

Hearing Date and Time: June 2, 2016 at 10:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: May 25, 2016 at 4:00 p.m. (Prevailing Eastern Time)

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Counsel for the Official Committee of Unsecured Creditors

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

-----X	
In re	:
	:
	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA	:
COMPANY, INC., et al.,	:
	:
Debtors.	:
	(Jointly Administered)
-----X	

**NOTICE OF JOINT MOTION OF DEBTORS AND OFFICIAL
COMMITTEE OF UNSECURED CREDITORS FOR APPROVAL OF
A GLOBAL SETTLEMENT PURSUANT TO BANKRUPTCY RULE 9019(A)
AND FURTHER AMENDING DEBTORS' AUTHORITY TO USE CASH
COLLATERAL PURSUANT TO 11 U.S.C. §§ 105 AND 363(C)(2)**

PLEASE TAKE NOTICE that a hearing on the annexed joint motion (the
“**Motion**”) of The Great Atlantic & Pacific Tea Company, Inc. and certain of its affiliates, as
debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the

“Debtors,” “A&P” or the “Company”), and the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the “Creditors’ Committee”) for entry of an order approving a global settlement (the “Global Settlement”) and further amending the Debtors’ authority to use cash collateral, all as more fully described in the Motion, will be held before the Honorable Robert D. Drain in the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York, 10601 (the “Bankruptcy Court”), on **June 2, 2016 at 10:00 a.m. (Prevailing Eastern Time)** (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that any responses or objections (the “Objections”) to the Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures*, dated July 20, 2015 (ECF No. 62), so as to be so filed and received no later than **May 25, 2016 at 4:00 p.m. (Prevailing Eastern Time)** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that if an Objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought without a hearing.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted upon default.

Dated: May 10, 2016
New York, New York

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In re	:
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	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA	:
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Debtors.	:
	(Jointly Administered)
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**JOINT MOTION OF DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR APPROVAL OF A GLOBAL SETTLEMENT PURSUANT TO
BANKRUPTCY RULE 9019(A) AND FURTHER AMENDING DEBTORS' AUTHORITY
TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C. §§ 105 AND 363(C)(2)**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

The Great Atlantic & Pacific Tea Company, Inc. and certain of its affiliates, as
debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the

“Debtors,” “A&P” or the “Company”), and the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the “Creditors’ Committee”) file this joint motion for entry of an order approving a global settlement (the “Global Settlement”)¹ described herein and further amending the Debtors’ authority to use cash collateral, and respectfully represent as follows:

Preliminary Statement

1. As previously announced, after intense arms’-length negotiations, the Debtors and the Creditors’ Committee reached a Global Settlement with the majority holders of the Senior Secured PIK Toggle Notes due 2017 (the “Majority PIK Noteholders”) and the majority holders of the Senior Secured Convertible Notes due 2018 (the “Majority Convertible Noteholders,” together, the “Secured Creditors”) – the only remaining secured creditors of the Debtors. The Debtors and the Creditors’ Committee are pleased to report that after further discussions, the Debtors’ unions (collectively, the “Unions”) and pension plans (collectively, the “Pension Plans”) now support the Global Settlement. The Global Settlement resolves all disputes between the parties, including the potential challenges to the Secured Creditors’ claims and liens and the asserted administrative expense claims of the Pension Plans, and paves the way for an efficient consensual resolution of these chapter 11 cases.

2. Pursuant to the Global Settlement, in consideration for the resolution and waiver of the Creditors’ Committee’s potential challenges that were preserved under the Final DIP Order, which the Creditors’ Committee was prepared to litigate, including the avoidance of prepetition liens of the Secured Creditors and equitable subordination of the Secured Creditors’

¹ Capitalized terms used but not defined in this Motion shall have the meanings ascribed to them in the Global Settlement, a copy of which is attached hereto as Exhibit A.

claims, and the Unions' and Pension Plans' support for the Global Settlement, the Secured Creditors have agreed to:

- cede \$11.25 million in cash collateral and share in proceeds from avoidance actions with the Debtors' estates as described below;
- share in the proceeds of a prepetition cause of action of the Debtors with the Pension Plans, with 5% of such proceeds (not to exceed \$1.5M) to be distributed to the Pension Plans;
- share 5% of the value of tax savings actually realized by the Secured Creditors with the Pension Plans to the extent the Debtors file a chapter 11 plan that provides for the continued operation of the liquor stores by the reorganized Debtors and the preservation of net operating loss carryforwards; and
- support a substantial contribution claim of the United Food and Commercial Workers Union, International Union ("UFCW") and consent to the payment of \$1.5M in fees and expenses of the attorneys and financial advisors to the Unions.

In addition, pursuant to the Global Settlement, the Debtors will continue making pay downs of the Secured Creditors' claims, subject to a modified wind down budget that will allow for the continued use of Cash Collateral by the Debtors.² The Global Settlement also resolves the litigation between the Debtors and the Pension Plans regarding the allowance and amount of the Pension Plans' asserted administrative expense claims.

3. The Global Settlement satisfies the criteria for approval of settlements under the Bankruptcy Code. The Global Settlement is the product of well-informed judgment of the Debtors and the Creditors' Committee. The Creditors' Committee conducted an investigation of various challenges and claims that could be asserted against the Secured Creditors. The Debtors assisted in the investigation with the consent of the Secured Creditors and provided numerous documents and other informal discovery to the Creditors' Committee.

² The parties are still finalizing the wind down budget. It will be filed in advance of the hearing on the Motion.

Based on the facts and circumstances, the Debtors and the Creditors' Committee (and the Unions and the Pension Plans who independently investigated claims against the Secured Creditors) have concluded that the Global Settlement is fair and reasonable and adequately compensates the Debtors' estates for the potential claims that could be asserted against the Secured Creditors.

4. Approval of the Global Settlement is in the best interests of the Debtors' estates as it will pave the way for an efficient resolution of these chapter 11 cases, with greater and faster recoveries to the Debtors' stakeholders. A consensual resolution of all of the litigable issues is especially beneficial given the limited resources of the Debtors' estates, which would unnecessarily be expended in time-consuming and expensive litigation, all with no guarantee of a greater recovery than that provided by the Global Settlement or any recovery whatsoever. In short, the Global Settlement is a far better alternative than litigation and should be approved.

5. Entry into the Global Settlement is a proper and appropriate exercise of sound business judgment and its approval by the Court is in the best interests of the Debtors and their estates. Accordingly, for these reasons as set forth more fully below, the Debtors and the Creditors' Committee request that the Court approve the Global Settlement.

Background

6. On July 19, 2015 (the "**Commencement Date**"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. The Debtors' chapter 11 cases are being jointly administered for procedural purposes pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

8. On July 24, 2015, the United States Trustee for Region 2 appointed the Creditors' Committee.

9. Information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Christopher W. McGarry Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*, sworn to on the Commencement Date (ECF No. 4).

10. The Debtors commenced these Chapter 11 Cases with a carefully crafted and coordinated sales strategy designed to maximize the value of the Debtors' assets and preserve as many jobs as possible. The sales strategy has been successfully implemented and has resulted in the realization of approximately \$910 million in sales proceeds and the preservation of more than 18,000 jobs. The Unions and their professionals worked to encourage participation of various potential purchasers in the sales of the Debtors' stores, reached consensual resolutions of most issues raised in the Debtors' motions pursuant to section 1113 and 1114 of the Bankruptcy Code, entered into new labor agreements with various purchasers, and reached consensual resolution of almost all objections or potential objections to the sales of the Debtors' stores.

The Final DIP Order and The Committee's Challenge Rights

11. On August 12, 2015, the Bankruptcy Court entered the *Final Order Authorizing Debtors To (A) Obtain Third Lien Postpetition Financing Pursuant To 11 U.S.C. §§ 105,361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) And 364(e), (B) Use Cash Collateral Pursuant To 11 U.S.C. § 363(c)(2) And (C) Grant Certain Protections To Prepetition Secured Parties Pursuant To 11 U.S.C. §§ 361, 362, 363 and 364* (Dkt. No. 531) (the "**Final DIP Order**"). Pursuant to the Final DIP Order, among other things, the Debtors stipulated, admitted and agreed to the validity and amount of the Secured Creditors' liens against collateral and

claims. Such stipulations and waivers were subject to the Challenge rights of the Creditors' Committee and other parties in interest as set forth in paragraph 8 of the Final DIP Order.

12. Pursuant to paragraph 8 of the Final DIP Order, the Creditors' Committee had an initial period of 60 days to commence a litigation challenging any of the Debtors' stipulations in the Final DIP Order. The challenge period was extended from time to time by agreement of the Creditors' Committee and Secured Creditors.

13. On January 28, 2016, the Bankruptcy Court entered the *Order (A) Amending Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. §§ 105 and 363(c)(2) and Fed. R. Bankr. 4001(b); (B) Granting Adequate Protection Pursuant to 11 U.S.C § 361; and (C) Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364* (Dkt. No. 2394) (the "**Amended Cash Collateral Order**"). Pursuant to the Amended Cash Collateral Order, the Debtors' permitted use of cash collateral was extended in exchange for adequate protection provided to the Secured Creditors as specified in paragraph 2(b) of the Amended Cash Collateral Order.

14. On November 7, 2015, the Debtors indefeasibly paid in full their prepetition term loan obligations, subject to an agreement among the Creditors' Committee and the term loan lenders, pursuant to which \$9,187,500 plus a \$750,000 legal fee reserve was set aside by the Debtors on account of the Creditors' Committee's potential challenge to the prepayment fee asserted by the term loan lenders under the Debtors' prepetition term loan agreement. *See Second Stipulation and Order with Prepetition Senior Agents Reserving Certain Committee Challenge Rights Under Final Order Authorizing Debtor in Possession Financing* (ECF No. 2030). The term loan lenders have since agreed to release their claim to approximately \$5.4 million and those funds have been paid to the Debtors' estates. *See*

Stipulation of Settlement and Order Resolving All Claims and Challenge Rights Relating to the Prepetition Term Loan Agent and Prepetition Term Loan Lenders (ECF No. 2703).

15. On November 10, 2015, the Debtors indefeasibly paid in full their secured prepetition revolver obligations. On November 13, 2015, the Debtors indefeasibly paid in full their secured postpetition financing obligations. In addition, pursuant to the Amended Cash Collateral Order, the Debtors have paid more than \$200 million on account of the secured Prepetition PIK Notes Obligations.

The Committee's Investigation and Challenges

16. In connection with the Creditors' Committee's investigation of claims and potential causes of action against the Secured Creditors, the Committee requested and received documents and information from the Debtors. The Debtors produced hundreds of pages of documents, including financial and other historical data, and also made available the Debtors' Chief Restructuring Officer, Christopher W. McGarry, for an interview, to assist the Creditors' Committee in conducting its investigation.

17. As a result of this investigation, the Creditors' Committee concluded that colorable claims exist against the Secured Parties. The Creditors' Committee prepared and shared a draft complaint with the Debtors and counsel to the Majority PIK Noteholders and the Majority Convertible Noteholders. Among other things, the Creditors' Committee alleged in the draft complaint that the Secured Creditors – who also maintained seats (non-controlling) on the Debtors' board of directors since A&P's emergence from its prior chapter 11 cases in 2012 – caused A&P to underfund capital expenditures as contemplated by A&P's prior chapter 11 plan. The draft complaint alleges that the purported underfunding of capital expenditures caused A&P's failure and that the Secured Creditors are responsible for that underfunding. The draft

complaint also challenged the validity of the liens and security interests granted to the Secured Creditors on the basis that they were not properly perfected. The Creditors' Committees' challenges were largely based on theories advanced by the professionals for the UFCW.

18. The Secured Creditors have intensely disputed the Creditors' Committee's allegations and have indicated that they would vigorously oppose any such litigation to final judgment, including any appeals. Among other things, the Secured Creditors asserted that they never took any money out of the Company and never caused the Company to undertake any action or forgo any opportunity exclusively for the benefit of the Secured Creditors. In addition, the Secured Creditors contested the Creditors' Committee's allegations regarding the Secured Creditors' perfection of liens. Notably, the liens were granted, approved and deemed effective in the Bankruptcy Court's confirmation order approving A&P's prior chapter 11 plan entered on February 28, 2012. *See* Case No. 10-24549; ECF No 3477, ¶¶ 114, 115, 117.

19. The Creditors' Committee also reviewed and evaluated (and the Global Settlement resolves potential claims regarding) the secular trust (the "**Trust**") established on April 3, 2015 for the benefit of the Debtors' executive management team. The Trust was funded with \$6 million dollars with payments tied to a prepetition incentive bonus plan (the "**Incentive Bonus Plan**") for individual beneficiaries. The Incentive Bonus Plan incentivized participants to achieve milestones consistent with the Debtors' goals in these chapter 11 cases, including sales, recapitalization, or restructuring, including by confirmation of a chapter 11 plan, of all or a substantial portion of the Debtors' assets. The Creditors' Committee reviewed the facts and circumstances surrounding the establishment of the Incentive Bonus Plan and the funding of the Trust, the participants and each of their contributions for the benefit of the

Debtors and their estates, and the claims and defenses that could be asserted in connection with any litigation regarding the foregoing.

Litigation With the Pension Plans

20. Various Pension Plans have filed motions seeking allowance and payment of alleged administrative expense claims against the Debtors. Specifically, the Pension Plans seek, pursuant to sections 503(b), 507(a), and 1113(f) of the Bankruptcy Code, (a) the allowance, as administrative expenses, of claims for unpaid monthly pension and benefit fund contributions falling due after the Commencement Date (the “**Post-Commencement Contributions**”) and, in some cases, for penalty interest or damages owed because the Post-Commencement Contributions have not been paid and (b) directing immediate payment of the foregoing claims and of future Post-Commencement Contributions on a current basis.

21. The Debtors filed an omnibus objection to the Pension Plans’ motions on a number of grounds, including that there is no statutory obligation to pay the Pension Plans prior to confirmation of a plan and that the Debtors do not have any unencumbered cash to pay such claims. *See Omnibus Objection of Debtors to Motions of Certain Pension and Benefit Funds Requesting Payment of Administrative Expense Claims* (ECF No. 2304). Additionally, the Debtors have filed several omnibus objections to certain of the Pension Plans’ administrative expense proofs of claim on various grounds. *See, e.g., Debtors’ Fourth Omnibus Objections to Claims* (ECF No. 2687) and *Debtors’ Fifth Omnibus Objection to Claims* (ECF No. 2689).

22. The motions and Debtors’ objections have been adjourned pending ongoing discussions among the parties. This litigation is now resolved pursuant to the Global Settlement. The administrative expense claims of the Pension Plans will be allowed in agreed upon amounts to be reflected in a schedule that will be filed with the Court prior to the hearing.

Jurisdiction

23. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

24. The Debtors and the Creditors' Committee request the entry of the proposed order, pursuant to Bankruptcy Rule 9019, approving the Global Settlement and authorizing the Debtors and the Creditors' Committee to complete the acts contemplated thereby, and further amending the Debtors' authority to use cash collateral in accordance with the wind down budget. As set forth more fully below, the Global Settlement falls well within the range of reasonableness and is in the best interests of the Debtors and their estates. Accordingly, the Global Settlement should be approved.

The Global Settlement

25. After extensive arm's-length negotiations, the Parties have reached a comprehensive, integrated compromise and settlement that resolves the potential challenges that could be asserted by the Creditors' Committee as well as other matters, including the litigation among the Debtors and the Pension Plans regarding the asserted administrative expense claims of the Pension Plans. The Global Settlement provides:³

- a. **Cash Consideration**: eleven million two hundred fifty thousand dollars (\$11,250,000.00) of cash (the "**Cash Consideration**") from the Collateral of the Secured Creditors will be made available for the Debtors' estates, including those claimants who asserted Deferred Administrative Expense and Priority Claims. The Cash Consideration is inclusive of \$600,000 on account of the Management Trust and \$5,000,000 on account of the settlement of the

³ To the extent there is any inconsistency between this summary and the Global Settlement, the Global Settlement controls.

Creditors' Committee's potential challenge to the prepayment fee asserted by the Prepetition Term Loan Secured Parties. *See* Global Settlement ¶ 3(a).

- b. Substantial Contribution Claim: Subject to the occurrence of the Effective Date, the aggregate amount of \$1.5 million of the Cash Consideration will be used to pay the reasonable fees and expenses of UFCW professionals CWS (up to \$500,000) and Glanzer (\$1,000,000) in connection with services for the UFCW in these chapter 11 cases, which shall be in full and complete settlement and release of all claims by the UFCW for professional fees pursuant to Section 503(b)(4) of the Bankruptcy Code and otherwise. These fees and expenses shall constitute a stipulated, approved, and allowed administrative expense to be paid on the Effective Date of this Agreement, which shall not be subject to any avoidance, reduction, recharacterization, subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges. *See* Global Settlement ¶ 3(b).
- c. Avoidance Actions: The Secured Creditors and the Debtors' estates will share the net recoveries from the prosecution of avoidance actions as follows: (i) 75% to the Secured Creditors and 25% to the Debtors' estates from the first \$10 million of net proceeds, (ii) a 50% split thereafter until that aggregate recovery for the Secured Creditors from proceeds of avoidance actions equals \$11.5 million, and (iii) thereafter, 100% of the net proceeds will be distributable to the Debtors' estates. *See* Global Settlement ¶ 4(b).
- d. Oversight Committee: The Avoidance Actions shall be prosecuted by the Creditors' Committee, which shall have full standing on behalf of the Debtors' estates to commence, prosecute, and compromise the Avoidance Actions, subject to the oversight and direction of an Oversight Committee. The Oversight Committee will consist of three individuals comprised of one designee by each of the Debtors, the Creditors' Committee, and the Prepetition Notes Secured Parties. Pachulski, Stang, Ziehl & Jones LLP shall prosecute the Avoidance Actions. *See* Global Settlement ¶ 4(a).
- e. Amex Litigation: The class action lawsuit captioned *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, Master File No.: 11-MD-02221(NGG) (RER), pending in the United States District Court for the Eastern District of New York, in which one or more of the Debtors is a member of the plaintiff class (the "**Amex Litigation**"), shall be prosecuted by the Debtors, subject to the oversight and direction of the Majority PIK Noteholders and Majority Convertible Noteholders with respect to the prosecution, settlement, abandonment or other decisions regarding the Amex Litigation. The Prepetition Notes Secured Parties and the Pension Plans shall share in the Amex Litigation Proceeds on a dollar for dollar basis as follows: ninety-five percent (95%) shall be distributed to the Prepetition Notes Secured Parties, and five percent (5%) to the Pension Plans (it being understood and

agreed that the recovery to the Debtors' estates from the Amex Litigation proceeds shall in no case exceed one million five hundred thousand dollars (\$1,500,000.00)). *See* Global Settlement ¶ 5.

f. Allowance of Secured Claims, Validation of Liens and Pay Down:

- i. The stipulations, admissions, waivers and agreements of the Debtors contained in the Final DIP Order shall become irrevocably binding on all parties in interest and the Debtors' estates, including the Creditors' Committee and any subsequently appointed trustee. On the effective date of the settlement, the Challenge Period Termination Date will be deemed to have occurred and all rights or reservations to assert a Challenge will be extinguished. *See* Global Settlement ¶ 7(a).
- ii. The Prepetition PIK Notes Secured Parties shall have an allowed Secured Claim against each of the Debtors on account of the Prepetition PIK Notes Documents in the aggregate amount of \$337,628,551.52 as of December 31, 2015; *plus* interest for the period from and after April 1, 2016. The Prepetition PIK Note Secured Parties are waiving their entitlement to (i) postpetition interest only for the period arising from and after January 1, 2016 through and including March 31, 2016, and (ii) only that portion of Original Issue Discount that accreted from and after the Commencement Date. For the period after April 1, 2016 through the date in which the Allowed Prepetition PIK Notes Claims are paid in full in cash, interest shall accrue at the rate of 12.50% per annum, plus an additional 1.00% per annum, plus interest on defaulted interest, on all amounts outstanding under the Prepetition PIK Notes shall accrue (for the avoidance of doubt, such interest shall be payable-in-kind and shall be calculated on a continuous daily basis until the next succeeding semi-annual interest payment date, upon which date the principal amount of the Prepetition PIK Notes outstanding shall be increased by an amount equal to the amount of such accrued interest) for period from and after April 1, 2016 through the date the Allowed Prepetition PIK Note Claims are paid in full in cash. *See* Global Settlement ¶¶ 3(c), 7(b).
- iii. The Prepetition PIK Notes Secured Parties have received distributions on account of the Allowed PIK Notes Claim in the amount of \$203,484,992 plus professional fees permitted under paragraph 18(c) of the Final DIP Order. One (1) business day following the Effective Date, the Debtors will make a cash payment to the (a) the Prepetition Indenture Trustees their outstanding fees and expenses in accordance with the wind down budget in an amount not to exceed \$250,000 in the aggregate and (b) Prepetition PIK Notes Trustee (for the benefit of the Prepetition PIK Noteholders) in the amount of \$90 million. From and after the making of such payment, the Debtors shall, on a weekly

basis, distribute all Cash Collateral to the Prepetition Indenture Trustees for the benefit of the Prepetition Notes Secured Parties (which payments, for the avoidance of doubt, shall be subject to Prepetition Notes Secured Parties Payment Priority) other than amounts set forth in the wind-down budget. *See* Global Settlement ¶ 8(a) – (c).

- iv. The Prepetition Convertible Notes Secured Parties shall have an allowed Claim against each of the Debtors on account of the Prepetition Convertible Notes Documents in the principal amount of \$388,678,953.00 (inclusive of prepetition interest, fees, expenses, charges and other prepetition obligations chargeable); *plus* professional fees permitted under paragraph 18(c) of the Final DIP Order, Amended Cash Collateral Order or other order of the Court (and subject to the Prepetition Notes Secured Parties Payment Priority) which claim shall be deemed secured to the extent of the value of the collateral. *See* Global Settlement ¶ 7(b)(ii).
- g. Treatment of Liquor Store Assets: On or before June 23 2016, the Debtors shall determine (subject to the prior written consent of each of the Majority PIK Noteholders (to the extent not paid in full, in cash, prior to such date) and the Majority Convertible Noteholders, in their sole and absolute discretion) whether or not to pursue a plan of reorganization for the Debtors that would provide for the continued operation by the Reorganized Debtors of their liquor stores and related assets (“Liquor Store Assets”) and the preservation of the Debtors’ tax attributes, including the Debtors’ net operating loss carry-forwards (the “Plan”). If by June 23, 2016, the Debtors have not obtained the requisite written consent or are advised by the Secured Creditors that they do not wish to pursue the Plan, then the Debtors shall as soon as commercially practicable (A) take such actions as may be reasonably necessary to solicit offers for and identify the highest and/or best bids for the Liquor Store Assets, with the intention of obtaining binding offers in writing on or before July 8, 2016, (B) conduct an auction on or before July 22, 2016, (C) obtain an order approving the sale of all the Liquor Store Assets no later than August 1, 2016, and (D) consummate a sale of all Liquor Store Assets no later than September 30, 2016. *See* Global Settlement ¶ 8(d).
- h. Plan Support: Subject to the receipt of a disclosure statement approved by the Bankruptcy Court, the Unions and the Pension Plans (on behalf of their respective members and constituents) shall agree to accept the consideration provided for in the Global Settlement on account of all allowed Deferred Administrative Expense and Priority Claims held by the Unions and the Pension Plans (and their respective members and constituents) under Section 1129(a)(9) of the Bankruptcy Code, and shall otherwise support (and shall not oppose directly or indirectly) confirmation of such plan of reorganization, except that the Unions reserve their right to object to any plan of

reorganization that includes the sale of the Liquor Store Assets solely on the grounds that such sale does not comply with the requirements under the CBA, and the Debtors and other Parties reserve the right to oppose any such objection. *See* Global Settlement ¶ 8(b).

- i. Resolution of Litigation with Pension Plans: The litigation among the Debtors and the Pension Plans regarding the asserted administrative expense claims of the Pension Plans is resolved pursuant to the Global Settlement. The administrative expense claims of the Pension Plans will be allowed in agreed upon amounts to be filed with the Court prior to the hearing on the motion. *See* Global Settlement ¶ 12(a).
- j. Releases: Pursuant to the Global Settlement, the Debtors and the Creditors' Committee, on their own behalf and on behalf of the Debtors' estates, will issue a broad release of the Secured Creditors and the Debtors' officers and directors of all claims or causes of action belonging to the Debtors or their estates against the released parties for any acts or omissions against or in relation to the Debtors, including with respect to the Management Trust. The Debtors, their estates and the Creditors' Committee are receiving mutual releases. *See* Global Settlement ¶ 12.
- k. Reservation of Rights. The Global Settlement provides for and fixes the aggregate consideration that will be made available to pay deferred administrative expense and priority claims. It does not allow any such claims or approve the priority of any such asserted claims. It also does not fix the mechanic for distributions to creditors. The parties will work in good faith to determine the means for distribution of the settlement consideration, the parties to receive such distribution, and the process for resolving these chapter 11 cases. *See* Global Settlement ¶ 9.

The Controlling Legal Standard Under Bankruptcy Rule 9019

26. Compromises are “a normal part of the process of reorganization.”

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). The decision to approve a particular compromise lies within the sound discretion of the bankruptcy court. *See Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). A settlement must not “fall below the lowest point in the range of reasonableness.” *Vaughn v. Drexel Burnham Lambert Group, Inc. (Drexel Burnham Lambert Group)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); *see*

also *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Spielfogel*, 211 B.R. 133, 144 (Bankr. E.D.N.Y. 1997). Discretion may be exercised by the court “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). A proposed compromise and settlement implicates the issue of whether it is “fair and equitable, and in the best interest of the [debtor’s] estate.” *In re Best Products*, 165 B.R. 35, 50 (Bankr. S.D.N.Y. 1994) (internal citations omitted).

27. The following factors are considered in determining whether a settlement should be approved: (i) the probability of success in litigation, with due consideration for the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay; (iii) the proportion of creditors who do not object to, or who affirmatively support, the proposed settlement; and (iv) the extent to which the settlement is truly the product of arm’s-length bargaining and not the product of fraud or collusion. See *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc.*, 390 U.S. at 424; *In re Ashford Hotels, Ltd.*, 226 B.R. 797, 804 (Bankr. S.D.N.Y. 1998); *In re Best Prods. Co.*, 168 B.R. at 50.

28. While a court must “evaluate. . .all. . .factors relevant to a fair and full assessment of the wisdom of the proposed compromise,” *Anderson*, 390 U.S. at 424-25, a court need not conduct a “mini-trial” of the merits of the claims being settled, *W.T. Grant Co.*, 699 F.2d at 608, or conduct a full independent investigation. *Drexel Burnham Lambert Group*, 134 B.R. at 496. “[T]he bankruptcy judge does not have to decide the numerous questions of law and fact....The court need only canvass the settlement to determine whether it is within the accepted range of reasonableness.” *Nellis*, 165 B.R. at 123 (internal citations omitted).

29. The court may give weight to the “informed judgments of the ... debtor-in-possession and their counsel that a compromise is fair and equitable, and consider the competency and experience of counsel who support the compromise.” *Drexel Burnham Lambert Group*, 134 B.R. at 505 (internal citations omitted); *see also In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993); *accord In re Ashford Hotels Ltd.*, 226 B.R. 797, 802 (Bankr. S.D.N.Y. 1998) (“Significantly, that test does not contemplate that [the court] substitute [its] judgment for the Trustee’s, but only that [the court] test his choice for reasonableness If the Trustee chooses one of two reasonable choices, [the court] must approve that choice, even if, all things being equal, [the court] would have selected the other.”).

30. There is no requirement that “the value of the compromise ... be dollar-for-dollar the equivalent of the claim.” *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 427 (S.D.N.Y. 1993). While not the settlement at bar, “there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.” *Id.* at 427-28 (*quoting City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974)).

The Global Settlement Satisfies the Legal Standard and Should be Approved

31. The Global Settlement falls well within the range of reasonableness and should be approved. All of the factors described above support approval of the Global Settlement. The Global Settlement resolves the major hurdles remaining in these chapter 11 cases, namely the potential litigation regarding the validity and allowance of the Secured Creditors’ claims as well as the pending litigation among the Debtors and the Pension Plans regarding the asserted administrative expense claims of the Pension Plans and their treatment. Indeed, the Global Settlement incorporates an agreement by the Unions and Pension Plans to

support a chapter 11 plan that is consistent with the Global Settlement. In the context of these cases and the limited resources available for distribution to the Debtors' estates, this is a remarkable achievement that is in the best interests of all creditors and should be approved.

32. The claims resolved by the Global Settlement against the Secured Creditors and the Pension Plans have been thoroughly investigated by the Debtors and the Creditors' Committee and, in the informed judgment of the estate fiduciaries, the Global Settlement is fair and reasonable. The Global Settlement adequately compensates the Debtors' estates for the value of the potential claims that could be asserted against the Secured Creditors, with consideration also given to the costs, delay and risks attendant to litigation that are avoided by the Global Settlement. The Global Settlement also takes into account the fact that there are virtually no unencumbered assets that would otherwise be available for the Creditors' Committee to prosecute the litigation or to distribute to the Debtors' stakeholders if the litigation was ultimately unsuccessful. Finally, the Global Settlement fairly resolves the litigation among the Debtors and the Pension Plans.

A. The Probability of Success in Litigation

33. As to the first and most important factor, the probability of success in litigation against the Secured Creditors is highly uncertain. The Creditors' Committee has conducted a thorough investigation of potential claims that could be brought against the Secured Creditors. The Debtors cooperated in the Creditors' Committee's analysis and also independently evaluated the challenges asserted by the Creditors' Committee during negotiations. Both estate fiduciaries have concluded that succeeding in litigation of such claims, over the vigorous objections of the Secured Creditors, would be difficult and that the benefits and certainty of the Global Settlement far outweigh the costs and risks associated with litigation.

The Unions and the Pension Plans also investigated claims against the Secured Creditors, asserted theories that were incorporated into the Creditors' Committee's challenges and have agreed to the terms of the Global Settlement as reasonable and fair.

34. Litigation against the Secured Creditors on the basis of the Creditors' Committee's claims regarding the Secured Creditors' role in the Company's failure to make sufficient capital investments would be highly fact-intensive in many respects, requiring extensive discovery of activities occurring over a three year period and involving various factual and legal issues. The litigation would also be complicated because many of the employees involved with A&P's affairs during the relevant time are no longer employed or controlled by the Company. As an additional hurdle, the Creditors' Committee would need to obtain standing to prosecute the claims.

35. Pursuant to the terms of the Global Settlement, the Debtors consent to the Creditors Committee standing to prosecute the Avoidance Actions. While the Bankruptcy Code does not, in express terms, authorize committees to sue on behalf of a debtor's estate, the Second Circuit, in common with the majority of circuits reaching the issue, has held that Bankruptcy Code sections 1103(c)(5) and 1109(b) imply a qualified right for creditors' committees to initiate suit with the approval of the bankruptcy court if the debtor in possession "unjustifiably fail[s] to bring suit." See *Unsecured Creditors Comm. of STN Enters. Inc. v. Noyes (In re STN Enterprises, Inc.)* ("STN"), 779 F.2d 901, 904 (2d Cir. 1985) (same); *Adelphia Commc'ns Corp v. Bank of Am., N.A. (In re Adelphia Commc'ns Corp.)* ("Adelphia"), 330 B.R. 364, 374 (Bankr. S.D.N.Y. 2005). The Second Circuit subsequently expanded *STN* to confer derivative standing upon a committee with the consent of either the debtor in possession or trustee, *Commodore Int'l Ltd. v. Gould (In re Commodore Int'l Ltd.)*, 262 F.3d 96, 100 (2d Cir. 2001).

36. The Global Settlement also takes into account the defenses that the Secured Creditors could assert, most significantly causation. The Secured Creditors have asserted that the Creditors' Committee's theories can be challenged for lack of causation on at least two grounds: *first*, the Creditors' Committee must prove that the reason for A&P's demise was exclusively its failure to make capital investments contemplated by the Company's 2012 chapter 11 plan; and, assuming the Creditors' Committee could prove such causation, *second*, the Creditors' Committee must prove that the Secured Creditors' conduct – and that conduct alone – caused the Company to fail to make sufficient capital expenditures. In that context, the Creditors' Committee would need to (i) rule out every other intervening factor that occurred since 2012 related to the Debtors' failure; (ii) overcome the fact that the Secured Creditors did not control the Debtors' board of directors, which included an independent director as well a director designated by the Debtors' Unions; and (iii) overcome the fact that the Secured Creditors never actually took any money out of the Company. Although the Creditors' Committee believes it has colorable claims, these defenses make the outcome of litigation highly uncertain and difficult to predict.

37. Similarly, successfully challenging the prepetition liens of the Secured Creditors would be difficult. The liens granted to the Secured Creditors were voted on by A&P's creditors in connection with the Company's 2012 chapter 11 plan. The liens were then approved by the Court. Accordingly, challenging the Secured Creditors' liens would be an uphill battle.

38. The Creditors' Committee also independently evaluated claims that could be asserted in connection with the management Trust and Incentive Bonus Plan and believes that the consideration offered by the Global Settlement on account of those potential claims fairly

compensates the Debtors' estates. Among other things, the Creditors' Committee took into account that the Trust and the distributions contemplated by the Incentive Bonus Plan were approved by a vote of independent directors on the Board's Compensation Committee and with the advice of counsel. The Creditors' Committee also considered the crucial role that the executive management team played in the implementation of the Debtors' chapter 11 strategy; the high degree of uncertainty regarding the Debtors' future at the time the Incentive Bonus Plan and Trust were established in April 2015; and the significant dedication of efforts and commitment required by the executive management team for the benefit of the Debtors' estates. Finally, the Creditors' Committee independently evaluated the criteria for payment under the Incentive Bonus Plan and concluded that they were sufficiently tied to performance criteria that were meaningful and were real hurdles.

39. The resolution of the litigation among the Debtors and the Pension Plans regarding the asserted administrative expense claims of the Pension Plans is also fair and reasonable. The parties have fully briefed the issues and exchanged discovery to come to an informed resolution.

40. Finally, as part of the Global Settlement, the parties have agreed to the allowance of a substantial contribution claim of the UFCW for the payment of its professional fees in the amount of \$1.5 million. Section 503(b)(3)(D) of the Bankruptcy Code permits a court to allow, as an administrative expense, the actual and necessary expenses incurred by a creditor who makes a substantial contribution to a chapter 11 case. *See* 11 U.S.C. § 503(b)(3)(D). Section 503(b)(4) allows for reimbursement of reasonable compensation for services rendered, and for reimbursement of actual and necessary expenses incurred, by an attorney of any such entity. *See* 11 U.S.C. § 503(b)(4). The "substantial contribution" inquiry under section

503(b)(3)(D) of the Bankruptcy Code is a factual inquiry. See *In re Bayou Grp., LLC*, 431 B.R. 549, 560 (Bankr. S.D.N.Y. 2010) (granting substantial contribution claim asserted by unofficial creditors committee comprised of defrauded investors). The “substantial contribution” test is satisfied “where the services rendered have substantially contributed to an actual and demonstrable benefit to the debtor’s estate, its creditors, and to the extent relevant, the debtor’s shareholders.” *In re United States Lines, Inc.*, 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989) *aff’d* 1991 U.S. Dist. Lexis 5262 (S.D.N.Y. Apr. 19, 1991) (granting administrative expense status to counsel to creditor in the case for substantial contributions). Under the “substantial contribution” test, compensation is awarded “to extraordinary creditor actions which lead directly to tangible benefits to the creditors, debtor or estate.” *Bayou Group*, 431 B.R. at 560 (quoting *In re Best Prods. Co., Inc.*, 173 B.R. 862, 866 (Bankr. S.D.N.Y. 1994)). The policy underlying the substantial contribution provisions of the Bankruptcy Code is to “promote meaningful creditor participation in the reorganization process.” *US Lines*, 103 B.R. at 429.

41. The UFCW, through its professionals, has made a substantial contribution to these chapter 11 cases and, as an integral element of the Global Settlement, the parties have agreed to support a substantial contribution claim of UFCW. As noted above, the UFCW coordinated the efforts and negotiations among the Debtors and purchasers of their stores with the various local unions. Those efforts were critical to the ultimate success of the Debtors’ sale process with minimal cost and expense. Without the UFCW’s participation, the Debtors would likely have litigated many more sales to the detriment of all parties in interest. In addition, as stated, the Creditors’ Committees’ challenges to the Secured Creditors’ claims that are resolved by this Global Settlement are largely based on theories advanced by the UFCW’s professionals.

These efforts of the UFCW have resulted in direct and substantial contributions to the Debtors' estates.

42. Taking into account all of the above considerations, the Debtors and the Creditors' Committee have concluded that the Global Settlement and the certainty it provides is a far better alternative to litigation with the Secured Creditors and Pension Plans. Accordingly, the Global Settlement is reasonable and should be approved.

**B. Litigation Would be Expensive, Inconvenient and
Would Delay the Resolution of the Debtors' Chapter 11 Cases**

43. As stated above, litigation with the Secured Creditors would be highly factual with the facts and circumstances spanning over three years. To establish its claims and respond to the defenses asserted by the Secured Creditors, the Creditors' Committee would need to gather and evaluate substantial factual evidence and depose numerous witnesses with familiarity of the Debtors' operations and affairs during the relevant time. Establishing this fact base would be extremely time-consuming, inconvenient and expensive.

44. Even if the Creditors' Committee was able to resolve or successfully litigate with Secured Creditors, prosecuting the claims would cause significant delay to the resolution of the Debtors' chapter 11 cases and distributions to creditors. The Secured Creditors have stated that they would appeal any judgment to final conclusion. During this time, the Debtors' stakeholders would be forced to sit and wait for resolution, and the value of the Debtors' estates would erode. Resolution of the disputes with the Secured Creditors is one of the last remaining hurdles to resolution of the Debtors' chapter 11 cases and the Debtors' exit from chapter 11. With the potential litigation out of the way, and its related costs avoided, the parties can focus on the prompt resolution of the Debtors' chapter 11 cases and distributions to creditors.

45. Similarly, continuing the litigation with the Pension Plans would be time-consuming, uncertain and expensive. As reflected in the Debtors' omnibus objection, there is a significant factual dispute regarding what portions of the asserted claims relate to postpetition benefits conferred on the Debtors' estates, which require actuarial expertise and testimony to resolve. *See Omnibus Objection of Debtors to Motions of Certain Pension and Benefit Funds Requesting Payment of Administrative Expense Claims* (ECF No. 2304), ¶¶ 20-29. The costs and delay associated with that litigation are avoided by the Global Settlement.

C. The Global Settlement is Supported by Creditors and is Not the Product of Fraud or Collusion

46. The Global Settlement is supported by all of the Debtors' major stakeholders, including the Creditors' Committee, the Secured Creditors, the Unions and the Pension Plans, each of whom is represented by experienced and competent counsel. The Global Settlement represents the independent analysis and judgment of all of the Parties.

47. Finally, the Global Settlement was negotiated at arm's-length over several months to reach a fair resolution of the disputes among the parties. The Global Settlement is not the product of fraud or collusion. The Parties have all been represented by competent and experienced professionals. Significant resources have been invested by all of the Parties in evaluating the claims and disputes resolved by the Global Settlement. The Global Settlement is the product of well-informed judgment and satisfies the standards for approval under Bankruptcy Rule 9019.

48. Accordingly, the Debtors and the Creditors' Committee submit that the Global Settlement is well within the range of reasonableness and should be approved by the Court.

Notice

49. Notice of this Motion has been provided in accordance with the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. Bankr. P. 1015(c), and 9007 Implementing Certain Notice and Case Management Procedures*, dated July 20, 2015 (ECF No. 62). In addition, the Debtors and the Creditors' Committee have served individualized notice on all creditors who filed proofs of claim in these chapter 11 cases in the form attached as Exhibit B. The Debtors and the Creditors' Committee submit that such notice is sufficient and no other or further notice need be provided.

50. No previous request for the relief sought herein has been made by the Debtors or the Creditors' Committee to this or any other Court.

WHEREFORE the Debtors and the Creditors' Committee respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: May 10, 2016
New York, New York

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*Counsel for the Official Committee of
Unsecured Creditors*

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

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

**ORDER (A) APPROVING GLOBAL SETTLEMENT AGREEMENT AND
(B) FURTHER AMENDING DEBTORS' AUTHORITY TO USE CASH COLLATERAL
PURSUANT TO 11 U.S.C. §§ 105 AND 363(c)(2)**

Upon the joint motion, dated May 9, 2016 (the "**Motion**"),¹ of The Great Atlantic & Pacific Tea Company, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), and the Official Committee of Unsecured Creditors appointed in the Debtors' chapter 11 cases (the "**Creditors' Committee**"), for entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedures, (i) approving the Global Settlement among the Debtors; the Creditors' Committee; the Prepetition PIK Notes Trustee (on behalf of the Prepetition PIK Noteholders); the Prepetition Convertible Notes Trustee (on behalf of the Prepetition Convertible Noteholders); the Unions; and the Pension Plans (collectively, the "**Parties**"), (ii) approving the Global Settlement Agreement and authorizing the Parties to implement the transactions contemplated therein, and (iii) further amending Debtors authority to use Cash Collateral pursuant to 11 U.S.C. §§ 105 and 363(c)(2) subject to a Wind-Down Budget (as defined below) that is acceptable to the Majority PIK Noteholders and the Majority Convertible Noteholders, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein

¹ Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion and/or the Global Settlement Agreement, a copy of which is attached hereto as Exhibit A.

in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held on June 2, 2016 to consider the relief requested in the Motion (the “**Hearing**”); and upon the record of the Hearing and all of the proceedings had before the Court; and the Parties having entered into good-faith arms'-length negotiations in connection with the Global Settlement; and the Global Settlement having been entered into for good and valuable consideration; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest, and that just cause exists for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED, ADJUDGED AND DECREED THAT:**²

1. The Motion is granted to the extent provided herein.
2. Any objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included herein, are hereby overruled on the merits and denied with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein, including, without limitation, each of the Prepetition PIK Notes Secured Parties and Prepetition Convertible Notes Secured Parties.

² The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such.

3. The Global Settlement Agreement is approved pursuant to Bankruptcy Rule 9019. Each of the Parties is authorized to execute, deliver, implement and fully perform under the Global Settlement Agreement and any and all other obligations, instruments, documents and papers, and to take any and all actions, reasonably necessary or appropriate to consummate the Global Settlement. Upon entry of this Order, the Global Settlement shall become enforceable and binding on the Debtors, the Debtors' estates and all parties in interest, including, without limitation, the Creditors' Committee and any subsequently-appointed chapter 11 or chapter 7 trustee or other estate representative.

4. Upon the occurrence of the Effective Date, the Cash Consideration shall be made available to the Debtors' estates in accordance with and subject to Paragraph 3 of the Global Settlement Agreement. No later than one (1) business day following the Effective Date, the Debtors shall distribute \$1.5 million of the Cash Consideration to the UFCW for professionals, in accordance with Section 3(b) of the Global Settlement Agreement, which payment shall not be subject to any avoidance, reduction, recharacterization, subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges.

5. Following the Effective Date, the Creditors' Committee shall be authorized to prosecute the Avoidance Actions on behalf of the Debtors' estates, subject to the oversight and direction of the Oversight Committee, in accordance with and subject to Sections 4(a) and (b) of the Global Settlement Agreement.

6. The allowance of the Allowed Prepetition PIK Notes Claim of the Prepetition PIK Notes Secured Parties as set forth in Section 7(b)(i) of the Global Settlement Agreement is hereby approved. The Allowed Prepetition PIK Notes Claim shall be Secured Claims shall not

be subject to any avoidance, reduction, recharacterization, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges (including, without limitation, any challenges to any claims of diminution of the value of Collateral asserted by any Prepetition PIK Notes Secured Party) under the Bankruptcy Code, the Final DIP Order, the Amended Cash Collateral Order or any applicable nonbankruptcy law or regulation by any person or entity of any kind.

7. The allowance of the Allowed Prepetition Convertible Notes Claim as set forth in Section 7(b)(ii) of the Global Settlement Agreement is hereby approved. The Allowed Prepetition Convertible Notes Claim shall not be subject to any avoidance, reduction, recharacterization, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges (including, without limitation, any challenges to any claims of diminution of the value of Collateral asserted by any Prepetition Convertible Notes Secured Party) under the Bankruptcy Code, the Final DIP Order, the Amended Cash Collateral Order or any applicable nonbankruptcy law or regulation by any person or entity of any kind.

8. No later than one (1) business day following the Effective Date, the Debtors shall (i) pay the Prepetition Indenture Trustees for their outstanding fees and expenses, subject to a wind-down budget that is acceptable to the Majority PIK Noteholders and Majority Convertible Noteholders (the "**Wind-Down Budget**"), in an amount not to exceed \$250,000 in the aggregate, and (ii) distribute to the Prepetition PIK Notes Trustee (for the benefit of the Prepetition PIK Noteholders) cash in an amount not less than \$90 million, all of which payments shall not be subject to any avoidance, reduction, recharacterization, subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-

claims, set-off or offset, or any other challenges (collectively, the “**Initial Mandatory Payments**”).

9. From and after the making of the Initial Mandatory Payments, the Debtors shall, on a weekly basis, distribute all Cash Collateral (including, for the avoidance of doubt, all proceeds from the sale of the Harlem store) to the Prepetition Indenture Trustees for the benefit of the Prepetition Notes Secured Parties (which payments, for the avoidance of doubt shall be subject to Prepetition Notes Secured Parties Payment Priority) other than amounts set forth in the Wind-Down Budget (with any excess cash or unused amounts remaining after payment of the expenses set forth in the Wind-Down Budget to be distributed on a weekly basis to the Prepetition Indenture Trustees for the benefit of the Prepetition Notes Secured Parties in accordance with the Prepetition Secured Parties Payment Priority).

10. The Parties acknowledge and agree that the Prepetition PIK Notes Secured Parties have prior to the date of the Global Settlement, received distributions on account of the Allowed PIK Notes Claim in the amount of \$203,484,992, plus professional fees required to be paid as set forth in the Final DIP Order or Amended Cash Collateral Order. Any amounts so distributed under Section 8(a) or 8(b) of the Global Settlement Agreement and any future distributions to any of the Prepetition Notes Secured Parties on account of any of the Allowed Prepetition Notes Claim, or any portion thereof, shall not be subject to any challenge or disgorgement of any kind notwithstanding anything to the contrary in the Final DIP Order, the Amended Cash Collateral Order or otherwise. Further, notwithstanding anything herein or the Amended Cash Collateral Order (including, without limitation, paragraph 4(d) thereof) to the contrary, no holder of the Prepetition PIK Notes, from and after the Effective Date, shall be required to furnish or maintain the certification contemplated by paragraph 4(d) of the Amended Cash Collateral Order prior to

disbursing or releasing of any funds distributed to it, whether before or after the Effective Date, on account of its Allowed Prepetition PIK Notes Claim, and paragraph 4(d) of the Amended Cash Collateral Order shall be deemed deleted.

11. Upon entry of this Order, the Debtors shall be authorized to take such actions described in Section 9 of the Global Settlement Agreement.

12. Each of the releases set forth in the Global Settlement Agreement are critical to the implementation of the Global Settlement Agreement, are supported by fair and reasonable consideration, are in the best interests of the Debtors' estates, and, accordingly, are hereby approved.

13. The Challenge Period Termination Date shall be deemed extended through, but not including, the earlier of (i) three business days after an Order is entered denying approval of this Agreement, or (ii) the Effective Date.

14. The Prepetition PIK Notes Trustee, the Prepetition Convertible Notes Trustee and their respective agents, employees, officers, directors or advisors shall not be liable for any expenses, claims, damages or losses incurred by any person (including any Prepetition PIK Note Secured Party or Prepetition Convertible Note Secured Party) as a result of actions taken in connection with their formulation, negotiation, execution or implementation of the Global Settlement Agreement. For the avoidance of doubt, (i) the charging lien of each of (a) the Prepetition Convertible Notes Trustee pursuant to the Prepetition Convertible Notes Indenture and (b) the Prepetition PIK Notes Trustee pursuant to the Prepetition PIK Notes Indenture, remains in place and in full force and effect and is not being released or otherwise settled as a result of such Prepetition Indenture Trustee's execution of the Global Settlement Agreement; and

(ii) to the extent fees and costs are due and owing to either of the Prepetition Indenture Trustees, such fees and costs will be paid first in accordance with the applicable indenture.

15. The Wind-Down Budget attached hereto as Exhibit B is hereby approved. From and after the date hereof, the Debtors may use Cash Collateral solely in accordance with the terms and conditions of this Order and the Wind Down Budget. The Final DIP Order and the Amended Cash Collateral Order shall remain in full force and effect, except as specifically amended or modified by this Order, including, but not limited to, the deletion of paragraph 4(d) of the Amended Cash Collateral Order. To the extent there is any inconsistency between this Order and the Final DIP Order or the Amended Cash Collateral Order, this Order shall govern.

16. The terms of this Order shall be immediately effective and enforceable upon its entry.

17. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order and the Global Settlement Agreement.

Dated: _____, 2016
New York, New York

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

(Global Settlement Agreement)

GLOBAL SETTLEMENT AGREEMENT

This Global Settlement Agreement (the “Agreement”) is made and entered into as of May 10, 2016 (the “Execution Date”), by and among the Debtors, the Creditors’ Committee appointed in the Debtors’ Chapter 11 Cases, the Prepetition PIK Notes Trustee, the Prepetition Convertible Notes Trustee, the Unions and the Pension Plans. The Debtors, the Creditors’ Committee, the Prepetition PIK Notes Trustee, the Prepetition Convertible Notes Trustee, the Unions and the Pension Plans may each be referred to in this Agreement individually as a “Party” and collectively as the “Parties.” All capitalized terms used herein and not otherwise defined shall have the meanings set forth in Section 1 of this Agreement.

RECITALS

WHEREAS, on July 19, 2015, (the “Commencement Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered for procedural purposes pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure under Case No. 15-23007 (RDD) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

WHEREAS, on July 24, 2015, the United States Trustee for Region 2 appointed the Creditors’ Committee.

WHEREAS, the Unions and their professionals worked to encourage the participation of various potential purchasers in the sales of the Debtors’ stores, reached consensual resolutions of most issues raised in the Debtors’ motions pursuant to Sections 1113 and 1114 of the Bankruptcy Code, as well as labor agreements with various purchasers, and reached consensual resolution of almost all objections or potential objections to the sales of the Debtors’ stores.

WHEREAS, severed employees represented by the Unions received approximately 54% of the severance they were due under the CBAs (and, in some cases, greater amounts based upon contributions by certain purchasers) and 100% of health and welfare benefits, while other holders of Deferred Administrative Expense and Priority Claims (as defined herein) have not received any payment on account of such claims.

WHEREAS, on August 12, 2015, the Bankruptcy Court entered the Final DIP Order pursuant to which, among other things, the Debtors stipulated, admitted and agreed to, among other things, the validity and amount of the Prepetition PIK Note Obligations and the Prepetition PIK Notes Liens and the Prepetition Convertible Note Obligations and the Prepetition Convertible Note Liens, and agreed that such claims shall not be subject to any avoidance, reduction, recharacterization, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges, subject only to the timely filing of a Challenge by the Creditors’ Committee or other party in interest as set forth in paragraph 8 of the Final DIP Order.

WHEREAS, from time to time, the Creditors’ Committee, the Prepetition PIK Notes Trustee and Prepetition Convertible Notes Trustee agreed to extend the Challenge Period Termination Date.

WHEREAS, on January 28, 2016, the Bankruptcy Court entered the Amended Cash Collateral Order which, among other things, extended the Debtors' rights to use cash collateral and granted, in exchange, adequate protection to the Prepetition Notes Secured Parties as specified therein.

WHEREAS, the Creditors' Committee has advised the Debtors, the Majority PIK Noteholders and the Majority Convertible Noteholders of its intention to assert certain Challenges seeking, among other things, the avoidance of certain of the Prepetition PIK Notes Liens and Prepetition Convertible Notes Liens, objections to the allowance of all or a portion of the Prepetition PIK Notes Obligations and Prepetition Convertible Notes Obligations, and equitable subordination of all or a portion of the Prepetition PIK Notes Obligations and Prepetition Convertible Notes Obligations (collectively, the "Committee Challenges"), and has further advised the Debtors, the Majority PIK Noteholders and the Majority Convertible Noteholders that those Challenges are largely based on theories advanced by professionals for the UFCW, Cohen Weiss and Simon LLP ("CWS") and Glanzer & Company ("Glanzer").

WHEREAS, certain Pension Plans and certain related multi-employer benefit funds filed proofs of claim for the allowance and payment of administrative expense claims related to unpaid pension and other obligations incurred subsequent to the commencement of the Debtors' cases (the "Administrative Expense Proofs of Claims"). The Debtors have challenged certain of the Administrative Expense Proofs of Claim, which challenges remain pending.

WHEREAS, certain Pension Plans and certain related multi-employer benefit funds have filed motions for the allowance and payment of administrative expense claims related to unpaid pension and other obligations incurred subsequent to the commencement of the Debtors' cases (the "Administrative Expense Motions"). The Debtors have disputed the Administrative Expense Motions, which remain pending.

WHEREAS, after good-faith arms'-length negotiations, the Parties have resolved certain disputes and matters among them, including, without limitation, the Committee Challenges, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the recitals stated above, the agreements, promises and warranties set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. ***Definitions.***

The following terms have the respective meanings set forth below for all purposes of this Agreement:

"Allowed Prepetition Convertible Notes Claim" shall have the meaning given to such term in Section 7(b)(ii) of this Agreement.

"Allowed Prepetition Notes Claims" means, collectively, the Allowed Prepetition Convertible Notes Claim and Allowed Prepetition PIK Notes Claim.

"Allowed Prepetition PIK Notes Claim" shall have the meaning given to such term in Section 7(b)(i) of this Agreement.

“Amended Cash Collateral Order” means the *Order (A) Amending Debtors’ Use of Cash Collateral Pursuant to 11 U.S.C. §§ 105 and 363(c)(2) and Fed. R. Bankr. 4001(b); (B) Granting Adequate Protection Pursuant to 11 U.S.C § 361; and (C) Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364*, entered by the Bankruptcy Court in the Chapter 11 Cases on January 28, 2016 (Dkt. No. 2394).

“Amex Litigation” means the class action lawsuit captioned *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, Master File No.: 11-MD-02221 (NGG) (RER), pending in the United States District Court for the Eastern District of New York, in which one or more of the Debtors is a member of the plaintiff class.

“Amex Litigation Proceeds” means any recoveries actually received by the Debtors on account of any judgment entered in, or settlement reached in, the Amex Litigation, net of any and all costs and expenses (including contingent or other professional fees and expenses) incurred or required to be paid by the Debtors in connection with the Amex Litigation.

“Approval Order” means an order of the Bankruptcy Court (i) approving this Agreement and the transactions, payments, releases and other terms set forth herein, (ii) authorizing the release of the Applicable Prepayment Fee Escrow (as defined in the Amended Cash Collateral Order) as contemplated by this Agreement, (iii) authorizing and approving the Debtors’ use of Cash Collateral solely in accordance with the wind-down budget (in form and substance acceptable to the Debtors, the Committee, the Majority PIK Noteholders and the Majority Convertible Noteholders, to be filed with the Bankruptcy Court prior to the hearing on the motion seeking entry of the Approval Order), and (iv) containing such other terms necessary or appropriate to implement the terms of this Agreement, which order shall be in form and substance reasonably acceptable to each of the Parties.

“Applicable Prepayment Fee Escrow” shall have the meaning given to such term in the Amended Cash Collateral Order.

“Avoidance Action” means an action or other claim of the Debtors’ estates arising under sections 502(d), 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code or any other avoidance actions under their state law analogs. For the avoidance of doubt, for the purposes hereof Avoidance Actions shall not include any action against any Prepetition Notes Secured Party or any of its successors, assigns, officers, directors, members, partners, employees, agents, representatives, consultants, financial advisors, accountants or attorneys released pursuant to this Agreement.

“Bankruptcy Code” means title 11 of the United States Code.

“Bankruptcy Court” shall have the meaning given to such term in the Recitals.

“Cash Collateral” shall have the meaning given to such term in the Final DIP Order.

“Cash Consideration” shall have the meaning given to such term in Section 3(a) of this Agreement.

“CBA” means a collective bargaining agreement to which one or more of the Debtors was a party as of the Commencement Date with one or more of the Unions.

“Chapter 11 Cases” shall have the meaning given to such term in the Introduction.

“Challenge” shall have the meaning given to such term in the Final DIP Order.

“Challenge Period Termination Date” shall have the meaning given to such term in the Final DIP Order as extended pursuant to Section 14(k) of this Agreement.

“Chapter 11 Cases” means the voluntary cases filed by the Debtors pursuant to chapter 11 of the Bankruptcy Code with the Bankruptcy Court, and jointly administered under *The Great Atlantic & Pacific Tea Company, Inc., et al.*, Case No. 15-23007 (RDD).

“Claim” shall have the meaning given to such term in the Bankruptcy Code.

“Collateral” shall have the meaning given to such term in the Amended Cash Collateral Order.

“Commencement Date” shall have the meaning given to such term in the Recitals.

“Committee Challenges” shall have the meaning given to such term in the Recitals.

“Conforming Plan of Reorganization” means a plan of reorganization under chapter 11 of the Bankruptcy Code confirmed by a Final Order of the Bankruptcy Court, each in form and substance acceptable to each of the Majority PIK Noteholders and Majority Convertible Noteholders, in their sole and absolute discretion, providing for the treatment of the Deferred Administrative Expense and Priority Claims of the Unions and the Pension Plans (and their respective members and constituents) as set forth in Section 6 of this Agreement, and (b) having terms otherwise consistent with the terms of this Agreement.

“Creditors’ Committee” means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

“Debtors” means 2008 Broadway, Inc.; The Great Atlantic & Pacific Tea Company, Inc.; A&P Live Better, LLC; A&P Real Property, LLC; APW Supermarket Corp.; APW Supermarkets, Inc.; Borman’s Inc.; Delaware County Dairies, Inc.; Food Basics, Inc.; Kwik Save Inc.; McLean Avenue Plaza Corp.; Montvale Holdings, Inc.; Montvale; Onpoint, Inc.; Pathmark Stores, Inc.; Plainbridge, LLC; Shopwell, Inc.; Super Fresh Food Markets, Inc.; The Old Wine Emporium of Westport Inc.; Tradewell Foods of Conn., Inc; and Waldbaum, Inc.

“Debtors’ Stipulations” shall have the meaning given to such term in the Final DIP Order.

“Deferred Administrative Expense and Priority Claims” means any Claim allowed against the Debtors under sections 503(b) and 507(a)(2), (4) or (5) of the Bankruptcy Code that is a:

- (a) Claims under or for breach of a CBA, including a Claim for:
 - (i) unpaid severance by or on account of a former employee of the Debtors who was represented by a Union;
 - (ii) unpaid wages, salary, benefits or vacation;
 - (iii) unpaid monthly contributions and/or other ongoing contribution obligations to a pension or defined benefit plan, legal services fund, or health and welfare plan and/or welfare plan or other multi-employer or single employer benefit fund maintained pursuant to a collective bargaining agreement of the Debtors; or

(iv) a lump-sum bonus or supplement payable upon retirement by an employee or former employee of United Food and Commercial Workers Local 342;

but excluding a Claim for:

(i) paid contributions to a multi-employer or single employer benefit fund; or

(ii) paid severance by or on account of a former employee of the Debtors who was represented by a Union;

(b) Claim under section 503(b)(9) of the Bankruptcy Code; or

(c) Claim under section 503(b)(1)(B) or 503(b)(1)(C) of the Bankruptcy Code, including the payments provided for pursuant to Section 3(b).

“Effective Date” shall have the meaning given to such term in Section 2 of this Agreement.

“Final DIP Order” means the *Final Order Authorizing Debtors To (A) Obtain Third Lien Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) And 364(e), (B) Use Cash Collateral Pursuant To 11 U.S.C. § 363(c)(2). And (C) Grant Certain Protections To Prepetition Secured Parties Pursuant To 11 U.S.C. §§ 361, 362, 363 and 364*, entered by the Bankruptcy Court in the Chapter 11 Cases on August 12, 2015 (Dkt. No. 531).

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Cases, or the docket of any such other court, the operation or effect of which has not been stayed, reversed, or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal, petition for certiorari, or seek review or rehearing or leave to appeal has expired and as to which no appeal, petition for certiorari or petition for review or rehearing was filed or, if filed, remains pending or as to which any right to appeal, petition for certiorari, reargument, or rehearing shall have been waived in writing by all Persons possessing such right, or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or from which reargument or rehearing was sought or certiorari has been denied, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Federal Rules of Bankruptcy Procedure may be filed with respect to such order shall not cause such order not to be a Final Order.

“Initial Mandatory Payments” shall have the meaning given to such term in Section 8 of this Agreement.

“Lien” shall have the meaning given to such term in the Bankruptcy Code.

“Majority Convertible Noteholders” means the holders of a majority in outstanding principal amount of the Prepetition Convertible Notes.

“Majority PIK Noteholders” means the holders of a majority in outstanding principal amount of the Prepetition PIK Notes.

“Management Trust” means the secular trust funded by the Debtors on April 3, 2015 for the benefit of the Debtors’ executive management team.

“Montvale” means Montvale-Para Holdings Inc.

“Net Proceeds” means the gross proceeds recovered by the Debtors from the prosecution of any Avoidance Action less the actual costs and expenses of such prosecution (including reasonable costs and expenses of counsel).

“Original Issue Discount” means \$10.75 million, representing the total amount of original issue discount under the Prepetition PIK Notes upon issuance.

“Oversight Committee” means a committee of three individuals comprised of (i) one designee from the Debtors, (ii) one designee from the Creditors’ Committee, and (iii) one designee from the Prepetition Notes Secured Parties.

“Pension Plans” means each of the pension plans that are signatories to this Agreement.

“Prepetition Convertible Notes” shall have the meaning given to such term in the Final DIP Order.

“Prepetition Convertible Notes Documents” shall have the meaning given to such term in the Final DIP Order.

“Prepetition Convertible Notes Indenture” means that certain Indenture, dated as of March 13, 2012 (as amended, supplemented or otherwise modified prior to the Commencement Date) between Montvale and the Prepetition Convertible Notes Trustee, pursuant to which Montvale issued senior secured notes due 2018 in the initial aggregate principal amount of \$250 million.

“Prepetition Convertible Notes Liens” shall have the meaning given to such term in the Final DIP Order.

“Prepetition Convertible Notes Obligations” shall have the meaning given to such term in the Final DIP Order.

“Prepetition Convertible Notes Secured Parties” shall have the meaning given to such term in the Final DIP Order and shall, for the avoidance of doubt, include The Yucaipa Companies, LLC and its affiliated funds, including, without limitation Yucaipa American Alliance Fund II, LP and Yucaipa American Alliance (Parallel) Fund II, LP (the “Yucaipa Funds”).

“Prepetition Convertible Notes Trustee” means U.S. Bank National Association, as trustee and collateral agent under the Prepetition Convertible Notes Documents, acting on behalf of itself and on behalf of each other Prepetition Convertible Notes Secured Party, and at the direction of the Majority Convertible Noteholders.

“Prepetition Indenture Trustees” means, collectively, the Prepetition PIK Notes Trustee and Prepetition Convertible Notes Trustee.

“Prepetition PIK Notes” shall have the meaning given to such term in the Final DIP Order.

“Prepetition PIK Notes Documents” shall have the meaning given to such term in the Final DIP Order.

“Prepetition PIK Notes Indenture” means that certain Indenture, dated as of March 13, 2012 (as amended, supplemented or otherwise modified prior to the Commencement Date) between Montvale and the Prepetition PIK Notes Trustee, pursuant to which Montvale issued senior secured convertible notes due 2017 in the initial aggregate principal amount of \$215 million.

“Prepetition PIK Notes Liens” shall have the meaning given to such term in the Final DIP Order

“Prepetition PIK Notes Obligations” shall have the meaning given to such term in the Final DIP Order.

“Prepetition PIK Notes Secured Parties” shall have the meaning given to such term in the Final DIP Order.

“Prepetition Notes Secured Parties” shall mean the Prepetition PIK Notes Secured Parties and the Prepetition Convertible Notes Secured Parties.

“Prepetition Notes Secured Parties Payment Priority” shall have the meaning given to such term in Section 4 of this Agreement.

“Prepetition PIK Notes Trustee” means U.S. Bank National Association, as trustee and collateral agent under the Prepetition PIK Notes Documents, acting on behalf of itself and on behalf of each other Prepetition PIK Notes Secured Party, and at the direction of the Majority PIK Noteholders.

“Prepetition Term Loan Facility” shall have the meaning given to such term in the Final DIP Order.

“Prepetition Term Loan Secured Parties” shall have the meaning given to such term in the Final DIP Order.

“Reorganized Debtors” means the Debtors from and after the occurrence of the effective date of a Conforming Plan of Reorganization.

“Secured Claim” means any Claim which is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with section 506(a) of the Bankruptcy Code.

“Unions” means the United Food and Commercial Workers Union, International Union (“UFCW”) and each of its affiliated local unions that are signatories to this Agreement.

2. ***Effective Date.*** This Agreement shall become effective on the date that the Approval Order becomes a Final Order, provided that such date occurs on or before June 17, 2016 (the “Effective Date”), provided further, however, that from and after the date the Approval Order is entered by the Bankruptcy Court, the Prepetition Indenture Trustees (at the direction of the Majority PIK Noteholders and Majority Convertible Noteholders, as applicable), the Debtors and the Creditors' Committee may unanimously waive the requirement that the Approval Order be a Final Order. If the Bankruptcy Court denies approval of this Agreement or the Effective Date does not occur on or before June 17, 2016 (or such later date as may be unanimously agreed to by each of the Debtors, the Committee, the Majority PIK Noteholders, the Majority Convertible Noteholders, the Unions and Pension Plans), then this Agreement (except Section 14(k)) shall be null and void, and each of the Parties' respective interests, rights, remedies and defenses shall be fully restored without prejudice as if this Agreement (except Section 14(k)) had never existed and the Parties shall be returned to their respective positions *status quo ante*.

3. ***Cash and Other Consideration.***

(a) Upon the occurrence of the Effective Date, eleven million two hundred fifty thousand dollars (\$11,250,000.00) of cash (the “Cash Consideration”) shall be made available and distributed by the Debtors' estates, including to the holders of Deferred Administrative Expense and Priority Claims, from the following sources:

- (i) six million two hundred fifty thousand dollars (\$6,250,000.00) on account of the Prepetition Notes Secured Parties' Cash Collateral; and
- (ii) five million dollars (\$5,000,000.00) on account of amounts that the Prepetition Term Loan Secured Parties have agreed shall be released from the Applicable Prepayment Fee Escrow,

it being understood and agreed that the Liens of the Prepetition Notes Secured Parties and Prepetition Term Loan Secured Parties against and rights in or to such Cash Collateral and the Applicable Prepayment Fee Escrow shall be forever waived, released and extinguished as of the Effective Date. The Cash Consideration shall be deemed to be inclusive of \$600,000 on account of the Management Trust.

(b) Subject to the occurrence of the Effective Date, the aggregate amount of \$1.5 million of the Cash Consideration will be used to pay the reasonable fees and expenses of UFCW professionals CWS (up to \$500,000) and Glanzer (\$1,000,000) in connection with services for the UFCW in these Chapter 11 cases, which shall be in full and complete settlement and release of all claims by the UFCW for professional fees pursuant to Section 503(b)(4) of the Bankruptcy Code and otherwise). Subject to the occurrence of the Effective Date, these fees and expenses shall constitute a stipulated, approved, and allowed administrative expense to be paid on the Effective Date of this Agreement, which shall not be subject to any avoidance, reduction, recharacterization, subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges.

(c) ***Prepetition PIK Notes Interest Accrual Waiver.*** Subject to the occurrence of, and on the Effective Date, the Prepetition PIK Notes Secured Parties shall be deemed to have waived any Claims on account of (i) accrual of interest only for the period from and after January 1, 2016 through and including March 31, 2016, and (ii) only that portion of Original Issue Discount that accreted from and after the Commencement Date. For the avoidance of doubt, interest at the rate of 12.50% per annum, plus an additional 1.00% per annum, plus interest on defaulted interest, on all amounts outstanding under the Prepetition PIK Notes shall accrue (for the avoidance of doubt, such interest shall be payable-in-kind and shall be calculated on a continuous daily basis until the next succeeding semi-annual interest payment date, upon which date the principal amount of the Prepetition PIK Notes outstanding shall be increased by an amount equal to the amount of such accrued interest) for period from and after April 1, 2016 through the date the Allowed Prepetition PIK Note Claims are paid in full in cash.

4. ***Prosecution of Avoidance Action; Allocation of Net Proceeds.***

(a) Following the Effective Date, the Avoidance Actions shall be prosecuted by the Creditors' Committee, which shall have full standing to do so on behalf of the Debtors' estates, subject to the oversight and direction of the Oversight Committee with respect to the prosecution, settlement, abandonment or other decisions regarding the Avoidance Actions. Pachulski, Stang, Ziehl & Jones LLP ("PSZJ") shall prosecute the Avoidance Actions on a contingency fee basis or on such other written terms and conditions acceptable to the Oversight Committee, unless PSZJ has a conflict of interest, in which case the Oversight Committee shall select alternative counsel for the prosecution of such matter.

(b) The Prepetition Notes Secured Parties and the Debtors' estates (for the benefit of, among others, the holders of Deferred Administrative Expense and Priority Claims) shall share in the Net Proceeds of Avoidance Actions, on a dollar for dollar basis, as follows:

(i) the first ten million dollars (\$10,000,000.00) of Net Proceeds shall be distributed (A) seventy-five percent (75%) to the Prepetition Notes Secured Parties and (B) twenty-five percent (25%) to the Debtors' estates;

(ii) Net Proceeds in excess of the first ten million dollars (\$10,000,000.00) and up to eighteen million dollars (\$18,000,000.00) shall be distributed (A) fifty percent (50%) to the Prepetition Notes Secured Parties and (B) fifty percent (50%) to Debtors' estates (it being understood and agreed that recovery to the Prepetition Notes Secured Parties from the Net Proceeds of the Avoidance Actions shall in no case exceed eleven million five hundred thousand dollars (\$11,500,000.00)); and

(iii) Net Proceeds in excess of eighteen million dollars (\$18,000,000.00) or after such time as the Prepetition Notes Secured Parties have been paid eleven million five hundred thousand dollars (\$11,500,000.00) from the Net Proceeds of Avoidance Actions shall be distributed 100% to the Debtors' estates;

provided that it is understood and agreed that notwithstanding anything herein to the contrary, distributions to the Prepetition Notes Secured Parties hereunder shall be made first to the Prepetition PIK Notes Trustee (for the benefit of the Prepetition PIK Noteholders), until such time as the Allowed Prepetition PIK Notes Claims shall have been paid in full in cash, and thereafter to the Prepetition Convertible Notes Trustee (on behalf of, and to be distributed on a pro rata basis to, the Prepetition Convertible Noteholders) (but such payment priority among the Prepetition Notes Secured Parties shall in no way impact or subordinate the payment of professional fees required to be paid pursuant to the Final DIP Order or Amended Cash Collateral Order) (the "Prepetition Notes Secured Parties Payment Priority").

5. ***Prosecution of Amex Litigation; Allocation of Net Proceeds.*** The Amex Litigation shall be prosecuted by the Debtors, subject to the oversight and direction of the Majority PIK Noteholders and Majority Convertible Noteholders with respect to the prosecution, settlement, abandonment or other decisions regarding the Amex Litigation. The Prepetition Notes Secured Parties and the Pension Plans shall share in the Amex Litigation Proceeds on a dollar for dollar basis as follows: Ninety-Five percent (95%) shall be distributed to the Prepetition Notes Secured Parties, and Five percent (5%) to the Pension Plans pro rata consistent with the amount of their Deferred Administrative Expense and Priority Claims (it being understood and agreed that the recovery to the Pension Plans from the Amex Litigation Proceeds shall in no case exceed one million five hundred thousand dollars (\$1,500,000.00) and all other amounts shall be distributed to the Prepetition Notes Secured Parties in accordance with the Prepetition Notes Secured Parties Payment Priority).

6. ***Plan Treatment for Deferred Administrative Expense and Priority Claims of the Pension Plans and Their Respective Members and Constituents.***

(a) The Debtors have advised the Unions and the Pension Plans that they may, subject to the prior written consent of the Majority PIK Noteholders (to the extent not paid in full, in cash, prior to such date) and the Majority Convertible Noteholders in each of their sole and absolute discretion, seek to propose a plan of reorganization for the Debtors that, among other things, would provide for the continued operation by the Reorganized Debtors of certain business operations and preservation of the Debtors' tax attributes, including the Debtors' net operating loss carryforwards. The determination of whether to propose such a plan of reorganization shall be made on or before June 23, 2016, with such plan and accompanying disclosure statement to be filed with the Bankruptcy Court on or before July 7, 2016 (both of which dates may be extended only with the written consent, in their sole and absolute discretion, of each of the Majority PIK Noteholders (to the extent not paid in full, in cash, prior to such

date) and the Majority Convertible Noteholders). In the event the Debtors, with the written consent of the Majority PIK Noteholders and the Majority Convertible Noteholders (which consent may be given or withheld in their sole and absolute discretion), determine to propose a plan of reorganization, such plan shall provide that, on account of the Deferred Administrative Expense and Priority Claims of the Pension Plans (and their respective members and constituents), the Reorganized Debtors shall pay ratably to such Pension Plan holders of Deferred Administrative Expense and Priority Claims, in cash, an amount equal to Five percent (5%) of the Value of the Tax Savings actually received by the Reorganized Debtors (and the Majority PIK Noteholders and/or the Majority Convertible Noteholders as the shareholders thereof), it being understood and agreed that the recovery to such Pension Plan holders of Deferred Administrative Expense and Priority Claims shall in no case exceed three million dollars (\$3,000,000.00) in the aggregate. For purposes of this Section 6, the term "Value of the Tax Savings" shall mean the value of the tax savings realized as a result of the use of net operating loss carry-forwards to shelter taxable income generated by Reorganized Debtors from and after the effective date of the plan, and shall not include the tax savings realized from the use of tax attributes to shelter cancellation of indebtedness or other income resulting from the confirmation of such plan or from the sale of operating assets retained by the Reorganized Debtors.

(b) Subject to the receipt of a disclosure statement approved by the Bankruptcy Court, the Unions and the Pension Plans (on behalf of their respective members and constituents) shall agree to accept such treatment, and the respective portion of the payments provided pursuant to Sections 3 through 6 if pursuant to a plan of reorganization, on account of all allowed Deferred Administrative Expense and Priority Claims held by the Unions and the Pension Plans (and their respective members and constituents) under Section 1129(a)(9) of the Bankruptcy Code, and shall otherwise support (and shall not oppose directly or indirectly) approval of such disclosure statement and confirmation of such plan of reorganization, except that the Unions reserve their right to object to any plan of reorganization that includes the sale of the Liquor Store Assets solely on the grounds that such sale does not comply with the requirements under a CBA under applicable law, and the Debtors and other Parties reserve the right to oppose any such objection. In addition, neither the Unions nor the Pension Plans (and their respective members and constituents), including the UFCW International Union-Industry Pension Fund ("National Fund"), will object to or otherwise oppose the withdrawal by the Debtors from the National Fund prior to consummation of a plan of reorganization as long as the Debtors and reorganized Debtors agree that the equivalent amount of funds that would have been contributed to the National Fund (other than amounts that would have been contributed in respect of any under-funding of the National Fund) will be utilized for a purpose that benefits the bargaining unit mutually agreeable with the Unions and there is written documentation evidencing such a withdrawal from the National Fund.

(c) The Unions have agreed that except with respect to amounts under Section 3(b) herein, the Unions' respective portion of the payments provided under Sections 3(a) and 4 herein shall first be used to pay Deferred Administrative Expense and Priority Claims arising under a CBA (other than unpaid severance claims described under subclause (a)(i) of the definition of "Deferred Administrative Expense and Priority Claims") and once 54% of such claims have been paid all outstanding Deferred Administrative Expense and Priority Claims arising under a CBA shall share ratably in the amounts described under Sections 3(a) and 4.

(d) In addition to the amounts set forth in Sections 3 through 6 herein, Debtors shall pay from the wind-down budget outstanding pension contributions owed to the National Fund on behalf of covered employees who are employed at the liquor stores described in Paragraph 8(d), in an aggregate amount not to exceed \$27,000 (provided that if a withdrawal from the National Fund has not occurred by June 30, 2016, the \$27,000 limit shall be increased by \$2,500 for each successive month that liquor store employees continue to be covered under the National Fund) and shall provide the National Fund

supporting documentation of individuals working in the liquor stores for the relevant time periods covering such contributions.

(e) It is agreed by the Parties that any plan of reorganization will be consistent in all respects with this Agreement and that all Parties (subject to the consent rights of the Majority PIK Noteholders and Majority Convertible Noteholders hereunder) will support a plan of reorganization that is consistent with this Agreement, except that the Unions reserve the right to object to any plan of reorganization that includes the sale of the Liquor Store Assets (as defined below) solely on the grounds that such sale does not comply with the requirements under a CBA under applicable law, and the Debtors and other Parties reserve the right to oppose any such objection, and the Parties will not be bound to support any plan of reorganization that is inconsistent with the terms hereof.

7. Allowance of Prepetition Notes Secured Parties' Claims and Validation of Liens.

(a) The Debtors' stipulations, admissions, waivers and agreements contained in the Final DIP Order and herein shall be irrevocably binding on the Debtors, the Debtors' estates and all parties in interest, including, without limitation, the Creditors' Committee and any subsequently-appointed chapter 11 or chapter 7 trustee or other estate representative, and none of the Debtors nor any such subsequently-appointed trustee, other estate representative or party in interest (including, without limitation, the Creditors' Committee) shall have the right to assert any Challenge (whether a Committee Challenge or otherwise) to any such stipulation, admission, waiver or agreement or otherwise. For the avoidance of doubt, on the Effective Date, the Challenge Period Termination Date shall be deemed to have occurred and all rights, and reservations of rights, to assert any Challenge (whether a Committee Challenge or otherwise) shall be deemed forever and irrevocably extinguished and waived.

(b) For the avoidance of doubt:

(i) The Prepetition PIK Notes Secured Parties shall have an allowed Secured Claim against each of the Debtors on account of the Prepetition PIK Notes Documents in the aggregate amount of \$337,628,551.52 as of December 31, 2015; *plus* interest for the period from and after April 1, 2016 (as set forth in Section 3(c) of this Agreement); *plus* the payment or reimbursements of any unpaid professional fees required to be paid under the Final DIP Order, Amended Cash Collateral Order or other order of the Bankruptcy Court (the "Allowed Prepetition PIK Notes Claim"). The Allowed Prepetition PIK Notes Claim shall not be subject to any avoidance, reduction, recharacterization, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges (including, without limitation, any challenges to any claims of diminution of the value of Collateral asserted by any Prepetition PIK Notes Secured Party) under the Bankruptcy Code, the Final DIP Order, the Amended Cash Collateral Order or any applicable nonbankruptcy law or regulation by any person or entity of any kind.

(ii) The Prepetition Convertible Notes Secured Parties shall have an allowed Claim against each of the Debtors on account of the Prepetition Convertible Notes Documents in the principal amount of \$388,678,953.00 (inclusive of prepetition interest, fees, expenses, charges and other prepetition obligations chargeable or reimbursable under the Prepetition Convertible Notes Documents) *plus* the payment or reimbursement of any unpaid professional fees required to be paid under the Final DIP Order, Amended Cash Collateral Order or other order of the Bankruptcy Court, subject to the Prepetition Notes Secured Parties Payment Priority, which allowed Claim shall be an allowed Secured Claim to the extent of the value of remaining Collateral (the "Allowed Prepetition

Convertible Notes Claim”). The Allowed Prepetition Convertible Notes Claim shall not be subject to any avoidance, reduction, recharacterization, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges (including, without limitation, any challenges to any claims of diminution of the value of Collateral asserted by any Prepetition Convertible Notes Secured Party) under the Bankruptcy Code, the Final DIP Order, the Amended Cash Collateral Order or any applicable nonbankruptcy law or regulation by any person or entity of any kind.

8. ***Mandatory Payments on Account of Allowed Prepetition PIK Notes Claims.***

(a) No later than one (1) business day following the Effective Date, the Debtors shall (i) pay the Prepetition Indenture Trustees their outstanding fees and expenses in accordance with the wind-down budget in an amount not to exceed \$250,000 in the aggregate, and (ii) distribute to the Prepetition PIK Notes Trustee (for the benefit of the Prepetition PIK Noteholders) cash in an amount not less than \$90 Million, all of which payments shall not be subject to any avoidance, reduction, recharacterization, subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law, objection, defense, counterclaim, cross-claims, set-off or offset, or any other challenges (the “Initial Mandatory Payments”).

(b) From and after the making of the Initial Mandatory Payments, the Debtors shall, on a weekly basis, distribute all Cash Collateral (including, for the avoidance of doubt, all proceeds from the sale of the Harlem store) to the Prepetition Indenture Trustees for the benefit of the Prepetition Notes Secured Parties (which payments, for the avoidance of doubt, shall be subject to Prepetition Notes Secured Parties Payment Priority) other than amounts set forth in the wind-down budget (with any excess cash or unused amounts remaining after payment of the expenses set forth in such wind-down budget to be distributed on a weekly basis to the Prepetition Indenture Trustees for the benefit of the Prepetition Notes Secured Parties in accordance with the Prepetition Secured Parties Payment Priority).

(c) The Parties acknowledge and agree that the Prepetition PIK Notes Secured Parties have prior to the date hereof, received distributions on account of the Allowed PIK Notes Claim in the amount of \$203,484,992 plus professional fees required to be paid as set forth in the Final DIP Order or Amended Cash Collateral Order. Any amounts so distributed pursuant to Section 8(a) or 8(b) hereof and any future distributions to any of the Prepetition Notes Secured Parties on account of any of the Allowed Prepetition Notes Claim, or any portion thereof, shall not be subject to any challenge or disgorgement of any kind notwithstanding anything to the contrary in the Final DIP Order, the Amended Cash Collateral Order or otherwise. Further, notwithstanding anything herein or the Amended Cash Collateral Order (including, without limitation, paragraph 4(d) thereof) to the contrary, no holder of the Prepetition PIK Notes, from and after the Effective Date, shall be required to furnish or maintain the certification contemplated by paragraph 4(d) of the Amended Cash Collateral Order prior to disbursing or releasing of any funds distributed to it, whether before or after the Effective Date, on account of its Allowed Prepetition PIK Notes Claim, and paragraph 4(d) of the Amended Cash Collateral Order shall be deemed deleted.

(d) ***Treatment of Liquor Store Assets.*** On or before June 23 2016, the Debtors shall determine (subject to the prior written consent of each of the Majority PIK Noteholders (to the extent not paid in full, in cash, prior to such date) and the Majority Convertible Noteholders, in their sole and absolute discretion) whether or not to pursue a plan of reorganization for the Debtors that would provide for the continued operation by the Reorganized Debtors of their liquor stores and related assets (“Liquor Store Assets”) and the preservation of the Debtors’ tax attributes, including the Debtors’ net operating loss carry-forwards (the “Plan”); provided that, if by June 23, 2016, the Debtors have not obtained the prior written consent of each of the Majority PIK Noteholders (to the extent not paid in full, in cash, prior to such date) and the Majority Convertible Noteholders in their sole and absolute discretion, to pursue the

Plan, or if, at any earlier time prior to June 23, 2016, the Majority Convertible Noteholders indicate to the Debtors that they do not wish to pursue the Plan, then, upon such date, the Debtors shall (A) promptly take such actions as may be reasonably necessary to solicit offers for and identify the highest and/or best bids for the Liquor Store Assets as soon as commercially practicable, with the intention of obtaining binding offers in writing on or before July 8, 2016, (B) conduct an auction (if determined to be appropriate by the Debtors, the Majority PIK Noteholders (to the extent not paid in full, in cash, prior to such date) and the Majority Convertible Noteholders) with respect to the Liquor Store Assets on or before July 22, 2016, (C) obtain an order of the Bankruptcy Court approving the sale of all the Liquor Store Assets as soon as commercially practicable, in any event no later than August 1, 2016, and (D) consummate a sale of all Liquor Store Assets pursuant to section 363 of the Bankruptcy Code as soon as commercially practicable, in any event no later than September 30, 2016. The Unions reserve their right to object to any sale of the Liquor Store Assets solely on the grounds that such sale does not comply with the requirements under the CBA under applicable law, and the Debtors and other Parties reserve the right to oppose any such objection.

9. ***Distribution Mechanics.*** Nothing herein shall be deemed to fix a mechanic for distributions of the Cash Consideration or Net Proceeds of Avoidance Actions retained by, or payable to, the Debtors' estates. The Parties agree to work in good faith to determine such mechanic, the parties entitled to receive distributions of such funds, and the process for resolving these Chapter 11 Cases. All Parties' rights with respect to such matters are fully preserved.

10. ***Final DIP Order and Amended Cash Collateral Order.*** To the extent there is any inconsistency between this Agreement and the Final DIP Order or the Amended Cash Collateral Order, this Agreement shall govern. The Final DIP Order and the Amended Cash Collateral Order shall be deemed amended so as to allow for the implementation of this Agreement.

11. ***Representations and Warranties.*** Each Party represents and warrants to each other Party that (i) subject to Bankruptcy Court approval in the case of the Debtors and the Creditors' Committee, the execution, delivery, and performance by such Party of this Agreement and the transactions contemplated under this Agreement are within the powers of such Party and have been duly authorized by all necessary action on the part of such Party, (ii) this Agreement has been duly executed and delivered by such Party and, subject to Bankruptcy Court approval in the case of the Debtors and the Creditors' Committee, constitutes a valid and binding obligation of such Party, enforceable against such Party in accordance with the terms and conditions hereof, (iii) it is not relying upon any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Agreement, (iv) it has had the opportunity to be represented and advised by legal counsel in connection with this Agreement, which it enters voluntarily and of its own choice and not under coercion or duress, (v) it has made its own investigation of the facts or has had the opportunity to do so or to consult with counsel for the Committee and is relying upon its own knowledge and the advice of its counsel, (vi) it has no expectation that any of the other Parties will disclose facts material to the Agreement to it, and (vii) it knowingly waives any and all claims that this Agreement was induced by any misrepresentation or non-disclosure and knowingly waives any and all rights to rescind or avoid this Agreement based upon presently existing facts, known or unknown.

12. ***Releases.***

(a) ***Releases by Debtors, Creditors' Committee, Unions and Pension Plans.*** Upon the occurrence of the Effective Date, and except as to (i) the agreements, promises, settlements, reservations, representations, claims allowances and warranties expressly set forth in this Agreement, and (ii) the performance of the obligations set forth herein, and in consideration of the foregoing, the Debtors (on behalf of themselves and the Debtors' estates including any chapter 7 trustee or chapter 11 trustee

subsequently appointed and any entity acting on his or her behalf), the Creditors' Committee (on behalf of itself and each of its members solely in their capacity as a member of the Creditors' Committee but not in their individual creditor capacities), the Unions (on behalf of themselves and each of their constituent members in their capacity as such), and the Pension Plans (on behalf of themselves and each of their constituent members in their capacity as such), each on behalf of themselves and their respective successors and assigns, agree and covenant not to sue, and fully and forever release, discharge and acquit (x) each Prepetition Notes Secured Party, each parent, subsidiary and affiliate of each Prepetition Secured Notes Party, and each of its/their respective successors, assigns, officers, directors, members, partners, employees, agents, representatives, consultants, financial advisors, accountants and attorneys of each of the foregoing, (y) each of the Debtors' current or former officers, directors, employees, representatives, consultants, financial advisors, accountants and attorneys, each in their capacity as such, in connection with or from any and all manners of claims, actions, causes of action, judgments, executions, debts, demands, rights, damages, costs, expenses, and other claims of every kind, nature, and character whatsoever existing as of the date hereof, whether at law or in equity, whether based on contract (including, without limitation, quasi-contract or estoppel), statute, regulation, tort (excluding intentional torts, fraud, recklessness, gross negligence or willful misconduct) or otherwise, accrued or unaccrued, known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, including, without limitation, all Avoidance Actions, based in whole or in part on any act, omission, transaction, event or other circumstance in any way arising from, relating to or in connection with the Debtors, their estates, or the Chapter 11 Cases, including, without limitation, in connection with management or operation of the Debtors' businesses, participation on the Debtors' board of directors, or the Management Trust. For purposes of clarification, no claims -- including, without limitation, any general unsecured, priority, or administrative expense claims -- filed by any of the Parties against the Debtors' estates are or shall be deemed to be released by this Agreement and, other than as set forth herein with respect to the Deferred Administrative Expense and Priority Claims, all rights are reserved with respect thereto. As part of this Agreement, the Debtors and the Pension Plans shall agree upon a schedule of Deferred Administrative Expense and Priority Claims of the Pension Plans and shall file such schedule prior to the hearing on the motion seeking entry of the Approval Order with the Court. Upon filing of such schedule and as of the Effective Date, (1) Debtors shall be deemed to have withdrawn their objections to the allowance of the various claims asserted in the Administrative Expense Motions and the Administrative Expense Proof of Claims, (2) the Parties shall not raise substantive objections to the allowance of the Pension Plans' Deferred Administrative Expense and Priority Claims, and (3) the movants in respect of the various Administrative Expense Motions shall be deemed to have withdrawn with prejudice their requests for payment of such claims; provided, however, that such Administrative Expense Motions shall be deemed to be timely filed proof of claims by movants. As part of this Agreement, the Parties agree not to object to the administrative expense status of the lump sum bonuses/supplements provided in the CBAs with Local 342, except that the Parties' rights are reserved with respect to the amount and validity of such claims.

(b) *Releases by Prepetition Notes Secured Parties.* Upon the occurrence of the Effective Date, and except as to (i) the agreements, promises, settlements, reservations, representations, claims allowances and warranties expressly set forth in this Agreement, and (ii) the performance of the obligations set forth herein, and in consideration of the foregoing, each of (x) the Prepetition PIK Notes Trustee, on behalf of itself and each other Prepetition PIK Notes Secured Party, and their respective successors and assigns, and (y) the Prepetition Convertible Notes Trustee, acting on behalf of itself and each other Prepetition Convertible Notes Secured Party, and, as applicable, their trust beneficiaries, and their respective successors and assigns, agree and covenant not to sue, and fully and forever release, discharge and acquit (1) each of the Debtors, their estates, current or former officers, directors, employees, representatives, consultants, financial advisors, accountants and attorneys, (2) the Creditors' Committee (on behalf of itself and each of its members solely in their capacity as a member of the Creditors' Committee but not in their individual creditor capacities), financial advisors, accountants and

attorneys, (3) the Unions and their financial advisors, accountants and attorneys, and (4) the Pension Plans and their financial advisors, accountants and attorneys, in connection with or from any and all manners of claims, actions, causes of action, judgments, executions, debts, demands, rights, damages, costs, expenses, and other claims of every kind, nature, and character whatsoever existing as of the date hereof, whether at law or in equity, whether based on contract (including, without limitation, quasi-contract or estoppel), statute, regulation, tort (excluding intentional torts, fraud, recklessness, gross negligence or willful misconduct) or otherwise, accrued or unaccrued, known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, based in whole or in part on any act, omission, transaction, event or other circumstance in any way arising from, relating to or in connection with the Debtors, their estates, or the Chapter 11 Cases, including, without limitation, in connection with management or operation of the Debtors' business, participation on the Debtors' board of directors, or the Management Trust; provided, that for the avoidance of doubt, nothing herein shall constitute a release of any portion of the Allowed Prepetition Notes Claims or any claim by any Prepetition Notes Secured Party of diminution in value of the Collateral, which claims are fully preserved hereunder.

13. ***Agreement Not to Interfere with Settlement.*** Upon execution of this Agreement by all Parties, and except as set otherwise specifically provided for in this Agreement, each Party agrees that it will not, and will not cause or encourage any other entity to, directly or indirectly, (a) object to or otherwise commence any proceeding or prosecute or join in, or otherwise support any action to oppose, or (b) take any other action that would interfere with, delay or impede, approval or implementation of this Agreement and the transactions contemplated hereunder; provided that nothing herein shall limit the ability of any Party to file pleadings, appear and be heard or file objections to enforce the provisions of this Agreement, or concerning any other matter arising in the Chapter 11 Cases, so long as such filing, appearance or objection is not inconsistent with such Party's other obligations under this Agreement.

14. ***Miscellaneous.***

(a) ***Venue and Choice of Law.*** The Parties consent and submit to the exclusive jurisdiction of the Bankruptcy Court over any actions or proceedings relating to the enforcement or interpretation of this Agreement and any Party bringing such action or proceeding shall bring such action or proceeding in the Bankruptcy Court. This Agreement and all claims and disputes arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the State of New York and the Bankruptcy Code, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of New York or the Bankruptcy Code. Each party hereto hereby waives any right to a trial by jury in any action, proceeding or counterclaim based upon or arising out of this Agreement or any of the transactions related hereto, and agrees that any such action, proceeding or counterclaim shall be tried before a court and not before a jury.

(b) ***Notices.*** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, or (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day,

To the Debtors at:

The Great Atlantic & Pacific Tea Company, Inc.
48 B-State Plaza
PMB 282
Old Tappan, New Jersey 07675
Attn: Christopher W. McGarry, Chief Restructuring Officer
mcgarryc@aptea.com

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Ray C. Schrock, P.C., Garrett Fail and Sunny Singh
ray.schrock@weil.com; garrett.fail@weil.com; sunny.singh@weil.com
Facsimile: (212) 310-8007

To the Creditors' Committee at:

Pachulski Stang Ziehl & Jones LLP
780 3rd Avenue, Fl 34
New York, NY 10017
Attn: Robert J. Feinstein, Bradford J. Sandler
rfeinstein@pszjlaw.com, bsandler@pszjlaw.com

To the Prepetition PIK Notes Trustee at:

U.S. Bank National Association
Attn: Sandra Spivey
U.S. Bank Global Corporate Trust Services
2300 W. Sahara, Suite 200
Las Vegas, NV 89102
sandra.spivey@usbank.com

With copies (which shall not constitute notice) to:

Squire Patton Boggs (US) LLP
Attn: Andrew M. Simon, Esq.
221 E. Fourth St., Suite 2900
Cincinnati, Ohio 45202
andrew.simon@squirepb.com

and the Majority PIK Noteholders at:

Stroock & Stroock & Lavan LLP
Attn: Kris Hansen, Esq. and Erez Gilad, Esq.
180 Maiden Lane
New York, New York 10038
khansen@stroock.com
egilad@stroock.com

To the Prepetition Convertible Notes Trustee at:

U.S. Bank National Association
Attn: Sandra Spivey
U.S. Bank Global Corporate Trust Services
2300 W. Sahara, Suite 200
Las Vegas, NV 89102
sandra.spivey@usbank.com

With copies (which shall not constitute notice) to:

Squire Patton Boggs (US) LLP
Attn: Andrew M. Simon, Esq.
221 E. Fourth St., Suite 2900
Cincinnati, Ohio 45202
andrew.simon@squirepb.com

and the Majority Convertible Noteholders at:

Schulte, Roth & Zabel LLP
Attn: Adam Harris, Esq.
919 Third Avenue
New York, New York 10022
adam.harris@srz.com

To the UFCW at:

Cohen, Weiss and Simon LLP
330 West 42nd Street
New York, NY 10036-6979
Attn: Richard M. Seltzer, reseltzer@cwsny.com, 212-356-0219
Thomas N. Ciantra, tciantra@cwsny.com, 212-356-0228

To each of the Pension Plans at such address as each such Pension Plan may provide to the other Parties to this Agreement.

(c) *No Admission of Liability.* Each Party acknowledges that this Agreement effects a settlement of potential claims and counterclaims that might be denied and contested, and that nothing contained herein shall be construed as an admission of liability or wrongdoing.

(d) *Entire Agreement.* This Agreement, together with the Final DIP Order and the Amended Cash Collateral Order (except as modified hereby), constitutes the entire and only agreement of the Parties concerning the subject matter hereof. This Agreement supersedes and replaces any and all prior or contemporaneous verbal or written agreements between the Parties concerning the subject matter hereof. The Parties acknowledge that this Agreement is not being executed in reliance on any verbal or written agreement, promise or representation not contained herein.

(e) *No Oral Modifications.* This Agreement may not be modified or amended orally. This Agreement only may be modified or amended by a writing signed by a duly authorized representative of each Party hereto. No modification or amendment of this Agreement may be made that disproportionately impacts any Prepetition Convertible Notes Secured Party without the prior written consent of such disproportionately impacted party. No waiver of any breach of any term or provision of this Agreement shall be construed as a waiver of any subsequent breach.

(f) *Construction.* This Agreement constitutes a fully negotiated agreement among commercially sophisticated parties and therefore shall not be construed or interpreted for or against any Party, and any rule or maxim of construction to such effect shall not apply to this Agreement.

(g) *Headings.* The heading of any section of this Agreement is intended only for convenience and shall not be construed to be or interpreted as a part, or limitation on the scope, of any such section.

(h) *Binding Effect; Successor and Assigns.* This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns; *provided*, that no Party may assign its rights or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed, and any assignment not in accordance with the terms hereof shall be null and void *ab initio*. The provisions of this Agreement shall survive the appointment of a chapter 7 or 11 trustee with respect to any of the Debtors and shall be binding on any chapter 11 trustee or chapter 7 trustee appointed with respect to any of the Debtors. Nothing in this section shall preclude the Prepetition Notes Secured Parties from assigning their rights to receive distributions on account of the Allowed Prepetition PIK Notes Claim or the Allowed Prepetition Convertible Notes Claim; *provided*, that any assignee of a Party to this Agreement shall be bound by the terms of this Agreement.

(i) *Counterparts.* This Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart.

(j) *Costs.* Other than as set forth in the Final DIP Order and the Amended Cash Collateral Order, each Party shall bear its own costs in connection with the negotiation and execution of this Agreement and the motion to approve the Agreement by the Bankruptcy Court.

(k) *Challenge Period Extension.* The Challenge Period Termination Date shall be deemed extended through, but not including, the earlier of (i) three business days after an Order is entered denying approval of this Agreement, or (ii) the Effective Date.

[Signature pages follow]

IN WITNESS WHEREOF, each Party by his/her or its duly authorized representative has executed this Agreement as of the date first written above:

**The Great Atlantic and Pacific Tea Company Inc.,
and its affiliated Debtors**

By: _____
Name:
Title:

The Creditors' Committee

By: _____
Name:
Title:

U.S. Bank National Association, as Prepetition PIK Notes Trustee (acting on behalf of itself and on behalf of each other Prepetition PIK Notes Secured Party, and at the direction of the Majority PIK Noteholders)

By: _____
Name: Sandra Spivey
Title: Vice President

U.S. Bank National Association, as Prepetition Convertible Notes Trustee (acting on behalf of itself and on behalf of each other Prepetition Convertible Notes Secured Party, and at the direction of the Majority Convertible Noteholders)

By: _____
Name: Sandra Spivey
Title: Vice President

United Food and Commercial Workers Union, International Union

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 464A

By: _____
Name:
Title:

Local 338 RWDSU/UFCW

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 1500

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 1262

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 342

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 152

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 1776

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 27

By: _____
Name:
Title:

Retail, Wholesale, Department Store Union Local 1034

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 1245

By: _____
Name:
Title:

United Food & Commercial Workers Union Local 371

By: _____
Name:
Title:

1199SEIU United Healthcare Workers East

By: _____
Name:
Title:

United Pharmacist Guild Local 100R

By: _____
Name:
Title:

1199SEIU Health Care Employees Pension Fund

By: _____
Name:
Title:

**Retail, Wholesale & Department Store International Union
and Industry Pension Fund**

By: _____
Name:
Title:

New York-New Jersey Amalgamated Pension Fund For ACME Employees

By: _____
Name:
Title:

UFCW Local 1245 Labor-Management Pension Fund

By: _____
Name:
Title:

UFCW Local 1245 Severance Fund

By: _____
Name:
Title:

UFCW Local 1262 & Employers Pension Fund

By: _____
Name:
Title:

UFCW LOCAL 1500 PENSION FUND

By: _____
Name:
Title:

Local 305 CIOs Pension Fund

By: _____
Name:
Title:

Local 338 Retirement Fund

By: _____
Name:
Title:

LOCAL 342 ANNUITY FUND

By: _____
Name:
Title:

UFCW Local 342 Savings and 401(k) Plan

By: _____
Name:
Title:

**UFCW Union & Participating Food Industry Employers
Tri-State Pension Fund**

By: _____
Name:
Title:

**United Food & Commercial Workers International
Union Local 464A Pension Fund**

By: _____
Name:
Title:

UFCW International Union - Industry Pension Fund

By: _____
Name:
Title:

UFCW Union Local 152 Retail Meat Pension Plan

By: _____
Name:
Title:

UFCW Union Local 152 Savings Plan

By: _____
Name:
Title:

UFCW Local 1776 & Participating Employers Pension Fund

By: _____
Name:
Title:

Retail Wholesale Department Store Local 1034 Severance Fund

By: _____
Name:
Title:

UFCW Union Retirement and Savings Fund

By: _____
Name:
Title:

UFCW Union Retirement and Savings Plan

By: _____
Name:
Title:

Exhibit B

(Individualized Notice)

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

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

NOTICE OF JOINT MOTION OF DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR APPROVAL OF A GLOBAL SETTLEMENT PURSUANT TO BANKRUPTCY RULE 9019(A) AND FURTHER AMENDING DEBTORS' AUTHORITY TO USE CASH COLLATERAL

PLEASE TAKE NOTICE that a hearing on the joint motion (the "**Motion**") of The Great Atlantic & Pacific Tea Company, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), and the Official Committee of Unsecured Creditors (the "**Creditors' Committee**") for approval of a global settlement agreement, a copy of which is attached to the Motion (the "**Global Settlement**"), among the Debtors, the Creditors' Committee, the Prepetition PIK Notes Trustee, the Prepetition Convertible Notes Trustee, Unions and the Pension Plans (each as defined in the Global Settlement; collectively, the "**Parties**") and related relief, all as more fully described in the Motion, will be held before the Honorable Robert D. Drain in the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York, 10601 (the "**Bankruptcy Court**"), on **June 2, 2016 at 10:00 a.m. (Prevailing Eastern Time)** (the "**Hearing**"). A summary of the key terms of the Global Settlement is attached as Exhibit 1.

If you do not object to the approval of the Motion, you do not need to do anything. Your failure to respond will be deemed to be a "no-objection" to the Motion and the Global Settlement. You may wish to consult legal counsel. If you choose to object to the Motion, you must file a written objection, which conforms to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York, with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures*, dated July 20, 2015 (ECF No. 62), so as to be so filed and received no later than **May 25, 2016 at 4:00 p.m. (Prevailing Eastern Time)** (the "**Objection Deadline**"). If an Objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought.

If you would like to obtain complete copies of the Motion and/or the Global Settlement and its related documents, please visit <https://cases.primeclerk.com/aptea/> for free access to such documents. Hard copies of these documents can also be requested from Prime Clerk at 844-239-9273.

WEIL, GOTSHAL & MANGES LLP
 767 Fifth Avenue
 New York, New York 10153
 Telephone: (212) 310-8000
 Facsimile: (212) 310-8007
 Ray C. Schrock, P.C.
 Garrett A. Fail

Robert J. Feinstein
 Bradford J. Sandler
 PACHULSKI STANG ZIEHL & JONES LLP
 780 Third Avenue, 34th Floor
 New York, New York 10017
 Telephone: (212) 561-7700
 Facsimile: (212) 561-7777

*Attorneys for Debtors
 and Debtors in Possession*

*Counsel for the Official Committee of Unsecured
 Creditors*

Exhibit 1
Summary of Terms of Global Settlement¹

Cash Consideration	Eleven million two hundred fifty thousand dollars (\$11,250,000.00) of cash (the “ Cash Consideration ”) from the Collateral of the Secured Lenders will be made available for the Debtors’ estates, including those claimants who asserted Deferred Administrative Expense and Priority Claims. The Cash Consideration is inclusive of \$600,000 on account of the Management Trust and \$5,000,000 on account of the settlement of the Creditors’ Committee’s potential challenge to the prepayment fee asserted by the Prepetition Term Loan Secured Parties.
Substantial Contribution Claim	The aggregate amount of \$1.5 million of the Cash Consideration will be used to pay the reasonable fees and expenses of UFCW professionals CWS (up to \$500,000) and Glanzer (\$1,000,000) in connection with services for the UFCW in these chapter 11 cases, which shall be in full and complete settlement and release of all claims by the UFCW for professional fees pursuant to Section 503(b)(4) of the Bankruptcy Code and otherwise.
Avoidance Actions	The Secured Creditors and the Debtors’ estates will share the net recoveries from the prosecution of avoidance actions as follows: (i) 75% to the Secured Creditors and 25% to the Debtors’ estates from the first \$10 million of net proceeds, (ii) a 50% split thereafter until that aggregate recovery for the Secured Creditors from proceeds of avoidance actions equals \$11.5 million, and (iii) thereafter, 100% of the net proceeds will be distributable to the Debtors’ estates.
Oversight Committee	The Avoidance Actions shall be prosecuted by the Creditors’ Committee, which shall have full standing on behalf of the Debtors’ estates to commence, prosecute, and compromise the Avoidance Actions, subject to the oversight and direction of an Oversight Committee. The Oversight Committee will consist of three individuals comprised of one designee by each of the Debtors, the Creditors’ Committee, and the Prepetition Notes Secured Parties.
Amex Litigation	The class action lawsuit captioned <i>In re American Express Anti-Steering Rules Antitrust Litigation (II)</i> , Master File No.: 11-MD-02221(NGG) (RER), pending in the United States District Court for the Eastern District of New York, in which one or more of the Debtors is a member of the plaintiff class (the “ Amex Litigation ”), shall be prosecuted by the Debtors, subject to the oversight and direction of the Majority PIK Noteholders and Majority Convertible Noteholders with respect to the prosecution, settlement, abandonment or other decisions regarding the Amex Litigation. The Prepetition Notes Secured Parties and the Pension Plans shall share in the Amex Litigation Proceeds on a dollar for dollar basis as follows: ninety-five percent (95%) shall be distributed to the Prepetition Notes Secured Parties, and five percent (5%) to the Pension Plans (it being understood and agreed that the recovery to the Debtors’ estates from the Amex Litigation proceeds shall in no case exceed one million five hundred thousand dollars (\$1,500,000.00)).
Allowance of Secured Claims, Validation of Liens and Pay Down	<p>The stipulations, admissions, waivers and agreements of the Debtors contained in the Final DIP Order shall become irrevocably binding on all parties in interest and the Debtors’ estates, including the Creditors’ Committee and any subsequently appointed trustee. On the effective date of the settlement, the Challenge Period Termination Date will be deemed to have occurred and all rights or reservations to assert a Challenge will be extinguished.</p> <p>The Prepetition PIK Notes Secured Parties shall have an allowed Secured Claim against each of the Debtors on account of the Prepetition PIK Notes Documents in the aggregate amount of \$337,628,551.52 as of December 31, 2015; <i>plus</i> interest for the period from and after April 1, 2016. The Prepetition PIK Note Secured Parties are waiving their entitlement to (i) postpetition interest only for the period arising from and after January 1, 2016 through and including March 31, 2016, and (ii) only that portion of Original Issue Discount that accreted from and after the Commencement Date. For the period after April 1, 2016 through the date in which the Allowed Prepetition PIK Notes Claims are paid in full in cash, interest shall accrue at the rate of 12.50% per annum, plus an additional 1.00% per annum, plus interest on defaulted interest, on all amounts outstanding under the Prepetition PIK Notes shall accrue (for the avoidance of doubt, such interest shall be payable-in-kind and shall be calculated on a continuous daily basis until the next succeeding semi-annual interest payment date, upon which date the principal amount of the Prepetition PIK Notes outstanding shall be increased by an amount equal to the amount of such accrued interest) for period from and after April 1, 2016 through the date the Allowed Prepetition</p>

¹ Capitalized terms used but not defined herein shall have the meanings ascribed in the Global Settlement. To the extent there is any inconsistency between this summary and the Global Settlement, the Global Settlement controls.

	<p>PIK Note Claims are paid in full in cash.</p> <p>The Prepetition PIK Notes Secured Parties have received distributions on account of the Allowed PIK Notes Claim in the amount of \$203,484,992 plus professional fees permitted under paragraph 18(c) of the Final DIP Order. One (1) business day following the Effective Date, the Debtors will make a cash payment to the (a) the Prepetition Indenture Trustees their outstanding fees and expenses in accordance with the wind down budget in an amount not to exceed \$250,000 in the aggregate and (b) Prepetition PIK Notes Trustee (for the benefit of the Prepetition PIK Noteholders) in the amount of \$90 million. From and after the making of such payment, the Debtors shall, on a weekly basis, distribute all Cash Collateral to the Prepetition Indenture Trustees for the benefit of the Prepetition Notes Secured Parties (which payments, for the avoidance of doubt, shall be subject to Prepetition Notes Secured Parties Payment Priority) other than amounts set forth in the wind-down budget.</p> <p>The Prepetition Convertible Notes Secured Parties shall have an allowed Claim against each of the Debtors on account of the Prepetition Convertible Notes Documents in the principal amount of \$388,678,953.00 (inclusive of prepetition interest, fees, expenses, charges and other prepetition obligations chargeable); <i>plus</i> professional fees permitted under paragraph 18(c) of the Final DIP Order, Amended Cash Collateral Order or other order of the Court (and subject to the Prepetition Notes Secured Parties Payment Priority) which claim shall be deemed secured to the extent of the value of the collateral.</p>
<p><i>Treatment of Liquor Store Assets:</i></p>	<p>On or before June 23 2016, the Debtors shall determine (subject to the prior written consent of each of the Majority PIK Noteholders (to the extent not paid in full, in cash, prior to such date) and the Majority Convertible Noteholders, in their sole and absolute discretion) whether or not to pursue a plan of reorganization for the Debtors that would provide for the continued operation by the Reorganized Debtors of their liquor stores and related assets (“<u>Liquor Store Assets</u>”) and the preservation of the Debtors’ tax attributes, including the Debtors’ net operating loss carry-forwards (the “<u>Plan</u>”). If by June 23, 2016, the Debtors have not obtained the requisite written consent or are advised by the Secured Creditors that they do not wish to pursue the Plan, then the Debtors shall as soon as commercially practicable (A) take such actions as may be reasonably necessary to solicit offers for and identify the highest and/or best bids for the Liquor Store Assets, with the intention of obtaining binding offers in writing on or before July 8, 2016, (B) conduct an auction on or before July 22, 2016, (C) obtain an order approving the sale of all the Liquor Store Assets no later than August 1, 2016, and (D) consummate a sale of all Liquor Store Assets no later than September 30, 2016.</p>
<p><i>Plan Support:</i></p>	<p>Subject to the receipt of a disclosure statement approved by the Bankruptcy Court, the Unions and the Pension Plans (on behalf of their respective members and constituents) shall agree to accept the consideration provided for in the Global Settlement on account of all allowed Deferred Administrative Expense and Priority Claims held by the Unions and the Pension Plans (and their respective members and constituents) under Section 1129(a)(9) of the Bankruptcy Code, and shall otherwise support (and shall not oppose directly or indirectly) confirmation of such plan of reorganization, except that the Unions reserve their right to object to any plan of reorganization that includes the sale of the Liquor Store Assets solely on the grounds that such sale does not comply with the requirements under the CBA, and the Debtors and other Parties reserve the right to oppose any such objection.</p>
<p><i>Resolution of Litigation with Pension Plans:</i></p>	<p>The litigation among the Debtors and the Pension Plans regarding the asserted administrative expense claims of the Pension Plans is resolved pursuant to the Global Settlement. The administrative expense claims of the Pension Plans will be allowed in agreed upon amounts to be filed with the Court prior to the hearing on the motion.</p>
<p><i>Releases:</i></p>	<p>Pursuant to the Global Settlement, the Debtors and the Creditors’ Committee, on their own behalf and on behalf of the Debtors’ estates, will issue a broad release of the Secured Creditors and the Debtors’ officers and directors of all claims or causes of action belonging to the Debtors or their estates against the released parties for any acts or omissions against or in relation to the Debtors, including with respect to the Management Trust. The Debtors, their estates and the Creditors’ Committee are receiving mutual releases.</p>
<p><i>Reservation of Rights</i></p>	<p>The Global Settlement provides for and fixes the aggregate consideration that will be made available to pay deferred administrative expense and priority claims. Except as expressly provided, it does not allow any such claims or approve the priority of any such asserted claims. It also does not fix the mechanic for distributions to creditors. The parties will work in good faith to determine the means for distribution of the settlement consideration, the parties to receive such distribution, and the process for resolving these chapter 11 cases.</p>