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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*	)	Case No. 10-24549 (RDD)
Debtors.	)	Jointly Administered

NOTICE OF FILING OF BLACKLINE OF THE DEBTORS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING THE DEBTORS' JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

PLEASE TAKE NOTICE that The Great Atlantic & Pacific Tea Company, Inc. ("***A&P***"), and certain of its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"),[1] filed the revised *Findings of Fact, Conclusions of Law, and Order Confirming the*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: The Great Atlantic & Pacific Tea Company, Inc. (0974); 2008 Broadway, Inc. (0986); AAL Realty Corporation (3152); Adbrett Corporation (5661); Amsterdam Trucking Corporation (1165); APW

Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 3428] (the "***Confirmation Order***") with the United States Bankruptcy Court for the Southern District of New York (the "***Court***") on February 22, 2012.[2]

PLEASE TAKE FURTHER NOTICE that the Debtors have revised the Confirmation Order to, among other things, modify, add or amend certain language on account of comments received from various parties in interest in the Debtors' chapter 11 cases and correct clerical and typographical errors. A copy of the revised Confirmation Order marked against the version filed with the Court on February 6, 2012 [Docket No. 3370], is attached as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that, a hearing on confirmation of the *Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3417] is currently scheduled to begin before the Honorable Robert D. Drain, United States Bankruptcy Judge, at 11:00 a.m. prevailing Eastern Time on February 27, 2012 at the Court, 300 Quarropas Street, White Plains, New York 10601-4140.

Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Bergen Street Pathmark, Inc. (1604); Best Cellars DC Inc. (2895); Best Cellars Inc. (9550); Best Cellars Licensing Corp. (2896); Best Cellars Massachusetts, Inc. (8624); Best Cellars VA Inc. (1720); Bev, Ltd. (9046); Borman's Inc. (9761); Bridge Stuart, Inc. (8652); Clay-Park Realty Co., Inc. (0902); Compass Foods, Inc. (0653); East Brunswick Stuart, LLC (9149); Farmer Jack's of Ohio, Inc. (5542); Food Basics, Inc. (1210); Gramatan Foodtown Corp. (5549); Grape Finds At DuPont, Inc. (9455); Grape Finds Licensing Corp. (7091); Grapefinds, Inc. (4053); Greenlawn Land Development Corp. (7062); Hopelawn Property I, Inc. (6590); Kohl's Food Stores, Inc. (2508); Kwik Save Inc. (8636); Lancaster Pike Stuart, LLC (9158); LBRO Realty, Inc. (1125); Lo-Lo Discount Stores, Inc. (8662); Mac Dade Boulevard Stuart, LLC (9155); McLean Avenue Plaza Corp. (5227); Milik Service Company, LLC (0668); Montvale Holdings, Inc. (6664); North Jersey Properties, Inc. VI (6586); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); SEG Stores, Inc. (4940); Shopwell, Inc. (3304); Shopwell, Inc. (1281); Spring Lane Produce Corp. (5080); Super Fresh/Sav-A-Center, Inc. (0228); Super Fresh Food Markets, Inc. (2491); Super Market Service Corp. (5014); Super Plus Food Warehouse, Inc. (9532); Supermarkets Oil Company, Inc. (4367); The Food Emporium, Inc. (3242); The Old Wine Emporium of Westport, Inc. (0724); The South Dakota Great Atlantic & Pacific Tea Company, Inc (4647); Tradewell Foods of Conn., Inc. (5748); Upper Darby Stuart, LLC (9153); and Waldbaum, Inc. (8599). The location of the Debtors' corporate headquarters is Two Paragon Drive, Montvale, New Jersey 07645.

[2] Capitalized terms used but not defined in this notice shall have the meanings set forth in the Confirmation Order.

New York, New York
Dated: February 22, 2012

/s/ Ray C. Schrock

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Counsel to the Debtors and Debtors in Possession

Exhibit A

**Blackline of Revised Confirmation Order [Docket No. 3428]
to Confirmation Order filed on February 6, 2012 [Docket No. 3370]**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*,	)	No. 10-24549 (RDD)
Debtors.	)	Jointly Administered

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING THE DEBTORS' JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

The Great Atlantic & Pacific Tea Company, Inc. ("***A&P***") and certain of its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"),[1] having:

a. commenced these chapter 11 cases (collectively, the "***Chapter 11 Cases***") on December 12, 2010 (the "***Commencement Date***") by filing voluntary petitions for relief under the Bankruptcy Code;[2]

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: The Great Atlantic & Pacific Tea Company, Inc. (0974); 2008 Broadway, Inc. (0986); AAL Realty Corporation (3152); Adbrett Corporation (5661); Amsterdam Trucking Corporation (1165); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Bergen Street Pathmark, Inc. (1604); Best Cellars DC Inc. (2895); Best Cellars Inc. (9550); Best Cellars Licensing Corp. (2896); Best Cellars Massachusetts, Inc. (8624); Best Cellars VA Inc. (1720); Bev, Ltd. (9046); Borman's Inc. (9761); Bridge Stuart, Inc. (8652); Clay-Park Realty Co., Inc. (0902); Compass Foods, Inc. (0653); East Brunswick Stuart, LLC (9149); Farmer Jack's of Ohio, Inc. (5542); Food Basics, Inc. (1210); Gramatan Foodtown Corp. (5549); Grape Finds At DuPont, Inc. (9455); Grape Finds Licensing Corp. (7091); Grapefinds, Inc. (4053); Greenlawn Land Development Corp. (7062); Hopelawn Property I, Inc. (6590); Kohl's Food Stores, Inc. (2508); Kwik Save Inc. (8636); Lancaster Pike Stuart, LLC (9158); LBRO Realty, Inc. (1125); Lo-Lo Discount Stores, Inc. (8662); Mac Dade Boulevard Stuart, LLC (9155); McLean Avenue Plaza Corp. (5227); Milik Service Company, LLC (0668); Montvale Holdings, Inc. (6664); North Jersey Properties, Inc. VI (6586); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); SEG Stores, Inc. (4940); Shopwell, Inc. (3304); Shopwell, Inc. (1281); Spring Lane Produce Corp. (5080); Super Fresh/Sav-A-Center, Inc. (0228); Super Fresh Food Markets, Inc. (2491); Super Market Service Corp. (5014); Super Plus Food Warehouse, Inc. (9532); Supermarkets Oil Company, Inc. (4367); The Food Emporium, Inc. (3242); The Old Wine Emporium of Westport, Inc. (0724); The South Dakota Great Atlantic & Pacific Tea Company, Inc (4647); Tradewell Foods of Conn., Inc. (5748); Upper Darby Stuart, LLC (9153); and Waldbaum, Inc. (8599). The location of the Debtors' corporate headquarters is Two Paragon Drive, Montvale, New Jersey 07645.

[2] Unless otherwise noted, capitalized terms not defined in the *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* (the "***Confirmation Order***"), shall have the meanings ascribed to them in the *Debtors' **First Amended** Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated February ~~4,~~**17,** 2012 [Docket No. ~~3351~~**3417**] (as may have been subsequently modified, supplemented, and amended, from time to (Continued…)

b. continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

c. filed, on November 14, 2011, the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 2868] and the *Debtors' Disclosure Statement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 2867], which plan and related documents were subsequently modified as set forth herein;

d. filed, on November 30, 2011, the *Debtors' Motion for Entry of an Order Approving: (A) the Adequacy of the Debtors' Disclosure Statement; (B) the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Chapter 11 Plan; (C) the Form of Various Ballots and Notices in Connection Therewith; and (D) the Scheduling of Certain Dates with Respect Thereto* [Docket No. 2929] (the "***Solicitation Procedures Motion***");

e. filed, on November 30, 2011, the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 2927] and the *Debtors' Disclosure Statement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 2925], which plan and related documents were subsequently modified as set forth herein;

f. filed, on November 30, 2011, Exhibit C (Reorganized Debtors' Financial Projections) and Exhibit D (Liquidation Analysis) to the *Debtors' Disclosure Statement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 2934**]**;

g. filed, on December 11, 2011, the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3025] and the *Debtors' Disclosure Statement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3023], which plan and related documents were subsequently modified as set forth herein;

h. filed, on December 14, 2011, the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3042] and the *Debtors' Disclosure Statement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3041], which plan and related documents were subsequently modified as set forth herein;

i. filed, on December 19, 2011, the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3063], and the

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time in accordance with the terms thereof, the "***Plan***"). The rules of interpretation set forth in Article I.A of the Plan shall apply to the Confirmation Order.

Debtors' Disclosure Statement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 3061] (as modified, the "***Disclosure Statement***");

~~j. *filed, on February 4, 2012, the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 3351];*~~

j. ~~k.~~ distributed solicitation materials, on or before December 23, 2011, to holders of Claims entitled to vote on the Plan, contract and lease counterparties, and parties in interest, consistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") and the *Order Approving (A) the Adequacy of the Debtors' Disclosure Statement, (B) the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Chapter 11 Plan, (C) the Form of Various Ballots and Notices in Connection Therewith and (D) the Scheduling of Certain Dates with Respect Thereto*, entered on December 19, 2011 [Docket No. 3066] (the "***Solicitation Procedures Order***"), which Solicitation Procedures Order also approved, among other things, solicitation procedures and related notices, forms, ballots, and master ballots (collectively, the "***Solicitation Packages***") as evidenced by the *Affidavit of Service of Alison M. Tearnen Schepper re: Solicitation Packages* [Docket No. 3110] (the "***Solicitation Affidavit***");

k. ~~l.~~ published, on December 27, 2011, notice of the Confirmation Hearing (the "***Confirmation Hearing Notice***") in the Wall Street Journal and USA Today to provide notice to creditors who are unknown or not reasonably ascertainable by the Debtors and creditors whose identities are known but whose addresses are unknown by the Debtors, as evidenced by the *Verification of Publication* by Toussaint Hutchinson from USA Today [Docket No. 3098] and *Affidavit of Publication* by Ken Long from the Wall Street Journal [Docket No. 3125] (the "***Publication Affidavits***");

l. ~~m.~~ filed the following exhibits to the Plan Supplement, (i) on January 14, 2012, the Summary of Terms for the Replacement Second Lien Notes [Docket No. 3170], (ii) on January 19, 2012, Exhibit A (Exit Facility Term Sheet), Exhibit B (Form of Management Services Agreement) and Exhibit C (Form of Replacement Second Lien Notes Indenture) [Docket No. 3190], (iii) on January 23, 2012, Exhibit D (List of Executory Contracts and Unexpired Leases to be Assumed) [Docket No. 3219], (iv) on January 27, 2012, Exhibit E (Composition of New Board), Exhibit F (Bylaws) and Exhibit G (Certificate of Incorporation) [Docket No. 3301], (v) on February 1, 2012, Exhibit H-1 (Description of Restructuring Transactions: ScripCo Transactions) and Exhibit H-2 (Description of Restructuring Transactions: Formation of Real Estate Subsidiary and Assignment of Nonresidential Real Property Leases) [Docket No. 3317], ~~and (iv)~~**(vi) on February 3, 2012,** Exhibit I (Form of Indenture for New Second Lien Notes), Exhibit J (Form of Indenture for New Convertible Third Lien Notes), and Exhibit K (Form of Agreement of Investment Warrants) [Docket No. 3347], **(vii) on February 4, 2012, Exhibit H-3 (UFCW Locals' Side Letter with Respect to ScripCo Restructuring Transactions), Exhibit H-4 (1199SEIU United Health Care Workers East Side**

Letter with Respect to ScripCo Restructuring Transactions) [Docket No. 3358], Amended Exhibit D (Amended and Revised List of Executory Contracts and Unexpired Leases to be Assumed), Exhibit D-1 (Comparison of the Amended and Revised List of Executory Contracts and Unexpired Leases to be Assumed against List Filed on January 23, 2012), Exhibit L (Executory Contracts and Unexpired Leases to be Rejected), and Exhibit M (Retained Causes of Action) [Docket No. 3359], (viii) on February 9, 2012, Amended Exhibit H-3 (Amended UFCW Locals' Side Letter with Respect to ScripCo Restructuring Transactions) and Exhibit H-3(A) (Blackline of Amended UFCW Locals' Side Letter with Respect to ScripCo Restructuring Transactions) [Docket No. 3394], and (ix) on February 16, 2012, Exhibit A-1 (Form of Term Loan Credit Agreement), Exhibit A-2 (Form of ABL Credit Agreement), and Exhibit A-3 (Form of Intercreditor Agreement) [Docket No. 3406] (together with all other agreements, documents, and instruments at any time executed and/or delivered in connection with or related thereto, ancillary or otherwise, and all exhibits, attachments, and schedules referred to therein, all of which are incorporated by reference into, and are an integral part of, the Plan, as all of the same may be amended, modified, replaced, and/or supplemented from time to time pursuant to the Plan, collectively, the "***Plan Supplement***");[3]

m. ~~n.~~ filed, on January 26, 2012 the *Notice of Intent to Seek Authority to Grant Liens on the Debtors' Assets, Including Leasehold Mortgages, to Secure Exit Financing Pursuant to Confirmation Order* [Docket No. 3285] (the "***Leasehold Mortgage Notice***");

n. ~~o.~~ filed, on January 30, 2012 the *Certification of Alison M. Tearnen Schepper Pursuant to Local Bankruptcy Rule 3018-1(a) with respect to the Tabulation of Votes on the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3308] (the "***Voting Certification***" and as amended by the *Amended Certification of Alison M. Tearnen Schepper Pursuant to Local Bankruptcy Rule 3018-1(a) with respect to the Tabulation of Votes on the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. **3374**], the "***Amended Voting Certification***"); and

o. ~~p.~~ filed, (i) on January 31, 2012, *Debtors' Memorandum of Law and Omnibus Reply in Support of the Settlement and Compromise of Claims and Causes of Action Arising From or Related to the Substantive Consolidation of Their Chapter 11 Estates Pursuant to Their Joint Plan of Reorganization* [Docket No. 3313] (the "***Substantive Consolidation Settlement Brief***") and the *Declaration of Frederic F. Brace in Support of the Debtors' Settlement and Compromise of Claims and Causes of Action Arising From or Related to the Substantive Consolidation of the*

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[3] To the extent that forms of documents have been filed in connection with the Plan, the documents actually executed and delivered will be substantially in the form of such filed documents.

Debtors' Chapter 11 Estates Pursuant to Their Joint Plan of Reorganization attached as **Exhibit A** to the Substantive Consolidation **Settlement** Brief (the "***Declaration in Support of the Substantive Consolidation Settlement***"), (ii) on February 4, 2012, *Debtors' Memorandum of Law and Omnibus Reply in Support of Confirmation of the Debtors' Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 3354] (the "***Plan Confirmation Brief***") (iii) on February 4, 2012 the (A) *Declaration of Frederic F. Brace in Support of Confirmation of the Debtors' Joint Plan Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3355] (the "***Brace Declaration***"), (B) *Declaration of Stephen Goldstein in Support of Confirmation of the Debtors' Joint Plan Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3356] (the "***Goldstein Declaration***"), and (C) *Declaration of James M. Lukenda in Support of the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3357] (the "***Lukenda Declaration***"), **and (iv) on February 22, 2012, the (A) *Supplemental Declaration of Frederic F. Brace in Support of Confirmation of the Debtors' First Amended Joint Plan Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No.] (the "*Supplemental Brace Declaration*"), (B) *Supplemental Declaration of Stephen Goldstein in Support of Confirmation of the Debtors' Joint Plan Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No.] (the "*Supplemental Goldstein Declaration*"), and (C) *Declaration of Tyler Cowan in Support of Confirmation of the Debtors' First Amended Join Plan Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No.] (the "*Cowan Declaration*")** (collectively, with the Declaration in Support of the Substantive Consolidation Settlement, the "***Declarations in Support of Confirmation***")**;**

p. *filed, on February 4, 2012, the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 3351];*

q. filed, on February 16, 2012, the *Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3402];

r. filed on February 16, 2012, (A) the *Debtors Motion for Entry of an Order (I) Approving Notice of Plan Modifications and Continued Confirmation Hearing, (II) Providing That the Debtors Are Not Required to Re-Solicit Creditors on Account of Such Modifications, (III) Fixing a Confirmation Hearing Date and an Objection Deadline for the Debtors' Plan Modifications, (IV) Approving Amendments to Their Securities Purchase Agreements, and (V) Granting Related Relief* [Docket No. 3405] (the "*Plan Modifications Motion*") and the annexedand (B) the *Motion to Shorten the Notice Period for the Plan Modification Motion* [Docket No. 3404];

s. filed, on February 17, 2012, the *Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 3417]; and

t. filed, on February 20, 2012, the *Affidavit of Service of Melissa Loomis Regarding Notice of Plan Modifications* [Docket No. 3421].

The Bankruptcy Court having:

a. entered the Solicitation Procedures Order on December 20, 2011 [Docket No. 3066];

b. entered an order approving the Plan Modification Motion on February 17, 2012 [Docket No. 3420], (the "*Plan Modifications Order*") the notice of plan modifications attached thereto as Exhibit 1 (the "*Plan Modifications Notice*");

c. ~~b.~~ set February 6 and 7, 2012 at 10:00 a.m. prevailing Eastern Time, **respectively,** as the date and time for the Confirmation Hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code **and continued the Confirmation Hearing on February 27, 2012 at 11:00 a.m. prevailing Eastern Time**;

d. ~~c.~~ reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Substantive Consolidation **Settlement** Brief, the Plan Confirmation Brief, the Declarations in Support of Confirmation, the Voting Certification ~~and~~**,** the Amended Voting Certification**, the Plan Modifications Motion**, and all other filed pleadings, exhibits, statements, affidavits, declarations, and comments regarding Confirmation of the Plan, including all objections, statements, and reservations of rights made with respect thereto;

e. ~~d.~~ held the Confirmation Hearing and heard the statements, arguments, and objections made by counsel concerning Confirmation of the Plan;

f. ~~e.~~ considered all oral representations, testimony, documents, filings, and other evidence regarding Confirmation of the Plan;

g. ~~f.~~ overruled any and all objections to the Plan and Confirmation thereof and all statements and reservations of rights not consensually resolved or withdrawn unless otherwise indicated; and

h. ~~g.~~ taken judicial notice of the papers and pleadings filed in these Chapter 11 Cases.

NOW, THEREFORE, it appearing to the Bankruptcy Court that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation have been adequate and appropriate as to all Entities affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing establish just cause for the relief granted

herein; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact, conclusions of law, and orders:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, AND CONCLUDED THAT:

A. Jurisdiction and Venue

1. On the Commencement Date, the Debtors commenced these Chapter 11 Cases. Venue in the Bankruptcy Court was proper as of the Commencement Date pursuant to 28 U.S.C. §§ 1408 and 1409 and continues to be proper during these Chapter 11 Cases. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(L). The Bankruptcy Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Eligibility for Relief

2. The Debtors were and are Entities eligible for relief under section 109 of the Bankruptcy Code.

C. Commencement and Joint Administration of the Chapter 11 Cases

3. Beginning on the Commencement Date, each of the Debtors commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By prior order of the Bankruptcy Court, these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 [Docket No. 68]. The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

D. Judicial Notice

4. The Bankruptcy Court takes judicial notice of (and deems admitted into evidence for Confirmation) the docket of these Chapter 11 Cases, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases. Any resolutions of objections to Confirmation explained on the record at the Confirmation Hearing are hereby incorporated by reference, and any unresolved objections, statements and reservations of rights are hereby overruled on the merits.

E. Transmittal and Mailing of Solicitation Materials; Notice

5. Due, adequate, and sufficient notice of the Plan (including the Debtor Release, Third Party Release, Exculpation Provisions, and Injunction Provisions (each as defined below) contained therein)**, the Plan Modifications Notice,** and all transactions consummated pursuant thereto, the Disclosure Statement, and the Confirmation Hearing, together with all deadlines for voting on or objecting to Confirmation of the Plan, has been given to known holders of Claims and Interests in compliance with the Solicitation Procedures Order and Bankruptcy Rules 2002(b), 3017(d), (e), and (f), as evidenced by the Solicitation Affidavit. The Solicitation Packages and all other materials relating in any way to the solicitation process, the Plan or the transactions consummated pursuant thereto (including notice of the filing of the Plan Supplement, Cure notices and Leasehold Mortgage Notice) were transmitted and served in substantial compliance with the Solicitation Procedures Order and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York (the "***Local Rules***"), the Debtors' solicitation and voting procedures (the "***Solicitation and Voting Procedures***"), and all other applicable rules, laws,~~ and~~ regulations**, and orders of the Court**. Additionally, in accordance with the Solicitation Procedures Order, the Debtors published the

Confirmation Hearing Notice in the publications listed in the Publication Affidavits. **In accordance with the Plan Modifications Order, the Debtors provided due, adequate and sufficient notice of the Plan Modifications through the service of the Plan Modifications Notice.** Because such transmittal and service were adequate and sufficient, no other or further notice is necessary or shall be required in connection with Confirmation of the Plan or consummation of any transaction pursuant thereto, including the issuance of securities pursuant to the Securities Purchase Agreements, the incurrence of indebtedness and obligations pursuant to the Exit Facility, and the Exit Pledge, the Second Lien Pledge and the Convertible Third Lien Pledge and the Restructuring Transactions (in each case as defined below).

F. Adequacy of Solicitation

6. The Debtors, with the assistance of the Claims Agent, distributed Solicitation Packages to all holders of Claims entitled to vote to accept or reject the Plan, and sufficient time was prescribed for such holders of Claims to vote to accept or reject the Plan in substantial compliance with the Solicitation Procedures Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Solicitation and Voting Procedures, and all other applicable rules, laws, and regulations. Additionally, the Debtors, with the assistance of the Claims Agent, provided (a) a CD-ROM of the Disclosure Statement Order (including all exhibits thereto) and the Disclosure Statement (including all exhibits thereto) to the Office of the United States Trustee for the Southern District of New York (the "***U.S. Trustee***"), the Office of the United States Attorney for the Southern District of New York (the "***U.S. Attorney***"), counsel for the Investors, counsel for Wilmington Trust as indenture trustee for the Debtors' prepetition unsecured notes, counsel for Wells Fargo Bank, N.A. as successor trustee and collateral agent for the Debtors' prepetition secured notes; counsel for the administrative agent for the Debtors' postpetition secured lenders, counsel to the Creditors' Committee, the Internal Revenue Service,

the Securities and Exchange Commission, and all those persons and Entities that have formally requested notice, pursuant to Bankruptcy Rule 2002 and the Local Rules. Further, the Debtors, with the assistance of the Claims Agent, filed and served, on January 26, 2012, the Leasehold Mortgage Notice with which the Debtors provided notice of their intent to seek to grant mortgages, Liens or security interests as part of the Exit Pledge, the Second Lien Pledge and the Convertible Third Lien Pledge. Transmittal and service were adequate and sufficient, and no further notice is or shall be required. In addition, in compliance with the Solicitation Procedures Order, holders of Claims or Interests in Classes that were not entitled to vote to accept or reject the Plan were provided with certain non-voting materials approved by the Bankruptcy Court in the Solicitation Procedures Order. Pursuant to the Solicitation Procedures Order, the Debtors were excused from distributing Solicitation Packages to those Entities at addresses from which Disclosure Statement Hearing notices were returned as undeliverable by the United States Postal Service unless the Debtors received accurate addresses for such Entities not less than ten days before the Solicitation Date, and failure to distribute Solicitation Packages to such Entities does not constitute inadequate notice of the Confirmation Hearing or the Voting Deadline, or a violation of Bankruptcy Rule 3017(d). The procedures used to distribute Solicitation Packages to holders of Claims and Interests, ~~and~~ notice given pursuant to the Leasehold Mortgage Notice in connection with the Exit Pledge, the Second Lien Pledge and the Convertible Third Lien Pledge, **and notice given pursuant to the Plan Modifications Order,** were fair, and the distribution thereof was conducted in accordance with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations.

G. Voting Certification

7. All procedures used to tabulate the Ballots and the Master Ballots (each as defined in the Solicitation Procedures Motion) were fair and conducted in accordance with the Solicitation

Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations.

8. As set forth in the Plan ~~and Disclosure Statement~~, only holders of Claims in Classes A~~, E, F, G, H, I, J, K,~~ and ~~L~~K (collectively, the "***Voting Classes***") are Impaired and were eligible to vote on the Plan pursuant to section 1126 of the Bankruptcy Code. Holders of Claims in Classes B, C, and D are Unimpaired (collectively, the "***Presumed Accepting Classes***") and are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, were not entitled to vote to accept or reject the Plan. Holders of **Claims in Classes E, F, G, H, I, J, and L,** Intercompany Claims in Class M, Interests in A&P in Class N, Intercompany Interests in Class O, and Subordinated Claims in Class P (collectively, the "***Deemed Rejecting Classes***") are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

9. As evidenced by the Amended Voting Certification, Classes A~~, F, G, H, I, J, K,~~ and ~~L~~K voted to accept the Plan, without counting the votes of insiders. ~~As further evidenced in the Amended Voting Certification, holders of Claims in Class E (together with the Deemed Rejecting Classes, the "***Rejecting Classes***") voted to reject the Plan.~~

10. Based on the foregoing, and as evidenced by the Amended Voting Certification, at least one Impaired Class of Claims (excluding the acceptance by any insiders of any of the Debtors) has voted to accept the Plan in accordance with the requirements of section 1129(a)(10) of the Bankruptcy Code.

H. Plan Supplement

11. On January 14, 2012 [Docket No. 3170], as supplemented on January 19, 2012 [Docket No. 3190], January 23, 2012 [Docket No. 3219], January 27, 2012 [Docket No. 3301], ~~and~~ February 1, 2012 [Docket No. 3317]**, February 3, 2012 [Docket No. 3347], February 4, 2012**

[Docket Nos. 3358 & 3359], February 9, 2012 [Docket No. 3394], and February 16, 2012 [Docket No. 3406], the Debtors filed the Plan Supplement with the Bankruptcy Court and served notice of such filing on the 2002 List and Master Service List.[4] The documents contained in the Plan Supplement are integral to, form a part of and are incorporated by reference into the Plan as if set forth in full in the Plan. The Plan Supplement complies with the terms of the Plan, and the filing and notice of such documents constitutes good and proper notice in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Solicitation Procedures Order, and no other or further notice is or shall be required. The Debtors reserve their right and are authorized, subject to approval of the Investors to the extent provided by the Plan **and the Securities Purchase Agreements**, to modify the Plan Supplement prior to the Effective Date in accordance with the terms of the Plan.

I. Plan Modifications

12. The modifications to the Plan (as reflected in the *Notices of Filing of Blackline of Plan of Reorganization* [Docket Nos. 3403 & 3418] and as may have been subsequently modified and supplemented, from time to time, the "*Plan Modifications*"), and as supported in the *Declaration of Frederic F. Brace in Support of the Plan Modification Motion* [Docket No. 3405], are fair and reasonable and in the best interests of the creditors in accordance with section 1123(b)(3) of the Bankruptcy Code. Specifically, replacing the $40 million cash pool for unsecured creditor recoveries with the Unsecured Creditor Contingent Recovery Pool (which may be created pursuant to the terms and conditions set forth in Exhibit 2

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[4] "2002 List" and "Master Service List" are defined in the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 75].

attached hereto) (a) provides liquidity necessary for the Debtors' to consummate their reorganization, (b) allows the Debtors to obtain the Exit Facility and the Investors' $490 million capital commitment, and (c) is a sound exercise of the Debtors' business judgment that provides the Debtors a feasible path to exit under the severe financial and time constraints at issue in these chapter 11 cases.

J. ~~I.~~ Bankruptcy Rule 3016

13. ~~12.~~ The Plan is dated and identifies the Entities submitting and filing it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement satisfied Bankruptcy Rule 3016(b).

K. ~~J.~~ Burden of Proof

14. ~~13.~~ The Debtors have met their burden of proving that the Plan complies with each necessary element of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence.[5] Further, each witness who testified on behalf of the Debtors at or in connection with the Confirmation Hearing was credible, reliable, and qualified to testify as to the topics addressed in his or her testimony.

L. ~~K.~~ Compliance with the Requirements of Section 1129 of the Bankruptcy Code

15. ~~14.~~ The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as follows:

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[5] The Debtors have not met their burden of proving section 1129(a)(8), the satisfaction of which is excused because the Debtors have met their burden of proving that the Plan complies with each applicable element of section 1129(b) of the Bankruptcy Code by a preponderance of the evidence.

(a) Section 1129(a)(1)—Compliance of the Plan with Applicable Provisions of the Bankruptcy Code

16. ~~15.~~ The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123.

(a) Sections 1122 and 1123(a)(1)—Proper Classification

17. ~~16.~~ The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Interests into sixteen Classes, based on differences in the legal nature or priority of such Claims and Interests (other than Administrative and Professional Claims, DIP Facility Claims, and Priority Tax Claims, which are addressed in Article II of the Plan, and which are not required to be designated as separate Classes pursuant to section 1123(a)(1) of the Bankruptcy Code). Valid business, factual, and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan, the classifications were not done for any improper purpose, and the creation of such Classes does not unfairly discriminate between or among holders of Claims or Interests.

18. ~~17.~~ In accordance with section 1122(a) of the Bankruptcy Code, each Class of Claims and Interests contains only, respectively, Claims and Interests that are substantially similar to the other Claims and Interests within that Class. Accordingly, the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code have been satisfied.[6]

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[6] The Plan does not contain a class of Claims consisting only of every unsecured claim that is less than or reduced to an amount that the Bankruptcy Court approves are reasonable and necessary for administrative convenience; therefore, section 1122(b) of the Bankruptcy Code is inapplicable.

(b) Section 1123(a)(2)—Specification of Unimpaired Classes

19. ~~18.~~ Article III of the Plan specifies that Claims in Classes B, C, and D are Unimpaired under the Plan. Accordingly, the requirements of section 1123(a)(2) of the Bankruptcy Code have been satisfied.

(c) Section 1123(a)(3)—Specification of Treatment of Impaired Classes

20. ~~19.~~ Article III of the Plan specifies the treatment of each Impaired Class under the Plan, including Classes A, E, F, G, H, I, J, K, L, M, N, O, and P. Accordingly, the requirements of section 1123(a)(3) of the Bankruptcy Code have been satisfied.

(d) Section 1123(a)(4)—No Discrimination

21. ~~20.~~ Article III of the Plan provides the same treatment and opportunity for each Claim or Interest within a particular Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment with respect to such Claim or Interest. The Plan, therefore, satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(e) Section 1123(a)(5)—Adequate Means for Plan Implementation

22. ~~21.~~ The Plan and the various documents and agreements set forth in the Plan Supplement provide adequate and proper means for the Plan's implementation, including: (a) the use of proceeds from the New Money Commitment, the Exit Facility and other funds held by the Debtors on the Effective Date; (b) the general settlement of Claims and Interests and controversies resolved pursuant to the Plan, (c) the issuance of NewCo Equity by Reorganized A&P to the Investors in consideration for the New Equity Investment; (d) the expected exemption from any applicable federal and state securities laws (including blue sky laws), registration pursuant to section 1145 of the Bankruptcy Code and Section 4(2) of the Securities Act and other requirements of the offering, issuance, and distribution of any Securities pursuant to the Plan; (e) the vesting of assets in the Reorganized Debtors; (f) the cancellation of notes, instruments, certificates and other

documents pursuant to the Plan; (g) the reinstatement of Intercompany Claims and Intercompany Interests; (h) the issuance of new securities; (i) the authority to consummate post-Confirmation property sales; (j) the general authority for all corporate action necessary to effectuate the Plan; (k) the authority of the Debtors and Reorganized Debtors to amend their corporate governance documents; (l) the authority of the Reorganized Debtors to execute documents and take actions necessary or appropriate to implement the terms of the Plan and the Securities Purchase Agreements; (m) the exemption from taxes of transfers of property under the Plan pursuant to section 1146(a) of the Bankruptcy Code; (n) the appointment of officers and directors of the Reorganized Debtors; (o) the creation or continuation of compensation, pensions and benefits programs; (p) the authority of the Debtors and the Reorganized Debtors to transfer funds between and among themselves; (q) the preservation of the Debtors' Causes of Action; (r) the waiver of Avoidance Actions, as set forth in Article IV.S of the Plan; (s) the consummation of the Restructuring Transactions, including, among others, (i) the issuance of common stock of Reorganized A&P to NewCo, (ii) the sale and transfer of pharmaceutical prescriptions and pharmacies of the Debtors (the "***Pharmacy/Prescription Sale Transaction***") as described in more detail in Exhibit H-1 of the Plan Supplement (Description of Restructuring Transactions: ScripCo Transactions) [Docket No. 3317], and (iii) the formation of the ~~New~~ Real Estate Subsidiary and the assignment of the Debtors' real property leases to such ~~New~~ Real Estate Subsidiary as described in more detail in Exhibit H-2 (Description of Restructuring Transactions: Formation of Real Estate Subsidiary and Assignment of Nonresidential Real Property Leases) [Docket No. 3317], (t) the continuation of the corporate existence of the Reorganized Debtors; (u) the reporting for all federal income tax purposes; (v) the entry into the Management Services Agreement of Reorganized A&P or one of its Affiliates and The Yucaipa Companies, LLC; (w) the return to the Reorganized

Debtors of all adequate assurance deposits provided by the Debtors to utility providers; (x) the release and/or modification of Liens on the Debtors' assets (other than Liens to be created as set forth in the Plan in connection with the Debtors' restructuring); and (y) the grant of mortgages, Liens and security interests in connection with the Exit Facility, the New Second Lien Notes and the New Convertible Third Lien Notes. Accordingly, the requirements of section 1123(a)(5) of the Bankruptcy Code have been satisfied.

(f) Section 1123(a)(6)—Voting Power of Equity Securities

23. ~~22.~~ The Amended and Restated Certificate of Incorporation of NewCo contained in Exhibit G of the Plan Supplement, and the charter of Reorganized A&P and each other Debtor, prohibits the issuance of non-voting securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. The Plan, therefore, satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

(g) Section 1123(a)(7)—Selection of Officers and Directors

24. ~~23.~~ The identity and affiliations of the initial New Board have been disclosed prior to the Confirmation Hearing in the Plan Supplement. The New Board shall be reconstituted to consist of seven (7) directors (or such larger number of directors as may be determined by the Investors in their discretion), of whom at least five (5) directors shall be persons designated by the Investors, one (1) person shall be designated by the UFCW (who (x) shall be an independent director and a grocery industry expert, and (y) shall not serve on behalf of, or take directions from, the UFCW) (the "***UFCW Board Designee***"), and one (1) person shall be the Chief Executive Officer of the Reorganized Debtors. The selection of the initial directors and officers of each of the Reorganized Debtors was, is, and will be consistent with the interests of holders of Claims and

Interests and public policy. Accordingly, the requirements of section 1123(a)(7) of the Bankruptcy Code have been satisfied.[7] The Reorganized A&P Charter and the Reorganized A&P Bylaws, or one or more other controlling corporate governance documents or agreements relating to NewCo, shall provide that the UFCW Board Designee shall serve on the New Board for the term of the Modified Collective Bargaining Agreements with the UFCW Locals on terms substantially consistent with the terms set forth on **Exhibit 1** attached hereto. As set forth on **Exhibit E** to the Plan Supplement, Mr. Lou Giraurdo is the initial UFCW Board Designee.

(h) Section 1123(b)—Discretionary Contents of the Plan

25. ~~24.~~ Section 1123(b) of the Bankruptcy Code provides that a plan of reorganization may include various discretionary provisions. As set forth below, the discretionary provisions of the Plan comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code. Thus, section 1123(b) of the Bankruptcy Code is satisfied.

i. **Section 1123(b)(1)–(2)—Claims, Executory Contracts and Unexpired Leases**

26. ~~25.~~ Article III of the Plan impairs or leaves Unimpaired, as the case may be, each Class of Claims and Interests, and Article V of the Plan provides that all of the Debtors' Executory Contracts and Unexpired Leases shall be deemed rejected as of the Effective Date except any Executory Contract or Unexpired Lease (a) listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" in the Plan Supplement, (b) previously assumed or rejected by the Debtors during the Chapter 11 Cases, (c) which is the subject of a separate motion to assume or

[7] None of the Debtors is an individual; consequently, section 1123(a)(8) of the Bankruptcy Code is inapplicable.

reject pending as of the Effective Date, (d) which is an Intercompany Contract, unless such Intercompany Contract previously was rejected by the Debtors pursuant to a Final Order, is the subject of a motion to reject pending on the Effective Date, or is listed on the schedule of "Rejected Executory Contracts and Unexpired Leases" in the Plan Supplement, or (e) which is otherwise assumed pursuant to the terms in the Plan.

27. ~~26.~~ This Confirmation Order constitutes an order of the Court under sections 365 and 1123(b) of the Bankruptcy Code approving the assumptions, assumptions and assignments, or rejections described above and set forth within the Plan and Plan Supplement. The Debtors have provided sufficient notice to each non-Debtor counter-party to the Executory Contracts and Unexpired Leases of the assumptions, assumptions and assignments or rejections described in the Plan and the Plan Supplement. The Debtors have also provided adequate assurance of future performance with respect to any applicable assumption, as that term is used in section 365 of the Bankruptcy Code.

ii. **Section 1123(b)(3)—Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action**

28. ~~27.~~ **Compromise and Settlement**. Pursuant to sections 105, 363 and 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of such Claims, Interests, and controversies (including the Substantive Consolidation Settlement), as well as a finding by the Bankruptcy Court that such compromise and settlement of

such Claims and Interests embodied in the Plan is in the best interests of the Debtors, the Estates, and all holders of Claims and Interests, is fair, equitable, and reasonable, and is a sound exercise of the Debtors' business judgment. The settlement and compromise of Claims and Interests is the product of arm's length negotiations and is approved pursuant to Bankruptcy Rule 9019.

29. ~~28.~~ In reaching an ultimate decision on substantive fairness, the Court considered the following factors: (a) the balance between the litigation's possibility of success and the settlement's future benefits; (b) the likelihood of complex and protracted litigation and risk and difficulty of collecting on the judgment; (c) the proportion of creditors and parties in interest that support the settlement; (d) the competency of counsel reviewing the settlement; (e) the nature and breadth of releases to be obtained by officers and directors; and (f) the extent to which the settlement is the product of arm's length bargaining.

30. ~~29.~~ **Substantive Consolidation Settlement**. The Substantive Consolidation Settlement is fair and reasonable and in the best interests of the Debtors' Estates in accordance with Bankruptcy Rule 9019 and section ~~1129~~**1123**(b)(3) of the Bankruptcy Code. All creditors will benefit from the settlement and compromise of substantive consolidation as provided by the Debtors' Plan. The Substantive Consolidation Settlement precludes potential complex and protracted litigation. The Substantive Consolidation Settlement was the result of arm's-length, good faith negotiations with the Creditors' Committee and is a sound exercise of the Debtors' business judgment.

31. ~~30.~~ The Substantive Consolidation Settlement reflects the Debtors' prepetition business reality. The Debtors' prepetition affairs were operationally and financially intertwined. Prior to 2009, the Debtors did not maintain separate financial statements but instead only maintained records on a consolidated basis. In 2009, the Debtors created initial legal entity

balance sheets that were developed on the available records and required significant estimates on assets, liabilities, and intercompany balances. These initial legal entity balance sheets were never audited. After these initial legal entity balance sheets were created, the Debtors' prepetition accounting system did not track the particular transactions between individual entities but rather maintained a single "intercompany balance" line item for each legal entity, which line item aggregated all intercompany transactions arising for each Debtor regardless of the particular counterparty. Therefore, the Debtors' prepetition books and records provide no ready basis to determine deconsolidated balance sheets. Nor were the Debtors' intercompany activities, including the allocation of corporate overhead and expenses, governed by formal operating agreements or service contracts. Instead, corporate overhead and similar expenses were a function of accounting policies implemented and revised by the Debtors' centralized financial and accounting teams. Disentangling these books and records would have been costly and time-consuming, and likely would have delayed the Debtors' ability to emerge from bankruptcy. These efforts also may have proved futile because they would have relied on the unaudited initial legal entity balance sheets developed in 2009.

32. ~~31.~~ The Debtors also transacted business with their creditors as a consolidated enterprise in the ordinary course of business, and their creditors did not rely on the separate identity of any one Debtor. The Debtors considered several factors in making this determination, including: (a) most of the Debtors' major vendor contracts were entered into only with A&P (b) the marketing relationships and merchandising programs were negotiated and developed with A&P and not individual Debtors; (c) the Debtors issued financial statements on a "consolidated only" basis; (d) substantially all cash disbursements were from A&P-owned bank accounts; and

(e) regardless of the legal entity, the Debtors typically used the same letterhead, business cards, and check forms for business purposes.

33. ~~32.~~ The Debtors also recognized that certain creditors could raise objections because they may have relied on the corporate separateness of particular Debtors when electing to extend credit to particular entities or may otherwise hold claims against multiple Debtor entities. Specifically, holders of Allowed Guaranteed Landlord Claims bargained for recourse against both an operating Debtor and A&P, through a guarantee. The Debtors also recognized that holders of Allowed Pension Withdrawal Claims could have asserted that substantive consolidation unfairly limited their recoveries because their Claims are entitled to recoveries on a joint and several basis against each of the Debtors pursuant to the Employee Retirement Income Security Act of 1974 (as amended, "***ERISA***") and PBGC regulations.

34. ~~33.~~ The Debtors also recognized that the costs of litigating issues related to the substantive consolidation of the Debtors' Estates was prohibitively time-consuming and expensive. The substantive consolidation analysis is fact-intensive and could take several months of discovery and many more weeks of evidentiary hearings and related litigation. These costs would harm the Debtors' Estates both by adding to the costs of administering these Chapter 11 Cases and by prolonging the time before the Debtors would be able to emerge from bankruptcy.

35. ~~34.~~ The Debtors therefore negotiated with the Creditors' Committee to settle and compromise the disputes related to the substantive consolidation of the Debtors' Estates. This Substantive Consolidation Settlement was the result of arm's-length, good faith negotiations, and was based upon both the Debtors' and the Creditors' Committee's analysis of the merits of the substantive consolidation issues. The Substantive Consolidation Settlement avoids costly, time-consuming, and uncertain litigation to substantively consolidate the Debtors' Estates—which

the Debtors believe could have been vigorously disputed by various parties in these Chapter 11 Cases.

36. ~~35.~~ For the foregoing reasons, the Substantive Consolidation Settlement is fair and equitable and in the best interests of the Debtors' Estates.

37. ~~36.~~ **Debtor Release**. The releases and discharges of Claims and Causes of Action by the Debtors described in Article VIII.D of the Plan (the "***Debtor Release***") pursuant to section 1123(b)(3)(A) of the Bankruptcy Code represent a sound exercise of the Debtors' business judgment, are in the best interests of the Estates' various constituencies, are a necessary and important aspect of the Plan, and are critically important to the success of the Debtors' Plan. The Debtor Release is reasonable and acceptable. The Released Parties provided good and valuable consideration in exchange for the Debtor Release, including the service of the Released Parties in facilitating the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan.

38. ~~37.~~ Each of the Released Parties afforded value to the Debtors and their Estates and aided in the reorganization process. The Released Parties played an integral role in the formulation of the Plan and have expended significant time and resources analyzing and negotiating the issues presented by the Debtors' prepetition capital structure (and, in the case of the Investors, are also contributing to the Plan in the form of the New Money Commitment). Moreover, the Plan reflects the settlement and resolution of several complex issues, and the releases are an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied in the Plan. Indeed, the release provisions in the Plan were a critical component of, and gating item for, the Debtors' ability to consummate the Securities Purchase Agreements in order to effectuate a plan of reorganization that maximizes recoveries to the

Debtors' creditors and affords the Debtors the opportunity to restructure their businesses to compete effectively post-emergence.

39. ~~38.~~ The Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties, (b) a good faith settlement and compromise of the claims released by the Debtor Release; (c) in the best interests of the Debtors and their Estates and all holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (f) appropriately narrow in scope given that it expressly excludes any causes of actions arising from acts or omissions that constitute gross negligence or willful misconduct; and (g) a bar to any of the Debtors or the Reorganized Debtors, or any party claiming by or through the Debtors or Reorganized Debtors, asserting any claim, debt, liability or cause of action released by the Debtor Release against any of the Released Parties.

40. ~~39.~~ **Third Party Release**. The releases of Claims and Causes of Action by holders of Claims and Interests described in Article VIII.E of the Plan (the "***Third Party Release***") are an important and necessary aspect of the Plan. The Third Party Release is reasonable and acceptable.

41. ~~40.~~ In consideration for the respective support (financial and otherwise) that the Released Parties have provided in connection with the Plan and the Debtors' reorganization, the Released Parties have required that the Third Party Release be included in the Plan.

42. ~~41.~~ With respect to the Investors, the Debtors have proven that the Securities Purchase Agreements are the backbone of the Plan, without which (i) the Debtors' restructuring goals and emergence would have been unobtainable, (ii) the Plan, which provides the Debtors with their only clear path to emergence from bankruptcy, would not be confirmable or feasible, and (iii) the recoveries for many parties in interest in these cases would fail to exist. Thus, these facts

justify the approval of the Third Party Release for the Investors. Consistent with this Court's Order approving the Debtors entry into the Securities Purchase Agreements, entered on December 6, 2011 [Docket No. 2962], the terms of the Securities Purchase Agreements are (a) fair and equitable to the Debtors and the Investors, (b) were negotiated at arm's length, and in good faith by and among the Debtors, the Investors and their respective professional advisors, and (c) provide value to, are beneficial to and are necessary to preserve the Debtors' Estates, and are otherwise in the best interests of the Debtors, their Estates, shareholders, creditors, and all parties in interest. The securities issued pursuant to the Securities Purchase Agreements and the terms thereof are (x) fair and reasonable and are approved, and (y) essential elements of the Plan, and entry into and consummation of the transactions contemplated by the Securities Purchase Agreements is in the best interests of the Debtors, their Estates, and the holders of Claims and Interests in all respects. The securities to be issued pursuant to the Securities Purchase Agreements will be valid, binding and enforceable and are not in conflict with any applicable laws.

43. ~~42.~~ The Third Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims released by the Releasing Parties; (c) in the best interests of the Debtors and their Estates and all holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after notice and opportunity for hearing; (f) appropriately narrow in scope given that it expressly excludes any causes of actions that the Releasing Parties may have against any party arising out of or relating to any act or omission of a Released Party that constitutes gross negligence or willful misconduct; and (g) a bar to any of the Releasing Parties asserting any Claim, debt, liability or cause of action released by the Third Party Release against any of the Released Parties.

44. ~~43.~~ The Third Party Release is an integral part of and critically important to the success of the Plan. Like the Debtor Release, the Third Party Release facilitated constructive participation in both the Debtors' Plan and the restructuring process generally. Moreover, like the Debtor Release, the Third Party Release embodies the settlement of certain Claims with the Debtors' primary stakeholders and further reflects and implements the concessions made in the Securities Purchase Agreements.

45. ~~44.~~ Further, such Third Party Release is appropriate because it is provided only by holders of Claims who vote to accept the Plan. As the Plan provides, a creditor gives a Third Party Release only if such creditor affirmatively votes in favor of the Plan. Creditors thus had a full opportunity to approve or disapprove the Third Party Release, thus, the Third Party Releases contained in the Plan are consensual in nature.

46. Notwithstanding anything to the contrary in the Plan or the Confirmation Order, a creditor in a Deemed Rejecting Class who voted to accept the Plan prior to the entry of the Plan Modifications Order shall not be a Releasing Party on account of its previous accepting vote where such creditor is deemed to reject the Plan.

47. ~~45.~~ **Exculpation**. The exculpation provisions set forth in Article VIII.G of the Plan (the "***Exculpation Provisions***") were proposed in good faith and are essential to the Plan. The Exculpation Provisions are appropriately tailored to protect the Exculpated Parties from inappropriate litigation and are hereby approved. The Exculpation Provisions shall have no effect on the liability of any Entity that is determined in a Final Order to have constituted gross negligence or willful misconduct.

48. ~~46.~~ **Injunction**. The injunction provisions set forth in Article VIII.H of the Plan (the "***Injunction Provisions***") are essential to the Plan and are necessary to preserve and enforce

the Debtor Release, the Third Party Release, and the Exculpation Provisions in Article VIII of the Plan, and are narrowly tailored to achieve that purpose.

49. ~~47.~~ Each of the Debtor Release, the Third Party Release, the Exculpation Provision, and the Injunction Provisions set forth in the Plan: (a) is within the jurisdiction of the Bankruptcy Court under 28 U.S.C. §§ 1334(a), 1334(b), and 1334(d); (b) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) is an integral element of the transactions incorporated into the Plan; (d) confers material benefits on, and is in the best interests of, the Debtors, the Estates, and their creditors; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 Cases with respect to the Debtors; and (f) is consistent with sections 105, 1123, and 1129 of the Bankruptcy Code, other provisions of the Bankruptcy Code, and other applicable law. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the Debtor Release, the Third Party Release, the Exculpation Provisions, and the Injunction Provisions contained in Article VIII of the Plan.

50. ~~48.~~ **No Successor Liability**. None of the Investors, the Reorganized Debtors and their Affiliates, or the Issuer (as defined in the Securities Purchase Agreements), NewCo (as defined herein) or ScripCo (as defined in the Plan Supplement Exhibit H-1 (Description of Restructuring Transactions: ScripCo Transactions)), will assume, nor be deemed to assume, or in any way be responsible for, any successor liability or similar liability, with respect to the Debtors or the Debtors' operations, that are not expressly assumed or reinstated in connection with the Plan.

51. ~~49.~~ **Preservation of Claims and Causes of Action**. Article IV.R of the Plan appropriately provides for the preservation of the Debtors' Causes of Action in accordance with

section 1123(b)(3)(B) of the Bankruptcy Code. The provisions regarding the Causes of Action in the Plan are appropriate and are in the best interests of the Debtors, the Estates, and holders of Claims and Interests.

(b) Section 1129(a)(2)—Compliance of the Debtors with the Applicable Provisions of the Bankruptcy Code

52. ~~50.~~ The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018, and 3019.

53. ~~51.~~ The Debtors and their respective present and former members, officers, directors, partners, employees, representatives, advisors, attorneys, professionals, affiliates, and agents solicited and tabulated votes on the Plan after the Bankruptcy Court approved the adequacy of the Disclosure Statement pursuant to Section 1125(b) of the Bankruptcy Code, and have formulated and solicited the Plan and Disclosure Statement fairly, in good faith within the meaning of section 1125(e) of the Bankruptcy Code, and in a manner consistent with the applicable provisions of the Solicitation Procedures Order, the Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the Exculpation Provisions and Injunction Provisions.

54. ~~52.~~ The Debtors and their respective present and former members, officers, directors, partners, employees, representatives, advisors, attorneys, professionals, affiliates, and agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the offering, issuance, and distribution of recoveries under the Plan and, therefore, are not (and on account of such distributions, will not be) liable at any time for

the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or distributions made pursuant to the Plan, so long as such distributions are made consistent with and pursuant to the Plan.

(c) Section 1129(a)(3)—Proposal of the Plan in Good Faith

55. ~~53.~~ The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, and the process to leading its formulation. The Debtors' good faith is evident from the facts and record of the Chapter 11 Cases, the Disclosure Statement and the hearing thereon, the record of the Confirmation Hearing, and other proceedings held in the Chapter 11 Cases.

56. ~~54.~~ The Plan is the product of extensive, good faith, arm's length negotiations between the Debtors and certain of their principal constituencies, including the Investors, holders of Second Lien Notes, and the Creditors' Committee. The Plan itself and the process leading to its formulation provide independent evidence of the Debtors' good faith, serve the public interest, and assure fair treatment of holders of Claims and Interests. Consistent with the overriding purpose of chapter 11, the Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to reorganize and emerge from bankruptcy with a capital structure that will allow them to satisfy their obligations with sufficient liquidity and capital resources. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

(d) Section 1129(a)(4)—Bankruptcy Court Approval of Certain Payments as Reasonable

57. ~~55.~~ Payments made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, including the professional fee expense amounts owed pursuant to the

Union Settlement Agreements as provided by Article II.A of the Plan, have been approved by, or are subject to the approval of, the Bankruptcy Court as reasonable. Accordingly, the requirements of section 1129(a)(4) of the Bankruptcy Code are satisfied.

(e) Section 1129(a)(5)—Disclosure of Identity of Proposed Management, Compensation of Insiders, and Consistency of Management Proposals with the Interests of Creditors and Public Policy

58. ~~56.~~ The Debtors have disclosed, in the Plan Supplement, the identity and affiliations of the individuals proposed to serve as the directors and officers of NewCo and the Reorganized Debtors, to the extent known, and the identity and nature of any compensation for any insider who will be employed or retained by the Reorganized Debtors. The appointment of the remaining officers, if any, and the compensation of all of the Reorganized Debtors' directors will be consistent with each Reorganized Debtor's applicable constituent documents, as amended from time to time. The proposed directors and officers for NewCo and the Reorganized Debtors are qualified, and the appointments to, or continuance in, such offices by the proposed directors and officers is consistent with the interests of holders of Claims and Interests and with public policy. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

(f) Section 1129(a)(6)—Approval of Rate Changes

59. ~~57.~~ The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission. Therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases.

(g) Section 1129(a)(7)—Best Interest of Creditors Test

60. ~~58.~~ Each holder of an Impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the

Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

61. ~~59.~~ The liquidation analysis attached as Exhibit D to the Disclosure Statement (the "***Liquidation Analysis***") and the other evidence related thereto in support of the Plan that was proffered or adduced at or prior to, or in declarations in connection with, the Confirmation Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that holders of Allowed Claims and Interests in every Class will recover property of a value, as of the Effective Date, that is not less than the amount such holder would receive if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(7) of the Bankruptcy Code.

(h) Section 1129(a)(8)—Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of the Plan by Each Impaired Class

62. ~~60.~~ Classes B, C, and D are Unimpaired Classes of Claims, each of which are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. As set forth in the Amended Voting Certification, Classes A~~, F, G, H, I, J, K~~ and ~~L~~**K** have voted to accept the Plan and ~~Class E has voted to reject the Plan.~~ Classes **E, F, G, H, I, J, L,** M, N, O, and P are ~~not receiving any distributions under the Plan and are conclusively~~ deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

63. ~~61.~~ Because ~~the Plan has not been accepted by Class E and because~~ Classes **E, F, G, H, I, J, L,** M, N, O, and P are ~~conclusively~~ deemed to reject the Plan, the Debtors seek Confirmation under section 1129(b), rather than section 1129(a)(8) of the Bankruptcy Code.

Thus, although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to the **Deemed** Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to each of the **Deemed** Rejecting Classes and, thus, satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to such Classes as described further below.

(i) Section 1129(a)(9)—Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code

64. ~~62.~~ The Treatment of Allowed Administrative and Allowed Professional Claims, Allowed DIP Facility Claims, and Allowed Priority Tax Claims under Article II of the Plan satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(9) are satisfied.

(j) Section 1129(a)(10)—Acceptance by at Least One Impaired Class

65. ~~63.~~ As set forth in the Amended Voting Certification, Classes A~~, F, G, H, I, J, K~~ and ~~L~~**K** voted to accept the Plan, without counting the votes of insiders. As such, there is at least one Class of Claims that is Impaired under the Plan that has accepted the Plan without including any acceptance of the Plan by insiders. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(10) of the Bankruptcy Code.

(k) Section 1129(a)(11)—Feasibility of the Plan

66. ~~64.~~ The evidence supporting the Plan proffered or adduced by the Debtors at, or prior to, or in declarations filed in connection with, the Confirmation Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; (d) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further

financial reorganization, of the Reorganized Debtors or any successor to the Reorganized Debtors under the Plan except as provided in the Plan; and (e) establishes that the Reorganized Debtors will have sufficient funds available to meet their obligations under the Plan. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

(l) Section 1129(a)(12)—Payment of Bankruptcy Fees

67. ~~65.~~ Article XI.F of the Plan provides that all fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid prior to the closing of these Chapter 11 Cases when due or as soon thereafter as practicable. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(12) of the Bankruptcy Code.

(m) Section 1129(a)(13)—Retiree Benefits

68. ~~66.~~ Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for "retiree benefits" (as defined in section 1114 of the Bankruptcy Code) at levels established pursuant to section 1114 of the Bankruptcy Code. Article IV.P of the Plan provides that, on and after the Effective Date (other than as set forth in Article IV.P.2), all retiree benefits shall continue to be paid in accordance with applicable law. Accordingly, the requirements of section 1129(a)(13) of the Bankruptcy Code have been satisfied.

(n) Sections 1129(a)(14), (15) and (16)—Non-Applicability of Certain Sections

69. ~~67.~~ The Debtors do not owe any domestic support obligations, are not individuals, and are business corporations. Therefore, sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to the Chapter 11 Cases.

(o) Section 1129(b)—Confirmation of the Plan Over Non-Acceptance of Impaired Classes

70. ~~68.~~ The Plan may be confirmed pursuant to section 1129(b) of the Bankruptcy Code notwithstanding that the requirements of section 1128(a)(8) have not been met because the

Debtors have demonstrated by a preponderance of the evidence that (a) the Plan satisfies all of the other requirements of section 1129(a) of the Bankruptcy Code, (b) Classes A~~, F, G, H, I, J, K~~ and ~~L~~**K** have voted to accept the Plan, and (c) the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to the **Deemed** Rejecting Classes.

71. ~~69.~~ The discrimination in treatment among Classes I and J, and ~~Class E~~**Classes E, F, G, H, and L** under the Plan is not "unfair" because (a) there are reasonable, legitimate, and equitable reasons for the enhanced **contingent** recovery **that may be provided** to Classes I and J under the Plan and **the amount of** such **contingent** recoveries were ~~provided~~**determined** in the context of the Substantive Consolidation Settlement, (b) the disparate treatment is necessary to achieve a successful reorganization and consummate the Plan, (c) the Debtors have acted in good faith in determining to provide **for** additional **contingent** recoveries to the holders of Classes I and J Claims compared to **the contingent** recoveries to ~~Class E~~**Classes E, F, G, H, and L** and (d) the discrimination is reasonably proportional to the rationale therefor, including the net benefits to the Debtors, their Estates, and the reorganized enterprise post-emergence, as set forth on the record.

72. ~~70.~~ The Plan is "fair and equitable" with respect to ~~Class E because no junior Class of Claims or Interests will receive or retain any property under the Plan on account of such Claims or Interests. Likewise, the Plan is "fair and equitable" with respect to~~ Classes **E, F, G, H, I, J, L,** M, N, O, and P because no junior Class of Claims or Interests will receive or retain any property under the Plan on account of such Claims or Interests.

73. ~~71.~~ The evidence supporting the Plan proffered or adduced by the Debtors at, or prior to, or in declarations filed in connection with, the Confirmation Hearing regarding the Debtors' classification and treatment of Claims and Interests: (a) is reasonable, persuasive,

credible, and accurate; (b) utilizes reasonable and appropriate methodologies and assumptions; and (c) has not been controverted by other credible evidence.

74. ~~72.~~ The Plan, therefore, satisfies the requirements of section 1129(b) of the Bankruptcy Code and may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan. After the entry of the Confirmation Order and upon the occurrence of the Effective Date, the Plan shall be binding upon the members of the **Deemed** Rejecting Classes.

(p) Section 1129(c)—Only One Plan

75. ~~73.~~ Other than the Plan (including previous versions thereof), no other plan has been filed in these Chapter 11 Cases. Accordingly, the Debtors have satisfied the requirements of section 1129(c) of the Bankruptcy Code.

(q) Section 1129(d)—Principal Purpose of the Plan Is Not the Avoidance of Taxes

76. ~~74.~~ No governmental unit has requested that the Bankruptcy Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. As evidenced by its terms, the principal purpose of the Plan is not such avoidance. Accordingly, the Debtors have satisfied the requirements of section 1129(d) of the Bankruptcy Code.

(r) Section 1129(e)—Small Business Case

77. ~~75.~~ None of these Chapter 11 Cases is a "small business case," as that term is defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable.

M. ~~L.~~ Satisfaction of Confirmation Requirements

78. ~~76.~~ Based upon the foregoing, all other filed pleadings, documents exhibits, statements, declarations, and affidavits filed in connection with Confirmation of the Plan and all

evidence and arguments made, proffered, or adduced at the Confirmation Hearing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

N. ~~**M.**~~ **Implementation of Other Necessary Documents and Agreements**

79. ~~77.~~ All documents and agreements necessary to implement the Plan are essential elements of the Plan and entry into and consummation of the transactions contemplated by each such document and agreement, including the Restructuring Transactions and the Pharmacy/Prescription Sale Transaction, is in the best interests of the Debtors, the Estates, and the holders of Claims and Interests, and shall, upon completion and execution of the documentation be valid, binding and enforceable and not in conflict with any federal, state or local law. The Debtors have exercised reasonable business judgment in determining which agreements to enter into and have provided sufficient and adequate notice of such documents and agreements. The terms and conditions of such documents and agreements have been negotiated in good faith, at arm's length, are fair and reasonable, and are reaffirmed and approved.

O. ~~**N.**~~ **Good Faith**

80. ~~78.~~ Based on the record in the Chapter 11 Cases, (a) the Debtors and their non-Debtor affiliates; (b) the DIP Facility Administrative Agent and the DIP Facility Lenders; (c) the Investors; (d) the Creditors' Committee; (e) the Unions; (f) the lenders under the Exit Facility and the lead arrangers for the Exit Facility (such lead arrangers, the "***Lead Arrangers***"); (g) the Second Lien Trustee and the Consenting Noteholders; and (h) with respect to each of the foregoing Entities in clauses (a) through (g), such Entities' current or former parents, subsidiaries, affiliates, managed accounts or funds, officers, directors, principals, employees, members, managers, partners agents, financial and other advisors, attorneys, accountants, professionals, investments bankers, consultants, representatives, and other Professionals have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable

provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the Plan, including any action or inaction in connection with their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the Exculpation Provisions.

81. ~~79.~~ In particular, the Investors, who are established and well-regarded in the Debtors' industry, have acted and entered into the documents effectuating the Debtors' restructuring pursuant to the Plan (including the Restructuring Transactions), including the Securities Purchase Agreements, in good faith and will be deemed to continue to act in good faith if they (i) proceed to consummate the Plan and the Debtors' restructuring (including, in the discretion of the Debtors and the Investors, the Restructuring Transactions) pursuant thereto, and (ii) take the actions authorized and directed by the Confirmation Order. The Investors fairly and reasonably negotiated the transactions effectuating the Debtors' restructuring, including the Restructuring Transactions, and the transactions contemplated in the Securities Purchase Agreements, at arm's length with the Debtors, and the resulting terms of the agreements, including the fee structure, are in the best interests of the Estates. The Creditors' Committee actively participated in these negotiations, conducted extensive discovery, and confirmed the good faith and sound business judgment underlying the Restructuring Transactions. The Restructuring Transactions are not tainted by self-dealing. No insider is receiving any undue consideration pursuant to the Securities Purchase Agreements or the Plan. Neither the Securities Purchase Agreements nor the Plan enable the Investors to purchase equity in the Reorganized Debtors on account of their current position in the Debtors' capital structure.

P. ~~O.~~ Executory Contracts and Unexpired Leases

82. ~~80.~~ The Debtors have exercised reasonable business judgment in determining whether to assume or reject each of their Executory Contracts and Unexpired Leases as set forth in Article V of the Plan, the Plan Supplement, the Confirmation Order or otherwise. Each assumption or rejection of any Executory Contract or Unexpired Lease in accordance with Article V of the Plan, the Plan Supplement, the Confirmation Order or otherwise, shall be legal, valid and binding upon: the Reorganized Debtors (if such Executory Contract or Unexpired Lease is assumed) and all non-Debtor Entities party to such Executory Contract or Unexpired Lease, all to the same extent as if such assumption or rejection had been authorized and effectuated pursuant to a separate order of the Bankruptcy Court that was entered pursuant to section 365 of the Bankruptcy Code prior to Confirmation. The Debtors have satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption, assumption and assignment, and rejection of Executory Contracts and Unexpired Leases pursuant to the Plan. The Debtors have provided sufficient notice to each non-Debtor counter-party to the Executory Contracts and Unexpired Leases of the assumptions, assumptions and assignments or rejections described in the Plan and the Plan Supplement. The Debtors have also provided adequate assurance of future performance, as that term is used in section 365 of the Bankruptcy Code, with respect to the assumption of any Executory Contract or Unexpired Lease that is to be assumed pursuant to the Plan.

83. ~~81.~~ Subject to unresolved Cure or Assumption objections filed prior to the Cure Objection Deadline or other applicable deadline pursuant to the Plan, the Debtors have Cured or provided "adequate assurance" of Cure of any default existing or occurring prior to the date of entry of the Confirmation Order under any of the assumed Executory Contracts and Unexpired Leases, and provided compensation or "adequate assurance" of compensation to any party for any actual pecuniary loss to such party resulting from a default existing or occurring prior to the date of

entry of the Confirmation Order under any of the assumed Executory Contracts or Unexpired Leases. Upon payment of any Cure established pursuant to Article V of the Plan, the Debtors or Reorganized Debtors, as applicable, shall be deemed to have cured any defaults that must be cured in order to permit any Debtor or Reorganized Debtor, as applicable, to assume any Executory Contract or Unexpired Lease to be assumed pursuant to the Plan.

Q. ~~P.~~ Exemption from Transfer Taxes

84. ~~82.~~ All transfer instruments made or delivered by the Debtors or their affiliates (including ScripCo) in relation to their restructuring pursuant to the Plan, including any transfer instruments made or delivered in relation to the Restructuring Transactions (including the Pharmacy/Prescription Sale Transaction) after entry of the Confirmation Order will be transfers under, or in contemplation of, the Plan. Accordingly, such transfers are appropriately not subject to any transfer tax, stamp tax, mortgage tax, recording tax, or similar tax.

R. ~~Q.~~ Disclosure: Agreements and Other Documents

85. ~~83.~~ The Debtors have disclosed all material facts regarding: (a) the adoption of the Reorganized A&P Charter and the Reorganized A&P Bylaws; (b) the selection of the members of the New Board and certain new officers for the applicable Reorganized Debtors; (c) the Reorganized Debtors' obligations under the Exit Facility, the New Second Lien Notes, the New Convertible Third Lien Notes, the Investment Warrants, the Management Services Agreement, the Securities Purchase Agreements, and the Plan Support Agreement; (d) the sources and distribution of Cash under the Plan; (e) the terms and issuance of the NewCo Equity; (f) the cancellation of the obligations under the DIP Facility, the 1991 Indenture, the 2007 Indenture, the Second Lien Indenture, the Second Lien Notes, the Convertible Notes, the 9.125% Senior Notes, and the Quarterly Interest Bonds; (g) the adoption, execution and delivery of all contracts, leases, instruments, securities, releases, indentures, and other agreements related to any of the foregoing;

~~and (h~~**(h) the Plan Modifications; (i) the Unsecured Creditor Contingent Recovery Pool (if any); and (j)** the adoption, execution, and implementation of the other matters provided for under the Plan involving corporate action to be taken by or required of the Reorganized Debtors including the Restructuring Transactions such as the Pharmacy/Prescription Sale Transaction.

S. ~~**R.**~~ **Approval of the Exit Facility**

86. ~~84.~~ The Exit Facility is an essential element of the Plan, and entry into the Exit Facility is in the best interests of the Debtors, the Estates, and all holders of Claims. The Debtors have exercised reasonable business judgment in determining to enter into the Exit Facility and have provided sufficient and adequate notice of the material terms of the Exit Facility. The terms and conditions of the Exit Facility, including, the pledge of the Debtors' leasehold interests to secure the Exit Facility, are fair and reasonable, and the Exit Facility has been negotiated in good faith and at arm's length. The Debtors and the Reorganized Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments, and certificates relating thereto and incur and perform their obligations thereunder.

T. ~~**S.**~~ **Approval of the New Securities / Restructuring Transactions**

87. ~~85.~~ The Restructuring Transactions, including the Securities Purchase Agreements, are in the best interests of the Debtors and their creditors. The Securities Purchase Agreements provided the Debtors with their best chance of attracting competing bidders for the benefit of their Estates and creditors. The Debtors appropriately exercised their business judgment in securing the Investors' commitment, which provided assurance to the Debtors of the sale of their business at a reasonable price, and encouraged competing offers from interested bidders. Any party who was interested in making an investment in the Debtors had ample opportunity to do so during the

pendency of the Chapter 11 Cases, before and after the Debtors entered into the Securities Purchase Agreements. No other party submitted other offers at any time.

88. ~~86.~~ The Securities Purchase Agreements are a critical component of the Plan because without them, the Debtors would not have any assurance of the sale of their business at fair value, would have no funding to pay the claims of their creditors, and ultimately would have no ability to reorganize.

89. ~~87.~~ The Debtors (and/or NewCo as applicable) are authorized, without further approval of the Bankruptcy Court or any other party, to authorize, issue and distribute, pursuant to the Plan and the Securities Purchase Agreements, the New Second Lien Notes, the New Convertible Third Lien Notes, the NewCo Equity, the Investment Warrants, the new common stock of Reorganized A&P and any other Securities to be authorized, issued and distributed pursuant to the Plan and Securities Purchase Agreements. The Debtors or the Reorganized Debtors, as the case may be (and/or NewCo, as applicable), are authorized to execute and deliver all documentation relating to the issuance of the aforementioned Securities and the Restructuring Transactions, including the Pharmacy/Prescription Sale Transaction, and are authorized to engage in such further transactions as are determined by the Debtors (or the Reorganized Debtors) and the Investors to be necessary in the furtherance of the Plan or the Securities Purchase Agreements.

90. The approval of the Restructuring Transactions described in Exhibit H-2 of the Plan Supplement will not impair, limit, prejudice, or alter in any way the rights of either the Debtors, the Reorganized Debtors, any of the Union Locals, benefit funds (if any), or any of the employees employed at any the Transferred Stores with respect to any of the Modified Collective Bargaining Agreements. Each of the Debtors, the Reorganized Debtors, the Union Locals, relevant benefit funds (if any) and any of the employees employed at any of

the Transferred Stores may enforce their respective Modified Collective Bargaining Agreement in the same manner as they could have done so had the Restructuring Transactions described in Exhibit H-2 of the Plan Supplement never taken place, the Debtors and the Reorganized Debtors not conceding that all of these parties would have the rights to enforce the Modified Collective Bargaining Agreements and reserving its rights to object to any efforts to do so.

U. ~~T.~~ Conditions Precedent to Effective Date

91. ~~88.~~ Each of the conditions precedent to the Effective Date, as set forth in Article IX.A. of the Plan, has been satisfied or waived in accordance with the provisions of the Plan, or is reasonably likely to be satisfied, *provided*, *however*, that no waiver of the conditions precedent to the Effective Date shall have occurred without the consent of the Investors.

V. ~~U.~~ Retention of Jurisdiction

92. ~~89.~~ The Bankruptcy Court properly may retain jurisdiction over the matters set forth in Article X and other applicable provisions of the Plan.

* * * * * * * *

ORDER

Based on the foregoing, it is hereby ORDERED:

A. Order

93. ~~90.~~ All requirements for Confirmation of the Plan have been satisfied. The Plan is confirmed in its entirety pursuant to section 1129 of the Bankruptcy Code. A copy of the confirmed Plan is attached hereto as **Exhibit 2**. The terms of the Plan and the Plan Supplement (as it may be amended from time to time in accordance with the Plan) are incorporated by reference into, and are an integral part of, this Order.

B. Objections

94. ~~91.~~ All objections to Confirmation of the Plan have been resolved, withdrawn, waived, or settled by the Debtors prior to the entry of the Confirmation Order. To the extent that any objections, reservations of rights, statements, or joinders to Confirmation have not been resolved, withdrawn, waived, or settled prior to entry of the Confirmation Order, are not cured by the relief granted herein, or otherwise resolved as stated on the record of the Confirmation Hearing, they are hereby overruled on their merits.

C. Findings of Fact and Conclusions of Law

95. ~~92.~~ The findings of fact and the conclusions of law set forth herein shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any of the following constitute findings of fact or conclusions of law, they are adopted as such. All findings of facts and conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to the Confirmation are incorporated herein to the extent not inconsistent herewith. To the extent any of the prior findings of fact or conclusions of law constitute an order of this Bankruptcy Court, they are adopted as such.

D. Rules of Construction

96. ~~93.~~ The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the Confirmation Order.

E. Confirmation of the Plan

97. ~~94.~~ The Plan and Plan Supplement (as such may be expressly amended by this Confirmation Order or in accordance with the Plan) and each of their provisions are confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code. The documents contained in the Plan Supplement, and any amendments, modifications, and supplements thereto,

and all documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to in such papers), and the execution, delivery, and performance thereof, are authorized and approved as finalized, executed, and delivered. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights (subject to approval by the Investors, to the extent provided by the Plan **and the Securities Purchase Agreements, and in consultation with the Creditors' Committee, the Second Lien Trustee, and the administrative agent under the Exit Facility (to the extent provided by the credit agreements governing the Exit Facility)**) to alter, amend, or modify materially the Plan with respect to the Debtors, one or more times after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan and in all cases, in accordance with the terms and conditions of the Securities Purchase Agreements and the Exit Facility. As set forth in the Plan, once finalized and executed, the documents comprising the Plan Supplement and all other documents contemplated by the Plan shall, as applicable, constitute legal, valid, binding, and authorized obligations of the respective parties thereto, enforceable in accordance with their terms.

98. ~~95.~~ The terms of the Plan, the Plan Supplement, and exhibits thereto are incorporated by reference into, and are an integral part of, the Confirmation Order. The terms of the Plan, the Plan Supplement, all exhibits thereto, and all other relevant and necessary documents, shall be effective and binding as of the Effective Date.

F. Solicitation and Notice

99. ~~96.~~ Notice of the Confirmation Hearing complied with the terms of the Solicitation Procedures Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The solicitation of votes on the Plan and the Solicitation Packages complied with the Solicitation and Voting Procedures, were appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and were in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The notice provided pursuant to the Leasehold Mortgage Notice in connection with the grant of mortgages, Liens, and security interests pursuant to the Exit Pledge, the Second Lien Pledge, and the Convertible Third Lien Pledge was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and other applicable law.

G. References to Plan Provisions

100. ~~97.~~ The failure specifically to include or to refer to any particular article, section, or provision of the Plan, the Plan Supplement, or any related document in the Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed and any related documents be approved in their entirety.

H. Plan Classification Controlling

101. ~~98.~~ The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the holders of Claims in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not

necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim as representing the actual classification of such Claim under the Plan for distribution purposes; and (d) shall not be binding on the Debtors and the Reorganized Debtors except for voting purposes.

I. Immediate Binding Effect

102. ~~99.~~ Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all holders of Claims or Interests (irrespective of whether holders of such Claims or Interests were entitled to vote, voted to accept or reject the Plan, or are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan or herein, each Entity acquiring property under the Plan or Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

J. Substantive Consolidation Settlement

103. ~~100.~~ As a result of the Substantive Consolidation Settlement, except as otherwise provided in the Plan (including any exhibits or supplements thereto), and only for purposes of voting and distributions under the Plan: (a) the separate Chapter 11 Cases of the Debtors shall be consolidated into the case of A&P as a single consolidated case; (b) all property of the Estate of each Debtor shall be deemed to be property of the consolidated Estates; (c) all Claims against each Estate shall be deemed to be Claims against the consolidated Estates, any Proof of Claim filed against one or more of the Debtors shall be deemed to be a single Proof of Claim filed against the consolidated Estates, and all duplicate Proofs of Claim filed on account of a Claim representing a

single liability shall be deemed expunged; (d) no distributions under the Plan shall be made on account of Intercompany Claims or Intercompany Interests; (e) Allowed Claims based on joint and several liability shall be deemed satisfied by a single distribution as if the Claim were held solely against one Debtor Entity; (f) except as provided in the Plan with respect to the treatment of Guaranteed Landlord Claims and Pension Withdrawal Claims, all Claims based upon pre-petition unsecured guarantees by one Debtor in favor of any other of the Debtors or other basis of co-Debtor liability shall be eliminated (other than guarantees existing under assumed Executory Contracts or Unexpired Leases), and no distributions under the Plan shall be made on account of Claims based upon such guarantees or other basis of co-Debtor liability; and (g) for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, the Debtors shall be treated as one consolidated entity so that, subject to the other provisions of section 553 of the Bankruptcy Code, pre-petition debts due to any of the Debtors may be set off against the pre-petition debts of any other of the Debtors.

104. ~~101.~~ The Plan shall not result in the merger or otherwise affect the separate legal existence of each Debtor, other than with respect to voting and distribution rights under the Plan. The Plan structure shall not (a) impair the validity or enforceability of guarantees that exist under or with respect to assumed Executory Contracts or Unexpired Leases; (b) affect valid, enforceable, and unavoidable Liens that would not otherwise be terminated under the Plan, except for Liens that secure a Claim that is eliminated by virtue of the Plan structure and Liens against collateral that are extinguished by virtue of such Plan structure; (c) have the effect of creating a Claim in a Class different from the Class in which a Claim would have been placed in the absence of such structure; or (d) affect the obligation of each of the Reorganized Debtors, pursuant to section 1930 of Title 28

of the United States Code, to pay quarterly fees to the Office of the United States Trustee until such time as each particular Debtor's case is closed.

105. As set forth in the Plan, on the Effective Date, and in exchange for the rights provided under the Plan to each holder of an Allowed Class E, F, G, H, I, J and L Claim, each respective Allowed Class E, F, G, H, I, J and L Claim shall be discharged. Further, the terms of the Unsecured Creditor Contingent Recovery Pool, as set forth on Exhibit 2 attached hereto, are hereby approved in their entirety and will hereafter replace the terms of the Unsecured Creditor Contingent Recovery Pool previously set forth in the Plan (or pursuant to the Plan Modifications). The rights set forth in the Unsecured Creditor Contingent Recovery Pool (if any) shall terminate pursuant to the terms set forth on Exhibit 2 attached hereto.

K. Cancellation of Notes, Instruments, Certificates and Other Documents

106. ~~102.~~ On the Effective Date, except as otherwise specifically provided for in the Plan or the Securities Purchase Agreements (and except for (x) such Certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan, and [(y) ~~except for~~ the common stock held by Lehman Brothers International (Europe) ("***LBIE***") that LBIE borrowed from A&P pursuant to that certain share lending agreement between A&P and LBIE, dated December 12, 2007, solely to the extent **and for such time as is** necessary for the Reorganized Debtors in their sole and absolute discretion to enforce their claims or causes of action against LBIE on account of such share lending agreement but for no other purpose **(provided, however, that such common stock held by LBIE shall be automatically cancelled (without any further action of the Reorganized Debtors or any other party) upon resolution or allowance of the LBIE claim and that, pending such automatic cancellation, the common stock held by LBIE shall be held in form only and shall**

not entitle any holder thereof to any voting, distribution or other rights of shareholders)][8]: (a) the obligations of the Debtors under the DIP Facility, the 1991 Indenture, the 2007 Indenture, the Second Lien Indenture, the Convertible Notes, the 9.125% Senior Notes, the Quarterly Interest Bonds and the Second Lien Notes and any other Certificate, share, note, bond, indenture, purchase right, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity or profits interest in the Debtors or any warrants, options or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership or profits interests in the Debtors giving rise to any Claim or Interest, and any options, or other securities exercisable or exchangeable for, or convertible into Interests or equity of the Debtors, shall be cancelled as to the Debtors; (b) the obligations of the Debtors under the DIP Facility, the 1991 Indenture, the 2007 Indenture, the Second Lien Indenture, the Convertible Notes, the 9.125% Senior Notes, the Quarterly Interest Bonds and the Second Lien Notes shall be fully released, settled, and compromised as to the Debtors and the non-Debtor Affiliates, and the Reorganized Debtors shall not have any continuing obligations thereunder except as otherwise provided in the Plan; and (c) the obligations of the Debtors, the Reorganized Debtors and the non-Debtor Affiliates, pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing any shares, Certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; provided, however, that notwithstanding Consummation of the Plan or the occurrence of the Effective Date, any indenture or agreement that

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8 [This clause (y) remains subject to ongoing review by the Investors.]

governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of (1) allowing holders to receive distributions under the Plan, and (2) allowing and preserving the rights of the DIP Facility Administrative Agent, Second Lien Trustee, and Wilmington Trust, as provided in Articles IV and VII of the Plan.

L. Approval of Exit Facility

107. ~~103.~~ The Exit Facility is hereby approved. The Debtors and the Reorganized Debtors, as the case may be, are hereby authorized to enter into and execute the Exit Facility, including any and all amendments and modifications thereto and any other agreements, instruments, Certificates, or documents related thereto, and are hereby authorized to enter into and to consummate any and all transactions contemplated thereby.

108. ~~104.~~ The Liens contemplated by and related to the Exit Facility are valid, binding and enforceable Liens on the collateral specified in the relevant agreements executed by the Reorganized Debtors in connection with the Exit Facility. The guarantees, mortgages, pledges, Liens, and other security interests granted pursuant to or in connection with the Exit Facility are granted in good faith as an inducement to the lenders thereunder to extend credit thereunder and shall be, and hereby are, deemed not to constitute a fraudulent conveyance or fraudulent transfer, shall not otherwise be subject to avoidance, and the priorities of such Liens and security interests shall be as set forth in the intercreditor agreement and other definitive documentation executed in connection with the Exit Facility.

109. ~~105.~~ The Reorganized Debtors and the persons and Entities granted Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and this Order, and will thereafter

cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

110. ~~106.~~ To the extent that any holder of a Claim secured by a Lien (regardless of whether such Lien was properly perfected or whether there is any economic value to such Lien or whether such Claim is a Secured Claim) that has been satisfied or discharged in full pursuant to the Plan, or any agent for such holder, has filed or recorded publicly any Liens and/or security interests to secure such holder's Secured Claim, then as soon as practicable on or after the Effective Date, such holder (or the agent for such holder) shall take any and all steps requested by the Debtors, the Reorganized Debtors or any agent under the Exit Facility, and the Debtors, the Reorganized Debtors and any agent under the Exit Facility are authorized to file or record any necessary documents or take any other necessary steps, that are necessary to cancel and/or extinguish such publicly-filed Liens and/or security interests, in each case all costs and expenses in connection therewith to be paid by the Debtors or the Reorganized Debtors.

111. ~~107.~~ Any provision in any of the Debtors' leases that purports to require the consent of the lessor thereunder in order for the applicable loan party to mortgage, pledge or collaterally assign such leases (or to restrict, prohibit or void any such mortgage, pledge or collateral assignment) is hereby (and as additionally set forth in paragraph ~~112~~**116** of this Confirmation Order) invalidated for the sole and limited purpose of allowing the Debtors' leasehold interests to be included in the collateral security of the Exit Facility. The collateral agent for the Exit Facility shall be granted Liens on the collateral, including all of the Debtors' leasehold interests, which Liens shall be deemed perfected and effective as of the Effective Date (the "***Exit Pledge***"). For the avoidance of doubt, (i) it is expressly understood that, other than with respect to the Exit Pledge, nothing herein or in the Plan shall broaden or limit any rights of the collateral agent or Exit Facility

lenders (whether arising under the applicable leases or applicable law, including, but not limited to and solely by way of example, any right to cure defaults, exercise remedies or compel delivery of notices from lessors) or of the lessors, in each case with respect to the Debtors' leasehold interests and (ii) to the extent any lessor under any of the Debtors' leases has not objected to the relief set forth herein or has withdrawn its objection or indicated its assent on the record at the Confirmation Hearing, such lessor shall be deemed to have consented to the Exit Pledge (as described above and including clause (i)).

112. ~~108.~~ Notwithstanding anything to the contrary in this Order or the Plan, the Bankruptcy Court's retention of jurisdiction shall not govern the enforcement of the loan documentation executed in connection with the Exit Facility or any rights or remedies related thereto.

M. New Securities

113. ~~109.~~ In accordance with the terms of Article IV.J of the Plan, the Reorganized Debtors and/or NewCo shall authorize, issue and distribute, pursuant to the Plan and the Securities Purchase Agreements, the New Second Lien Notes, the New Convertible Third Lien Notes, the NewCo Equity, the Investment Warrants, the new common stock of Reorganized A&P and any other Securities to be authorized, issued and distributed pursuant to the Plan and Securities Purchase Agreements, and the Debtors and the Reorganized Debtors as the case may be shall be authorized to execute and deliver all documentation related thereto. Upon execution and delivery by the Debtors or Reorganized Debtors, as applicable, of the foregoing documents, or issuance of the Securities related thereto, as the case may be, such documents and Securities shall be deemed validly executed and delivered and deemed to constitute valid, binding and enforceable agreements and obligations of the Reorganized Debtors and are not in conflict with any applicable laws. Upon issuance, the NewCo Equity and the new common stock of Reorganized A&P issued

to NewCo, including without limitation, any capital stock of Reorganized A&P or NewCo shall be deemed pursuant to this Order, duly authorized, validly issued, fully paid and non-assessable under all applicable laws. In addition, any capital stock issued pursuant to, including by way of conversion or exercise, the Investment Warrants, the New Second Lien Notes, the New Convertible Third Lien Notes, and any documents related thereto, are hereby deemed duly authorized, and, upon issuance, are deemed validly issued, fully-paid and non-assessable under all applicable laws.

114. ~~110.~~ The Liens contemplated by and related to the New Second Lien Notes and the New Convertible Third Lien Notes, are valid, binding and enforceable Liens on the collateral specified in the relevant agreements executed by the Reorganized Debtors in connection with the New Second Lien Notes and the New Convertible Third Lien Notes. The guarantees, mortgages, pledges, Liens, and other security interests granted pursuant to or in connection with the New Second Lien Notes and the New Convertible Third Lien Notes, are granted in good faith as an inducement to the holders of such notes to extend credit thereunder and shall be, and hereby are, deemed not to constitute a fraudulent conveyance or fraudulent transfer, and shall not otherwise be subject to avoidance, and the priorities of such Liens and security interests shall be as set forth in the intercreditor agreements and other definitive documentation executed in connection with the New Second Lien Notes and the New Convertible Third Lien Notes.

115. ~~111.~~ The Reorganized Debtors and the persons and entities granted Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests in connection with the New Second Lien Notes and New Convertible Third Lien Notes under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign)

that would be applicable in the absence of the Plan and this Order, and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such mortgages, Liens and security interests to third parties.

116. ~~112.~~ Any provision in any of the Debtors' leases that purports to require the consent of the lessor thereunder in order for the applicable loan party to mortgage, pledge or collaterally assign such leases (or to restrict, prohibit or void any such mortgage, pledge or collateral assignment) is hereby (and as additionally set forth in paragraph ~~107~~**111** of this Confirmation Order) invalidated for the sole and limited purpose of allowing the Debtors' leasehold interests to be included in the collateral security of the New Second Lien Notes and New Convertible Third Lien Notes. The collateral agent for the New Second Lien Notes and New Convertible Third Lien Notes shall be granted Liens on the collateral, including all of the Debtors' leasehold interests, which Liens shall be deemed perfected and effective as of the Effective Date (collectively, the "***Second Lien Pledge***" or the "***Convertible Third Lien Pledge***," respectively). For the avoidance of doubt, (i) it is expressly understood that, other than with respect to the Second Lien Pledge and the Convertible Third Lien Pledge, nothing herein or in the Plan shall broaden or limit any rights of the collateral agent or holders of the New Second Lien Notes or the New Convertible Third Lien Notes (in each case, whether arising under the applicable leases or applicable law, including, but not limited to and solely by way of example, any right to cure defaults, exercise remedies or compel delivery of notices from lessors) or of the lessors, in each case with respect to the Debtors' leasehold interests and (ii) to the extent any lessor under any of the Debtors' leases has not objected to the relief set forth herein or has withdrawn its objection or indicated its assent on the record at the Confirmation Hearing, such lessor shall be deemed to have consented to the Second Lien Pledge and the Convertible Third Lien Pledge (as described above and including clause (i)).

117. ~~113.~~ Notwithstanding anything to the contrary in this Order or the Plan the Bankruptcy Court's retention of jurisdiction shall not govern the enforcement of the documentation executed in connection with the New Second Lien Notes and New Convertible Third Lien Notes or any rights or remedies related thereto.

N. Registration Exemptions

118. ~~114.~~ The solicitation of acceptances and rejections of the Plan was exempt from the registration requirements of the Securities Act and applicable state securities laws, and no other non-bankruptcy law applies to the solicitation.

119. ~~115.~~ The offering, issuance, and distribution of any Securities pursuant to the Plan and any and all settlement agreements incorporated therein are deemed exempt from applicable federal and state securities laws (including blue sky laws), registration and other requirements, including but not limited to, the registration and prospectus delivery requirements of section 5 of the Securities Act, pursuant to section 1145 of the Bankruptcy Code and/or section 4(2) of the Securities Act, or another available exemption from registration under the Securities Act, as applicable. In addition, under section 1145 of the Bankruptcy Code, if applicable, any Securities issued pursuant to the Plan**, any distribution from the Unsecured Creditor Contingent Recovery Pool (if any),** or any and all settlement agreements incorporated therein will be transferable under the Securities Act by the recipients thereof, subject to (1) the restrictions, if any, on the transferability of such Securities and instruments, including restrictions contained in the Reorganized A&P Charter and the Securities Purchase Agreements and (2) any other applicable regulatory and legal requirements.

O. Treatment of Executory Contracts and Unexpired Leases

120. ~~116.~~ The Executory Contract and Unexpired Lease provisions of Article V of the Plan shall be, and hereby are, approved in their entirety and, accordingly, any anti-assignment

provisions in any Executory Contracts and Unexpired Leases assumed by the Debtors on or before the Effective Date shall be deemed invalid for purposes of assumption and assignment pursuant to section 365 of the Bankruptcy Code, including assignment of any assumed Executory Contract and/or Unexpired Lease to any Affiliate of the Debtors on or prior to the Effective Date. Upon payment of any Cure established pursuant to Article V of the Plan, the Debtors or Reorganized Debtors, as applicable, shall be deemed to have cured any defaults that must be cured in order to permit any Debtor or Reorganized Debtor, as applicable, to assume any Executory Contract or Unexpired Lease to be assumed pursuant to the Plan. All Executory Contracts and Unexpired Leases rejected by the Debtors prior to, or as of the date of entry of, the Confirmation Order will not be continuing obligations of the Debtors or the Reorganized Debtors, nor will the Investors be liable in their individual capacities for any obligations under any assumed Executory Contract or Unexpired Lease. No non-Debtor party to any assumed Executory Contract or Unexpired Lease shall be permitted to, as a result of the Debtors' restructuring pursuant to the Plan or any Debtor's failure to perform any obligation under any assumed Executory Contract or Unexpired Lease in connection therewith: (a) cancel or terminate such assumed Executory Contract or Unexpired Lease; or (b) declare a default, claim that additional fees or other payments are due, increase or modify rights, benefits or obligations, or accelerate any obligation under such assumed Executory Contract or Unexpired Lease.

121. ~~117.~~ The Plan Supplement will contain a schedule of "Rejected Executory Contracts and Unexpired Leases," as may be amended from time to time with the consent, as provided in the Securities Purchase Agreements, of the Investors; provided, however, that any Executory Contract and Unexpired Lease not previously assumed, assumed and assigned, or rejected by an order of the Bankruptcy Court, and not listed in the schedule of "Assumed

Executory Contracts and Unexpired Leases" will be rejected on the Effective Date, notwithstanding its omission from the schedule of "Rejected Executory Contracts and Unexpired Leases." The Modified Collective Bargaining Agreements and the Other Collective Bargaining Agreements shall be assumed as provided by Article V.B.3 of the Plan.

122. ~~118.~~ Notwithstanding anything to the contrary in the Plan, in the event that any license granted to the Debtors by a ~~g~~**G**overnmental ~~u~~**U**nit, which is in effect immediately prior to the Effective Date, is considered an ~~e~~**E**xecutory ~~c~~**C**ontract, such license shall be deemed assumed under the Plan.

P. Procedures for Resolving Contingent, Unliquidated, and Disputed Claims

123. ~~119.~~ The Claims resolution procedures contained in Article VI of the Plan shall be, and hereby are, approved in their entirety.

Q. Provisions Governing Distributions

124. ~~120.~~ The distribution provisions of Article VII of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan, the Reorganized Debtors shall make all distributions required under the Plan.

R. Vesting of Assets in the Reorganized Debtors

125. ~~121.~~ Except as specifically or expressly provided in the Plan or any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property of the Debtors' Estates, all of the Debtors' Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, interests, charges, liabilities and other encumbrances or security interests of any kind or nature, except for: (a) Liens, if any, that may be specifically granted to secure the Exit Facility, the New Second Lien Notes and the New Convertible Third Lien Notes, and if applicable, the Other Secured Claims; and (b) Liens that constitute assumed liabilities of the Debtors. On and

after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

S. Discharge of Debtors

126. ~~122.~~ Pursuant to Article VIII.A of the Plan and section 1141(d) of the Bankruptcy Code, except as otherwise provided in the Plan and effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Commencement Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders were entitled to vote, failed to vote to on the Plan, voted to accept the Plan, voted to reject the Plan or were deemed to have accepted or rejected the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

T. Subordinated Claims

127. ~~123.~~ Pursuant to Article VIII.B of the Plan, the allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and

Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise, and any such rights shall be settled, compromised, and released pursuant to the Plan. Specifically, pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to re-classify any Allowed Claim in accordance with any contractual, legal, or equitable subordination relating thereto.

U. Compromise and Settlement of Claims and Controversies

128. ~~124.~~ Pursuant to sections 105, 363 and 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan or any distribution to be made on account of an Allowed Claim, the provisions of the Plan, including the Substantive Consolidation Settlement, constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The Court hereby approves the compromise or settlement of all such Claims, Interests, and controversies pursuant to the Plan (including the Substantive Consolidation Settlement) and such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to sections 105, 363 and 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and their Estates and Causes of Action held by them against other Entities.

V. Settlement, Release, Injunction and Related Provisions

129. ~~125.~~ The following releases, injunction, exculpation and related provisions set forth in Article VIII of the Plan are hereby approved and authorized in their entirety:

(a) Releases by the Debtors

130. ~~126.~~ The Debtor Release provisions set forth in Article VIII.D of the Plan are hereby approved. The Exit Lenders, the lead arrangers, and the agents under the Exit Facility (each in their capacity as such) are deemed "Released Parties" for the purposes of the Debtor Release provided by Article VIII.D of the Plan, but not for the purposes of the Third Party Release provided by Article VIII.E of the Plan.

(b) Releases by Holders of Claims and Other Releasing Parties

131. ~~127.~~ The Third Party Release provisions set forth in Article VIII.E of the Plan are hereby approved.

132. Holders of Claims or Interests, as applicable, in the Deemed Rejecting Classes shall not be bound by the Third Party Release provisions contained in Article VIII.E of the Plan, solely in their capacities as holders of a Claim or Interest in the Deemed Rejecting Classes.

(c) Waiver of Statutory Limitations on Releases

133. ~~128.~~ The Waiver of Statutory Limitations on Releases provisions set forth in Article VIII.F of the Plan are hereby approved.

(d) Exculpation

134. ~~129.~~ The Exculpation Provisions set forth in Article VIII.G of the Plan are hereby approved. The Exit Lenders, the lead arrangers, and the agents under the Exit Facility (each in their capacity as such) are deemed "Exculpated Parties" for the purposes of the exculpation provided by Article VIII.G of the Plan. **Notwithstanding anything in the Plan or the**

Confirmation Order, nothing in the Exculpation Provisions set forth in Article VIII.G of the Plan shall (a) exculpate any Professional retained in these Chapter 11 Cases (the "*Retained Professionals*") from any liability resulting from any act or omission constituting fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of confidential information that causes damages or ultra vires acts determined by a Final Order or (b) limit the liability of the Retained Professionals to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 §1200.8 Rule 1.8(h)(1) (2009).

(e) Injunction

135. ~~130.~~ The Injunction Provisions set forth in Article VIII.H of the Plan are hereby approved.

W. Release of Liens

136. ~~131.~~ Pursuant to Article VIII.L of the Plan, except as otherwise provided in the Plan or the Plan Supplement or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, charges, encumbrances, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

X. Preservation of Causes of Action

137. ~~132.~~ The provisions of the Plan Supplement related to the Debtors' Causes of Action are hereby approved in their entirety. Subject to the Debtor Release and the Third Party Release set forth in, respectively, Article VIII.D and Article VIII.E of the Plan and the waiver in Article IV.S, unless any of the Debtors' Causes of Action against an Entity are expressly waived,

relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all of the Debtors' Causes of Action, whether arising before or after the Commencement Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle their Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any of the Debtors' Causes of Action against it as any indication that the Debtors or the Reorganized Debtors will not pursue any and all of their available Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all of their Causes of Action against any Entity, except as otherwise expressly provided in the Plan or a Final Order.** Unless any of the Debtors' Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all such Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

138. ~~133.~~ Further, subject to the releases set forth in Article VIII.D and Article VIII.E of the Plan and the waiver in Article IV.S of the Plan, the Reorganized Debtors reserve and shall retain the foregoing Debtors' Causes of Action notwithstanding the rejection or repudiation of any

Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the applicable Reorganized Debtors as of the Effective Date. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order or approval of the Bankruptcy Court.

Y. Restructuring Transactions

139. ~~134.~~ On or prior to the Effective Date, the Debtors (in consultation with the Creditors' Committee and the DIP Facility Administrative Agent, the administrative agent under the Exit Facility, and the Second Lien Trustee) or the Reorganized Debtors may enter into such transactions, execute and deliver such agreements, instruments and other documents, and take any actions as may be necessary or appropriate to effect a restructuring of their respective businesses or a restructuring of the overall corporate structure of the Reorganized Debtors, as and to the extent provided therein, with the consent of the Investors. The Restructuring Transactions may include one or more inter-company mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dissolutions, transfers, asset sales, liquidations, or other corporate transactions as may be determined by the Debtors (in consultation with the Creditors' Committee, the DIP Facility Administrative Agent**, the Second Lien Trustee** and the administrative agent under the Exit Facility) or the Reorganized Debtors, as applicable, and the Investors, to be necessary or appropriate to implement the transactions provided for in the Securities Purchase Agreements. None of the Restructuring Transactions contemplated herein or in the Securities

Purchase Agreements shall constitute a change of control under any agreement, contract or document of the Debtors or Reorganized Debtors, as applicable. Subject to the Securities Purchase Agreements, the actions to effect the Restructuring Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan, the Securities Purchase Agreements, and the Exit Facility and that satisfy the requirements of applicable law and any other terms to which the relevant entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan, the Securities Purchase Agreements, and the Exit Facility and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state or provincial law; (d) pledging, granting of Liens or security interests over, assuming or guarantying obligations or taking such similar actions as may be necessary to preserve the rights and collateral interests of the secured creditors of the Debtors and their subsidiaries at all times prior to the effectiveness and consummation of the Plan; (e) the creation of a new holding company, as provided in the Securities Purchase Agreements, or other changes to the organizational structure of the Debtors or the Reorganized Debtors, as applicable, as determined by the Debtors or the Reorganized Debtors, as applicable, and the Investors (in consultation with the DIP Facility Administrative Agent ~~and~~, the administrative agent under the Exit Facility**, and the Second Lien Trustee**); and (f) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be

required by applicable law in connection with the Restructuring Transactions or that are otherwise provided for in the Plan, the Securities Purchase Agreements or the Exit Facility.

140. ~~135.~~ In addition, the Debtors and the Reorganized Debtors (as applicable) are hereby authorized to engage in any and all other transactions necessary to consummate the Debtors' restructuring pursuant to the Plan, including the Restructuring Transactions and the Pharmacy/Prescription Sale Transaction, as applicable, as determined by the Debtors or the Reorganized Debtors and the Investors (in consultation with the DIP Facility Administrative Agent ~~and~~, the administrative agent under the Exit Facility**, and the Second Lien Trustee**) to be necessary in the furtherance of the Plan or the Securities Purchase Agreements or the Exit Facility. The Debtors and the Reorganized Debtors (as applicable) shall be authorized to execute and deliver all documentation related thereto.

141. Pursuant to Amendment No. 1 to Amended and Restated Securities Purchase Agreements (the "*SPA Amendment*"), which the Court approved in the Plan Modifications Order [Docket No. 3420], the Amendment to the C&S Agreement, attached as Exhibit D to the SPA Amendment, is hereby approved.

142. ~~136.~~ The Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

Z. Authorization of the Pharmacy/Prescription Sale Transaction

143. ~~137.~~ The Pharmacy/Prescription Sale Transaction, as set forth on Plan Supplement Exhibit H-1 (Description of Restructuring Transactions: ScripCo Transactions), ~~are~~**is** hereby approved and authorized in its entirety, to be implemented and consummated in the Debtors' and

Reorganized Debtors' discretion (subject to the approval of the Investors to the extent provided by the Plan and the Securities Purchase Agreements), including the issuance by Reorganized A&P of new common stock to NewCo. Each and every federal, state and local government agency is directed to continue or renew all pharmacy licenses and other regulatory approvals, consents, licenses and permits of any kind for the surviving parties of the Restructuring Transactions.

AA. Compensation, Pensions and Benefits Programs

(a) Management Equity Incentive Program

144. ~~138.~~ The Management Equity Incentive Program provisions set forth in Article IV.P.1 of the Plan are hereby approved.

(b) Employee and Retiree Benefits

145. ~~139.~~ The Employee and Retiree Benefits provisions set forth in IV.P.2 of the Plan are hereby approved.

(c) Pensions

146. ~~140.~~ The Pensions provisions set forth in IV.P.3 of the Plan are hereby approved.

(d) Workers' Compensation Programs

147. ~~141.~~ The Workers' Compensation Programs provisions set forth in IV.P.4 of the Plan are hereby approved.

BB. Allowance and Payment of Certain Administrative Claims

(a) Administrative Claims

148. ~~142.~~ The Administrative Claims provisions set forth in Article II.A of the Plan are hereby approved.

(b) Professional Claims

149. ~~143.~~ The Professional Claims provisions set forth in Article II.B of the Plan are hereby approved.

(c) DIP Facility Claims

150. ~~144.~~ The DIP Facility Claims provisions set forth in Article II.C of the Plan are hereby approved.

(d) Priority Tax Claims

151. ~~145.~~ The Priority Tax Claims provisions set forth in Article II.D of the Plan are hereby approved.

(e) Filing Deadlines

152. ~~146.~~ The deadline for filing requests for payment of Administrative Claims, which shall be 30 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court, except with respect to (i) Professional Claims, which shall be subject to the provisions of Article II.B of the Plan (i.e., all final requests for payment of Professional Claims shall be filed and served no later than 60 days after the Confirmation Date; and after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Claims shall be determined by the Bankruptcy Court); (ii) Transaction Expenses and the Break-Up Fee, which shall be allowed as provided by the Securities Purchase Agreements and approved by the Securities Purchase Agreements Order; or (iii) the Administrative Claims of the Second Lien Trustee and its attorneys and advisors, which shall be Allowed to the extent provided by Article II.A of the Plan. Any Holder of an Administrative Claim that is required to file and serve a request for payment of such Administrative Claim and that does not file and serve such a request within the time established herein **will be forever barred from asserting such Administrative Claim against any of the Debtors or their respective property and such Administrative Claim will be deemed discharged as of the Effective Date.**

CC. Section 1146(a) Exemption

153. ~~147.~~ Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment (including any state, municipality, or country), and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. For the avoidance of doubt, the foregoing exemption includes sales and use taxes or any similar government assessment. Such exemption specifically applies, without limitation, to (a) the Restructuring Transactions (including the Pharmacy/Prescription Sale Transaction, as applicable); (b) the creation of any mortgage, deed of trust, Lien or other security interest (including as part of the Exit Pledge, the New Second Lien Pledge, and the New Convertible Third Lien Pledge; (c) the making or assignment of any lease or sublease; (d) the issuance and/or distribution of NewCo Equity, any Replacement Second Lien Notes, the New Second Lien Notes, the New Convertible Third Lien Notes, the Investment Warrants and any other securities of the Debtors or the Reorganized Debtors; (e) transactions and advances contemplated by the Exit Facility, the New Second Lien Notes and the New Convertible Third Lien Notes; (f) the making or delivery of any deed, bill of sale, assignment agreement or other instrument of transfer under, in furtherance of or in connection with the Plan, the Securities Purchase Agreements, the Exit Facility or the Restructuring Transactions, including: (i) any merger agreements; (ii) agreements of consolidation, restructuring, disposition, liquidation, or dissolution; (iii) deeds; (iv) bills of sale; or (g) assignment executed in connection with the Exit

Facility, the New Second Lien Notes or the New Convertible Third Lien Notes, or any Restructuring Transaction occurring pursuant to the Plan or the Securities Purchase Agreements.

DD. Retention of Jurisdiction

154. ~~148.~~ Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases, the Plan and the Confirmation Order pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including, jurisdiction over those matters set forth in Article X of the Plan.

EE. Notice of Subsequent Pleadings

155. ~~149.~~ Except as otherwise may be provided in the Plan or herein, notice of all subsequent pleadings in the Chapter 11 Cases after the Effective Date shall be limited to the following parties: (a) the Reorganized Debtors and their counsel; (b) the United States Trustee; (c) the administrative agent(s) for the Exit Facility; (d) the Investors; and (e) any party known to be directly affected by the relief sought therein.

FF. Other Essential Documents and Agreements

156. ~~150.~~ The Reorganized A&P Charter, the Reorganized A&P Bylaws, the New Second Lien Notes, the New Convertible Third Lien Notes, the Investment Warrants, the Management Services Agreement, the Securities Purchase Agreements, the Plan Support Agreement, the Exit Facility, and any other agreements, instruments, certificates, or documents related thereto and the transactions contemplated by each of the foregoing are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, such documents shall be in full force and effect and valid, binding, and enforceable in accordance with their terms without the need for any further notice to or action, order, or approval of this Bankruptcy Court, or other act or action under applicable law, regulation,

order, or rule. The Debtors, and after the Effective Date, the Reorganized Debtors (and their affiliates, including NewCo from and after the Effective Date), are authorized, without further approval of this Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments, securities, and Certificates relating to such agreements and perform their obligations thereunder, including, pay all fees and expenses due thereunder or in connection therewith.

157. ~~151.~~ The Debtors or Reorganized Debtors, as applicable, and upon request all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest, shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan, including any filings with the Secretary of State (or comparable official) of any jurisdiction that the Debtors may deem reasonably necessary or appropriate.

GG. Return of Deposits

158. ~~152.~~ Notwithstanding anything to the contrary in the Plan or in an order previously entered by the Bankruptcy Court, unless the Debtors (in consultation with the Creditors' Committee and the DIP Facility Administrative Agent) or Reorganized Debtors, with the reasonable consent of the Investors and the administrative agent under the Exit Facility, otherwise agree, all adequate assurance deposits provided by the Debtors to utility providers pursuant to the *Order Determining Adequate Assurance of Payment for Future Utility Services* [Docket No. 503] shall be returned to the Reorganized Debtors within ten (10) Business Days of the Effective Date.

HH. Governing Law

159. ~~153.~~ Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the

rights, obligations, construction and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters; *provided*, *however*, that corporate governance matters relating to Debtors or Reorganized Debtors (and their affiliates, including NewCo from and after the Effective Date), as applicable, not incorporated in New York shall be governed by the laws of the state of incorporation of the applicable Debtor or Reorganized Debtor or other entity, as applicable.

II. Ownership and Control

160. ~~154.~~ The consummation of the Plan shall not, unless the Debtors expressly agree otherwise in writing, constitute a change of ownership or change in control, as such terms are used in any statute, regulation, contract, or agreement (including any Executory Contracts or Unexpired Leases assumed by the Debtors pursuant to the Plan or otherwise and any agreements related to employment, severance, termination agreements, insurance agreements, or collective bargaining agreements) in effect on the Effective Date and to which any of the Debtors is a party.

JJ. Effectiveness of All Actions

161. ~~155.~~ Except as set forth in the Plan, all actions authorized to be taken pursuant to the Plan shall be effective on, prior to, or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of this Bankruptcy Court, or further action by the respective officers, directors, managers, members, or stockholders of the Reorganized Debtors and with the effect that such actions had been taken by unanimous action of such officers, directors, members, or stockholders.

KK. Approval of Consents and Authorization to Take Acts Necessary to Implement Plan

162. ~~156.~~ Pursuant to section 1142(b) of the Bankruptcy Code, section 303 of the Delaware General Corporation Law, and any comparable provision of the business corporation laws of any other state, on the Effective Date, a newly organized Delaware corporation to be owned by the Investors ("***NewCo***") will be formed and each of the Debtors, the Reorganized Debtors and NewCo hereby is authorized and empowered to take such actions and to perform such acts as may be necessary, desirable, or appropriate to comply with or implement the Plan, the Plan Supplement, the Reorganized A&P Charter, the Reorganized A&P Bylaws, the New Second Lien Notes, the New Convertible Third Lien Notes, the Investment Warrants, the Management Services Agreement, the Securities Purchase Agreements, the Plan Support Agreement, the Exit Facility, the Exit Pledge, the New Second Lien Pledge, the Convertible Third Lien Pledge, any other Plan documents and the provisions of this Confirmation Order, including the election or appointment, as the case may be, of the New Board as contemplated in the Plan and the issuance by Reorganized A&P of new common stock to NewCo, and all documents, instruments, securities, and agreements related thereto and all annexes, exhibits, and schedules appended thereto, and the obligations thereunder shall constitute legal, valid, binding, and authorized obligations of each of the respective parties thereto, enforceable in accordance with their terms without the need for any stockholder or board of directors' approval. Each of the Debtors, the Reorganized Debtors and NewCo hereby is authorized and empowered to take such actions, to perform all acts, to make, execute, and deliver all instruments and documents, and to pay all fees and expenses as set forth in the documents relating to the Plan and including, the Plan Supplement, the Reorganized A&P Charter, the Reorganized A&P Bylaws, the New Second Lien Notes, the New Convertible Third Lien Notes, the Investment Warrants, the Management Services Agreement, the Securities Purchase Agreements, the Plan Support Agreement, the Exit Facility, any other Plan documents,

and the provisions of this Confirmation Order, including documents relating to the election or appointment, as the case may be, of directors and officers of the New Board as contemplated in the Plan, and all documents, instruments, securities, and agreements related thereto and all annexes, exhibits, and schedules appended thereto and that may be required or necessary for its performance thereunder without the need for any stockholder or board of directors' approval. As of the Effective Date, the appropriate officers of the Reorganized Debtors and NewCo and members of the New Board are authorized and empowered to issue, execute, deliver, file, or record the agreements, documents, securities, and instruments contemplated by the Plan in the name of and on behalf of the Reorganized Debtors and NewCo. Subject to the terms of this Confirmation Order, each of the Debtors, the Reorganized Debtors, NewCo, and the officers and directors thereof are authorized to take any such actions without further corporate action or action of the directors or stockholders of the Debtors, the Reorganized Debtors or NewCo. On the Effective Date, or as soon thereafter as is practicable, NewCo shall be organized as a Delaware corporation (if not previously organized) and shall file the Reorganized A&P Charter (and shall thereafter have all of the rights and privileges of a Reorganized Debtor for purposes of implementing the transactions contemplated in the Plan and Plan Supplement, including the Restructuring Transactions), and the Reorganized Debtors shall file their amended certificates of incorporation with the Secretary of State of the state in which each such entity is (or will be) organized, in accordance with the applicable general business law of each such jurisdiction.

163. ~~157.~~ This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan, including the incorporation of NewCo as a Delaware corporation pursuant to the Plan, and any documents, instruments, agreements, any

amendments or modifications thereto and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, and any documents, instruments, securities, agreements and any amendments or modifications thereto.

164. Any requirements for notices, approvals or consents relating to (i) any transfer by the Debtors, Reorganized Debtors or ScripCo (as applicable) of any of their assets, (ii) any change of ownership, change in control or change of the officers or directors of the Debtors, Reorganized Debtors or ScripCo (as applicable) or (iii) any of the Restructuring Transactions (including, without limitation, the ScripCo Transactions set forth in Plan Supplement Exhibit H-1 filed with the Bankruptcy Court on or about February 1, 2012 [Docket No. 3317]) that would otherwise be applicable under any state or local law, rule or regulation (or required by any other governmental authority) shall be superseded by this Confirmation Order and are hereby waived, including, without limitation, any notice to, or approval or consent required from, the New York State Board of Pharmacy or any comparable agency of any other state in which the Debtors, Reorganized Debtors or ScripCo (as applicable) do business.

LL. The New Board

165. The identity and affiliations of the initial New Board have been disclosed prior to the Confirmation Hearing in the Plan Supplement. The New Board shall be reconstituted to consist of seven (7) directors (or such larger number of directors as may be determined by the Investors in their discretion), of whom at least five (5) directors shall be persons designated by the Investors, one (1) person shall be the UFCW Board Designee, and one (1) person shall be the Chief Executive Officer of the Reorganized Debtors. The Reorganized A&P Charter and the Reorganized A&P Bylaws, or one or more other controlling corporate

governance documents or agreements relating to NewCo, shall provide that the UFCW Board Designee shall serve on the New Board for the term of the Modified Collective Bargaining Agreements with the UFCW Locals on terms substantially consistent with the terms set forth on Exhibit 1 attached hereto. As set forth on Exhibit E to the Plan Supplement, Mr. Lou Giraurdo is the initial UFCW Board Designee.

MM. ~~LL.~~ Modifications or Amendments

166. ~~158.~~ Except as otherwise specifically provided in the Plan, and subject to the Securities Purchase Agreements, the Plan Support Agreement, the Exit Facility, and the satisfaction or waiver of conditions precedent to the Effective Date, the Debtors reserve the right to modify the Plan and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, each of the Debtors expressly reserves its rights to revoke or withdraw or to alter, amend, or modify materially the Plan with respect to such Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XI.B of the Plan. Entry of the Confirmation Order means that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127 of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

NN. ~~MM.~~ Effect of Plan and Confirmation Order on Union Settlements

167. ~~159.~~ Nothing in the Plan or the Confirmation Order shall override the provisions of the Union Settlement Agreements or other Bankruptcy Court-approved settlements entered into by the Debtors and the UFCW, the UFCW Local Unions, or the SEIU, as amended by any side letters agreed upon prior to entry of the Confirmation Order.

OO. ~~NN.~~ Effect of Conflict Between Plan and Confirmation Order

168. ~~160.~~ If there is any direct conflict or ambiguity between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

PP. ~~OO.~~ Payment of Statutory Fees

169. ~~161.~~ All fees payable pursuant to 28 U.S.C. § 1930(a), as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

QQ. ~~PP.~~ Payment of Remaining Transaction Fees

170. ~~162.~~ Any and all outstanding Initial Transaction Expenses or Transaction Expenses (each as defined in the Securities Purchase Agreements), or unpaid fees and expenses of the Investors and the professional advisors for the Investors, will be paid in full in Cash on the Effective Date, as provided in the Securities Purchase Agreements, and thereafter in the ordinary and usual course of normal day to day operations of the businesses of the Debtors consistent with past practice, pursuant to the Securities Purchase Agreements.

~~**QQ. Professional Fees**~~

RR. Final DIP Order

171. ~~163.~~ Notwithstanding anything ~~contained in the Plan or the Confirmation Order, from the date of entry of the Confirmation Order through the Effective Date, each Debtor shall, in~~

~~the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court, pay in Cash the reasonable legal, Professional or other fees *and expenses incurred by* that Debtor after the date of entry of the Confirmation Order pursuant to the Plan~~**to the contrary herein, the Final DIP Order and all terms therein shall remain in full force and effect until the occurrence of the Effective Date**.

SS. ~~**RR.**~~ **Dissolution of Creditors' Committee**

172. ~~164.~~ On the Effective Date, the Creditors' Committee shall dissolve automatically, and its members shall be released and discharged from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter 11 Cases; provided, however, that the Creditors' Committee shall be deemed to remain in existence solely with respect to the final fee applications filed in connection with Article II.B of the Plan and the Creditors' Committee shall have the right to be heard on all issues relating to such final fee applications.

TT. ~~**SS.**~~ **Reservation of Rights**

173. ~~165.~~ Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

UU. ~~**TT.**~~ **Successors and Assigns**

174. ~~166.~~ The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

VV. ~~UU.~~ No Successors In Interest

175. ~~167.~~ Except as to obligations expressly assumed pursuant to the Plan, the Reorganized Debtors shall not be deemed to be successors to the Debtors, and shall not assume, nor be deemed to assume, or in any way be responsible for, any successor liability or similar liability with respect to the Debtors or the Debtors' operations that are not expressly assumed or reinstated in connection with the Plan. ~~Neither the Investors, the Issuer, NewCo nor~~**None of the Investors (or any other funds affiliated or under common management with the Investors, or any of their respective general or limited partners, members, investment advisors, managers, officers, directors, employees or representatives), the Issuer, NewCo or** ScripCo shall be deemed to be successors to the Debtors or Reorganized Debtors, and shall not assume, nor be deemed to assume, or in any way be responsible for, any successor liability or similar liability with respect to the Debtors, the Reorganized Debtors or their operations.

WW. ~~VV.~~ Notice of Entry of the Confirmation Order.

176. ~~168.~~ In accordance with Bankruptcy Rules 2002 and 3020(c), within ten (10) Business Days of the date of entry of the Confirmation Order, the Debtors shall serve a notice of Confirmation by United States mail, first class postage prepaid, by hand, or by overnight courier service to all parties served with notice of the Confirmation Hearing; *provided*, *however*, that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors served the notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address," or "forwarding order expired," or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity's new address.

177. ~~169.~~ To supplement the notice described in the preceding sentence, within twenty (20) days of the date of the Confirmation Order the Debtors shall publish notice of entry of the

Confirmation Order on one occasion in the national editions of *The Wall Street Journal* and *USA Today*. Mailing and publication of the notice of entry of the Confirmation Order in the time and manner set forth in this paragraph shall be good, adequate and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020, and no further notice is necessary.

178. ~~170.~~ The notice of Confirmation shall have the effect of an order of the Bankruptcy Court, shall constitute sufficient notice of the entry of the Confirmation Order to such filing and recording officers, and shall be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

XX. ~~WW.~~ Injunctions and Automatic Stay

179. ~~171.~~ Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

180. ~~172.~~ This Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any Claims, Interests, Causes of Action, obligations, suits, judgments, damages, demands, debts, rights, or liabilities released, exculpated or enjoined pursuant to the Plan.

YY. ~~XX.~~ Nonseverability of Plan Provisions Upon Confirmation

181. ~~173.~~ Each term and provision of the Plan, as it may have been altered or interpreted in accordance with the ~~foregoing~~**Plan**, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors **(in**

consultation with the Creditors' Committee and the DIP Facility Administrative Agent), the Investors ~~(as set forth in Article XI.N of the Plan)~~ and the administrative agent under the Exit Facility (~~as set forth therein~~**to the extent provided by the credit agreements governing the Exit Facility**); and (c) nonseverable and mutually dependent.

ZZ. ~~YY.~~ **Waiver or Estoppel**

182. ~~174.~~ Each holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Plan Supplement, the Disclosure Statement, or papers filed with this Bankruptcy Court prior to the Confirmation Date, or as applicable, on or before a bar date established by the Plan or by order of the Bankruptcy Court.

AAA. ~~ZZ.~~ **Authorization to Consummate**

183. ~~175.~~ The Debtors are authorized to consummate the Plan on any business day selected by the Debtors after the entry of the Confirmation Order, subject to satisfaction or waiver (by the required parties) of the conditions precedent to the Effective Date set forth in Article IX of the Plan.

BBB. ~~AAA.~~ **Effect of Non-Occurrence of Conditions to the Effective Date**

184. ~~176.~~ Each of the conditions to the Effective Date must be satisfied or duly waived, and the Effective Date shall be the first Business Day upon which all of the conditions specified in Article IX.A of the Plan have been satisfied or waived (as set forth in Article X.B of the Plan). If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any

other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity. **For the avoidance of doubt, if the Effective Date does not occur, all releases, waivers, exculpations or injunctions provided in the Plan and authorized by this Confirmation Order shall be deemed null and void.**

CCC. ~~BBB.~~ Waiver of Bankruptcy Rule 3020(e)

185. ~~177.~~ Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, the 14-day stay provided under Bankruptcy Rule 3020(e) is waived and the Confirmation Order shall be effective and enforceable immediately upon entry and deemed binding upon the Debtors, the Reorganized Debtors and any and all holders of Claims or Interests (irrespective of whether holders of such Claims or Interests are deemed to have accepted the Plan), all entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan or herein, each entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

DDD. ~~CCC.~~ Reservation of Rights With Respect to Assignment of Staten Island Lease

186. ~~178.~~ Notwithstanding any contrary language herein or in the Plan, all rights of the Debtors, the Reorganized Debtors and Vornado Forest Plaza L.L.C. (the "***Landlord***") as set forth in that certain stipulation for an extension of time to assume or reject the real property lease for the property located at 2040 Forest Avenue, Staten Island, NY (Store #027-3812) (the "***Staten Island Lease***") dated January 30, 2012 (the "***Stipulation***") are reserved. As provided in the Stipulation, the Debtors, or Reorganized Debtors, are authorized to assume and assign the Staten Island Lease subject to the resolution of the Landlord's objection [Docket No. 2319], and all parties agree that any litigation on such assumption and assignment may be timely litigated following the Confirmation Hearing and shall not be affected by the passage of the Effective Date. Notwithstanding any language to the contrary herein or in the Plan, the Debtors, the Reorganized

Debtors and the Landlord shall have and retain the right to request a ruling from the Bankruptcy Court to resolve the Landlord's objection to the assumption and assignment of the Staten Island Lease and such ruling shall be deemed timely by all parties, regardless if such hearing and ruling occurs after the Effective Date. If the Court does not enter a final, non-appealable order assuming and/or assigning the Staten Island Lease at the conclusion of the litigation referenced in this paragraph, or the Debtors or the Reorganized Debtors elect to not prosecute (to be evidenced in writing by the Reorganized Debtors) their pending motion to assume and/or assign the Staten Island Lease, the Staten Island Lease shall be deemed automatically rejected and terminated without further court order and neither the Debtors nor the Reorganized Debtors shall have any rights, interest and title to the Staten Island Lease or the premises. The Landlord shall have the right to file a notice with the Court specifying the date of such rejection and termination. If the Staten Island Lease is rejected or terminated or otherwise deemed rejected or terminated, the Landlord's sole remedy against the Debtors or Reorganized Debtors on account of such rejection shall be limited to a general unsecured lease rejection damages claim (General Unsecured Claim treatment in Class K of the Plan) in the Chapter 11 Cases.

EEE. Reservation of Rights With Respect to Assignment of Rockville Centre Lease

187. Notwithstanding any contrary language herein or in the Plan, all rights of the Debtors, the Reorganized Debtors and Sunoce Properties, Inc, ("*Sunoce*") with regard to that certain lease for the property located at 399 Ocean Avenue, Rockville Centre, New York, NY, dated July 27, 1972 (the "*Rockville Centre Lease*"), and the assumption and assignment (or the rejection and termination) of the Rockville Centre Lease [Docket No. 3344] are expressly reserved. The Debtors' (or the Reorganized Debtors') proposed assumption and assignment of the Rockville Centre Lease is subject to the resolution of Sunoce's objection [Docket No. 3394] to an assignment of such lease to Pick Quick Foods,

Inc. (the "*Proposed Assignee*"), and all parties agree that any litigation on such assumption and assignment may be timely litigated following the Confirmation Hearing and shall not be affected by the passage of the Effective Date. The Debtors will request to have a hearing on Sunoce's objection as soon as practicable, subject to the Court's availability. Notwithstanding any language to the contrary herein or in the Plan, the Debtors, the Reorganized Debtors and Sunoce shall have and retain the right to request a ruling from the Bankruptcy Court to resolve Sunoce's objection to the assumption and assignment of the Rockville Centre Lease and such ruling shall be deemed timely by all parties, regardless if such hearing and ruling occurs before or after the Effective Date. If the Court, or the applicable appellate court, does not enter a final order assuming and assigning the Rockville Centre Lease to the Proposed Assignee (or separate third-party assignee proposed by the Debtors or Reorganized Debtors) at the conclusion of the litigation and/or contested matter on the assumption and assignment of the Rockville Centre Lease and the Debtors do not seek to otherwise assume (and/or assign) the Rockville Centre Lease within thirty days of the conclusion of such litigation and/or contested matter (including any applicable appellate processes), or the Debtors or the Reorganized Debtors elect to not prosecute (to be evidenced in writing by the Debtors or Reorganized Debtors) the assumption and assignment of the Rockville Centre Lease or appeal of any order of the Bankruptcy Court thereon, the Rockville Centre Lease shall be deemed automatically rejected as if such rejection occurred during the pendency of these chapter 11 cases, and for the avoidance of doubt, Sunoce shall not assert nor be entitled to any claim pursuant to section 503(b)(7) of the Bankruptcy Code.

FFF. ~~DDD.~~ Resolution of United States of America's Objection[9]

188. ~~179.~~ Notwithstanding anything contained in the Plan or Confirmation Order to the contrary, nothing in the Plan or Confirmation Order shall discharge, release, impair or otherwise preclude: (1) any claim ~~or liability~~ of the United States of America, its agencies, departments, or agents (collectively, the "***United States***"), other than a claim against the Debtors or Reorganized Debtors that arose ~~at the time of or before the order for relief concerning the Debtors or a claim against the estate of a kind specified in 11 U.S.C. §§ 348(d), 502(f), 502(g), 502(h) or 502(i)~~**on or before the Confirmation Date**; (2) any liability to the United States that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code; (3) any valid right of setoff or recoupment of the United States against any of the Debtors; or (4) any liability of the Debtors or Reorganized Debtors**, respectively,** under environmental law to any governmental unit because of ~~the Debtors' or Reorganized Debtors' status as the owner or operator of property that such entity owns or operates after the Confirmation~~**such entity's ownership or operation of property, in the case of the Debtors, between the Confirmation Date and the Effective Date, and in the case of the Reorganized Debtors, on and after the Effective Date. For the avoidance of doubt, the foregoing shall not limit the discharge of (a) any Claim against the Debtors or Reorganized Debtors that arose prior to the Confirmation Date, or (b) any Administrative Claim as to which the United States does not file a Proof of Claim by the Administrative Claims Bar** Date.

189. ~~180.~~ Moreover, nothing in the Confirmation Order or the Plan shall release or exculpate any non-debtor, including any Released Parties, from any liability to the United States,

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[9] ~~[The Investors have reserved their rights to address this provision at the Confirmation Hearing.]~~

including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against the Released Parties, nor shall anything in this Confirmation Order or the Plan enjoin the United States from bringing any claim, suit, action or other proceeding against the Released Parties for any liability whatsoever; provided, however, that the foregoing sentence shall not **(a)** limit the scope of discharge granted to the Debtors or Reorganized Debtors under sections 524 and 1141 **of the Bankruptcy Code or (b) diminish the scope of any exculpation to which any party is entitled under section 1125(e)** of the Bankruptcy Code.

190. ~~181.~~ As to the United States, nothing in the Plan or Confirmation Order shall limit or expand the scope of discharge, release or injunction to which the Debtors or Reorganized Debtors are entitled to under the Bankruptcy Code, if any. ~~The Plan and Confirmation Order shall bind the United States only to the extent that the United States is a creditor, as defined in 11 U.S.C. § 101(10).~~ The discharge, release and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to **entry of** the Confirmation Order, pursuing any police or regulatory action.

191. ~~182.~~ Notwithstanding anything in the Plan otherwise, ~~with the reasonable consent of the Investors,~~ each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive one of the following **three** treatments on account of such Claim **(the particular treatment ultimately determined or agreed-to by the Debtors or Reorganized Debtors, as applicable, being subject to the Investors' reasonable consent):** (a) Cash, payable by the Debtors on the Effective Date, in an amount equal to the amount of such Allowed Priority Tax Claim~~.~~**;** (b) Cash in an amount agreed to by the Debtor or Reorganized Debtor (on the Effective Date), as applicable, and such holder, provided, however, that such parties may further

agree for the payment of such Allowed Priority Tax Claim to occur at a later date, or (c) at the option of the Debtors (on the Effective Date) or the Reorganized Debtors (after the Effective Date), Cash in the aggregate amount of such Allowed Priority Tax Claim payable in ~~monthly~~**quarterly** installment payments, with interest **at a rate determined in accordance with section 511 of the Bankruptcy Code and section 6621(a)(2) of the Internal Revenue Code**, over a period not more than five years after the Commencement Date pursuant to section 1129(a)(9)(C) of the Bankruptcy Code**, provided that such Allowed Priority Tax Claims of the United States shall be treated in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the Plan (other than cash payments made to a class of creditors under section 1122(b) of the Bankruptcy Code); provided that the Debtors or Reorganized Debtors, as applicable, shall provide the administrative agent under the Exit Facility reasonable prior notice of any payment to be made pursuant to clause (a) or (b) of this sentence**. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors (on the Effective Date) or the Reorganized Debtors (after the Effective Date) and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

GGG. ~~EEE.~~ Resolution of State of Michigan, Department of Treasury Objection[10]

192. ~~183.~~ Notwithstanding any language in the Plan to the contrary or any finding of fact contained hereunder that the terms of the Plan comply with the required provisions of the Bankruptcy Code: (i) the rights of State of Michigan, Department of Treasury (the "Michigan

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[10] ~~[The Investors have reserved their rights to address this provision at the Confirmation Hearing.]~~

Treasury") as a holder of Priority Tax Claim(s) and Administrative Claim(s~~) (collectively, the" Claims"~~) against the Debtors, including entitlement to interest payments at the applicable rate as provided under 11 U.S.C. §511, shall be as provided for under the Bankruptcy Code and applicable non-bankruptcy state law; (ii) the Michigan Treasury shall also have the right to pursue **the Debtors'** corporate officers and ~~principals under applicable non-bankruptcy~~**certain responsible persons of the Debtors as determined under Michigan** state law or as subsequently agreed to by the Reorganized Debtors and the Michigan Treasury in writing; (iii) the Michigan Treasury shall be permitted to amend their timely filed proofs of claim for a period of 90 days after all tax returns are filed and processed by Michigan Treasury and, for all assessments currently under audit, for a period of 90 days after all audits are complete pursuant to Michigan law; (iv) the Michigan Treasury's timely filed proofs of claim are allowed unless objected to; (v) the Reorganized Debtors deadline to object to any proofs of claim filed by the Michigan Treasury shall be 120 days following the 90 days in which Michigan Treasury is permitted to amend their proofs of claim, unless otherwise agreed to by the parties in writing; (vi) to the extent the Reorganized Debtors seek to make installment payments on such Priority Tax Claims, the Debtors shall make equal installment payments beginning the day after the 120 days during which the Reorganized Debtors have to object to such Priority Tax Claim(s), or if an objection is made, the day after such Priority Tax Claim(s) is allowed by **a Final Order of** the Bankruptcy Court, and shall continue every 90 days on such Priority Tax Claims, such that the Priority Tax Claims are paid in full within five years of the Petition date, as provided under 11 U.S.C. § 1129(a)(9)(C)(ii).

HHH. ~~**FFF.**~~ **Resolution of Pine Grove Plaza Limited Partnership Objection**

193. ~~184.~~ Nothing in the Plan or this Confirmation Order shall limit the rights of Pine Grove Plaza Limited Partnership ("***Pine Grove***") or the Reorganized Debtors to the $189,042.16 held in escrow by the Huron Title Company (the "***Escrowed Funds***") in connection with the state

court proceedings pending in the Michigan Court of Appeals. Both the Reorganized Debtors and Pine Grove retain their rights to the Escrowed Funds including any state court rights of appeal relating to the preliminary injunction ordered by the St. Clair County Circuit Court. All of the rights of both the Reorganized Debtors and Pine Grove are fully reserved, including all defenses and potential actions, on account of the Escrowed Funds.

III. ~~GGG.~~ Resolution of Amended Claim-Related Objections

194. ~~185.~~ Notwithstanding Article VI.F and VI.G and the Plan, the following parties shall be permitted to amend their otherwise timely filed Proofs of Claim for six months after the Effective Date: DDR Duval Village, L.P., DDRM Harundale Plaza, LLC, DDRM West Falls Plaza, LLC, Equity One, Inc., Basser-Kaufman 228, LLC, Basser-Kaufman 340, LLC, North Babylon Associates, Basser-Kaufman Co. of Brentwood, Hayes-Kaufman Newington Associates, Basser-Kaufman of Matawan, LLC, Basser-Kaufman of Centereach, LLC, Marlboro Plaza Associates, LLC, Basser-Kaufman 224, LLC, BDG Larkfield Associates, Mass One, LLC, Plainfield Associates, Regency Centers, L.P., U.S. Retail Partners, LLC, Macquarie CountryWide-Regency II, LLC, Woodbridge Plaza, LLC, Regency Realty Group, Inc., Brixmor Properties Group, The Hutensky Group, Federal Realty Investment Trust, Alecta Real Estate Investments, LLC, DLC Management Corp., Nellis Corporation, Inland US Management, LLC, Inland Western Bethlehem Saucon Valley DST. After six months after the Effective Date, such parties must seek authorization from the Reorganized Debtors (which shall not be unreasonably withheld) or the Bankruptcy Court before further amending their claims.

JJJ. ~~HHH.~~ Resolution of Cure-Related Objections

195. ~~186.~~ For the avoidance of doubt, nothing herein or in the Plan shall release or discharge any unresolved Cure disputes or pending cure objections filed by parties to Executory

Contracts and Unexpired Leases that have been previously assumed by the Debtors pursuant to section 365 of the Bankruptcy Code.

KKK. ~~III.~~ Resolution of Recoupment-Related Objections

196. ~~187.~~ Notwithstanding Article VIII.H or Article VIII.K of the Plan, all rights of recoupment and set-off shall be preserved, subject to the Bankruptcy Code and applicable state law, for the following holders of any pre-petition or post-petition claims: Manoa Associates, M. Plaza, L.P., Bradhurst Development Company, LLC, DDR Duval Village, L.P., DDRM Harundale Plaza, LLC, DDRM West Falls Plaza, LLC, Equity One, Inc., Basser-Kaufman 228, LLC, Basser-Kaufman 340, LLC, North Babylon Associates, Basser-Kaufman Co. of Brentwood, Hayes-Kaufman Newington Associates, Basser-Kaufman of Matawan, LLC, Basser-Kaufman of Centereach, LLC, Marlboro Plaza Associates, LLC, Basser-Kaufman 224, LLC, BDG Larkfield Associates, Mass One, LLC, Plainfield Associates, Regency Centers, L.P., U.S. Retail Partners, LLC, Macquarie CountryWide-Regency II, LLC, Woodbridge Plaza, LLC, Regency Realty Group, Inc., Brixmor Properties Group, The Hutensky Group, Federal Realty Investment Trust, Alecta Real Estate Investments, LLC, DLC Management Corp., Nellis Corporation, Closter-Grocery, LLC, GVD Commercial Properties, Inc., Greenwich Grocery Owners, LLC, Kenilworth-Grocery, LLC, GVD Commercial Properties, Inc., New Canaan-Grocery, LLC, Southhampton Grocery Owners, LLC, Benenson Howard Beach, LLC, Benenson Belle Harbor, LLC, 400 N Center St Co. LLC, 592 Ft. Washington Avenue Co. LLC, 555 S.W. 4th Ave Co LLC, **Allied Jackson Heights, LLC,** and such parties shall not be subject to any performance or notification requirements set forth in Article VIII.K of the Plan.

LLL. ~~JJJ.~~ Resolution of Lease Rejection-Related Objections

197. ~~188.~~ Notwithstanding the provisions of the Plan, the Debtors shall not seek to reject after the Confirmation Date the following leases that were previously assumed, as amended in certain instances, by Order of the Bankruptcy Court:

CJAM Associates, LLC	2730 Arthur Kill Road, Staten Island, NY
ASN 50th Street LLC	250 West 50th Street (810-28 Eighth Avenue), New York, NY
Rosmar Holding Company, L.P.	155 Islip Avenue, Islip, New York
Old Bridge Plaza Associates, LLC	1043 Highway #9, Old Bridge, NJ
F.I. Associates	1245 61 Street, Brooklyn, NY
Harwill Homes, Inc.	330 Connecticut Avenue, Nowarlk, CT
Howell Friendship Real Estate Corp.	4578 Route 9, Howell, NJ
Bernard's Plaza Associates LLC	403 King George, Basking Ridge, NJ
Federal Realty Investment Trust	64 Brick Plaza / 10 Chambers Bridge Road, Bricktown, NJ
FLV Greenlawn Plaza , LP C/O Federal Realty Investment Trust	777 Pulaski Road, Greenlawn, NY
Federal Realty Investment Trust	830-890 Walt Whitman Rd., Melville (Huntington), NY
Federal Realty Investment Trust	1157 Rt. 46 East Parsippany, NJ
Brixmor Property Group	1060 Raritan Road, Clark, NJ
Brixmor Property Group	1757 Central Park Avenue, Yonkers, NY
Brixmor Property Group	7162 Ridge Avenue, Philadelphia, PA
Brixmor Property Group	1930 Rt. 88, Bricktown, NJ
Brixmor Property Group	805 Mamaroneck, Mamaroneck, NY
Brixmor Property Group	405 Nesconset, East Setauket, NY
Brixmor Property Group	829 Route 82, Hopewell Junction (Fishkill), NY
Alecta Real Estate Investments, LLC	2335 New Hyde Park, New Hyde Park, NY
DLC Management Corp.	Rt 6 and Miller Road Mahopac, NY
Manoa Shopping Center Associates, L.P.	1305 Westchester Pike, Havertown, PA
M. Plaza, L.P.	452, West 43rd Street, New York, NY
Bradhurst Development Company, LLC	145th Street and Bradhurst Avenue, New York, NY
Allied Jackson Heights, LLC	75-55, 31st Avenue, Jackson Heights, NY
Equity One, Inc.	1175 Third Avenue, New York, NY
Basser-Kaufman 228, LLC	531 Montauk Highway, West Babylon, NY

Basser-Kaufman 340, LLC	336 North Broadway, Jericho, NY
North Babylon Associates C/O Basser-Kaufman	1251 Deer Park Avenue, North Babylon, NY
Basser-Kaufman Co. of Brentwood	101 Wick Rd. Brentwood, NY
Hayes-Kaufman Newington Associates	40 Fenn Rd., Newington, CT
Basser-Kaufman of Matawan, LLC	325 Rt. 35, Cliffwood, NJ
Mass One, LLC C/O Philips International	5508 Sunrise Highway, Massapequa, NY
BDG Larkfield Associates	5010-5032 Jericho Turnpike, E. Northport, NY
Woodbridge Plaza, LLC	1600 St. Georges Avenue Avenel, NJ
DDRM West Falls Plaza, LLC	1730 ROUTE 46 Woodland Park, NJ

MMM. ~~KKK.~~ Resolution of Lease Pledge-Related Objections

198. ~~189.~~ Except as expressly provided in paragraphs ~~107~~111 and ~~112~~116 of the Confirmation Order, nothing in the Plan or the Confirmation Order shall affect the rights of a party to an Executory Contract or Unexpired Lease assumed by the Debtors pursuant to a final order or pursuant to the terms of the Plan with respect to any obligations under such Executory Contract or Unexpired Lease.

NNN. ~~LLL.~~ Resolution of E. Windsor LLC Objection

199. ~~190.~~ Notwithstanding anything in the Plan to the contrary, any claims asserted by E. Windsor, LLC ("***E. Windsor***") arising from the Debtors' rejection of that certain nonresidential real property lease for Store Number 70404, located at 501 Princeton Road #1, Hightstown, NJ, including Proof of Claim No. 6122 and Proof of Claim No. 6416, shall be consolidated as a single claim pursuant to the Substantive Consolidation Settlement (collectively, the "***Consolidated E. Windsor Claim***"), and the Consolidated E. Windsor Claim shall be classified as a Guaranteed Landlord Claim (Class I); provided that the Substantive Consolidation Settlement shall be without prejudice to (x) E. Windsor's rights to argue that the Consolidated E. Windsor Claim is not subject to the damages cap imposed by section 502(b)(6) of the Bankruptcy Code or (y) the Debtors' rights to argue that the Consolidated E. Windsor Claim is subject to the damages cap imposed by section

502(b)(6) of the Bankruptcy Code; provided further that if the Substantive Consolidation Settlement is not approved or the Debtors are not otherwise substantively consolidated, (xx) E. Windsor shall retain all rights to assert separate claims against each applicable Debtor's estate and (yy) the Debtors shall retain all rights to object to such claims.

OOO. ~~MMM.~~ Resolution of Chartis Objection

200. ~~191.~~ In consideration of the provisions set forth in this paragraph and in reliance upon section IV.P.4 of the Plan relating to workers compensation agreements, those Chartis companies that filed an objection to the Plan (collectively, "***Chartis***") hereby withdraw their objection [Docket No. 3250] with prejudice. Nothing in the Plan or the Confirmation Order shall impair or prejudice any of the following: (a) any rights granted to Chartis in the Chartis Assumption Order [Docket No. 2374]; (b) any right of recoupment that Chartis may have; and (c) Chartis' right to request or require arbitration of any disputes between Chartis and the Debtors or the Reorganized Debtors, provided that Chartis has a right to arbitration pursuant to the applicable agreement between Chartis and the Debtors or the Reorganized Debtors. Further, Article IV.P.4 of the Plan shall be operative with respect to any part of a proof of claim filed by Chartis only to the extent such part of a proof of claim relates to workers compensation insurance.

PPP. ~~NNN.~~ Resolution of Amoroso's Objection

201. ~~192.~~ Notwithstanding anything to the contrary in the Plan (including Articles V.S, VI.F and VII.E), the Plan Supplement, the Confirmation Order and/or the transactions contemplated thereby, or the acceptance by Amoroso's Baking Company ("***Amoroso's***") of any distribution pursuant to the Plan, neither the Debtors, the Reorganized Debtors, the Debtors' bankruptcy estates nor any party acting on their behalf may assert section 502(d) of the Bankruptcy Code and/or otherwise utilize Avoidance Actions, whether through setoff and/or recoupment rights or otherwise, to disallow and/or avoid making payment in full of any Administrative Claims

to which Amoroso's may be entitled including but not limited to Amoroso's Administrative Claims (a) under section 503(b)(9) of the Bankruptcy Code filed against Food Basics, Inc., Pathmark Stores, Inc. and Super Fresh Food Markets, Inc. in the amount of $8,681.53, $53,110.23 and $26,152.04, respectively; and (b) based on amounts incurred by the Debtors in the ordinary course of business after the Petition Date, if any; provided, that, the Debtors' and Reorganized Debtors' rights to object on any other grounds to any Claims of Amoroso's are fully reserved.

QQQ. ~~OOO.~~ Resolution of Securities Class Action Litigants Objection

202. ~~193.~~ Notwithstanding anything in the Plan or in the Confirmation Order to the contrary, nothing in the Plan or the Confirmation Order, except for the Third-Party Release in Article VIII.E of the Plan, shall discharge, release or enjoin claims, or the prosecution of claims asserted in the Securities Class Action Lawsuit (as defined in the Disclosure Statement), against non-Debtors, or limit the rights of any non-Debtor parties in connection with any settlement, or enforcement of any settlement or judgment, obtained in the Securities Class Action Lawsuit against non-Debtors, including without limitation to the extent of available insurance coverage and proceeds under any directors and officers insurance for the benefit of the non-Debtor defendants in such litigation.

203. ~~194.~~ Nothing in the Plan or the Confirmation Order shall affect any otherwise applicable law or rule requiring the Debtors, the Reorganized Debtors and any transferee, and any of their successors or assigns to provide for an adequate protocol for the preservation of the Debtors' records or documents in connection with the Securities Class Action Lawsuit.

204. ~~195.~~ Notwithstanding anything to the contrary contained in the Plan, the Disclosure Statement or the Confirmation Order, if a holder of a Claim voted to accept the Plan, such holder will be bound by the Third Party Release provisions contained in Article VIII.E of the Plan solely in its capacity as a holder of a Claim voting to accept the Plan.

RRR. ~~PPP.~~ Resolution of McKesson Objection

205. ~~196.~~ Notwithstanding any provision in the Plan to the contrary, (i) proofs of claim #'s 44, 49 and 50 (collectively, the "McKesson Claims") filed by McKesson Corporation, McKesson Pharmacy Systems LLC and McKesson Specialty Care Distribution Joint Venture LP (collectively, "McKesson") against the Debtors shall be presumed to be allowed claims, subject to the right of the Debtors or Reorganized Debtors to object to such claims in the future on any grounds and prior to any distribution on account of such claims, (ii) McKesson reserves the right to assert, and the Debtors and Reorganized Debtors reserve the right to dispute postpetition interest in connection with the McKesson Claims**,** (iii) subject to any release exchanged between McKesson and the Debtors and operative immediately following the Effective Date of the Plan, McKesson reserves any rights it may have under the applicable agreements underlying the McKesson Claims to assert setoff and recoupment rights against the Debtors and (iv) the undisputed portion of the McKesson Claims entitled to administrative status pursuant to 11 U.S.C. § 503(b)(9), which amount totals Twenty Three Million Two Hundred Thousand Thirty Four Thousand Six Hundred Dollars and Eight-Five Cents ($23,234,607.85), shall be paid on or within five days after the Effective Date.

SSS. ~~QQQ.~~ Resolution of Inland Objection

206. ~~197.~~ Articles VII.B.2(b) and VII.C.6.b(ii) of the Plan shall not apply to any proofs of claim filed by Inland US Management, LLC or Inland Western Bethlehem Saucon Valley DST.

TTT. ~~RRR.~~ Resolution of Armstrong Objection

207. ~~198.~~ The claim set forth on Proof of Claim No. 8363 filed by Armstrong Sutton Plaza, LLC shall be an allowed Class L General Unsecured Claim in the amount of $3,125,608.10. The claim set forth on Proof of Claim No. 8405 filed by AC I Carmel LLC shall be an allowed Class L General Unsecured Claim in the amount of $1,623,463.96. The allowed amount of the

claims filed by AC I Sterling Heights, LLC ("***Armstrong***") pursuant to Proofs of Claim No. 1594 and 1597 (the "***Consolidated Armstrong Claim***") shall be determined by a good faith reconciliation of the Consolidated Armstrong Claim undertaken by Armstrong and the Debtors (the "***Armstrong Reconciliation***"); provided that (x) the Armstrong Reconciliation shall be completed 30 days following entry of this order unless otherwise agreed-to by the Debtors and Armstrong, (y) if the Debtors and Armstrong cannot agree on the reconciled amount of the Armstrong Claims following the Armstrong Reconciliation, the amount of the Armstrong Claims shall be determined by the Court after notice and a hearing, and (z) the Consolidated Armstrong Claim shall be treated as a single Class L General Unsecured Claim, which shall be without prejudice to (xx) Armstrong's rights to argue that the Consolidated Armstrong Claim is not subject to the damages cap imposed by section 502(b)(6) of the Bankruptcy Code or (yy) the Debtors' rights to argue that the Consolidated Armstrong Claim is subject to the damages cap imposed by section 502(b)(6) of the Bankruptcy Code.

UUU. ~~SSS.~~ Resolution of GHI and Local 863 Pension Plan Objections

208. ~~199.~~ The Debtors, Grocery Haulers, Inc. ("***GHI***") and the trustees of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America Local 863 Pension Plan (the "***Local 863 Pension Plan***") hereby stipulate and agree, which agreement, via this Confirmation Order shall constitute an Order of the Bankruptcy Court, as follows:

a. The Debtors consent to GHI being removed as a "Non-Affiliated Participating Employer" of, the Pathmark Stores, Inc. Pension Plan ("***Pathmark Pension Plan***") (as such term is defined in the Pathmark Pension Plan), effective February 28, 2012 ("***Participation Termination Date***"). Upon the Debtors' receipt of an instrument evidencing proper corporate action by GHI to so remove itself effective on the Participation Termination Date, the Debtors shall direct the sponsor of the Pathmark Pension Plan to prepare any amendments to such plan as the sponsor determines is necessary to reflect such removal.

b. GHI acknowledges and agrees that, on May 2, 2011 (the "***Benefit Cessation Date***"), it had terminated the employment of all employees of GHI who were otherwise eligible to accrue benefits under the Pathmark Pension Plan pursuant to the terms of the letter agreement dated August 29, 2008 between GHI and A&P (the "***2008 Letter Agreement***") regarding the transfer of assets and liabilities from the Local 863 Pension Plan to the Pathmark Pension Plan and the Spinoff and Withdrawal Liability Agreement, dated August 31, 2008, by and among the trustees of the Local 863 Pension Plan, A&P, and GHI ("***Spin-Off Agreement***"), such that, after the Benefit Cessation Date, no GHI employee was accruing (or entitled to accrue) a benefit under the Pathmark Pension Plan, including pursuant to the 2008 Letter Agreement or the Spin-Off Agreement.

c. The Debtors shall not seek payment from GHI or the Local 863 Pension Plan to fund any benefits that (a) eligible GHI employees accrued under the Pathmark Pension Plan prior to the Benefit Cessation Date or (b) were, prior to the Benefit Cessation Date, transferred to the Pathmark Pension Plan from the Local 863 Pension Plan pursuant to the Spin-Off Agreement and the 2008 Letter Agreement. Similarly neither the Debtors nor the Reorganized Debtors shall (nor shall they direct the Pathmark Pension Plan to) seek payment from GHI for other contributions to the Pathmark Pension Plan, any premiums under 29 U.S.C. 1306, any penalties related to such contributions or premiums, or any pension plan termination liabilities.

d. GHI and the Local 863 Pension Plan shall not seek payment from the Debtors or the Reorganized Debtors for or with respect to any pension benefits accrued by any current or former employees of GHI.

e. The following agreements are hereby rejected as of February 28, 2012: (a) the 2008 Letter Agreement; and (b) the Spin-Off Agreement.

f. Pursuant to Articles IV.P.3 and I.A.11 of the Plan, as of the Effective Date, the Reorganized Debtors shall continue the Pathmark Pension Plan in accordance with, and subject to, its terms, ERISA and the Internal Revenue Code, and the Reorganized Debtors shall preserve all of their rights under the terms of the Pathmark Pension Plan and the law.

g. Absent termination of the Pathmark Plan in accordance with ERISA, the Debtors will make any missed contributions (plus applicable interest) to the Pathmark Pension Plan prior to or on the Effective Date.

h. Any ballots submitted as votes to the Plan by GHI or the Local 863 Pension Plan shall be deemed as votes accepting the Plan.

i. Notwithstanding the foregoing, GHI acknowledges and agrees that (i) GHI will take action to remove itself as a Non-Affiliated Participating Employer in the Pathmark Pension Plan effective February 28, 2012, (ii) GHI has not, since the Benefit Cessation Date, hired or re-hired any employees that might be

eligible to accrue benefits under the Pathmark Pension Plan, pursuant to the 2008 Letter Agreement, the Spin-Off Agreement or otherwise, and (iii) GHI will not, until on or after March 1, 2012, hire or re-hire any employees that might be eligible to accrue benefits under the Pathmark Pension Plan, pursuant to the 2008 Letter Agreement, the Spin-Off Agreement or otherwise.

j. ~~i.~~ The Debtors and GHI reserve their rights with respect to the allowance, amount and priority of GHI's claims filed against the Debtors.

VVV. ~~TTT.~~ Resolution of Local 1262 Pension Fund Objection

209. ~~200.~~ The Debtors and the Trustees of the UFCW Local 1262 and Employers Pension Fund ("***Local 1262 Pension Fund***") hereby stipulate and agree, which agreement, via this Confirmation Order shall constitute an Order of the Bankruptcy Court, as follows:

a. The Debtors agree that Local 1262 Pension Fund's partial withdrawal claim reflected in Proof of Claim Nos. 5641; 5648; 5654; 5657; 5664; 5666; 5671; 5678; 5682; 5687; 5690; 5693; 5696; 5699; 5703; 5708; 5721; 5725; 5727; 5730; 5733; 5734; 5735; 5737; 5739; 5742; 5746; 5747; 5752; 5756; 5758; 5761; 5764; 5765; 5769; 5778; 5782; 5787; 5789; 5793; 5795; 5803; 5806; 5807; 5809; 5812; 5815; 5820; 5822; 5825; 5827; 5829; and 5838, shall be deemed an Allowed Class J Pension Withdrawal Claim (with no administrative claim component) in the amount of $13,922,966, and such Allowed Class J Pension Withdrawal Claim shall be entitled to the enhanced treatment given to Holders of Allowed Pension Withdrawal Claims that vote to accept the Plan pursuant to the Substantive Consolidation Settlement.

b. Local 1262 Pension Fund's delinquent contribution claim reflected in Proof of Claim No. 5715, is not included in paragraph "b.", and the parties reserve their respective rights regarding such claim, including but not limited to the Debtors' and Reorganized Debtors' rights to seek to disallow such claim and to object to such claim on any grounds.

c. Any ballots submitted as votes to the Plan by Local 1262 Pension Fund shall be deemed as votes accepting the Plan.

d. The Debtors and Local 1262 Pension Fund reserve their rights regarding whether any pre-emergence events may have given rise to a "claim" pursuant to the Bankruptcy Code for withdrawal liability that are subject to discharge.

e. Local 1262 Pension Fund's rights are completely preserved with respect to arguing that Article VIII in the Plan and the corresponding provisions in the Confirmation Order do not apply as a matter of law to any other withdrawal liability relating to the Local 1262 Pension Fund other than the one for which Local 1262 Pension Fund sent the Debtors a demand for payment, including the legal standard for

determining whether such withdrawal liability is a "claim" under section 101(5) of the Bankruptcy Code.

f. The Debtors' and Reorganized Debtors' rights to argue that Article VIII in the Plan and the corresponding provisions in the Confirmation Order do apply to any such withdrawal liability, including the legal standard for determining whether such withdrawal liability is a claim under section 101(5) of the Bankruptcy Code, also are completely preserved.

g. In the event of a dispute occurring, after entry of the Confirmation Order, over Article VIII in the Plan and the corresponding provisions in the Confirmation Order between Local 1262 Pension Fund the Debtors and Reorganized Debtors, the parties' rights with respect to the appropriate jurisdiction for hearing such a matter also are reserved.

WWW. ~~UUU.~~ Resolution of Smithfield Packing Objection

210. ~~201.~~ Notwithstanding any provision in the Plan or the Confirmation Order to the contrary, in full and final satisfaction of proofs of claim number 554 and 8169, The Smithfield Packing Company, Incorporated shall have an allowed administrative expense claim pursuant to section 503(b)(9) of the Bankruptcy Code against the Debtors in the amount of $342,934.47, which shall be paid on or within 14 days after the Effective Date.

XXX. Resolution of Barbarone Objection

211. In resolution of the objection of the Estate of Sophie Barbarone (the "*Barbarone Estate*"), the Barbarone Estate expressly reserves any and all rights it may have with respect to (a) that certain judgment, dated April 19, 2010 (the "*Judgment*"), the Barbarone Estate has obtained against the Debtors in the action pending in the Supreme Court of Westchester County bearing the Index No. 11414/008, including, without limitation, any and all rights and remedies the Barbarone Estate may have under applicable state law to enforce the Judgment on or after the Effective Date; and (b) the lien the Barbarone Estate has on the Debtors' interests in real property located in Westchester County, New York (the "*Westchester Properties*"), as a result of the Judgment. Likewise, the

Debtors and Reorganized Debtors, as applicable, reserve all of their rights with respect to the Judgment, including, without limitation, any right the Debtors or the Reorganized Debtors may have to pursue the appeal of the Judgment. The lien shall be deemed to be a first priority lien, subject only to any liens that existed prior to the Judgment, and any rights the Debtors may have to contest the Judgment in state court. Notwithstanding anything to the contrary, the Barbarone Estate will not take any action to enforce the Judgment until the Effective Date of the Debtors' Plan.

YYY. ~~VVV.~~ Miscellaneous

212. ~~202.~~ Nothing contained in the Plan or the Confirmation Order shall affect Ahold U.S.A., Inc.'s, The Stop & Shop Supermarket Company LLC's, and Giant Food LLC's rights under section 502(j) of the Bankruptcy Code.

213. ~~203.~~ For the avoidance of doubt, the Debtors are assuming the Modified Collective Bargaining Agreement between the Debtors and United Food and Commercial Workers International Union Local 27 ("***Local 27***") as further modified by the Side Letter of Agreement, dated January 31, 2012, between the Debtors and Local 27.

214. ~~204.~~ Notwithstanding anything herein or in the Plan to the contrary, the Debtors' proposed assumption of the BLS Properties LLC Operating Agreement (as set forth in the "Amended and Revised list of Executory Contracts and Unexpired Leases to be Assumed" of the Plan Supplement and filed pursuant to the *Notice of Filing Exhibits to the Plan Supplement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy* [Docket No. 3359]) shall be subject to the resolution of the objection filed by Woodward Detroit CVS, LLC [Docket No. 3367] ("***CVS***") at a hearing that shall occur on our prior to the Effective Date, **and the BLS Properties LLC Operating Agreement and all related BLS Documents (as defined in the CVS Plan Objection) shall not be assumed or rejected until such continued**

hearing prior to the Effective Date, provided, that, notwithstanding entry of this Confirmation Order, CVS agrees the Debtors shall be permitted to reject the BLS Properties LLC Operating Agreement at any time prior to the Effective Date, including in the event that the Court determines that the Debtors are required to assume one or more additional agreements as a condition to assume the BLS Properties LLC Operating Agreement.

ZZZ. ~~WWW.~~ Final Order

215. ~~205.~~ This Confirmation Order is a final order.

IT IS SO ORDERED.

Date: _____, 2012
White Plains, New York

United States Bankruptcy Judge

Exhibit 1

[UFCW Board Designee]

Corporate Governance/UFCW Board Designee~~11~~9

The following provisions will be in effect for so long as the UFCW shall be entitled to have a UFCW Board Designee serve on the New Board.

At any annual or special meeting of stockholders of Reorganized A&P at which directors of Reorganized A&P are to be elected following the Effective Date (and at which the seat held by the UFCW Board Designee is subject to election), Reorganized A&P shall renominate the UFCW Board Designee, or nominate another individual designated by the UFCW to be the UFCW Board Designee, to be elected to the New Board, and shall use its reasonable best efforts to cause such person to be elected to such position (it being understood that efforts consistent with, and no less extensive than, in all material respects, the efforts used by Reorganized A&P to solicit proxies in favor of the election of the rest of the director nominees of the A&P Board shall be deemed reasonable best efforts).

The UFCW shall notify Reorganized A&P of its proposed UFCW Board Designee to the New Board, in writing, with respect to any subsequent annual meeting of stockholders, no later than 60 days prior to the first anniversary of the mailing of the proxy statement related to the previous year's annual meeting of stockholders, together with all information concerning such nominee reasonably requested by Reorganized A&P.

In the event of the death, disability, disqualification, resignation, removal or failure to be elected of the UFCW Board Designee, the New Board will promptly elect to the New Board a replacement individual designated by the UFCW to fill the resulting vacancy, which individual shall then be deemed the UFCW Board Designee. The UFCW Board Designee will have the same powers, rights and duties as the other members of the New Board, and Reorganized A&P will indemnify the UFCW Board Designee to the same extent it provides indemnification to other members of the A&P Board, including the provision of directors and officers liability insurance.

Nothing herein or in the Reorganized A&P Bylaws or in the Reorganized A&P Charter shall be require or be deemed to require that the UFCW, Reorganized A&P, or any affiliate thereof, act or be in violation of any applicable provision of law, legal duty or requirement or stock exchange or stock market rule.

The Reorganized A&P Charter and Reorganized A&P Bylaws shall provide that if, at any time, a publicly-held parent company of A&P were to be formed (the "***Parent Company***"), the rights of the UFCW to appoint a UFCW Board Designee to the New Board pursuant to the Reorganized A&P Charter and the Reorganized A&P Bylaws, and the corresponding obligations of A&P thereunder, will apply, *mutatis mutandis*, to the right of the UFCW to appoint a UFCW director to

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~~11~~9 Capitalized terms used but not defined herein shall have the meanings set forth in the *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* to which this Corporate Governance/UFCW Board Designee Summary is attached as **Exhibit 1**.

the board of directors of the Parent Company and the corresponding obligations of the Parent Company.

Exhibit 2

[Unsecured Creditor Contingent Recovery Pool]

Exhibit 2

Unsecured Creditor Contingent Recovery Pool[10]

Any consideration that may be distributable to holders of Unsecured Claims in Classes E, F, G, H, I, J and L from the Unsecured Creditor Contingent Recovery Pool shall be provided solely as set forth herein. Within one hundred twenty (120) days of the closing of a transaction involving the sale for Cash of all or substantially all of the assets or common stock of Reorganized A&P or its newly formed holding company (the "Sale Transaction") that is consummated no later than the fifth (5th) anniversary of the Effective Date, Reorganized A&P shall distribute Pro Rata, to record holders (as of the Distribution Record Date) of Allowed Unsecured Claims in Classes E, F, G, H, I, J and L, Cash in an amount as follows:

(a) $10 million, if the net Cash proceeds of the Sale Transaction distributable to the then existing equity holders of Reorganized A&P or its parent holding company on account of their equity interests (excluding any contingent consideration) (such net Cash amount, the "Equity Proceeds") equal or exceed $800 million, but are less than $1.1 billion;

(b) $20 million, if the Equity Proceeds equal or exceed $1.1 billion, but are less than $1.3 billion;

(c) $30 million, if the Equity Proceeds equal or exceed $1.3 billion, but are less than $1.5 billion; and

(d) $40 million, if the Equity Proceeds equal or exceed $1.5 billion (each of the payments in (a) through (d), a "Contingent Payment" and, collectively, the "Contingent Payments").

In determining the amount of Equity Proceeds of a Sale Transaction: (i) such Equity Proceeds shall be determined net of (A) any amounts payable or distributable to equity holders of Reorganized A&P or its parent holding company with respect to any equity securities issued after the Effective Date (other than equity securities issued upon conversion of New Convertible Third Lien Notes), (B) the value of any business acquired by Reorganized A&P or its parent holding company after the Effective Date (with such value to be determined in good faith by the board of Reorganized A&P or such parent holding company), (C) any costs *and expenses incurred by* or for the account of such equity holders in connection with the Sale Transaction, and (D) the amount, if any, of the Contingent

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[10] Capitalized terms used but not defined herein shall have the meanings set forth in the *Debtors' First Amended Joint Plain of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code*, filed on February 17, 2012 [Docket No. 3417].

Payment, and (ii) amounts distributable with respect to the New Convertible Third Lien Notes in connection with a Sale Transaction shall be treated as a distribution with respect to equity interests only to the extent the aggregate amount distributable on account of the New Convertible Third Lien Notes exceeds the total principal amount of, and accrued interest on, the then-outstanding New Convertible Third Lien Notes.

The right of record holders (as of the Distribution Record Date) of Allowed Unsecured Claims in Classes E, F, G, H, I, J and L, to receive a Contingent Payment will be non-transferable and will be extinguished without any payment on the fifth (5th) anniversary of the Effective Date, or earlier upon (i) a Sale Transaction where the level of Equity Proceeds triggering a Contingent Payment is not achieved, or is achieved and a Contingent Payment is paid, (ii) a liquidity transaction other than a Sale Transaction, including, but not limited to, an initial public offering of common stock or a leveraged recapitalization, or (iii) a change of control that does not involve a Sale Transaction, including a change of control in which Cash represents less than 90% of the total consideration payable to the then existing equity holders of Reorganized A&P or its parent holding company on account of their equity interests.

The funding and payment of the Unsecured Creditor Contingent Recovery Pool shall be obligations solely of Reorganized A&P and not of any subsidiary, affiliate or equity holder of Reorganized A&P or any other person or entity.

The Bankruptcy Court shall retain exclusive jurisdiction over all disputes related to the Contingent Payments, even after the closing of the Chapter 11 Cases, and any such disputes shall be heard solely in the Bankruptcy Court. Any party receiving a Contingent Payment agrees to submit to the venue and jurisdiction of the Bankruptcy Court and the entry of binding Final Orders by the Bankruptcy Court.