the Lease (including making all payments) as if Buyer were the original tenant under the Lease and (ii) the Subleases, if any, as if Buyer were the original sublessor under each of such Subleases, and (b) that the Lease and each of the Subleases, if any, shall remain in full force and effect. As of the Closing Date, Sellers shall have no further liabilities or obligations with respect to the Lease, including, but not limited to, obligations related to rents, utilities, Taxes, insurance and common area maintenance, regardless of when due and payable, nor any of the Subleases, if any, and Sellers shall be released from all such obligations and Buyer shall fully indemnify and hold harmless Sellers with respect thereto. No Person, other than Buyer, shall be deemed a beneficiary of the provisions of this Section 8.

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

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

11. Closing Deliverables. On the Closing Date:

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

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

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

13. Closing Costs.

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

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

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

14. Conditions to Closing.

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

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

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

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

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

b. Conditions to 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:

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

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

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

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

(v) each payment contemplated by Sections 3, 4 and 12 to be made to Sellers or any landlord shall have been made, and each delivery contemplated by Section 11(b) to be delivered to Sellers shall have been delivered.

c. No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Subsection 13(a) or Subsection 13(b), as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliate's failure to use its reasonable best efforts (or commercially reasonable efforts, with respect to those matters contemplated by Section 16, as applicable) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach hereunder. The Parties agree that neither the failure to obtain a court order nor any action with respect to a Competing Bid (as defined below), to the extent permitted hereunder, shall be deemed to be a failure to use the efforts required to satisfy

the conditions to consummation of the transactions contemplated hereunder nor a breach hereunder.

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

16. Termination of Agreement.

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

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

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

(A) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Subsection 15(a)(ii)(A) shall not be available to Buyer if the failure to consummate the Assignment because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(B) the Closing shall not have occurred prior to the sixtieth (60) day from the date hereof ("**Outside Date**"); provided that if the Closing shall not have occurred on or before the Outside Date due to a material breach of this Agreement by Buyer or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 15(a)(ii)(B).

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

b. Sellers may terminate this Agreement at any time prior to Closing if Buyer fails to satisfy any requirement set forth under Section 13(b)(v), including delivery of the Deposit required hereunder. In such case, the Agreement shall be rendered null and void, Sellers shall be entitled to retain any and all consideration already paid to Sellers, including, but not limited to, the Deposit.

c. Effect of Termination. If any Party terminates this Agreement pursuant to Section 15(a) or (b), all rights and obligations of the Parties hereunder shall terminate upon such



termination and shall become null and void (except that Section 12, this Section 15, Sections 22 through 42, and Schedule I shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 15(b) and Section 16) to the other Party hereunder (except as may be provided in Section 4 and Subsection 15(b)); provided, however, that nothing in this Section 15 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, subject to Section 15(d) below, that other than in the case of fraud or willful misconduct, (a) the maximum Liability of Sellers under this Agreement shall not exceed the reasonably out of pocket expenses incurred by Buyer and (b) subject to subsection (d) below, the maximum liability of Buyer under this Agreement shall not exceed the Deposit.

d. Lease Indemnity. Notwithstanding anything contained herein to the contrary, if this Agreement is terminated pursuant to Section 15(a) or (b), 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. This indemnity shall survive such early termination.

17. Bankruptcy Court Matters.

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

b. Bankruptcy Court Filings.

(i) If the Buyer is the successful bidder (to the extent an auction is conducted), as soon as reasonably practicable following the execution of this Agreement, Sellers shall seek approval of the Agreement in accordance with the Global Bidding Procedures Order or the Discrete Procedures Order and file any necessary notice or pleadings required in connection therewith. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining Bankruptcy Court approval of the transactions contemplated by this Agreement pursuant to the Global Bidding Procedures Order or the Discrete Procedures Order, including a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for providing the Adequate Assurance Information to the Cure Notice Parties and filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and

demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the event the approval of the transactions contemplated by this Agreement shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

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

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

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

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

d. Notwithstanding any other provision in this Agreement, Buyer shall, and shall cause its Affiliates to, promptly take and diligently pursue any or all actions to the extent necessary to eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Authority or any other Person in opposition to the consummation of any transaction contemplated hereby, so as to enable the Parties to consummate the transactions contemplated by this Agreement as soon as reasonably practicable, but in any event not later than the Outside Date. In furtherance of this obligation, and without limitation, Buyer agrees to: (i) offer, negotiate, effect, and agree to, by consent decree, hold separate order or otherwise, any sale, divestiture, license, or other disposition of or restriction on, any of the Acquired Assets or

---

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

Buyer's assets; **provided, however**, that any such sale, divestiture, license, disposition, restriction on, holding separate, or other similar arrangement or action is conditioned on the occurrence of, and shall become effective only from and after, the Closing Date; and (ii) to take any and all actions to avoid and, if necessary, defend any threatened or initiated litigation under any Antitrust Law that would prevent or delay consummation of the transactions contemplated by this Agreement.

19. Delivery; "AS IS" Transaction.

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

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

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

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

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

22. Casualty and Condemnation.

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

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

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

23. Brokers' Fees. Other than the fees and expenses payable to Evercore Group L.L.C. or Hilco Real Estate Group LLC in connection with the transactions contemplated hereby, which shall be borne by Sellers, neither Party has entered into any contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby

for which Buyer could become liable or obligated to pay. Buyer shall indemnify and hold Sellers harmless from and against any and all claims, causes of action, losses, costs, expenses, damages or liabilities, including reasonable attorneys' fees and disbursements, which Buyer, or any of its affiliates may sustain, incur or be exposed to, by reason of any claim or claims by any broker, finder or other person or entity for fees, commissions or other compensation arising out of the transactions contemplated herein. Any broker retained by or providing services to Buyer in connection with the transaction evidenced by this Agreement shall be compensated solely by Buyer without contribution from Sellers.

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

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

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

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

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

29. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may

assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of each other Party.

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

If to Sellers:

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

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

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

If to Buyer:

[Buyer]  
[Street Address]  
[City, State, Zip Code]  
Attention: [Contact]  
E-mail: [E-mail address]

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

[Firm]  
[Street Address]  
[City, State, Zip Code]  
Attention: [Contact]  
E-mail: [E-mail address]

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**[SIGNATURE PAGE FOLLOWS]**

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

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

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

[TENANT]

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

[BUYER]

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

**LIST OF SCHEDULE AND EXHIBITS**

**SCHEDULE**

Schedule I

**DESCRIPTION**

Definitions

**EXHIBIT**

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit F

Exhibit G

Exhibit H

Exhibit I

**DESCRIPTION**

The Lease

Premises

Sublease(s)

Escrow Agreement

Wire Instructions

Form of Assignment and Assumption of Lease

Form of Quitclaim Bill of Sale

Form of Landlord Notice and Form of Subtenant Notice

Form of Assignment and Assumption of Subleases

## Schedule I

### Definitions

- (i) “Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.
- (ii) “Antitrust Law” means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act, and all other laws and orders that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, whether in the United States or elsewhere.
- (iii) “Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.
- (iv) “Code” means the Internal Revenue Code of 1986, as amended.
- (v) “Damages” means any actual losses, claims, liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out-of-pocket expenses (including reasonable fees and expenses of counsel)).
- (vi) “Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.
- (vii) “FIRPTA Certificate” means a certificate from Tenant in compliance with applicable Treasury Regulations setting forth Tenant’s (or, if applicable, its regarded owner’s) name, address and federal tax identification number and stating that Tenant (or, if applicable, its regarded owner) is not a “foreign person” within the meaning of section 1445 of the Code and otherwise complying with the Treasury Regulations issued pursuant to section 1445 of the Code.
- (viii) “Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.
- (ix) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.
- (x) “Law” means any constitution applicable to, and any law, statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.
- (xi) “Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise,

whether directly incurred, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

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

(xiii) “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.

(xiv) “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.

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

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

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

**EXHIBIT A**

**The Lease**

**EXHIBIT B**

**Leased Premises**

**EXHIBIT C**

**Sublease(s)**



**EXHIBIT D**

**Escrow Agreement**

(Attached hereto)

**EXHIBIT E**

**Wire Instructions**

**EXHIBIT F**

**Form of Assignment and Assumption of Lease**

**EXHIBIT G**

**Form of Quitclaim Bill of Sale**

**EXHIBIT H**

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

**Exhibit I**

**Form of Assignment and Assumption of Subleases**