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 and Debtors in Possession*

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

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**In re** : **Chapter 11**  
 :  
**THE GREAT ATLANTIC & PACIFIC TEA** : **Case No. 15-23007 (RDD)**  
**COMPANY, INC., et al.,** :  
 : **(Jointly Administered)**  
**Debtors.**<sup>1</sup> :  
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**NOTICE OF PRESENTMENT OF MOTION OF DEBTORS PURSUANT  
 TO 11 U.S.C. §§ 105, 363, AND 365 AND FED. R. BANKR. P. 2002, 6004,  
 AND 6006 FOR AN ORDER APPROVING (I) THE PURCHASE  
 AGREEMENT AMONG SELLER AND BUYER, (II) AUTHORIZING THE  
 SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF  
 LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (III) AUTHORIZING THE  
 ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
 LEASES IN CONNECTION THEREWITH, AND (IV) GRANTING RELATED RELIEF**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corp. (7132); APW Supermarkets, Inc. (9509); Borman's Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); Shopwell, Inc.(3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors' corporate headquarters is 800D Lake Street, Ramsey, New Jersey 07446.

**PLEASE TAKE NOTICE** that on **June 23, 2017 at 10:00 a.m. (Eastern Time)**, the attached Motion of Debtors Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 for an order Approving (I) the Purchase Agreement Among Seller and Buyer (II) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and leases in Connection Therewith, and (IV) Granting Related Relief (the "**Motion**") will be presented to the Honorable Robert D. Drain, in the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York 10601 (the "**Bankruptcy Court**") for approval and signature.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections ("**Objections**") to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures*, dated July 20, 2015 (ECF No. 62), so as to be so filed and received no later than **June 22, 2017 at 12:00 p.m. (Eastern Time)** (the "**Objection Deadline**").

**PLEASE TAKE FURTHER NOTICE** that, if a written Objection is timely filed and served, a hearing will be held on a date to be determined to consider the Motion before the Honorable Robert D. Drain in the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that if an Objection to the Motion is not received by the Objection Deadline, the Bankruptcy Court may enter an order granting the relief sought without

Dated: June 16, 2017  
New York, New York

*/s/ Sunny Singh*  
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**MOTION OF DEBTORS PURSUANT TO 11 U.S.C.  
 §§ 105, 363, AND 365 AND FED. R. BANKR. P. 2002, 6004,  
 AND 6006 FOR AN ORDER APPROVING (I) THE PURCHASE  
 AGREEMENT AMONG SELLER AND BUYER, (II) AUTHORIZING THE  
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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corp. (7132); APW Supermarkets, Inc. (9509); Borman's Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); Shopwell, Inc.(3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors' corporate headquarters is 800D Lake Street, Ramsey, New Jersey 07446.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The Great Atlantic & Pacific Tea Company, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent:

**Background**

1. On July 19, 2015 (the “**Commencement Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

2. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. On July 20, 2015, the Court entered the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* (the “**Case Management Order**”).

4. On July 24, 2015, the United States Trustee for Region 2 appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”).

**Jurisdiction**

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

### **Relief Requested**

6. The Debtors own the lands, buildings, and other personal property for the three properties identified on Exhibit A attached hereto (the “**Gas Stations**”) and, pursuant to certain master leases (the “**Leases**”), rent the Gas Stations to Leemilt’s Petroleum, Inc. (“**Leemilt**”), an affiliate of Getty Leasing, Inc. (the “**Buyer**”). Leemilt sublets portions of the leased premises to third parties.

7. By this motion, the Debtors seek approval for the sale of the Gas Stations and assignment of their interests in the Leases, as landlord, to the Buyer (the “**Sale Transaction**”) pursuant to the Real Property Sale Agreement attached hereto as Exhibit B (the “**Purchase Agreement**”) and the order attached hereto as Exhibit C (the “**Sale Order**”). Pursuant to the Purchase Agreement, Buyer will pay the Debtors \$134,342 for the Gas Stations and related Leases.<sup>2</sup> The Sale Transaction is in the best interests of the Debtors and their estates, and should be approved.

### **Summary of Sale Transaction**

8. The following is a summary of the material terms and conditions of the Sale Transaction:

- **Purchase Price**: The total consideration for both the sale of the Gas Stations and assignment of the Leases is \$134,342.
- **Private Sale/No Competitive Bidding**: The Debtors and Hilco Real Estate LLC (“**Hilco**”) marketed the Gas Stations extensively with no other interest. Given the limited value of the Gas Stations as determined by the Debtors and proved through Hilco’s marketing process, the Debtors are proceeding via a private sale.

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<sup>2</sup> On August 13, 2015, the Bankruptcy Court entered the *Amended Final Order Pursuant to 11 U.S.C. §§105, 363, 365 and 554 Approving (I) Global Procedures for (A) Store Closings, (B) The Expedited Sale, Transfer or Abandonment of De Minimis Assets, and (C) Rejecting Unexpired Nonresidential Real Property Leases, and (II) Entry Into a Liquidation Consulting Agreement* [Docket No. 546] (the “**De Minimis Asset Sale Procedures Order**”). The De Minimis Asset Sale Procedures Order does not specifically identify or authorize the sale of the Gas Stations and Leases. Accordingly, the Debtors have filed this motion for approval of the Sale Transaction.

- Requested Findings as to Successor Liability: The form Sale Order contains findings of fact and conclusions of law limiting the Buyer's successor liability.
- Relief from Bankruptcy Rules 6004(h) and 6006(d). The Debtors seek relief from the 14-day stays imposed by Bankruptcy Rules 6004(h) and 6006(d) to promptly consummate the Sale Transaction.

**The Relief Requested Is Warranted  
And in the Best Interests of the Debtors and Their Stakeholders**

9. Ample authority exists for approval of the Sale Transaction. Section 363 of the Bankruptcy Code provides, in relevant part, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts in the Second Circuit and others, in applying this section, have required that the sale of a debtor's assets be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge reviewing a section 363(b) application must find from the evidence presented a good business reason to grant such application); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Gen. Motors Corp.*, 407 B.R. 463, 493-94 (Bankr. S.D.N.Y. 2009). Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether (i) the debtor has provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith. *Gen. Motors*, 407 B.R. at 493-94; *In re Betty Owens Sch.*, 1997 U.S. Dist. Lexis 5877 (S.D.N.Y. 1997); *accord In re Delaware and Hudson Ry. Co.*, 124 B.R. at 166; *In re Decora Indus., Inc.*, Case No. 00-4459, 2002 WL 32332749 at \*3 (Bankr. D. Del. May 20, 2002).

**A. Business Justification for the Sale**

10. Consummating the Sale Transaction under the terms set forth in the Purchase Agreement represents a reasonable exercise of the Debtors' business judgment and is in

the best interests of all parties. The Debtors have ceased virtually all of their operations and are completing their total liquidation. Accordingly, they will not be able to act as landlord under the Leases for the duration of the term of such leases. In addition, an orderly and expeditious sale of the Gas Stations preserves and realizes value and, thereby, maximizes recoveries for the Debtors' economic stakeholders.

**B. Fair Purchase Price**

11. The Debtors and their advisors have extensively marketed substantially all of their assets, including the Gas Stations. The Debtors' marketing of the Gas Stations and lack of any higher or better offer proves that the \$134,342 purchase price for the Gas Stations is fair and reasonable.

**C. Notice of the Sale Transaction**

12. As will be set forth in affidavits of service filed by the Debtors' claims and noticing agent, adequate notice of the sale of the Gas Stations has been provided. Consistent with the Asset Sale Guidelines, notice has been provided to: (i) counsel for the Creditors' Committee, (ii) the Office of the United States Trustee, (iii) entities who have requested notice under Bankruptcy Rule 2002, (iv) the Debtors' prepetition lenders, (v) all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the Gas Stations, (vi) all parties to the Leases, and (vii) all affected federal, state and local regulatory and taxing authorities.

13. Because appropriate notice has been provided, the Court should find that the purchaser of the Gas Stations shall not be liable under theories of successor liability.

**D. Sale Free and Clear of Liens, Claims, Encumbrances and Interests**

14. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell property of the estate "free and clear of any interest in such property of an entity other



than the estate” if applicable non-bankruptcy law permits sale of such property free and clear of such interest, if such entity consents, if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property, if such interest is in bona fide dispute, or if such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f)(1) – (5). With respect to any party asserting a lien, claim, encumbrance or other interest against the Gas Stations, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f).

**E. Protections As a Good Faith Purchaser**

15. Section 363(m) of the Bankruptcy Code protects a good faith purchaser’s interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *Reloeb Co. v. LTV Corp (In re Chateaugay Corp.*, No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. Lexis 6130, at \*9 (S.D.N.Y. May 10, 1993) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 3d Cir. 1986). *See also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“pursuant to 11 U.S.C. § 363(m), good faith

purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal”).

16. The selection of the Buyer was the product of arm’s-length, good faith negotiations in as competitive a purchasing process as is possible under the circumstances. Based upon this Motion and the evidence to be submitted in support thereof, the Buyer is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

**F. Assumption and Assignment of Contracts**

17. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Upon finding that a debtor has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

18. The Debtors satisfy the business judgment test under section 365(a) for the same reasons they satisfy such test in the context of section 363(b). Further, section 365(k) of the Bankruptcy Code provides that assignment by the debtor to an entity of a contract or lease “relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.” 11 U.S.C. § 365(k). Pursuant to section 365(k), the Debtors will therefore be relieved from any liability for any breach of any Lease after an assignment to the Buyer. As such, the assumption and assignment of the Leases constitutes an exercise of the Debtors’ sound business judgment in the context of these liquidating chapter 11 cases.

19. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Leases must be cured or that adequate assurance be provided that such defaults will be promptly cured. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2). The Debtors are assigning their interests as lessors under the Leases to the existing lessees under the Leases. There are no defaults that are required to be cured by the Debtors as lessors. Therefore, cure and adequate assurance are not at issue.

**G. Request for Relief Pursuant to Bankruptcy Rules 6004(h) and 6006(d)**

20. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of fourteen (14) days after the entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6006(d).

21. In light of the current circumstances and the financial condition of the Debtors, the Debtors believe that, in order to maximize value, the sale of the Gas Stations should be consummated as soon as practicable. Accordingly, the Debtors request that the Sale Order be effective immediately upon entry of such order and that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) be waived.

**Notice**

22. Notice of this Motion has been provided in accordance with the Order Pursuant to Fed. Bankr. P. 1015(c), and 9007 Implementing Certain Notice and Case Management Procedures, dated July 20, 2015 (ECF No. 62) and to the parties identified in the

Asset Sale Guidelines. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

23. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just.

Dated: June 16, 2017  
New York, New York

/s/ Sunny Singh  
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**Exhibit A**

**Gas Stations**

<b>Somerset Parcel</b>	
Location	669 Somerset Street, Somerset, NJ
Purchase Price	\$34,388

<b>Paramus Parcel</b>	
Location	639 Rt. 17 South, Paramus, NJ
Purchase Price	\$74,653

<b>Fairless Hills Parcel</b>	
Location	630 Lincoln Highway, Fairless Hills, PA
Purchase Price	\$25,301

**Exhibit B**

**Purchase Agreement**

669 SOMERSET STREET, SOMERSET, NJ  
639 RT. 17 SOUTH, PARAMUS, NJ  
630 LINCOLN HIGHWAY, FAIRLESS HILLS, PA

**REAL PROPERTY SALE AGREEMENT**

THIS REAL PROPERTY SALE AGREEMENT (this "**Agreement**") is made as of May 22, 2017 ("Effective Date") by and between PATHMARK STORES, INC., a Delaware corporation, having a place of business located at 48 Bi-State Plaza, PMB 282, Old Tappan, New Jersey 07675 ("**Seller**"), and GETTY LEASING, INC., a Delaware corporation having a place of business at 2 Jericho Plaza, Wing C, Suite 110, Jericho, NY 11753 ("**Buyer**"), and collectively with Seller, the "**Parties**" and each individually a "**Party**").

WITNESSETH:

WHEREAS, Seller is the fee owner (as evidenced by certain Deeds of Confirmation of Merger dated March 20, 2000, by Pennsylvania Stuart, Inc. ("**PSI**"), as grantor, and Pathmark Stores, Inc. as grantee) of the following parcels of land more specifically described on Exhibit A attached hereto and made a part hereof including, without limitation, (i) all easements, rights of way, alleys, strips or gores, air rights, development rights, privileges, appurtenances and other rights, if any, pertaining thereto, (ii) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road or avenue opened or proposed, public or private, in front of or adjoining the land, to the center line thereof and (iii) any unpaid awards, if any (each a "**Land**" and collectively, the "**Lands**"):

a. Street Address: 669 Somerset Street, Somerset, NJ

(Tax Map Designation: Block 150, Lot 43) (individually referred to herein as the "**Somerset Parcel**")

b. Street Address: 639 Rt. 17 South, Paramus, NJ

(Tax Map Designation: Block 5004, Lot 4) (individually referred to herein as the "**Paramus Parcel**")

c. Street Address: 630 Lincoln Highway, Fairless Hills, PA

(Tax Map Designation: Parcel: #13-017168) (individually referred to herein as the "**Fairless Hills Parcel**");

WHEREAS, PSI leased the Premises (as hereinafter defined) to Supermarkets General Corporation ("**SGC**") by Leases dated as of October 1, 1969 ("**Underlying Leases**") and SGC subleased out the Premises pursuant to the Leases (defined below);

WHEREAS, the Underlying Leases expired and SGC merged into Seller and the Leases remained and still remain in full force and effect as prime leases between Seller and the tenant thereto;

WHEREAS, LEEMILT'S PETROLEUM, INC., an Affiliate of Buyer has been leasing the Premises from Seller since October 5, 1978, pursuant to the following leases (collectively referred to herein as the "Leases");

a. As to the Somerset Parcel: Sublease by and between SGC, as sublessor, and Digas Company ("Digas"), as sublessee, dated October 24, 1975, as amended by Amendment to Sublease dated October 5, 1978, and as assigned by Digas to Power Test of New Jersey, Inc. ("Power Test") (a predecessor of Buyer) by Assignment of Lease and Assumption Agreement dated as of October 5, 1978 (hereinafter the "Somerset Lease");

b. As to the Paramus Parcel: Sublease by and between SGC, as sublessor, and Digas, as sublessee, dated October 24, 1975, as amended by Amendment to Sublease dated October 5, 1978, and as assigned by Digas to Power Test by Assignment of Lease and Assumption Agreement dated as of October 5, 1978 (hereinafter the "Paramus Lease");

c. As to the Fairless Hills Parcel: Sublease by and between SGC, as sublessor, and Digas, as sublessee, dated October 24, 1975, as amended by Amendment to Sublease dated October 5, 1978, and as assigned by Digas to Power Test by Assignment of Lease and Assumption Agreement dated as of October 5, 1978, as further amended by Master Amendment of Sublease by SGC, Supermarkets Oil Company, Inc., Power Test and Gasway Inc., dated March 26, 1992 (hereinafter the "Fairless Hills Lease").

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

WHEREAS, Seller desires to sell, assign, convey and transfer to Buyer all of its rights, title and interests in (i) the Lands, (ii) the buildings and other improvements, if any, situated on the Lands (the "Buildings"), (iii) the Leases and/or any other leases, subleases, or license agreements for use or occupancy of all or any portion of the Premises by any third party ("Occupancy Agreements") and to the extent Seller has no such rights or interests, Buyer shall nonetheless take subject to all Occupancy Agreements at the Premises in any Occupancy Agreement, and (iv) all fixtures, if any, attached to or used in connection with the Premises and any articles of personal property, if any, owned by Seller and located at the Premises ("Personal Property") (provided no part of the Purchase Price is allocated to such fixtures or personal property and the same, to the extent Seller has any ownership interest therein, shall be deemed transferred at Closing);

The Lands, the Buildings, the Leases and the Personal Property are hereinafter sometimes collectively referred to as the "Premises";

WHEREAS, Buyer desires to purchase the Premises, subject to any occupancies and the conditions hereinafter set forth.



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

1. Procedures. This Agreement is made subject to entry of an order of the Bankruptcy Court authorizing the sale transaction contemplated hereunder, substantially in the form annexed as Exhibit B (the "**Sale Order**"), which Sale Order shall (a) provide for Seller's conveyance of all of its right, title and interest in and to the Premises, free and clear of all liens, claims, interests and encumbrances of any nature, other than the Leases that are being assumed and assigned by Seller to Buyer pursuant to the terms hereof, (collectively, "**Liens**") to the fullest extent available under the Bankruptcy Code, (b) provide that any Liens attach to the proceeds paid to Seller, (c) provide that the transactions contemplated herein are arm's-length transactions entitled to the protections of Bankruptcy Code section 363(m), (d) provide that the assumption and assignment of the Leases is specifically approved and Seller is authorized to enter into the Assignment and Assumption of Leases and (e) be acceptable to Buyer in its reasonable discretion. In the event of a contradiction between this Agreement and the Sale Order, the Sale Order shall control.

2. Purchase Price. The consideration for the Premises shall be equal to ONE HUNDRED THIRTY-FOUR THOUSAND THREE HUNDRED FORTY-TWO AND 00/100 Dollars (\$134,342) (the "**Purchase Price**").

**The Purchase Price is being allocated to the Premises as follows:**

<b>Somerset Parcel:</b>	<b>\$34,388</b>
<b>Paramus Parcel:</b>	<b>\$74,653</b>
<b>Fairless Hills Parcel:</b>	<b>\$25,301</b>

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

a. Deposit. Concurrently herewith, Buyer shall deposit with Seller by a bank wire transfer of immediately available federal funds to an account designated by Seller the sum of Six Thousand Seven Hundred Seventeen and 10/100 Dollars (\$6,717.10) (together with all interest thereon, the "**Deposit**"), which Deposit shall be held by Seller. Notwithstanding anything to the contrary set forth in this Agreement, all interest accrued in connection with the Deposit hereunder shall accrue for the sole benefit of the party to whom the Deposit is paid. The Parties agree that any payments made pursuant to this Section 3(a) in respect of accrued interest shall be deemed to be an adjustment to the Purchase Price for tax purposes to the extent permitted by applicable Law.

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

4. Intentionally Omitted.

5. Indivisible. Except as expressly provided in this Agreement for specific and isolated purposes (and in such cases only to the extent expressly so stated), all provisions of this Agreement shall apply equally and uniformly to the Somerset Parcel, the Paramus Parcel, and the Fairless Hills Parcel as one unit and the provisions hereof and the sale of the Somerset Parcel, the Paramus Parcel, and the Fairless Hills Parcel hereunder are not otherwise severable. This Agreement is intended by the parties as a single, indivisible, integrated and unitary economic transaction and except as expressly provided in this Agreement for specific isolated purposes (and in such cases only to the extent so expressly provided), the provisions of this Agreement shall at all times be construed, interpreted and applied such that the intention of Seller and Buyer to create a unitary contract applicable to the sale of all of the Somerset Parcel, the Paramus Parcel, and the Fairless Hills Parcel as a single and indivisible transaction shall be preserved and maintained.

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

7. Transfer. As of the Closing Date, pursuant to section 363 of the Bankruptcy Code and in accordance with the Sale Order, Seller shall transfer to Buyer, without representation or warranty of any kind, except as provided in this Agreement, all of its right, title, and interest in and to the Premises in accordance with the terms of this Agreement.

8. Intentionally Omitted.

9. Prorations/Adjustments. There will be no prorations between Seller and Buyer on the Closing Date, and no post-Closing reconciliations or adjustments of any kind shall occur. Buyer shall receive the benefits and burdens for all adjustments that occur after the Closing Date (regardless of the period in question that is subject to the adjustment), including year-end adjustments for Taxes, and Buyer shall fully indemnify and hold harmless Seller with respect thereto. Seller shall retain all security deposits under any Leases or Occupancy Agreements to the extent currently held by or on behalf of Seller, if any, and there shall be no offset or reduction in the Purchase Price in connection with the same. Buyer shall replace any such security deposits as of the Closing Date and maintain the same in accordance with applicable Laws and each Lease or Occupancy Agreement, as applicable.

10. Free and Clear of All Liens. Pursuant to the Sale Order, Seller shall convey its rights, interests and title to the Premises to Buyer free and clear of all Liens.

11. Closing Deliverables. On the Closing Date:

a. Seller shall deliver to Fidelity National Title Insurance Services, LLC, having an address at 1415 Kellum Place, Suite 202, Garden City, NY, Attn: Ross Rumsky, ("**Escrowee**") a duly executed copy of: (i) a Quitclaim Deed conveying title to the Premises substantially in the form attached hereto as Exhibit D (subject to such changes as necessary to conform with state specific requirements for recordability) (the "**Deed**"); (ii) a FIRPTA Certificate; (iii) if applicable, Transfer Tax forms or certifications provided by Buyer as more specifically described in subsection (b) below; (iv) the Closing Statement; (v) such funds and other instruments, in recordable form or otherwise, as may be reasonably required in order to complete the transaction; and (vii) an Assignment and Assumption of Leases substantially in the form annexed hereto as Exhibit E ("**Assignment and Assumption of Leases**").

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

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

13. Closing Costs.

a. Seller and Buyer shall each pay their own attorneys' fees and expenses.

b. Buyer shall pay (i) all state, county and local Transfer Taxes required to be paid in connection with the recordation of the Deed and the consummation of the transactions contemplated herein, all of which amounts shall be paid, if applicable, to Escrowee for payment to the proper Governmental Authority on or prior to the Closing Date, (ii) all escrow charges under the any escrow agreement with Escrowee ("**Escrow Agreement**"), if any, and (iii) Buyer's

title fees. For avoidance of doubt, Buyer will not be responsible for payment of any corporate taxes of Seller or its affiliates.

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

14. Conditions to Closing.

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

(i) the transactions contemplated by this Agreement shall have been authorized pursuant to the Sale Order and the Sale Order is acceptable to Buyer in its reasonable discretion;

(ii) no order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date;

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

(iv) each delivery contemplated by Section 11(a) to be delivered to Escrowee shall have been delivered and all fees related to Escrowee's services hereunder shall have been paid to Escrowee by Buyer;

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

(vi) no material defect caused by Seller or its affiliates and unknown to Buyer on the date hereof arising after the Effective Date is revealed on a continuation of title and/or a survey of the Premises obtained by Buyer ("New Defect(s)"); provided that any New Defect over which a national title insurance company is willing to insure shall not be deemed a New Defect. Buyer's failure to timely obtain such title continuation or survey shall be deemed a waiver of any New Defects related thereto.

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

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

(ii) the transactions contemplated by this Agreement shall have been authorized pursuant to the Sale Order, and no order staying, reversing, modifying or amending such authorization shall be in effect on the Closing Date;

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

(iv) each payment contemplated by Sections 2, 3, and 13 to be made to Seller, Escrowee, Governmental Authorities or other parties shall have been made, and each delivery contemplated by Section 11(b) to be delivered to Escrowee shall have been delivered.

c. No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Subsection 14(a) or Subsection 14(b), as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliate's failure to use its reasonable best efforts (or commercially reasonable efforts, with respect to those matters contemplated by Section 17, as applicable) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach hereunder. The Parties agree any action with respect to a competing bid, to the extent permitted hereunder, shall not be deemed to be a failure to use the efforts required to satisfy the conditions to consummation of the transactions contemplated hereunder nor a breach hereunder.

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

16. Termination of Agreement.

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

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

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

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

(B) the Closing shall not have occurred prior to the Outside Date; provided that if the Closing shall not have occurred on or before the Outside Date due to a

material breach of this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 16(a)(ii)(B).

(iii) by Buyer giving written notice to Seller on or before the Closing Date, if any New Defect(s) exist, provided such termination can be voided if (i) Buyer waives the New Defect(s) by written notice to Seller on or before the Closing Date, which decision to waive or not waive such New Defect(s) shall be in the sole and absolute discretion of Buyer, (ii) Seller removes such New Defect(s) by the Closing Date provided that Seller has the right to adjourn the Closing Date up to 60 days to clear such defect or find a national title company willing to insure over the same or (iii) Seller gives a credit to the Buyer against the Purchase Price at Closing for the amount, estimated by Seller, to cure such New Defect(s).

(iv) by Buyer if Seller fails to satisfy any condition to Closing set forth herein.

**In the event this Agreement is terminated under this Section 16(a), the Deposit shall be returned to Buyer and neither Party shall have any further rights, obligations or duties hereunder other than such obligations and/or Liabilities that are expressly stated to survive.**

b. Seller may terminate this Agreement at any time prior to Closing if Buyer fails to satisfy any requirement set forth under Section 14(b)(iv), including delivery of the Deposit required hereunder. In such case, the Agreement shall be rendered null and void, Seller shall be entitled to retain the Deposit.

c. Effect of Termination. If any Party terminates this Agreement pursuant to Section 16(a) or (b), all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Section 13(a), this Section 16, Sections 23 through 43, and Schedule I shall survive any such termination) and no Party shall have any Liability to the other Party hereunder (except as set forth in Section 16(b) and Section 17); provided, however, that nothing in this Section 16 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, that other than in the case of fraud or willful misconduct, (a) the maximum Liability of Seller under this Agreement shall not exceed the reasonable out of pocket expenses incurred by Buyer and (b) the maximum Liability of Buyer under this Agreement shall not exceed the Deposit.

17. Bankruptcy Court Matters.

a. Court Approval. This Agreement is a private sale and shall be subject to approval by the Bankruptcy Court.

b. Bankruptcy Court Filings. As soon as reasonably practicable following the execution of this Agreement, Seller shall seek approval of the Agreement and the Sale Order and file any necessary notice to all necessary parties (including any parties asserting an interest in the Premises) or pleadings required in connection therewith. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court

approval of the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information, and filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Premises hereunder. In the event the approval of the transactions contemplated by this Agreement shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

c. Bankruptcy Documents. Seller shall provide Buyer with copies of all court documents filed in connection with the bankruptcy which in any way relate to this Agreement and Buyer's acquisition of the Premises, including, without limitation, the Sale Order.

18. Intentionally Omitted.

19. Delivery; "AS IS" Transaction.

a. Buyer acknowledges that it has fully inspected or waived the right to inspect the Premises prior to the execution of this Agreement and does hereby assume all of the risks, including, but not limited to, latent defects in the Premises. Seller shall not be obligated to do any work or alter, restore, repair or develop the Premises. Seller shall deliver the Premises in its as is condition at Closing. Any work (including demolition) which may be necessary to adapt the Premises for Buyer's occupancy or for the operation of Buyer's business therein shall be the sole responsibility of Buyer and shall be performed by Buyer at its sole cost and expense. Notwithstanding anything to the contrary herein, Seller's obligations under the Leases shall not be compromised or altered by this Agreement and such obligations shall remain in full force and effect until the Closing.

b. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO REPRESENTATIONS, WARRANTIES (EXCEPT AS EXPRESSLY SET FORTH HEREIN), OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO: ANY MATTER RELATED TO THE PREMISES (INCLUDING, WITHOUT LIMITATION, INCOME TO BE DERIVED FROM OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PREMISES; THE PHYSICAL CONDITION OF THE PREMISES; THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS IN, ON OR ABOUT THE PREMISES OR ANY OTHER MATTER RELATED TO THE ENVIRONMENTAL CONDITION OF THE PREMISES; THE ZONING OF THE PREMISES; THE POSSIBILITY OF DEVELOPING OR USING THE PREMISES IN THE MANNER CONTEMPLATED BY BUYER OR OBTAINING ANY CONSENTS, APPROVALS, PERMITS, AUTHORIZATIONS OR ENTITLEMENTS IN CONNECTION THEREWITH; THE VALUE OF THE PREMISES; THE FITNESS OF THE PREMISES FOR ANY PARTICULAR PURPOSE OR USE; THE ACCURACY, COMPLETENESS, OWNERSHIP OR TRANSFERABILITY OF ANY DOCUMENTS OR OTHER MATERIALS FURNISHED TO BUYER WITH RESPECT TO THE PREMISES (OR ANY PORTION THEREOF); OR ANY OTHER MATTER OR THING RELATED TO THE PREMISES). BUYER ACKNOWLEDGES THAT BUYER HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE,

MAPS OR SKETCHES, PROJECTIONS, PRO FORMAS, STATEMENTS, REPRESENTATIONS, GUARANTEES OR WARRANTIES (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OR MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF SELLER. BUYER ALSO ACKNOWLEDGES THAT BUYER HAS CONDUCTED OR WAIVED THE RIGHT TO CONDUCT AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PREMISES AND ALL SUCH OTHER MATTERS RELATED TO OR AFFECTING THE PREMISES, AS BUYER DEEMED NECESSARY OR APPROPRIATE AND BUYER IS ACQUIRING THE PREMISES, BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS OR BUYER'S INDEPENDENT JUDGMENT, AND BUYER IS NOT RELYING UPON ANY REPRESENTATIONS OF SELLER OR SELLER'S AGENTS. ACCORDINGLY, BUYER HEREBY ACCEPTS THE PREMISES IN ITS "AS IS, WHERE IS," "WITH ALL FAULTS," CONDITION (EXCEPT AS EXPRESSLY SET FORTH HEREIN) AND ALL LATENT OR PATENT DEFECTS.

20. Intentionally Omitted.

21. Release; Indemnity. Buyer agrees to defend and indemnify Seller against, and hold Seller harmless from, any and all claims, actions, proceedings, suits, costs, Liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements), whether foreseen or unforeseen ("**Claims**"), in connection with the use and occupancy of the Premises by Buyer, its agents, employees, contractors, subtenants, licensees, or any other party using and/or occupying all or part of the Premises by or through Buyer ("**Tenant Parties**") including any breach of the Lease by any Tenant Party, or otherwise directly or indirectly arising out of or in connection with any act or omission of Tenant Party. In addition to the foregoing, Buyer shall defend and indemnify Seller against, and hold Seller harmless from, any and all Claims related to the Leases, the Premises, and any other rights or assets transferred hereby, the basis of which arise on or after the Closing.

22. Casualty and Condemnation.

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

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



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

23. Brokers' Fees. Other than the fees and expenses payable to Evercore Group L.L.C. or Hilco Real Estate Group LLC in connection with the transactions contemplated hereby, which shall be borne by Seller, neither Party has entered into any contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby. Each Party shall indemnify and hold the other Party harmless from and against any and all claims, causes of action, losses, costs, expenses, damages or Liabilities, including reasonable attorneys' fees and disbursements, which the Party seeking indemnification, or any of its affiliates may sustain, incur or be exposed to, by reason of the foregoing representation being false. The provisions of this Section 23 shall survive the Closing.

24. Survival. Except as specifically set forth herein, none of the representations, warranties, or covenants of any Party set forth in this Agreement shall survive, and each of the same shall terminate and be of no further force or effect as of the Closing.

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

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

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

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

herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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

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

If to Seller:

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

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

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

If to Buyer: Getty Leasing, Inc.  
Two Jericho Plaza, Suite 110, Wing C  
Jericho, New York 11753  
Attention: Juliet Voses, Esq.  
E-mail: jvoses@gettyrealty.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 30.

31. Governing Law. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of New York (without giving effect to the principles of conflict of laws thereof that would result in the application of the laws of any other

jurisdiction), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

32. Submission to Jurisdiction; Service of Process. For so long as the bankruptcy of Seller and its affiliates continues, each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any agreement related to the transactions contemplated hereby ("**Related Agreements**") or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 30; provided, however, that nothing in this Section shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

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

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

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

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

37. Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or the Related Agreements may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing ("Non-Party Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or the Related Agreements or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 37. Nothing herein will release any Person from Liability for fraud or willful misconduct.

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

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

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

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

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

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

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

44. Incorporation and Recitals. The recitals set forth at the beginning of this Agreement are true and correct and by this reference are incorporated into the body of this agreement as if fully stated herein.

**[SIGNATURE PAGE FOLLOWS]**

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

PATHMARK STORES, INC.

By: 

Name: Christopher W. McGarry

Title: Chief Restructuring Officer

GETTY LEASING, INC.

By: \_\_\_\_\_

Name:

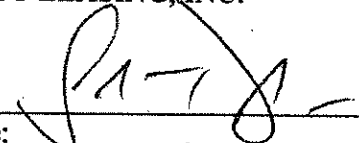
Title:

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

PATHMARK STORES, INC.

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

GETTY LEASING, INC.

By:  \_\_\_\_\_  
Name: **Joshua Dicker**  
Title: **Executive Vice President**

**LIST OF SCHEDULE AND EXHIBITS**

**SCHEDULE**

Schedule I

**DESCRIPTION**

Definitions

**EXHIBIT**

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

**DESCRIPTION**

Legal Description of the Land

Form of Sale Order

Seller's Wire Instructions

Form of Quitclaim Deeds (PA and NJ)

Form of Assignment and Assumption of Leases



**Schedule I**

**Definitions**

- (v) “Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.
- (vi) [Intentionally Omitted]
- (vii) “Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.
- (viii) “Code” means the Internal Revenue Code of 1986, as amended.
- (ix) “Damages” means any actual losses, claims, Liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out-of-pocket expenses (including reasonable fees and expenses of counsel)).
- (x) “Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.
- (xi) “FIRPTA Certificate” means a certificate from Seller in compliance with applicable Treasury Regulations setting forth Seller’s (or, if applicable, its regarded owner’s) name, address and federal tax identification number and stating that Seller (or, if applicable, its regarded owner) is not a “foreign person” within the meaning of section 1445 of the Code and otherwise complying with the Treasury Regulations issued pursuant to section 1445 of the Code.
- (xii) “Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.
- (xiii) [Intentionally Omitted]
- (xiv) “Law” means any constitution applicable to, and any law, statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.
- (xv) “Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether directly incurred, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

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

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

(xviii) “Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including subsidiaries) and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources.

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

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

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

EXHIBIT A

Legal Description of the Premises

As to the Somerset Parcel:

All that tract or parcel of land and premises, situate, lying and being in the Township of Franklin in the County of Somerset and State of New Jersey, more particularly described as follows:

BEGINNING at the intersection of the northerly line of Somerset Street (State Highway Route 27) with the westerly line of Matilda Street and from thence (1) Along the northerly line of Somerset Street South 79 degrees 20 minutes West 125 feet; thence (2) North 10 degrees 40 minutes West 100 feet; thence (3) North 79 degrees 20 minutes East 25 feet; thence (4) North 10 degrees 40 minutes West 25 feet; thence (5) North 79 degrees 20 minutes East 100 feet to the westerly line of Matilda Street; thence (6) Along same South 10 degrees 40 minutes East 125 feet to the point and place of beginning.

Being in accordance with a survey made by Robert Kane dated April 17, 1969 and revised to September 6, 1969.

As to the Paramus Parcel:

BEGINNING at a point in the westerly right of way line of New Jersey State Highway Route 17, distant southerly along said right of way line, 175.63 feet from the point of intersection of the division line between lands now or formerly of the Estate of Floyd E. Tether, deceased, and lands of Elisa P.V. Bogert, running thence (1) Along the said right of way line south 5 degrees 57 minutes east, 205 feet to the lands conveyed to Charles Hoefler et ux by deed made by Mary A. Tether, Russell K. Tether, Executors of the Last Will and Testament of Floyd E. Tether, dated February 7, 1940, and recorded in the Bergen County Clerk's Office on February 8, 1940, in Book 2203 of Deeds for said County, page 43; thence (2) North 69 degrees 5 minutes west and along the said lands of Hoefler, 200 feet; and thence (3) North 5 degrees 57 minutes west and along lands formerly of Floyd E. Tether, 200 feet; thence (4) South 69 degrees 5 minutes east, 92.10 feet; thence (5) South 5 degrees 57 minutes east, parallel with the aforesaid Highway, 16.63 feet; thence (6) South 80 degrees 13 minutes east 100 feet to the aforesaid right of way line of the aforesaid Highway, and the point or place of beginning.

As to the Fairless Hills Parcel

ALL THAT CERTAIN piece or parcel of ground with the building and improvements thereon erected situate in Falls Township, Bucks County, Pennsylvania and described according to a Survey and Plan - Supermarkets General Corporation - made by William Spencer Irwin Associates, Inc., dated October 17, 1969 as follows to wit:-

BEGINNING at a point formed by the intersection of the Southerly side of Lincoln Highway (U.S.#1) (70 feet wide) with the Westerly side of Atlantic Avenue (50 feet wide) (Not Opened); thence extending from said point of beginning South 04 degrees 22 minutes 20 seconds West along the Westerly side of Atlantic Avenue (Not Opened) 203.38 feet to a point; thence extending North 85 degrees 37 minutes 40 seconds West 85.00 feet to a point; thence extending North 04 degrees 22 minutes 20 seconds East along other lands now or late of Supermarkets General Corporation 202.18 feet to a point on the Southerly side of Lincoln Highway aforesaid; thence extending South 86 degrees 26 minutes 10 seconds East along the Southerly side of Lincoln Highway 85.10 feet to the first mentioned point of intersection and place of beginning.

County Parcel Number 13-17-168.

**EXHIBIT B**

**Form of Sale Order**

(Attached Hereto)

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

<hr/>		X
In re	:	Chapter 11
	:	
THE GREAT ATLANTIC & PACIFIC TEA	:	Case No. 15-23007 (RDD)
COMPANY, INC., <i>et al.</i> , <sup>1</sup>	:	
	:	(Jointly Administered)
Debtors.	:	
<hr/>		X

**ORDER (I) APPROVING THE PURCHASE AGREEMENT  
AMONG SELLERS AND BUYER (II) AUTHORIZING THE SALE OF  
CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS AND ENCUMBRANCES, (III) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
LEASES IN CONNECTION THEREWITH, AND (IV) GRANTING RELATED RELIEF**

(Getty Leasing, Inc.)

Upon the motion to approve the sale of certain of the Debtors' assets and to authorize the assumption and assignment of certain of the Debtors' unexpired leases, dated [\_\_\_\_], 2017 (Docket No. [\_\_\_\_]) (the "Sale Motion")<sup>2</sup>, filed by the above-captioned debtors and debtors in possession (the "Debtors") seeking, among other things, entry of an order, pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Borman's, Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge LLC (5965); Shopwell, Inc.(3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport, Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors' corporate headquarters is 800D Lake Street, Ramsey, New Jersey 07446.

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

United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules"), authorizing and approving the sale of the Gas Stations and the assumption and assignment of certain unexpired leases of the Debtors in connection therewith (the "Leases" and together with the Gas Stations, the "Acquired Assets"); and Getty Leasing, Inc. (the "Buyer") having submitted the highest and best offer for the Acquired Assets, as reflected in the Purchase Agreement (as defined below); and the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto and (ii) the Real Property Sale Agreement, dated as of [\_\_\_\_], 2017 the ("Purchase Agreement"), a copy of which is attached hereto as Exhibit A, by and between Seller and Buyer, whereby the Debtors have agreed, among other things, to sell and assign the Acquired Assets to Buyer, including the Leases that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Purchase Agreement (collectively, the "Sale Transaction"); and it appearing that due notice of the Sale Motion, the Purchase Agreement, and the form of this order (the "Sale Order") having been provided; [and the Debtors having submitted a certification that no party has objected to the Sale Motion;] and it appearing that the relief requested in the Sale Motion and granted herein is in the best interests of the Debtors, their estates and creditors and all parties in interest in these chapter 11 cases; and upon the record of these chapter 11 cases; and after due deliberation thereon; and good cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**

A. Fed. R. Bankr. P. 7052. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Jurisdiction and Venue.** This Court has jurisdiction to decide the relief requested in the Sale Motion and over the Sale Transaction and the property of the Debtors' estates, including the Acquired Assets, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core proceeding pursuant to 28 U. S.C. § 157(b)(2). Venue of these chapter 11 cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Notice and Opportunity to Object.** Actual written notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Sale Transaction, the sale of the Acquired Assets free and clear of any Claims (as defined below) and the relief requested in the Sale Motion has been given, as required by the Bankruptcy Code and the Bankruptcy Rules, to all Persons entitled to notice, including, but not limited to, the following: (i) all non-Debtor parties to the Leases, (ii) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, (iii) all applicable federal, state, and local taxing and regulatory authorities, and (iv) all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the Acquired Assets.

D. **Good Faith; No Collusion.** The Debtors and the Buyer, and their respective counsel and advisors, have negotiated, proposed and entered into the Purchase Agreement and each of the transactions contemplated in good faith, without collusion and from arm's-length bargaining positions.

E. **Notice.** As evidenced by the certificates of service filed with the Court: (i) due, proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Transaction, the Sale Order and the other relief requested in the Sale Motion was provided by the Debtors; (ii) such notice was good, sufficient and appropriate under the particular circumstances; and (iii) no other



or further notice of the Sale Motion, the Sale Transaction, the Sale Order or any of the relief requested in the Sale Motion is required.

F. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Acquired Assets free and clear of all liens, claims (including those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Acquired Assets, the operation of the Debtors' businesses before the effective time of the Closing pursuant to the Purchase Agreement, or the transfer of the Debtors' interests in the Acquired Assets to the Buyer (collectively, the "Claims"), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Claims who did object that have an interest in the Acquired Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Claim pursuant to section 363(f)(5) or fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Claims that constitute interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. All Persons having Claims of any kind or nature whatsoever against the Debtors or the Acquired Assets shall be forever barred, estopped and

permanently enjoined from pursuing or asserting such Claims against the Buyer or any of its assets, property, Affiliates, successors, assigns, or the Acquired Assets.

G. The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Acquired Assets was not free and clear of all Claims, or if the Buyer would, or in the future could, be liable for any such Claims, including, as applicable, certain liabilities related to the Acquired Assets that will not be assumed by the Buyer. A sale of the Acquired Assets other than one free and clear of all Claims would adversely impact the Debtors, their estates and their creditors, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale Transaction.

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

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

1. **Sales Transaction Approved.** The Sale Transaction is approved.
2. **Notice.** Notice of the Sale Transaction was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
3. **Fair Purchase Price.** The consideration provided by the Buyer under the Purchase Agreement is fair and reasonable.
4. **Approval of the Purchase Agreement.** The Purchase Agreement, all transactions contemplated therein (including, but not limited to, all ancillary agreements contemplated thereby) and all of the terms and conditions thereof are hereby approved. The

failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all ancillary agreements contemplated thereby) be authorized and approved in its entirety.

5. Transfer of Assets Free and Clear. Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement. The Acquired Assets shall be transferred to the Buyer, and, upon the Closing, such transfer shall: (a) be valid, legal, binding and effective; (b) vest the Buyer with all right, title and interest of the Debtors in the Acquired Assets; and (c) be free and clear of all Claims (including any Claims of any Governmental Authority) in accordance with section 363(f) of the Bankruptcy Code, with all Claims that represent interests in property to attach to the net proceeds of the Sale Transaction, in the same amount and order of their priority, with the same validity, force and effect which they have against the Acquired Assets, and subject to any claims and defenses the Debtors may possess with respect thereto in each case immediately before such Closing.

6. Except as otherwise expressly provided in the Purchase Agreement, all Persons (and their respective successors and assigns) including, without limitation, the Debtors, the Debtors' estates, all debt security holders, equity security holders, governmental, tax and regulatory authorities, governmental units, lenders, employees, former employees, pension plans, multiemployer pension plans, labor unions, trade creditors and any other creditors holding Claims against the Debtors, the Acquired Assets or the Debtors' businesses (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors,

the Acquired Assets or the Debtors' businesses prior to the Closing Date or the transfer of the Acquired Assets to the Purchase, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such Claims against the Buyer, its Affiliates, successors or assigns, its property or the Acquired Assets. No such Persons shall assert or pursue against the Buyer or its Affiliates, successors or assigns any such Claim.

7. This Order (a) shall be effective as a determination that, as of the Closing, all Claims, have been unconditionally released, discharged and terminated as to the Buyer and the Acquired Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, county and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Buyer is the assignee and owner of the Acquired Assets free and clear of all Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as "Recording Officers"). All Recording Officers are authorized and specifically directed to strike recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. A certified copy of this Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. All Recording Officers are hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

8. Except with as expressly set forth in the Purchase Agreement, the Buyer and its successors and assigns shall have no liability for any Claim, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature or character whatsoever, by reason of any theory of law or equity..

9. On the Closing Date, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets acquired under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in all of the Acquired Assets to the Buyer.

10. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Acquired Assets to the Buyer, free and clear of Claims, unless such authorization is duly stayed before the Closing Date pending such appeal. The Buyer is a good faith purchaser of the Acquired Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Debtors and the Buyer will be acting in good faith if they proceed to consummate the Sale Transaction at any time after entry of this Order.

11. **Waiver of Bankruptcy Rules 6004(h), 6006(d) and 7062.** Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062 or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy

Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale Transaction and the Debtors and the Buyer intend to close the Sale Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal will be foreclosed as moot.

12. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Order, the Purchase Agreement, and any documents executed in connection therewith, the provisions contained in this Order, the Purchase Agreement and any documents executed in connection therewith shall govern, in that order.

13. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith), and to adjudicate disputes related to this Order or the Purchase Agreement (and such other related agreements, documents or other instruments).

Dated: \_\_\_\_\_, 2017  
White Plains, New York

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UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C  
**Escrowee's Wire Instructions**

**THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC. (A&P)  
WIRING INSTRUCTIONS FOR INCOMING WIRE TRANSFERS**

**ROUTING:**

Bank Name: Wells Fargo  
Bank Address: 420 Montgomery Street  
San Francisco, CA 94104

ABA #: 121000248  
Account: The Great Atlantic & Pacific Tea Company, Inc.  
Company Address: Old Tappan, NJ 07675  
Account #: 4123996555

SWIFT CODE: WFBIUS6S  
(If Needed)

March 17, 2016



**EXHIBIT D**

**Form of Quitclaim Deed**

This document was prepared by and after  
recording should be returned to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153-0119  
(212) 310-8085  
Attention: Samuel Zylberberg, Esq. (MOM)

Tax Parcel Nos. [ \_\_\_\_\_ ]  
Address: [ \_\_\_\_\_ ]

### FORM OF QUIT CLAIM DEED

THIS QUIT CLAIM DEED made as of the \_\_\_\_\_ day of May, 2017, between  
[ \_\_\_\_\_ ], a [ \_\_\_\_\_ ], with an address of  
\_\_\_\_\_ (the "**Grantor**") to GETTY LEASING, INC., a Delaware corporation having a  
place of business at 2 Jericho Plaza, Suite 110, Wing C, Jericho, NY 11753 (the "**Grantee**").

WITNESSETH, that the Grantor, in consideration of ten dollars and other good and  
valuable consideration paid by the Grantee does hereby remise, release and quit-claim unto the  
Grantee, and to its successors and assigns forever, all right, title, interest, claim and demand of  
the Grantor in and to the real property described on **Exhibit A** attached hereto and made a part  
hereof (the "**Premises**"), subject to all easements, reservations, restrictions and covenants of  
record.

TOGETHER with the all and singular the ways, easements, rights, privileges and  
appurtenances to the same belonging or; in anywise appertaining, and all the estate right, title,  
interests and claim, either at law or in equity, or otherwise however, of the said Grantor of, in, to  
or out of said land and Premises.

TO HAVE AND TO HOLD the Premises herein granted unto the Grantee, its successors  
and assigns forever.

The Premises is being conveyed pursuant to U.S. Bankruptcy Court Order Index  
# \_\_\_\_\_ (See order attached as **Exhibit B**).

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**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Bankruptcy Court Order**

**EXHIBIT E**

**FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES**

### ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "Assignment") is entered into and effective as of [ \_\_\_\_\_ ], 2017, by and between [ \_\_\_\_\_ ], whose address is \_\_\_\_\_ ] ("Seller"), AND GETTY LEASING, INC., a Delaware corporation having a place of business at 2 Jericho Plaza, Wing C, Suite 110, Jericho, NY 11753 ("Buyer"). Seller and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Real Property Sale Agreement, dated [ \_\_\_\_\_ ], 2017 (the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, pursuant to the Purchase Agreement, Buyer is purchasing, inter alia, the Lease (as subsequently defined) and, in connection therewith, the execution and delivery of this Assignment is contemplated by the Purchase Agreement; and

WHEREAS, Seller desires to assign, transfer, convey, and deliver to Buyer the Leases described in Exhibit A attached hereto including all amendments, modifications, and supplements thereto (collectively, the "Lease"), and Buyer desires to purchase and accept an assignment of the Lease together with all right, title, and interest of Seller thereunder. The Lease encumbers all of certain property (the "Leased Premises") more specifically described on Exhibit B attached hereto (the "Premises").

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, the Parties hereby agree as follows:

- 1) Purchase, Assignment and Assumption of Lease. Effective as of the Closing, Seller hereby sells, assigns, transfers, conveys, and delivers to Buyer all of Seller's estate, right, title and interest as landlord of the leasehold estate described under the Lease, and Buyer hereby purchases, and accepts the assignment, transfer, conveyance, and delivery of Seller's estate, rights, title and interest in, to and under such leasehold estate, and assumes and agrees to pay, discharge, and perform when due all of Seller's obligations as landlord under the Lease.
- 2) Conflict. The sale, assignment and assumption of the Lease (and the obligations thereunder) made hereunder are made in accordance with and subject to the Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the Purchase Agreement.
- 3) Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this

Assignment is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.

- 4) Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by, or on behalf of, Buyer and Seller.
- 5) Counterparts; Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.
- 6) Governing Law. This Assignment shall be governed by the Laws of the state in which the Leased Premises are located, except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
- 7) Third Party Beneficiaries and Obligations. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or Liabilities under or by reason of this Assignment.
- 8) Recordation. Seller makes no representation regarding the recordability of this Assignment, nor the Lease or related documents. Seller shall bear no Liability for the failure of the Lease or related documents to be recorded.
- 9) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment, including, without limitation, any other form of assignment agreement required in order to record this Assignment in the appropriate public records of the county in which the Leased Premises is located.

\* \* \* \* \*

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

**SELLER:**

[ \_\_\_\_\_,  
a \_\_\_\_\_ ]

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



[ACKNOWLEDGMENTS]

**BUYER:**

GETTY LEASING, INC.,  
a Delaware corporation

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

[ACKNOWLEDGMENTS]

**EXHIBIT A**  
**Lease**

[List Lease in the following form:

Lease dated [●] originally between [●], as Landlord, and [●], as Tenant.]

Site \_\_\_\_\_ – [ADDRESS]

**EXHIBIT B**

**Premises**

**Exhibit C**

**Sale Order**

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

-----	X	
<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>THE GREAT ATLANTIC &amp; PACIFIC TEA COMPANY, INC., et al.,<sup>1</sup></b>	:	<b>Case No. 15-23007 (RDD)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
-----	X	

**ORDER (I) APPROVING THE PURCHASE AGREEMENT  
AMONG SELLER AND BUYER, (II) AUTHORIZING THE SALE  
OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES (III) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
LEASES IN CONNECTION THEREWITH, AND (IV) GRANTING RELATED RELIEF**

(Getty Leasing, Inc.)

Upon the motion to approve the sale of certain of the Debtors' assets and to authorize the assumption and assignment of certain of the Debtors' unexpired leases, dated [\_\_\_\_], 2017 (Docket No. [\_\_\_\_]) (the "Sale Motion")<sup>2</sup>, filed by the above-captioned debtors and debtors in possession (the "Debtors") seeking, among other things, entry of an order, pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Borman's, Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge LLC (5965); Shopwell, Inc.(3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport, Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors' corporate headquarters is 800D Lake Street, Ramsey, New Jersey 07446.

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

United States Bankruptcy Court for the Southern District of New York (the “Local Bankruptcy Rules”), authorizing and approving the sale of the Gas Stations and the assumption and assignment of certain unexpired leases of the Debtors in connection therewith (the “Leases” and together with the Gas Stations, the “Acquired Assets”); and **Getty Leasing, Inc.** (the “Buyer”) having submitted the highest and best offer for the Acquired Assets, as reflected in the Purchase Agreement (as defined below); and the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto and (ii) the Real Property Sale Agreement, dated as of May 22, 2017 the (“Purchase Agreement”), a copy of which is attached hereto as Exhibit A, by and between Seller and Buyer, whereby the Debtors have agreed, among other things, to sell and assign the Acquired Assets to Buyer, including the Leases that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Purchase Agreement (collectively, the “Sale Transaction”); and it appearing that due notice of the Sale Motion, the Purchase Agreement, and the form of this order (the “Sale Order”) having been provided; [and the Debtors having submitted a certification that no party has objected to the Sale Motion;] and it appearing that the relief requested in the Sale Motion and granted herein is in the best interests of the Debtors, their estates and creditors and all parties in interest in these chapter 11 cases; and upon the record of these chapter 11 cases; and after due deliberation thereon; and good cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**

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

B. **Jurisdiction and Venue.** This Court has jurisdiction to decide the relief requested in the Sale Motion and over the Sale Transaction and the property of the Debtors' estates, including the Acquired Assets, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core proceeding pursuant to 28 U. S.C. § 157(b)(2). Venue of these chapter 11 cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Notice and Opportunity to Object.** Actual written notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Sale Transaction, the sale of the Acquired Assets free and clear of any Claims (as defined below) and the relief requested in the Sale Motion has been given, as required by the Bankruptcy Code and the Bankruptcy Rules, to all Persons entitled to notice, including, but not limited to, the following: (i) all non-Debtor parties to the Leases, (ii) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, (iii) all applicable federal, state, and local taxing and regulatory authorities, and (iv) all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the Acquired Assets.

D. **Good Faith; No Collusion.** The Debtors and the Buyer, and their respective counsel and advisors, have negotiated, proposed and entered into the Purchase Agreement and each of the transactions contemplated in good faith, without collusion and from arm's-length bargaining positions.

E. **Notice.** As evidenced by the certificates of service filed with the Court: (i) due, proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Transaction, the Sale Order and the other relief requested in the Sale Motion was provided by the Debtors; (ii) such notice was good, sufficient and appropriate under the particular circumstances; and (iii) no other

or further notice of the Sale Motion, the Sale Transaction, the Sale Order or any of the relief requested in the Sale Motion is required.

F. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Acquired Assets free and clear of all liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors’ interests in the Acquired Assets, the operation of the Debtors’ businesses before the effective time of the Closing pursuant to the Purchase Agreement, or the transfer of the Debtors’ interests in the Acquired Assets to the Buyer (collectively, the “Claims”), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Claims who did object that have an interest in the Acquired Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Claim pursuant to section 363(f)(5) or fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Claims that constitute interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. All Persons having Claims of any kind or nature whatsoever against the Debtors or the Acquired Assets shall be forever barred, estopped and



permanently enjoined from pursuing or asserting such Claims against the Buyer or any of its assets, property, Affiliates, successors, assigns, or the Acquired Assets.

G. The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Acquired Assets was not free and clear of all Claims, or if the Buyer would, or in the future could, be liable for any such Claims, including, as applicable, certain liabilities related to the Acquired Assets that will not be assumed by the Buyer. A sale of the Acquired Assets other than one free and clear of all Claims would adversely impact the Debtors, their estates and their creditors, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale Transaction.

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

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

1. **Sales Transaction Approved.** The Sale Transaction is approved.
2. **Notice.** Notice of the Sale Transaction was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
3. **Fair Purchase Price.** The consideration provided by the Buyer under the Purchase Agreement is fair and reasonable.
4. **Approval of the Purchase Agreement.** The Purchase Agreement, all transactions contemplated therein (including, but not limited to, all ancillary agreements contemplated thereby) and all of the terms and conditions thereof are hereby approved. The

failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all ancillary agreements contemplated thereby) be authorized and approved in its entirety.

5. **Transfer of Assets Free and Clear.** Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement. The Acquired Assets shall be transferred to the Buyer, and, upon the Closing, such transfer shall: (a) be valid, legal, binding and effective; (b) vest the Buyer with all right, title and interest of the Debtors in the Acquired Assets; and (c) be free and clear of all Claims (including any Claims of any Governmental Authority) in accordance with section 363(f) of the Bankruptcy Code, with all Claims that represent interests in property to attach to the net proceeds of the Sale Transaction, in the same amount and order of their priority, with the same validity, force and effect which they have against the Acquired Assets, and subject to any claims and defenses the Debtors may possess with respect thereto in each case immediately before such Closing.

6. Except as otherwise expressly provided in the Purchase Agreement, all Persons (and their respective successors and assigns) including, without limitation, the Debtors, the Debtors' estates, all debt security holders, equity security holders, governmental, tax and regulatory authorities, governmental units, lenders, employees, former employees, pension plans, multiemployer pension plans, labor unions, trade creditors and any other creditors holding Claims against the Debtors, the Acquired Assets or the Debtors' businesses (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors,

the Acquired Assets or the Debtors' businesses prior to the Closing Date or the transfer of the Acquired Assets to the Purchase, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such Claims against the Buyer, its Affiliates, successors or assigns, its property or the Acquired Assets. No such Persons shall assert or pursue against the Buyer or its Affiliates, successors or assigns any such Claim.

7. This Order (a) shall be effective as a determination that, as of the Closing, all Claims, have been unconditionally released, discharged and terminated as to the Buyer and the Acquired Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, county and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Buyer is the assignee and owner of the Acquired Assets free and clear of all Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as "Recording Officers"). All Recording Officers are authorized and specifically directed to strike recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. A certified copy of this Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. All Recording Officers are hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

8. Except with as expressly set forth in the Purchase Agreement, the Buyer and its successors and assigns shall have no liability for any Claim, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature or character whatsoever, by reason of any theory of law or equity..

9. On the Closing Date, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets acquired under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in all of the Acquired Assets to the Buyer.

10. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Acquired Assets to the Buyer, free and clear of Claims, unless such authorization is duly stayed before the Closing Date pending such appeal. The Buyer is a good faith purchaser of the Acquired Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Debtors and the Buyer will be acting in good faith if they proceed to consummate the Sale Transaction at any time after entry of this Order.

11. **Waiver of Bankruptcy Rules 6004(h), 6006(d) and 7062.** Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062 or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy

Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale Transaction and the Debtors and the Buyer intend to close the Sale Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal will be foreclosed as moot.

12. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Order, the Purchase Agreement, and any documents executed in connection therewith, the provisions contained in this Order, the Purchase Agreement and any documents executed in connection therewith shall govern, in that order.

13. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith), and to adjudicate disputes related to this Order or the Purchase Agreement (and such other related agreements, documents or other instruments).

Dated: \_\_\_\_\_, 2017  
White Plains, New York

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**Purchase Agreement**

669 SOMERSET STREET, SOMERSET, NJ  
639 RT. 17 SOUTH, PARAMUS, NJ  
630 LINCOLN HIGHWAY, FAIRLESS HILLS, PA

**REAL PROPERTY SALE AGREEMENT**

THIS REAL PROPERTY SALE AGREEMENT (this "**Agreement**") is made as of May 22, 2017 ("Effective Date") by and between PATHMARK STORES, INC., a Delaware corporation, having a place of business located at 48 Bi-State Plaza, PMB 282, Old Tappan, New Jersey 07675 ("**Seller**"), and GETTY LEASING, INC., a Delaware corporation having a place of business at 2 Jericho Plaza, Wing C, Suite 110, Jericho, NY 11753 ("**Buyer**", and collectively with Seller, the "**Parties**" and each individually a "**Party**").

WITNESSETH:

WHEREAS, Seller is the fee owner (as evidenced by certain Deeds of Confirmation of Merger dated March 20, 2000, by Pennsylvania Stuart, Inc. ("**PSI**"), as grantor, and Pathmark Stores, Inc. as grantee) of the following parcels of land more specifically described on **Exhibit A** attached hereto and made a part hereof including, without limitation, (i) all easements, rights of way, alleys, strips or gores, air rights, development rights, privileges, appurtenances and other rights, if any, pertaining thereto, (ii) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road or avenue opened or proposed, public or private, in front of or adjoining the land, to the center line thereof and (iii) any unpaid awards, if any (each a "**Land**" and collectively, the "**Lands**"):

a. Street Address: 669 Somerset Street, Somerset, NJ

(Tax Map Designation: Block 150, Lot 43) (individually referred to herein as the "**Somerset Parcel**")

b. Street Address: 639 Rt. 17 South, Paramus, NJ

(Tax Map Designation: Block 5004, Lot 4) (individually referred to herein as the "**Paramus Parcel**")

c. Street Address: 630 Lincoln Highway, Fairless Hills, PA

(Tax Map Designation: Parcel: #13-017168) (individually referred to herein as the "**Fairless Hills Parcel**");

WHEREAS, PSI leased the Premises (as hereinafter defined) to Supermarkets General Corporation ("**SGC**") by Leases dated as of October 1, 1969 ("**Underlying Leases**") and SGC subleased out the Premises pursuant to the Leases (defined below);

WHEREAS, the Underlying Leases expired and SGC merged into Seller and the Leases remained and still remain in full force and effect as prime leases between Seller and the tenant thereto;

WHEREAS, LEEMILT'S PETROLEUM, INC., an Affiliate of Buyer has been leasing the Premises from Seller since October 5, 1978, pursuant to the following leases (collectively referred to herein as the "**Leases**"):

a. As to the Somerset Parcel: Sublease by and between SGC, as sublessor, and Digas Company ("**Digas**"), as sublessee, dated October 24, 1975, as amended by Amendment to Sublease dated October 5, 1978, and as assigned by Digas to Power Test of New Jersey, Inc. ("**Power Test**") (a predecessor of Buyer) by Assignment of Lease and Assumption Agreement dated as of October 5, 1978 (hereinafter the "**Somerset Lease**");

b. As to the Paramus Parcel: Sublease by and between SGC, as sublessor, and Digas, as sublessee, dated October 24, 1975, as amended by Amendment to Sublease dated October 5, 1978, and as assigned by Digas to Power Test by Assignment of Lease and Assumption Agreement dated as of October 5, 1978 (hereinafter the "**Paramus Lease**");

c. As to the Fairless Hills Parcel: Sublease by and between SGC, as sublessor, and Digas, as sublessee, dated October 24, 1975, as amended by Amendment to Sublease dated October 5, 1978, and as assigned by Digas to Power Test by Assignment of Lease and Assumption Agreement dated as of October 5, 1978, as further amended by Master Amendment of Sublease by SGC, Supermarkets Oil Company, Inc., Power Test and Gasway Inc., dated March 26, 1992 (hereinafter the "**Fairless Hills Lease**").

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

WHEREAS, Seller desires to sell, assign, convey and transfer to Buyer all of its rights, title and interests in (i) the Lands, (ii) the buildings and other improvements, if any, situated on the Lands (the "**Buildings**"), (iii) the Leases and/or any other leases, subleases, or license agreements for use or occupancy of all or any portion of the Premises by any third party ("**Occupancy Agreements**") and to the extent Seller has no such rights or interests, Buyer shall nonetheless take subject to all Occupancy Agreements at the Premises in any Occupancy Agreement, and (iv) all fixtures, if any, attached to or used in connection with the Premises and any articles of personal property, if any, owned by Seller and located at the Premises ("**Personal Property**") (provided no part of the Purchase Price is allocated to such fixtures or personal property and the same, to the extent Seller has any ownership interest therein, shall be deemed transferred at Closing);

The Lands, the Buildings, the Leases and the Personal Property are hereinafter sometimes collectively referred to as the "**Premises**";

WHEREAS, Buyer desires to purchase the Premises, subject to any occupancies and the conditions hereinafter set forth.



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

1. Procedures. This Agreement is made subject to entry of an order of the Bankruptcy Court authorizing the sale transaction contemplated hereunder, substantially in the form annexed as Exhibit B (the "**Sale Order**"), which Sale Order shall (a) provide for Seller's conveyance of all of its right, title and interest in and to the Premises, free and clear of all liens, claims, interests and encumbrances of any nature, other than the Leases that are being assumed and assigned by Seller to Buyer pursuant to the terms hereof, (collectively, "**Liens**") to the fullest extent available under the Bankruptcy Code, (b) provide that any Liens attach to the proceeds paid to Seller, (c) provide that the transactions contemplated herein are arm's-length transactions entitled to the protections of Bankruptcy Code section 363(m), (d) provide that the assumption and assignment of the Leases is specifically approved and Seller is authorized to enter into the Assignment and Assumption of Leases and (e) be acceptable to Buyer in its reasonable discretion. In the event of a contradiction between this Agreement and the Sale Order, the Sale Order shall control.

2. Purchase Price. The consideration for the Premises shall be equal to ONE HUNDRED THIRTY-FOUR THOUSAND THREE HUNDRED FORTY-TWO AND 00/100 Dollars (\$134,342) (the "**Purchase Price**").

**The Purchase Price is being allocated to the Premises as follows:**

<b>Somerset Parcel:</b>	<b>\$34,388</b>
<b>Paramus Parcel:</b>	<b>\$74,653</b>
<b>Fairless Hills Parcel:</b>	<b>\$25,301</b>

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

a. Deposit. Concurrently herewith, Buyer shall deposit with Seller by a bank wire transfer of immediately available federal funds to an account designated by Seller the sum of Six Thousand Seven Hundred Seventeen and 10/100 Dollars (\$6,717.10) (together with all interest thereon, the "**Deposit**"), which Deposit shall be held by Seller. Notwithstanding anything to the contrary set forth in this Agreement, all interest accrued in connection with the Deposit hereunder shall accrue for the sole benefit of the party to whom the Deposit is paid. The Parties agree that any payments made pursuant to this Section 3(a) in respect of accrued interest shall be deemed to be an adjustment to the Purchase Price for tax purposes to the extent permitted by applicable Law.

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

4. Intentionally Omitted.

5. Indivisible. Except as expressly provided in this Agreement for specific and isolated purposes (and in such cases only to the extent expressly so stated), all provisions of this Agreement shall apply equally and uniformly to the Somerset Parcel, the Paramus Parcel, and the Fairless Hills Parcel as one unit and the provisions hereof and the sale of the Somerset Parcel, the Paramus Parcel, and the Fairless Hills Parcel hereunder are not otherwise severable. This Agreement is intended by the parties as a single, indivisible, integrated and unitary economic transaction and except as expressly provided in this Agreement for specific isolated purposes (and in such cases only to the extent so expressly provided), the provisions of this Agreement shall at all times be construed, interpreted and applied such that the intention of Seller and Buyer to create a unitary contract applicable to the sale of all of the Somerset Parcel, the Paramus Parcel, and the Fairless Hills Parcel as a single and indivisible transaction shall be preserved and maintained.

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

7. Transfer. As of the Closing Date, pursuant to section 363 of the Bankruptcy Code and in accordance with the Sale Order, Seller shall transfer to Buyer, without representation or warranty of any kind, except as provided in this Agreement, all of its right, title, and interest in and to the Premises in accordance with the terms of this Agreement.

8. Intentionally Omitted.

9. Prorations/Adjustments. There will be no prorations between Seller and Buyer on the Closing Date, and no post-Closing reconciliations or adjustments of any kind shall occur. Buyer shall receive the benefits and burdens for all adjustments that occur after the Closing Date (regardless of the period in question that is subject to the adjustment), including year-end adjustments for Taxes, and Buyer shall fully indemnify and hold harmless Seller with respect thereto. Seller shall retain all security deposits under any Leases or Occupancy Agreements to the extent currently held by or on behalf of Seller, if any, and there shall be no offset or reduction in the Purchase Price in connection with the same. Buyer shall replace any such security deposits as of the Closing Date and maintain the same in accordance with applicable Laws and each Lease or Occupancy Agreement, as applicable.

10. Free and Clear of All Liens. Pursuant to the Sale Order, Seller shall convey its rights, interests and title to the Premises to Buyer free and clear of all Liens.

11. Closing Deliverables. On the Closing Date:

a. Seller shall deliver to Fidelity National Title Insurance Services, LLC, having an address at 1415 Kellum Place, Suite 202, Garden City, NY, Attn: Ross Rumsky, ("**Escrowee**") a duly executed copy of: (i) a Quitclaim Deed conveying title to the Premises substantially in the form attached hereto as Exhibit D (subject to such changes as necessary to conform with state specific requirements for recordability) (the "**Deed**"); (ii) a FIRPTA Certificate; (iii) if applicable, Transfer Tax forms or certifications provided by Buyer as more specifically described in subsection (b) below; (iv) the Closing Statement; (v) such funds and other instruments, in recordable form or otherwise, as may be reasonably required in order to complete the transaction; and (vii) an Assignment and Assumption of Leases substantially in the form annexed hereto as Exhibit E ("**Assignment and Assumption of Leases**").

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

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

13. Closing Costs.

a. Seller and Buyer shall each pay their own attorneys' fees and expenses.

b. Buyer shall pay (i) all state, county and local Transfer Taxes required to be paid in connection with the recordation of the Deed and the consummation of the transactions contemplated herein, all of which amounts shall be paid, if applicable, to Escrowee for payment to the proper Governmental Authority on or prior to the Closing Date, (ii) all escrow charges under the any escrow agreement with Escrowee ("**Escrow Agreement**"), if any, and (iii) Buyer's

title fees. For avoidance of doubt, Buyer will not be responsible for payment of any corporate taxes of Seller or its affiliates.

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

14. Conditions to Closing.

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

(i) the transactions contemplated by this Agreement shall have been authorized pursuant to the Sale Order and the Sale Order is acceptable to Buyer in its reasonable discretion;

(ii) no order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date;

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

(iv) each delivery contemplated by Section 11(a) to be delivered to Escrowee shall have been delivered and all fees related to Escrowee's services hereunder shall have been paid to Escrowee by Buyer;

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

(vi) no material defect caused by Seller or its affiliates and unknown to Buyer on the date hereof arising after the Effective Date is revealed on a continuation of title and/or a survey of the Premises obtained by Buyer ("New Defect(s)"); provided that any New Defect over which a national title insurance company is willing to insure shall not be deemed a New Defect. Buyer's failure to timely obtain such title continuation or survey shall be deemed a waiver of any New Defects related thereto.

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

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

(ii) the transactions contemplated by this Agreement shall have been authorized pursuant to the Sale Order, and no order staying, reversing, modifying or amending such authorization shall be in effect on the Closing Date;

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

(iv) each payment contemplated by Sections 2, 3, and 13 to be made to Seller, Escrowee, Governmental Authorities or other parties shall have been made, and each delivery contemplated by Section 11(b) to be delivered to Escrowee shall have been delivered.

c. No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Subsection 14(a) or Subsection 14(b), as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliate's failure to use its reasonable best efforts (or commercially reasonable efforts, with respect to those matters contemplated by Section 17, as applicable) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach hereunder. The Parties agree any action with respect to a competing bid, to the extent permitted hereunder, shall not be deemed to be a failure to use the efforts required to satisfy the conditions to consummation of the transactions contemplated hereunder nor a breach hereunder.

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

16. Termination of Agreement.

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

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

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

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

(B) the Closing shall not have occurred prior to the Outside Date; provided that if the Closing shall not have occurred on or before the Outside Date due to a

material breach of this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 16(a)(ii)(B).

(iii) by Buyer giving written notice to Seller on or before the Closing Date, if any New Defect(s) exist, provided such termination can be voided if (i) Buyer waives the New Defect(s) by written notice to Seller on or before the Closing Date, which decision to waive or not waive such New Defect(s) shall be in the sole and absolute discretion of Buyer, (ii) Seller removes such New Defect(s) by the Closing Date provided that Seller has the right to adjourn the Closing Date up to 60 days to clear such defect or find a national title company willing to insure over the same or (iii) Seller gives a credit to the Buyer against the Purchase Price at Closing for the amount, estimated by Seller, to cure such New Defect(s).

(iv) by Buyer if Seller fails to satisfy any condition to Closing set forth herein.

**In the event this Agreement is terminated under this Section 16(a), the Deposit shall be returned to Buyer and neither Party shall have any further rights, obligations or duties hereunder other than such obligations and/or Liabilities that are expressly stated to survive.**

b. Seller may terminate this Agreement at any time prior to Closing if Buyer fails to satisfy any requirement set forth under Section 14(b)(iv), including delivery of the Deposit required hereunder. In such case, the Agreement shall be rendered null and void, Seller shall be entitled to retain the Deposit.

c. Effect of Termination. If any Party terminates this Agreement pursuant to Section 16(a) or (b), all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Section 13(a), this Section 16, Sections 23 through 43, and Schedule I shall survive any such termination) and no Party shall have any Liability to the other Party hereunder (except as set forth in Section 16(b) and Section 17); provided, however, that nothing in this Section 16 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, that other than in the case of fraud or willful misconduct, (a) the maximum Liability of Seller under this Agreement shall not exceed the reasonable out of pocket expenses incurred by Buyer and (b) the maximum Liability of Buyer under this Agreement shall not exceed the Deposit.

17. Bankruptcy Court Matters.

a. Court Approval. This Agreement is a private sale and shall be subject to approval by the Bankruptcy Court.

b. Bankruptcy Court Filings. As soon as reasonably practicable following the execution of this Agreement, Seller shall seek approval of the Agreement and the Sale Order and file any necessary notice to all necessary parties (including any parties asserting an interest in the Premises) or pleadings required in connection therewith. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court

approval of the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information, and filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Premises hereunder. In the event the approval of the transactions contemplated by this Agreement shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

c. Bankruptcy Documents. Seller shall provide Buyer with copies of all court documents filed in connection with the bankruptcy which in any way relate to this Agreement and Buyer's acquisition of the Premises, including, without limitation, the Sale Order.

18. Intentionally Omitted.

19. Delivery; "AS IS" Transaction.

a. Buyer acknowledges that it has fully inspected or waived the right to inspect the Premises prior to the execution of this Agreement and does hereby assume all of the risks, including, but not limited to, latent defects in the Premises. Seller shall not be obligated to do any work or alter, restore, repair or develop the Premises. Seller shall deliver the Premises in its as is condition at Closing. Any work (including demolition) which may be necessary to adapt the Premises for Buyer's occupancy or for the operation of Buyer's business therein shall be the sole responsibility of Buyer and shall be performed by Buyer at its sole cost and expense. Notwithstanding anything to the contrary herein, Seller's obligations under the Leases shall not be compromised or altered by this Agreement and such obligations shall remain in full force and effect until the Closing.

b. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO REPRESENTATIONS, WARRANTIES (EXCEPT AS EXPRESSLY SET FORTH HEREIN), OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO: ANY MATTER RELATED TO THE PREMISES (INCLUDING, WITHOUT LIMITATION, INCOME TO BE DERIVED FROM OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PREMISES; THE PHYSICAL CONDITION OF THE PREMISES; THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS IN, ON OR ABOUT THE PREMISES OR ANY OTHER MATTER RELATED TO THE ENVIRONMENTAL CONDITION OF THE PREMISES; THE ZONING OF THE PREMISES; THE POSSIBILITY OF DEVELOPING OR USING THE PREMISES IN THE MANNER CONTEMPLATED BY BUYER OR OBTAINING ANY CONSENTS, APPROVALS, PERMITS, AUTHORIZATIONS OR ENTITLEMENTS IN CONNECTION THEREWITH; THE VALUE OF THE PREMISES; THE FITNESS OF THE PREMISES FOR ANY PARTICULAR PURPOSE OR USE; THE ACCURACY, COMPLETENESS, OWNERSHIP OR TRANSFERABILITY OF ANY DOCUMENTS OR OTHER MATERIALS FURNISHED TO BUYER WITH RESPECT TO THE PREMISES (OR ANY PORTION THEREOF); OR ANY OTHER MATTER OR THING RELATED TO THE PREMISES). BUYER ACKNOWLEDGES THAT BUYER HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE,

MAPS OR SKETCHES, PROJECTIONS, PRO FORMAS, STATEMENTS, REPRESENTATIONS, GUARANTEES OR WARRANTIES (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OR MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF SELLER. BUYER ALSO ACKNOWLEDGES THAT BUYER HAS CONDUCTED OR WAIVED THE RIGHT TO CONDUCT AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PREMISES AND ALL SUCH OTHER MATTERS RELATED TO OR AFFECTING THE PREMISES, AS BUYER DEEMED NECESSARY OR APPROPRIATE AND BUYER IS ACQUIRING THE PREMISES, BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS OR BUYER'S INDEPENDENT JUDGMENT, AND BUYER IS NOT RELYING UPON ANY REPRESENTATIONS OF SELLER OR SELLER'S AGENTS. ACCORDINGLY, BUYER HEREBY ACCEPTS THE PREMISES IN ITS "AS IS, WHERE IS," "WITH ALL FAULTS," CONDITION (EXCEPT AS EXPRESSLY SET FORTH HEREIN) AND ALL LATENT OR PATENT DEFECTS.

20. Intentionally Omitted.

21. Release; Indemnity. Buyer agrees to defend and indemnify Seller against, and hold Seller harmless from, any and all claims, actions, proceedings, suits, costs, Liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements), whether foreseen or unforeseen ("**Claims**"), in connection with the use and occupancy of the Premises by Buyer, its agents, employees, contractors, subtenants, licensees, or any other party using and/or occupying all or part of the Premises by or through Buyer ("**Tenant Parties**") including any breach of the Lease by any Tenant Party, or otherwise directly or indirectly arising out of or in connection with any act or omission of Tenant Party. In addition to the foregoing, Buyer shall defend and indemnify Seller against, and hold Seller harmless from, any and all Claims related to the Leases, the Premises, and any other rights or assets transferred hereby, the basis of which arise on or after the Closing.

22. Casualty and Condemnation.

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

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



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

23. Brokers' Fees. Other than the fees and expenses payable to Evercore Group L.L.C. or Hilco Real Estate Group LLC in connection with the transactions contemplated hereby, which shall be borne by Seller, neither Party has entered into any contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby. Each Party shall indemnify and hold the other Party harmless from and against any and all claims, causes of action, losses, costs, expenses, damages or Liabilities, including reasonable attorneys' fees and disbursements, which the Party seeking indemnification, or any of its affiliates may sustain, incur or be exposed to, by reason of the foregoing representation being false. The provisions of this Section 23 shall survive the Closing.

24. Survival. Except as specifically set forth herein, none of the representations, warranties, or covenants of any Party set forth in this Agreement shall survive, and each of the same shall terminate and be of no further force or effect as of the Closing.

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

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

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

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

herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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

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

If to Seller:

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

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

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

If to Buyer: Getty Leasing, Inc.  
Two Jericho Plaza, Suite 110, Wing C  
Jericho, New York 11753  
Attention: Juliet Voses, Esq.  
E-mail: jvoses@gettyrealty.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 30.

31. Governing Law. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of New York (without giving effect to the principles of conflict of laws thereof that would result in the application of the laws of any other

jurisdiction), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

32. Submission to Jurisdiction; Service of Process. For so long as the bankruptcy of Seller and its affiliates continues, each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any agreement related to the transactions contemplated hereby ("**Related Agreements**") or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 30; provided, however, that nothing in this Section shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

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

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

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

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

37. Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or the Related Agreements may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing ("Non-Party Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or the Related Agreements or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 37. Nothing herein will release any Person from Liability for fraud or willful misconduct.

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

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

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

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

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

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

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

44. Incorporation and Recitals. The recitals set forth at the beginning of this Agreement are true and correct and by this reference are incorporated into the body of this agreement as if fully stated herein.

**[SIGNATURE PAGE FOLLOWS]**

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

PATHMARK STORES, INC.

By: 

Name: Christopher W. McGarry

Title: Chief Restructuring Officer

GETTY LEASING, INC.

By: \_\_\_\_\_

Name:

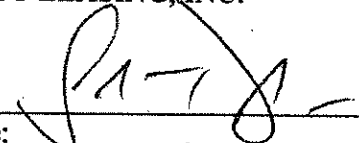
Title:

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

PATHMARK STORES, INC.

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

GETTY LEASING, INC.

By:  \_\_\_\_\_  
Name: **Joshua Dicker**  
Title: **Executive Vice President**

**LIST OF SCHEDULE AND EXHIBITS**

**SCHEDULE**

Schedule I

**DESCRIPTION**

Definitions

**EXHIBIT**

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

**DESCRIPTION**

Legal Description of the Land

Form of Sale Order

Seller's Wire Instructions

Form of Quitclaim Deeds (PA and NJ)

Form of Assignment and Assumption of Leases



**Schedule I**

**Definitions**

- (v) “Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.
- (vi) [Intentionally Omitted]
- (vii) “Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.
- (viii) “Code” means the Internal Revenue Code of 1986, as amended.
- (ix) “Damages” means any actual losses, claims, Liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out-of-pocket expenses (including reasonable fees and expenses of counsel)).
- (x) “Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.
- (xi) “FIRPTA Certificate” means a certificate from Seller in compliance with applicable Treasury Regulations setting forth Seller’s (or, if applicable, its regarded owner’s) name, address and federal tax identification number and stating that Seller (or, if applicable, its regarded owner) is not a “foreign person” within the meaning of section 1445 of the Code and otherwise complying with the Treasury Regulations issued pursuant to section 1445 of the Code.
- (xii) “Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.
- (xiii) [Intentionally Omitted]
- (xiv) “Law” means any constitution applicable to, and any law, statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.
- (xv) “Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether directly incurred, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

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

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

(xviii) “Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including subsidiaries) and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources.

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

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

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

EXHIBIT A

Legal Description of the Premises

As to the Somerset Parcel:

All that tract or parcel of land and premises, situate, lying and being in the Township of Franklin in the County of Somerset and State of New Jersey, more particularly described as follows:

BEGINNING at the intersection of the northerly line of Somerset Street (State Highway Route 27) with the westerly line of Matilda Street and from thence (1) Along the northerly line of Somerset Street South 79 degrees 20 minutes West 125 feet; thence (2) North 10 degrees 40 minutes West 100 feet; thence (3) North 79 degrees 20 minutes East 25 feet; thence (4) North 10 degrees 40 minutes West 25 feet; thence (5) North 79 degrees 20 minutes East 100 feet to the westerly line of Matilda Street; thence (6) Along same South 10 degrees 40 minutes East 125 feet to the point and place of beginning.

Being in accordance with a survey made by Robert Kane dated April 17, 1969 and revised to September 6, 1969.

As to the Paramus Parcel:

BEGINNING at a point in the westerly right of way line of New Jersey State Highway Route 17, distant southerly along said right of way line, 175.63 feet from the point of intersection of the division line between lands now or formerly of the Estate of Floyd E. Tether, deceased, and lands of Elisa P.V. Bogert, running thence (1) Along the said right of way line south 5 degrees 57 minutes east, 205 feet to the lands conveyed to Charles Hoefler et ux by deed made by Mary A. Tether, Russell K. Tether, Executors of the Last Will and Testament of Floyd E. Tether, dated February 7, 1940, and recorded in the Bergen County Clerk's Office on February 8, 1940, in Book 2203 of Deeds for said County, page 43; thence (2) North 69 degrees 5 minutes west and along the said lands of Hoefler, 200 feet; and thence (3) North 5 degrees 57 minutes west and along lands formerly of Floyd E. Tether, 200 feet; thence (4) South 69 degrees 5 minutes east, 92.10 feet; thence (5) South 5 degrees 57 minutes east, parallel with the aforesaid Highway, 16.63 feet; thence (6) South 80 degrees 13 minutes east 100 feet to the aforesaid right of way line of the aforesaid Highway, and the point or place of beginning.

As to the Fairless Hills Parcel

ALL THAT CERTAIN piece or parcel of ground with the building and improvements thereon erected situate in Falls Township, Bucks County, Pennsylvania and described according to a Survey and Plan - Supermarkets General Corporation - made by William Spencer Irwin Associates, Inc., dated October 17, 1969 as follows to wit:-

BEGINNING at a point formed by the intersection of the Southerly side of Lincoln Highway (U.S.#1) (70 feet wide) with the Westerly side of Atlantic Avenue (50 feet wide) (Not Opened); thence extending from said point of beginning South 04 degrees 22 minutes 20 seconds West along the Westerly side of Atlantic Avenue (Not Opened) 203.38 feet to a point; thence extending North 85 degrees 37 minutes 40 seconds West 85.00 feet to a point; thence extending North 04 degrees 22 minutes 20 seconds East along other lands now or late of Supermarkets General Corporation 202.18 feet to a point on the Southerly side of Lincoln Highway aforesaid; thence extending South 86 degrees 26 minutes 10 seconds East along the Southerly side of Lincoln Highway 85.10 feet to the first mentioned point of intersection and place of beginning.

County Parcel Number 13-17-168.

**EXHIBIT B**

**Form of Sale Order**

(Attached Hereto)

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

<hr/>		X
In re	:	Chapter 11
	:	
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 15-23007 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
<hr/>		X

**ORDER (I) APPROVING THE PURCHASE AGREEMENT  
AMONG SELLERS AND BUYER (II) AUTHORIZING THE SALE OF  
CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS AND ENCUMBRANCES, (III) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
LEASES IN CONNECTION THEREWITH, AND (IV) GRANTING RELATED RELIEF**

(Getty Leasing, Inc.)

Upon the motion to approve the sale of certain of the Debtors' assets and to authorize the assumption and assignment of certain of the Debtors' unexpired leases, dated [\_\_\_\_], 2017 (Docket No. [\_\_\_\_]) (the "Sale Motion")<sup>2</sup>, filed by the above-captioned debtors and debtors in possession (the "Debtors") seeking, among other things, entry of an order, pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Borman's, Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge LLC (5965); Shopwell, Inc. (3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport, Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors' corporate headquarters is 800D Lake Street, Ramsey, New Jersey 07446.

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

United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules"), authorizing and approving the sale of the Gas Stations and the assumption and assignment of certain unexpired leases of the Debtors in connection therewith (the "Leases" and together with the Gas Stations, the "Acquired Assets"); and Getty Leasing, Inc. (the "Buyer") having submitted the highest and best offer for the Acquired Assets, as reflected in the Purchase Agreement (as defined below); and the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto and (ii) the Real Property Sale Agreement, dated as of [\_\_\_\_], 2017 the ("Purchase Agreement"), a copy of which is attached hereto as Exhibit A, by and between Seller and Buyer, whereby the Debtors have agreed, among other things, to sell and assign the Acquired Assets to Buyer, including the Leases that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Purchase Agreement (collectively, the "Sale Transaction"); and it appearing that due notice of the Sale Motion, the Purchase Agreement, and the form of this order (the "Sale Order") having been provided; [and the Debtors having submitted a certification that no party has objected to the Sale Motion;] and it appearing that the relief requested in the Sale Motion and granted herein is in the best interests of the Debtors, their estates and creditors and all parties in interest in these chapter 11 cases; and upon the record of these chapter 11 cases; and after due deliberation thereon; and good cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**

A. Fed. R. Bankr. P. 7052. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Jurisdiction and Venue.** This Court has jurisdiction to decide the relief requested in the Sale Motion and over the Sale Transaction and the property of the Debtors' estates, including the Acquired Assets, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core proceeding pursuant to 28 U. S.C. § 157(b)(2). Venue of these chapter 11 cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Notice and Opportunity to Object.** Actual written notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Sale Transaction, the sale of the Acquired Assets free and clear of any Claims (as defined below) and the relief requested in the Sale Motion has been given, as required by the Bankruptcy Code and the Bankruptcy Rules, to all Persons entitled to notice, including, but not limited to, the following: (i) all non-Debtor parties to the Leases, (ii) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, (iii) all applicable federal, state, and local taxing and regulatory authorities, and (iv) all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the Acquired Assets.

D. **Good Faith; No Collusion.** The Debtors and the Buyer, and their respective counsel and advisors, have negotiated, proposed and entered into the Purchase Agreement and each of the transactions contemplated in good faith, without collusion and from arm's-length bargaining positions.

E. **Notice.** As evidenced by the certificates of service filed with the Court: (i) due, proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Transaction, the Sale Order and the other relief requested in the Sale Motion was provided by the Debtors; (ii) such notice was good, sufficient and appropriate under the particular circumstances; and (iii) no other



or further notice of the Sale Motion, the Sale Transaction, the Sale Order or any of the relief requested in the Sale Motion is required.

F. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Acquired Assets free and clear of all liens, claims (including those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Acquired Assets, the operation of the Debtors' businesses before the effective time of the Closing pursuant to the Purchase Agreement, or the transfer of the Debtors' interests in the Acquired Assets to the Buyer (collectively, the "Claims"), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Claims who did object that have an interest in the Acquired Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Claim pursuant to section 363(f)(5) or fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Claims that constitute interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. All Persons having Claims of any kind or nature whatsoever against the Debtors or the Acquired Assets shall be forever barred, estopped and

permanently enjoined from pursuing or asserting such Claims against the Buyer or any of its assets, property, Affiliates, successors, assigns, or the Acquired Assets.

G. The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Acquired Assets was not free and clear of all Claims, or if the Buyer would, or in the future could, be liable for any such Claims, including, as applicable, certain liabilities related to the Acquired Assets that will not be assumed by the Buyer. A sale of the Acquired Assets other than one free and clear of all Claims would adversely impact the Debtors, their estates and their creditors, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale Transaction.

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

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

1. **Sales Transaction Approved.** The Sale Transaction is approved.
2. **Notice.** Notice of the Sale Transaction was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
3. **Fair Purchase Price.** The consideration provided by the Buyer under the Purchase Agreement is fair and reasonable.
4. **Approval of the Purchase Agreement.** The Purchase Agreement, all transactions contemplated therein (including, but not limited to, all ancillary agreements contemplated thereby) and all of the terms and conditions thereof are hereby approved. The

failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all ancillary agreements contemplated thereby) be authorized and approved in its entirety.

5. **Transfer of Assets Free and Clear.** Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement. The Acquired Assets shall be transferred to the Buyer, and, upon the Closing, such transfer shall: (a) be valid, legal, binding and effective; (b) vest the Buyer with all right, title and interest of the Debtors in the Acquired Assets; and (c) be free and clear of all Claims (including any Claims of any Governmental Authority) in accordance with section 363(f) of the Bankruptcy Code, with all Claims that represent interests in property to attach to the net proceeds of the Sale Transaction, in the same amount and order of their priority, with the same validity, force and effect which they have against the Acquired Assets, and subject to any claims and defenses the Debtors may possess with respect thereto in each case immediately before such Closing.

6. Except as otherwise expressly provided in the Purchase Agreement, all Persons (and their respective successors and assigns) including, without limitation, the Debtors, the Debtors' estates, all debt security holders, equity security holders, governmental, tax and regulatory authorities, governmental units, lenders, employees, former employees, pension plans, multiemployer pension plans, labor unions, trade creditors and any other creditors holding Claims against the Debtors, the Acquired Assets or the Debtors' businesses (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors,

the Acquired Assets or the Debtors' businesses prior to the Closing Date or the transfer of the Acquired Assets to the Purchase, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such Claims against the Buyer, its Affiliates, successors or assigns, its property or the Acquired Assets. No such Persons shall assert or pursue against the Buyer or its Affiliates, successors or assigns any such Claim.

7. This Order (a) shall be effective as a determination that, as of the Closing, all Claims, have been unconditionally released, discharged and terminated as to the Buyer and the Acquired Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, county and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Buyer is the assignee and owner of the Acquired Assets free and clear of all Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as "Recording Officers"). All Recording Officers are authorized and specifically directed to strike recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. A certified copy of this Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. All Recording Officers are hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

8. Except with as expressly set forth in the Purchase Agreement, the Buyer and its successors and assigns shall have no liability for any Claim, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature or character whatsoever, by reason of any theory of law or equity..

9. On the Closing Date, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets acquired under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in all of the Acquired Assets to the Buyer.

10. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Acquired Assets to the Buyer, free and clear of Claims, unless such authorization is duly stayed before the Closing Date pending such appeal. The Buyer is a good faith purchaser of the Acquired Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Debtors and the Buyer will be acting in good faith if they proceed to consummate the Sale Transaction at any time after entry of this Order.

11. **Waiver of Bankruptcy Rules 6004(h), 6006(d) and 7062.** Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062 or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy

Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale Transaction and the Debtors and the Buyer intend to close the Sale Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal will be foreclosed as moot.

12. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Order, the Purchase Agreement, and any documents executed in connection therewith, the provisions contained in this Order, the Purchase Agreement and any documents executed in connection therewith shall govern, in that order.

13. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith), and to adjudicate disputes related to this Order or the Purchase Agreement (and such other related agreements, documents or other instruments).

Dated: \_\_\_\_\_, 2017  
White Plains, New York

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UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C  
**Escrowee's Wire Instructions**

**THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC. (A&P)  
WIRING INSTRUCTIONS FOR INCOMING WIRE TRANSFERS**

**ROUTING:**

Bank Name: Wells Fargo  
Bank Address: 420 Montgomery Street  
San Francisco, CA 94104

ABA #: 121000248  
Account: The Great Atlantic & Pacific Tea Company, Inc.  
Company Address: Old Tappan, NJ 07675  
Account #: 4123996555

SWIFT CODE: WFBIUS6S  
(If Needed)

March 17, 2016



**EXHIBIT D**

**Form of Quitclaim Deed**

This document was prepared by and after  
recording should be returned to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153-0119  
(212) 310-8085  
Attention: Samuel Zylberberg, Esq. (MOM)

Tax Parcel Nos. [ \_\_\_\_\_ ]  
Address: [ \_\_\_\_\_ ]

### FORM OF QUIT CLAIM DEED

THIS QUIT CLAIM DEED made as of the \_\_\_\_\_ day of May, 2017, between  
[ \_\_\_\_\_ ], a [ \_\_\_\_\_ ], with an address of  
\_\_\_\_\_ (the "**Grantor**") to GETTY LEASING, INC., a Delaware corporation having a  
place of business at 2 Jericho Plaza, Suite 110, Wing C, Jericho, NY 11753 (the "**Grantee**").

WITNESSETH, that the Grantor, in consideration of ten dollars and other good and  
valuable consideration paid by the Grantee does hereby remise, release and quit-claim unto the  
Grantee, and to its successors and assigns forever, all right, title, interest, claim and demand of  
the Grantor in and to the real property described on **Exhibit A** attached hereto and made a part  
hereof (the "**Premises**"), subject to all easements, reservations, restrictions and covenants of  
record.

TOGETHER with the all and singular the ways, easements, rights, privileges and  
appurtenances to the same belonging or; in anywise appertaining, and all the estate right, title,  
interests and claim, either at law or in equity, or otherwise however, of the said Grantor of, in, to  
or out of said land and Premises.

TO HAVE AND TO HOLD the Premises herein granted unto the Grantee, its successors  
and assigns forever.

The Premises is being conveyed pursuant to U.S. Bankruptcy Court Order Index  
# \_\_\_\_\_ (See order attached as **Exhibit B**).

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**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Bankruptcy Court Order**

**EXHIBIT E**

FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES

### ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "Assignment") is entered into and effective as of [ \_\_\_\_\_ ], 2017, by and between [ \_\_\_\_\_ ], whose address is \_\_\_\_\_ ] ("Seller"), AND GETTY LEASING, INC., a Delaware corporation having a place of business at 2 Jericho Plaza, Wing C, Suite 110, Jericho, NY 11753 ("Buyer"). Seller and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Real Property Sale Agreement, dated [ \_\_\_\_\_ ], 2017 (the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, pursuant to the Purchase Agreement, Buyer is purchasing, inter alia, the Lease (as subsequently defined) and, in connection therewith, the execution and delivery of this Assignment is contemplated by the Purchase Agreement; and

WHEREAS, Seller desires to assign, transfer, convey, and deliver to Buyer the Leases described in Exhibit A attached hereto including all amendments, modifications, and supplements thereto (collectively, the "Lease"), and Buyer desires to purchase and accept an assignment of the Lease together with all right, title, and interest of Seller thereunder. The Lease encumbers all of certain property (the "Leased Premises") more specifically described on Exhibit B attached hereto (the "Premises").

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, the Parties hereby agree as follows:

- 1) Purchase, Assignment and Assumption of Lease. Effective as of the Closing, Seller hereby sells, assigns, transfers, conveys, and delivers to Buyer all of Seller's estate, right, title and interest as landlord of the leasehold estate described under the Lease, and Buyer hereby purchases, and accepts the assignment, transfer, conveyance, and delivery of Seller's estate, rights, title and interest in, to and under such leasehold estate, and assumes and agrees to pay, discharge, and perform when due all of Seller's obligations as landlord under the Lease.
- 2) Conflict. The sale, assignment and assumption of the Lease (and the obligations thereunder) made hereunder are made in accordance with and subject to the Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the Purchase Agreement.
- 3) Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this

Assignment is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.

- 4) Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by, or on behalf of, Buyer and Seller.
- 5) Counterparts; Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.
- 6) Governing Law. This Assignment shall be governed by the Laws of the state in which the Leased Premises are located, except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
- 7) Third Party Beneficiaries and Obligations. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or Liabilities under or by reason of this Assignment.
- 8) Recordation. Seller makes no representation regarding the recordability of this Assignment, nor the Lease or related documents. Seller shall bear no Liability for the failure of the Lease or related documents to be recorded.
- 9) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment, including, without limitation, any other form of assignment agreement required in order to record this Assignment in the appropriate public records of the county in which the Leased Premises is located.

\* \* \* \* \*

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

**SELLER:**

[ \_\_\_\_\_,  
a \_\_\_\_\_ ]

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



[ACKNOWLEDGMENTS]

**BUYER:**

GETTY LEASING, INC.,  
a Delaware corporation

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

[ACKNOWLEDGMENTS]

**EXHIBIT A**

**Lease**

[List Lease in the following form:

Lease dated [●] originally between [●], as Landlord, and [●], as Tenant.]

Site \_\_\_\_\_ – [ADDRESS]

**EXHIBIT B**

**Premises**