

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

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

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**ORDER (I) AUTHORIZING THE DEBTORS  
TO APPLY THE COURT-APPROVED GOB PROCEDURES  
TO CONDUCT GOB SALES AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “*Motion*”)<sup>1</sup> of The Great Atlantic & Pacific Tea Company, Inc. (“*A&P*”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”) for the entry of an order (this “*Order*”) authorizing the Debtors to (a) commence GOB Sales at the Affected Stores in accordance with the GOB Sale Limitations and notwithstanding any contractual provisions or state and local laws that may restrict such GOB Sales; (b) sell certain assets in connection with the GOB Sales free and clear of all liens, claims, and encumbrances; (c) hire a Liquidation Consultant; (d) assume and assign unexpired leases, as applicable, in accordance with the Lease Procedures; and (e) reject certain leases that were previously assumed, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having provided adequate and appropriate notice of the Motion under the circumstances; and there being no opposition to the requested relief; and upon the record of the January 24, 2012

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



hearing on the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted to the extent provided herein.
2. The Debtors and their agents are immediately authorized, pursuant to sections 105(a) and 363 of the Bankruptcy Code, to conduct the GOB Sales at the Affected Stores, as listed on Exhibit 1 attached hereto, in their sole discretion, in accordance with the GOB Sale Limitations, without further authorization or notice to the Court.
3. The GOB Sale Limitations (previously approved by the Court on March 10, 2011 [Docket No. 1004]), attached hereto as Exhibit 2, are approved for the GOB Sales, provided that the Debtors and lessors are authorized to enter into agreements modifying the GOB Sale Limitations without further order of the Court; provided that such agreements do not have a material adverse effect on the Debtors or their estates, and subject, further, to paragraph 12 herein and paragraph 2 of the GOB Sale Limitations.
4. To the extent the Debtors remain in possession of an Affected Store location after the applicable lease is rejected pursuant to section 365 of the Bankruptcy Code, the Debtors shall continue to pay rent to the applicable lessor pursuant to the applicable lease and state law.
5. Pursuant to section 365 of the Bankruptcy Code, the applicable Debtors are authorized to reject the leases as set forth on Exhibit 3 attached hereto, and such leases are deemed rejected as of January 31, 2012 unless previously assigned pursuant to the Lease procedures.
6. The Debtors are authorized to sell the Pharmaceutical Assets to the highest and best bidder(s) as identified by the Debtors in their business judgment and subject to applicable

public health, safety and privacy requirements imposed by applicable non-bankruptcy law. To the extent applicable, the Debtors shall comply with the requirements for the sale of de minimis assets, as approved by this Court.

7. Pursuant to section 363(f) of the Bankruptcy Code, any assets of the Affected Stores being sold through the GOB Sales shall be sold free and clear of any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances or claims of any kind or nature (including, without limitation, any and all “claims” as defined in section 101(5) of the Bankruptcy Code), including, without limitation, the liens and security interests of the DIP Agent and DIP Lenders (collectively, the “*Liens*”), with such Liens, if any, attaching to the proceeds with the same validity, and enforceability, to the same extent and with the same priority as they attached to such assets immediately prior to the closing of the applicable sale.

8. To the extent that there is any inconsistency between this Order and the terms of the *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)* [Docket No. 479] (the “*DIP Order*”) or related documents (including, without limitation, sections 5.06 and 6.05 of the debtor-in-possession credit agreement), the DIP Order and related documents shall control.

9. Subject to the terms and conditions of this Order, no entity shall interfere with or otherwise impede the conduct of the GOB Sales at the Affected Stores, or institute any action against the Debtors or landlords in any court (other than in this Court) or before any

administrative body which in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the GOB Sales at the Affected Stores.

10. Any restrictions in any lease agreement, restrictive covenant, or similar documents purporting to limit, condition, or impair the Debtors' ability to conduct the GOB Sales shall not be enforceable, nor shall any breach of such provisions constitute a default under a lease or provide a basis to terminate the lease.

11. The Affected Stores may "go-dark" during the GOB Sales and remain "dark" despite any lease restriction, real estate local act, local law, or ordinance to the contrary, and any "continuous operation" or similar clause in any of the leases (or any lease provision that purports to increase the rent or impose any penalty for "going dark") may not be enforced to hinder or interrupt the GOB Sales (and the "going dark" under such leases shall not be a basis to cancel or terminate the leases).

12. Subject to applicable state and local public health and safety laws (the "***Safety Laws***"), and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, the "***General Laws***"), but excluding Liquidation Sale Laws, the Debtors are authorized to take such actions as necessary and appropriate to conduct the GOB Sales without the necessity of a further order of this Court, including, but not limited to, advertising the GOB Sales.

13. Provided that the GOB Sales are conducted in accordance with the GOB Sale Limitations, and in light of the provisions in the laws of many local and state laws that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance or otherwise excused from compliance with any Liquidation Sale Laws, and are authorized to conduct the GOB Sales in accordance with the terms of this Order without the necessity of

compliance with any such Liquidation Sale Laws.

14. The Debtors shall be entitled to use sign walkers, hang signs, and/or interior or exterior banners advertising the GOB Sales in accordance with the GOB Sale Limitations (or as otherwise agreed between the Debtors and the respective landlords), including, without limitation, advertising the GOB Sales as “store closing,” “sale on everything,” or similar themed sales and by means of media advertising, A-frames, banners, and similar signage, without further consent of any person and without compliance with the Liquidation Sale Laws; *provided, however,* that the use of banners and sign walkers is done in a safe and responsible manner, such sign walkers and banners, in and of themselves, shall not be deemed to be in violation of Safety Laws and/or General Laws.

15. Each and every federal, state, or local agency, departmental or governmental unit with regulatory authority over the GOB Sales and all newspapers and other advertising media in which the GOB Sales are advertised shall consider this Order as binding authority that no further approval, license, or permit of any governmental unit shall be required, nor shall the Debtors be required to post any bond, to conduct the GOB Sales.

16. State and/or local authorities shall not fine, assess, or otherwise penalize the Debtors or any of the landlords of the Affected Stores for conducting or advertising the GOB Sales in a manner inconsistent with state or local law; *provided, however,* that the GOB Sales are conducted and advertised in a manner contemplated by this Order.

17. The Debtors are authorized to enter into a liquidation consulting and/or services agreement to the extent the Debtors deem necessary.

18. The following procedures for each Purchased Lease associated with the Affected Stores are hereby approved:

- (a) Assumption and Assignment Notice. The Debtors will file a notice (the “*Assumption and Assignment Notice*”) to assume and/or assign any Purchased Lease(s) pursuant to section 365 of the Bankruptcy Code, which Assumption and Assignment Notice shall set forth, among other things: (i) the Purchased Lease(s) to be assumed (as applicable); (ii) the names and addresses of the counterparties to such Purchased Lease(s); (iii) the proposed effective date of the assumption and/or assignment for each such Purchased Lease(s), which date may not be before the date of service of the Assumption and Assignment Notice; (iv) the proposed cure amount, if any; (v) the assignee(s) of the Purchased Lease(s); (vi) a certification that each assignee has demonstrated to the Debtors the financial wherewithal and willingness to perform under the Purchased Lease; and (vii) the deadlines and procedures for filing objections to the Assumption and Assignment Notice (as set forth below).
- (b) Service of the Assumption and Assignment Notice. The Debtors will cause the Assumption and Assignment Notice to be served by overnight mail upon the Purchased Lease counterparties affected by the Assumption and Assignment Notice and by e-mail upon: (a) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York, 10004, Attn.: Susan Golden, Attn.: Richard Morrissey; (b) counsel to the agent for the Debtors’ postpetition secured lenders (the “Agent”), Davis Polk & Wardwell LLP, 450 Lexington Avenue New York, New York, 10017, Attn.: Donald S. Bernstein, Attn.: Marshall S. Huebner; (c) counsel for Wilmington Trust Company as indenture trustee for the Debtors’ prepetition unsecured notes, Covington & Burling LLP, 620 Eighth Ave, New York, New York, 10018, Attn.: Michael B. Hopkins, Attn.: Ronald A. Hewitt; (d) counsel for The Bank of New York Mellon Trust Company, N.A., as successor trustee and collateral agent for the Debtors’ prepetition secured notes, Brown Rudnick LLP, Seven Times Square, New York, New York 10036, Attn.: Edward S. Weisfelner; (e) counsel to the Convertible Noteholders, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attn.: Kristopher M. Hansen, Attn.: Jayme T. Goldstein, Attn.: Marianne S. Mortimer; (f) counsel to Yucaipa, Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, California 90071, Attn.: Robert Klyman, Attn.: Robert O’Shea (g) counsel for the Creditors’ Committee, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn.: Dennis F. Dunne, Attn.: Abhilash M. Raval, Attn.: Matthew S. Barr; and (h) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002, (collectively, the “*Notice Parties*”).
- (c) Objection Procedures. Parties objecting to a proposed assumption and assignment, including to the proposed cure amount, must file and serve a written objection so that such objection is filed with the Court and is actually received by the Notice Parties no later than seven (7) calendar

days after the date the Debtors serve the relevant Assumption and Assignment Notice (the “*Assumption and Assignment Objection Deadline*”).

- (d) Event of No Objection. If an objection to the assumption and assignment of any Purchased Lease(s) is not timely filed by the Assumption and Assignment Objection Deadline, then: (i) the Debtors’ proposed cure amount shall be binding upon the non-debtor party to the Purchased Lease for all purposes in these chapter 11 cases and will constitute a final determination of the assumption; (ii) the effective date of such assumption and/or assignment will be as set forth in the Assumption and Assignment Notice or such other date to which the Debtors and the counterparty or counterparties to such Purchased Lease have agreed; and (iii) the Debtors shall submit a proposed order to the Court granting the unopposed requested relief, together with a statement that there were no timely objections to the proposed relief.
- (e) Unresolved Objections. If an objection to the assumption and/or assignment of any Purchased Lease is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing for the Court to consider the objection(s) for the Purchased Lease(s) to which such objection(s) relates at the next scheduled omnibus hearing which is at least ten (10) calendar days after the Rejection Objection Deadline, unless the Debtors agree to an earlier hearing. If such objection is overruled or withdrawn, such Purchased Lease(s) shall be assumed with the effective date of such assumption to be as set forth in the Assumption and Assignment Notice or such other date to which the Debtors and the counterparty to such unexpired lease(s) have agreed.

19. The Lease Procedures shall not invalidate or modify the DIP Lenders’ right to receive 75 days’ notice of any rejection of any unexpired lease pursuant to the DIP Order.

20. The Lease Procedures comply with the requirements of Bankruptcy Rule 6006(f).

21. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

22. The requirement to file a report of the assets sold in the GOB Sales pursuant to Bankruptcy Rule 6004(f) is hereby waived.

23. Notwithstanding Bankruptcy Rule 6004 or otherwise, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

24. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: White Plains, New York  
January 27, 2012

/s/Robert D. Drain  
United States Bankruptcy Judge



**Exhibit 1**

**List of Affected Stores**

<b>AFFECTED STORES</b>					
<b>#</b>	<b>Banner</b>	<b>STORE #</b>	<b>STORE ADDRESS</b>	<b>STORE CITY</b>	<b>STORE STATE</b>
1	WALDBAUMS	7673	300 MONTAUK HWY	EAST ISLIP	NY
2	PATHMARK	6594	517 ROUTE 72 WEST	MANAHAWKIN	NJ
3	A&P	1041	35 MAIN ST.	DANBURY	CT
4	PATHMARK	6189	145 PASSAIC AVENUE	KEARNY	NJ
5	A&P	3653	59 OUTWATER LANE	GARFIELD	NJ
6	WALDBAUMS	7661	725 SUNRISE HWY	WEST BABYLON	NY
7	PATHMARK	6575	6718 BLACK HORSE PIKE	EGG HARBOR TWP	NJ
8	WALDBAUMS	7647	399 OCEAN AVENUE	ROCKVILLE CENTRE	NY
9	WALDBAUMS	7630	601 PORTION & CENACLE ROAD	LAKE RONKONKOMA	NY
10	WALDBAUMS	449	711 E. JERICHO TURNPIKE	HUNTINGTON STATION	NY
11	PATHMARK	6648	1 PATHMARK PLAZA	MOUNT VERNON	NY
12	PATHMARK	5246	2100 COUNTRY LINE	UPPER MORELAND	PA
13	WALDBAUMS	3569	40 VANDERBILT PKWY	COMMACK	NY
14	A&P	3609	175 AVENUE A	BAYONNE	NJ

**Exhibit 2**

**GOB Sale Limitations**

### **GOB Sale Limitations**

1. The GOB Sales shall be conducted during normal business hours or such hours as otherwise permitted by the applicable lease; provided that the Debtors shall abide by any applicable shopping center guidelines regarding maintenance, security, and trash removal.
2. The GOB Sales shall be conducted in accordance with applicable state and local “Blue Laws,” and thus, where applicable, no GOB Sales shall be conducted on Sunday, unless the Debtors have been operating such stores on Sundays.
3. All display and hanging signs used by the Debtors in connection with the GOB Sales shall be professionally lettered and all hanging signs shall be hung in a professional manner. Nothing herein shall be construed to create or impose upon the Debtors any additional restrictions not contained in the applicable lease. In addition, the Debtors shall be permitted to utilize exterior banners and signwalkers.
4. If GOB Sales are to be considered “final,” conspicuous signs shall be posted in each of the affected stores to the effect that all sales are “final.”
5. The Debtors shall not make any alterations to interior or exterior store lighting, and shall not use any type of amplified sound to advertise the GOB Sales or solicit customers.
6. No alterations shall be made to the Affected Stores, except as authorized pursuant to the applicable lease. The hanging of exterior banners or other signage shall not constitute an alteration to a store.
7. No property of any landlord of a store shall be removed or sold during the GOB Sales.
8. The Debtors shall keep store premises and surrounding areas clear and orderly, consistent with past practices.

9. A lease shall only be assumed and assigned in accordance with the Lease Procedures.

**Exhibit 3**

**Rejected Leases**

#	LEASE COUNTERPARTY	STORE BANNER/DEBTOR	STORE NUMBER	PROPERTY LOCATION
<b>REJECTED LEASES<sup>1</sup></b>				
1.	CAROL VAN STUART CORP. C/O JCS MANAGEMENT	PATHMARK	6594	517 ROUTE 72 WEST, MANAHAWKIN, NJ
2.	ETON CENTERS COMPANY	A&P	1041	35 MAIN ST., DANBURY, CT
3.	DANBURY SCOTT-FANTON MUSEUM AND HISTORICAL SOCIETY <sup>2</sup>	A&P	1041	43 MAIN ST., DANBURY, CT
4.	OUTWATER ENTERPRISES, INC. <sup>3</sup>	A&P	3653	59 OUTWATER LANE, GARFIELD, NJ

<sup>1</sup> The Debtors reserve the right to (a) amend or supplement this exhibit by, among other things, removing or adding certain leases from or to the exhibit prior to the hearing on the Motion and/or (b) assign the leases on this exhibit pursuant to the Lease Procedures in lieu of rejecting them.

<sup>2</sup> Parking lot lease.

<sup>3</sup> *Id.*