

20-0731-cv(L), 20-1009-cv(XAP), 20-1028-cv(XAP)

United States Court of Appeals for the Second Circuit

NATIONAL LABOR RELATIONS BOARD,

Petitioner-Cross-Respondent,

– v. –

KEY FOOD STORES CO-OPERATIVE, INC., 1525 ALBANY AVE MEAT LLC,
HB FOOD CORP., PARAMOUNT SUPERMARKETS INC., RIVERDALE
GROCERS LLC, SEVEN SEAS UNION SQUARE, LLC, 100 GREAVES LANE
MEAT LLC, JAR 259 FOOD CORP.,

Respondents-Cross-Petitioners.

ON APPEAL FROM THE NATIONAL LABOR RELATIONS BOARD

DEFERRED JOINT APPENDIX Volume V of VI (Pages A-1105 to A-1380)

ROPES & GRAY LLP
1211 Avenue of the Americas
New York, New York 10036
(212) 596-9000

*Attorneys for Respondent-Cross-
Petitioner Key Food Stores
Co-Operative, Inc.*

NATIONAL LABOR RELATIONS BOARD
1015 Half Street SE
Washington, DC 20570
(202) 273-1743

Petitioner-Cross-Respondent

CLIFTON BUDD & DEMARIA, LLP
The Empire State Building
350 Fifth Avenue, Suite 6110
New York, New York 10118
(212) 687-7410

*Attorneys for Respondents-Cross-Petitioners
1525 Albany Ave Meat LLC, HB Food
Corp., Paramount Supermarkets Inc.,
Riverdale Grocers LLC, Seven Seas Union
Square, LLC, 100 Greaves Lane Meat LLC
and Jar 259 Food Corp.*

Table of Contents

| | Page |
|---|-------------|
| Certified List of the National Labor Relations Board, Dated April 7, 2020..... | A-1 |
| Excerpts from Transcript of Hearing, Dated February 8, 2017..... | A-8 |
| Excerpts from Transcript of Hearing, Dated February 10, 2017..... | A-27 |
| Excerpts from Transcript of Hearing, Dated February 13, 2017..... | A-60 |
| Excerpts from Transcript of Hearing, Dated February 14, 2017..... | A-83 |
| Excerpts from Transcript of Hearing, Dated February 16, 2017..... | A-124 |
| Excerpts from Transcript of Hearing, Dated February 28, 2017..... | A-140 |
| Excerpts from Transcript of Hearing, Dated March 1, 2017..... | A-152 |
| Excerpts from Transcript of Hearing, Dated March 6, 2017..... | A-154 |
| Excerpts from Transcript of Hearing, Dated March 8, 2017..... | A-227 |
| Excerpts from Transcript of Hearing, Dated March 13, 2017..... | A-232 |
| Excerpts from Transcript of Hearing, Dated March 20, 2017..... | A-244 |
| Excerpts from Transcript of Hearing, Dated March 22, 2017..... | A-249 |
| Excerpts from Transcript of Hearing, Dated March 23, 2017..... | A-279.1 |
| Excerpt from Transcript of Hearing, Dated March 27, 2017..... | A-282 |
| Excerpts from Transcript of Hearing, Dated April 5, 2017..... | A-283 |

| | Page |
|--|-------------|
| Excerpts from Transcript of Hearing, Dated April 6, 2017 | A-292 |
| Excerpts from Transcript of Hearing, Dated April 17, 2017 | A-311 |
| Excerpts from Transcript of Hearing, Dated April 19, 2017 | A-328 |
| Excerpts from Transcript of Hearing, Dated April 26, 2017 | A-361 |
| General Counsel's Trial Exhibits: | |
| 1 Index and Description of Formal Documents | A-375 |
| 9 Notes from Region 1 Meeting with Key Food, Held on July 28, 2015 | A-378 |
| 13 Key Food Bargaining Notes, Dated October 12, 2015 | A-383 |
| 15 Key Food Bargaining Notes, Dated October 21, 2015 | A-400.1 |
| 16 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 342, Dated October 22, 2015 | A-401 |
| 17 E-mail from Janel D'Amassa to Douglas P. Catalano, with Attachment, Dated November 2, 2015 | A-413 |
| 20 E-mail from Sherai Pernell to Lenny Mandell, with Attachment, Dated November 24, 2015 | A-426 |
| 21 E-mail between Richard Abondolo and Sharon Konzelman and Others, Dated from November 25, 2015 to November 27, 2015 | A-436 |
| 22 Correspondence Regarding Bargaining Agreement | A-439 |
| 24 E-mail between Lisa O'Leary and Sharon Konzelman, Dated from June 28, 2016 to July 6, 2016, and Forwarded to Douglas P. Catalano on July 7, 2016 | A-464 |
| 25 Key Food Rules and Regulations | A-466 |

| | Page |
|------------------------------|--|
| 28 | Asset Purchase Agreement between Key Food Stores Co-Operative, Inc. and 1525 Albany Ave. Meat, LLC, Dated November 16, 2015 A-479 |
| 31 | Asset Purchase Agreement between Key Food Stores Co-Operative, Inc. and 1525 Albany Ave. Meat, LLC, Dated October ___, 2015 A-496 |
| 33 | Bulletin from UFCW Local 342..... A-513 |
| 34 | Bulletin from UFCW Local 342..... A-514 |
| 60 | Confidential Witness Affidavit, Sworn to December 1, 2015 A-515 |
| 62 | E-mail from Liz Fontanez to Stephen Booras and Margaret Monier, Dated September 6, 2015..... A-521 |
| 81 | E-mail Exchange between Lisa O’Leary and Sharon Konzelman, Dated October 15, 2015, and Forwarded to Noor I. Alam and Lynda Tooker on April 18, 2017 A-522 |
| Respondents’ Trial Exhibits: | |
| 1 | Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 342, Dated October 22, 2015 A-525 |
| 2 | E-mail Exchange between Lou Loiacono and Pat Conte, with Attachment, Dated from November 8, 2015 to November 9, 2015 A-537 |
| 10 | 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, Interest and Encumbrances, (iii) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and (iv) Granting Related Relief, with Exhibit, <i>In Re: The Great Atlantic & Pacific Tea Company, Inc.</i> (U.S. Bankruptcy Court, Southern District of New York Case No. 15-23007), Dated October 21, 2015 A-539 |
| 13 | Notes from Key Food Negotiations Meeting, Held on October 14, 2015 A-633 |

iv

| | Page |
|--|-------------|
| 24 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 464A, Dated October 23, 2015 | A-638 |
| 25 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 464A, Dated October 23, 2015 | A-648 |
| 26 Memorandum of Agreement by and between Key Food Co-Op and Local 338, RWDSU/ UFCW, Dated October 20, 2015 | A-650 |
| 27 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 1500, Dated October 28, 2015 | A-664 |
| 29 Memorandum of Agreement by and between Dan's Supreme and United Food and Commercial Workers Union Local 342, Dated December 9, 2015 | A-676 |
| 39 Project Phoenix — TTM Financials — P3 FY 2015..... | A-686 |
| 40 Department Totals for Store 1964..... | A-696 |
| 41 Department Totals for Store 1962..... | A-705 |
| 46 Letter from Sharon Konzelman to Bruce Both, Vincent DeVito, John T. Niccollai, Richard Abondolo and John R. Durso, Dated September 11, 2015..... | A-719 |
| 47 Letter from Sharon Konzelman to Christopher W. McGarry and Matthew Bennett, with Enclosure, Dated September 14, 2015 | A-721 |
| 50 Department Totals for November 2015 | A-726 |
| 52 Offers to Purchase A&P Stores, Dated June 25, 2015 | A-736 |

Page

Joint Trial Exhibits:

| | | |
|---|--|--------|
| 3 | 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, Interest and Encumbrances, (iii) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and (iv) Granting Related Relief, with Exhibit, <i>In Re: The Great Atlantic & Pacific Tea Company, Inc.</i> (U.S. Bankruptcy Court, Southern District of New York Case No. 15-23007), Dated October 21, 2015 | A-757 |
| 4 | E-mail from Sharon Konzelman to Samantha Sgarlato and Others, Dated October 25, 2015, and Forwarded to Maria Garvin on October 26, 2015 | A-868 |
| 6 | Stipulation of Fact, Dated March 13, 2017 | A-873 |
| 8 | Payroll Account..... | A-883 |
| 9 | Assignment and Assumption Agreements | A-893 |
| | Order Further Consolidating Cases, and Amending Consolidated Complaint and Notice of Hearing, Dated September 28, 2016 | A-1435 |
| | Respondent Key Food Stores Co-Operative, Inc.'s and Respondent CS2's Exceptions to Part of the Decision of the Administrative Law Judge, Dated April 24, 2018..... | A-1494 |
| | Brief in Support of Respondent Key Food Stores Co-Operative, Inc.'s and Respondent CS2's Exceptions to Part of the Decision of the Administrative Law Judge, Dated July 19, 2018..... | A-1502 |
| | Reply Brief in Support of Respondent Key Food Stores Co-Operative, Inc.'s and Respondent CS2's Exceptions to Part of the Decision of the Administrative Law Judge, Dated July 19, 2018..... | A-1541 |

Section 7.2 Specific Performance. Each of the Parties acknowledges and agrees that the other parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the parties agrees that, without posting bond or other undertaking, the other parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter in addition to any other remedy to which it may be entitled, at law or in equity.

Section 7.3 Termination. The Parties may terminate this Agreement at any time prior to the Closing (a) by the mutual written consent of the Parties or (b) by any Party upon the termination of the A&P Asset Purchase Agreement.

Section 7.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (b) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

If to Key Food: Key Food Stores Co-Operative, Inc.
 1200 South Avenue
 Staten Island, NY 10314
 Attention: Dean Janeway / Sharon Konzelman
 E-mail: DeanJ@keyfoods.com; skonzelman@keyfoods.com

With a copy, which
 shall not
 constitute notice: Ropes & Gray LLP
 1211 Avenue of the Americas
 Attention: Robert S. Fischler
 Email: robert.fischler@ropesgray.com

If to Member: As set forth on Schedule A

Section 7.5 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule), the statements in the body of this Agreement will control.

Section 7.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 7.7 No Third Party Beneficiaries. Except as expressly provided herein, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.8 Amendment; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving.

Section 7.9 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 its conflict of law rules.

Section 7.10 Member's Representative. Member hereby irrevocably constitutes and appoints Key Food as its true, exclusive and lawful agent and attorney-in-fact to act in the name, place and stead of Member in connection with the transactions contemplated by the A&P Asset Purchase Agreement, in accordance with the terms and provisions of the A&P Asset Purchase Agreement, and to act on behalf of Member in any action, suit or proceeding involving the A&P Asset Purchase Agreement, to do or refrain from doing all such further acts and things, and to execute all such documents as Key Food shall deem necessary or appropriate in connection with the transactions contemplated by the A&P Asset Purchase Agreement. Key Food will incur no liability to Member with respect to any action taken or suffered by any party in reliance upon any notice, direction, instruction, consent, statement or other document believed by Key Food to be genuine and to have been signed by the proper person (and Key Food shall have no responsibility to determine the authenticity thereof), nor for any other action or inaction, except its own gross negligence, bad faith or willful misconduct.

Section 7.11 Jurisdiction; Waiver of Jury Trial. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the city of New York City, borough of Manhattan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 7.12 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall

not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 7.13 Release. Effective as of the Closing, Member hereby releases, remises and forever discharges any and all rights and claims that it has had, now has or might now have against Key Food or its Affiliates with respect to the Member Stores other than any rights or claims under this Agreement, the agreements referenced herein or any agreement entered into after the date hereof.

Section 7.14 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.

[Remainder of page intentionally left blank]

A-1108

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

KEY FOOD:

KEY FOOD STORES CO-
OPERATIVE, INC.

By



Name:

Sharon Kozel

Title:

VP Finance

A-1109

MEMBER:

JAR 259 FOOD CORP.

By

Name:

Title:


Jon Dias
President

A-1110**Schedule A**

| Store Number | City | State | Address | Member Cash Purchase Price | Cash Inst. ¹ | Member A&P Escrow Deposit |
|--------------|-----------|-------|-----------------------|----------------------------|-------------------------|---------------------------|
| 1940 | Glen Oaks | NY | 259-01 Union Turnpike | \$1,500,000 | \$809,000 | \$187,500 |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Member Notice Address and Contact Information

JAR 259 Food Corp.
 [Name of Member]

259-01 Union Turnpike
 Glen Oaks, NY 11004

[Address]

Attn: Jose Diaz

[Email Address] diazjose1223@yahoo.com

¹ "Cash Installment" means the amount of the aggregate cash paid for such Store, calculated as aggregate Member Store Purchase Price minus the amount of any Member Loans. Note Members loans shall not exceed 70% of the total Member Store Purchase Price.

Schedule B

Member Store Purchase Price

The Member Store Purchase Price shall be equal to the sum of:

- (i) the amount set forth on Schedule A under the heading "Member Cash Purchase Price"
plus
- (ii) the amount of the Inventory Purchase Price with respect to the Inventory of the Member Stores as determined under Section 2.6 of the A&P Asset Purchase Agreement (the "Member Inventory Purchase Price"), *plus*
- (iii) the amount of the Prepaid Expenses with respect to the Member Stores (the "Member Prepaid Expenses"), *plus*
- (iv) the Seller Proration Amount with respect to the Member Stores, as determined under Section 2.8 of the A&P Asset Purchase Agreement, if any, *minus*
- (v) the Buyer Proration Amount with respect to the Member Stores, as determined under Section 2.8 of the A&P Asset Purchase Agreement (the "Member Proration Amount"), if any, *plus*
- (vi) the amount that Sellers are required to pay as Cure Costs with respect to the Member Stores (the "Member Cure Costs"), *plus*
- (vii) the Register Cash held in the Member Stores (the "Member Register Cash").

EXHIBIT A**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (the "Agreement") is made as of [•], 2015 by and between Key Food Stores Co-Operative, Inc., a New York corporation ("Key Food") and the undersigned ("Member"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Member Asset Purchase Agreement (defined below).

RECITALS

WHEREAS, Key Food and Member have entered into that certain Asset Purchase Agreement dated as of [•], 2015 by and between Key Food and Member (the "Member Asset Purchase Agreement"), pursuant to which, among other things, Key Food has agreed to assign all of its rights, title and interests in, and Member has agreed to assume and become responsible for all of Key Food's obligations under the A&P Asset Purchase Agreement (as such term is defined in the Member Asset Purchase Agreement) with respect to the Member Stores (as such term is defined in the Member Asset Purchase Agreement).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Subject to the terms and conditions set forth in the Member Asset Purchase Agreement, effective as of the Closing, Key Food hereby assigns, grants, conveys and transfers to Member all of Key Food's right, title and interest in and to the A&P Asset Purchase Agreement with respect to the Member Stores and Member hereby accepts such assignment and assumes all of Key Food's duties and obligations and agrees to pay, perform and discharge, as and when due, all of the obligations of Key Food under A&P Asset Purchase Agreement related to the Member Stores accruing on and after the Effective Date and Member agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all such obligations, including those in connection with the, Member Assumed Liabilities (as such term is defined in the A&P Asset Purchase Agreement) in a timely manner in accordance with the terms thereof.

2. Terms of the Member Asset Purchase Agreement. The terms of the Member Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Member Acquired Contracts are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Member Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between

A-1113

the terms of the Purchase Agreement and the terms hereof, the terms of the Member Asset Purchase Agreement shall govern.

3. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

4. Effective Date. This Agreement is effective as of the Closing, and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

5. Amendment. This Agreement may be amended or modified, but only by an instrument in writing executed by each of Key Food and Member.

6. 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 any choice or conflict of law provision or rule.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

KEY FOOD STORES CO-OPERATIVE, INC.

By _____
Name:
Title:

JAR 259 FOOD CORP.

By Jan Dias
Name: Jan Dias
Title: President

EXECUTION VERSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Agreement") is made as of November 11, 2015 by and between Key Food Stores Co-Operative, Inc., a New York corporation ("Key Food") and the undersigned ("Member"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Member Asset Purchase Agreement (defined below).

RECITALS

WHEREAS, Key Food and Member have entered into that certain Asset Purchase Agreement dated as of November 11, 2015 by and between Key Food and Member (the "Member Asset Purchase Agreement"), pursuant to which, among other things, Key Food has agreed to assign all of its rights, title and interests in, and Member has agreed to assume and become responsible for all of Key Food's obligations under the A&P Asset Purchase Agreement (as such term is defined in the Member Asset Purchase Agreement) with respect to the Member Stores (as such term is defined in the Member Asset Purchase Agreement).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Subject to the terms and conditions set forth in the Member Asset Purchase Agreement, effective as of the Closing, Key Food hereby assigns, grants, conveys and transfers to Member all of Key Food's right, title and interest in and to the A&P Asset Purchase Agreement with respect to the Member Stores and Member hereby accepts such assignment and assumes all of Key Food's duties and obligations and agrees to pay, perform and discharge, as and when due, all of the obligations of Key Food under A&P Asset Purchase Agreement related to the Member Stores accruing on and after the Effective Date and Member agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all such obligations, including those in connection with the, Member Assumed Liabilities (as such term is defined in the A&P Asset Purchase Agreement) in a timely manner in accordance with the terms thereof.

2. Terms of the Member Asset Purchase Agreement. The terms of the Member Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Member Acquired Assets are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Member Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Member Asset Purchase Agreement shall govern.

3. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

4. Effective Date. This Agreement is effective as of the Closing, and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

5. Amendment. This Agreement may be amended or modified, but only by an instrument in writing executed by each of Key Food and Member.

6. 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 any choice or conflict of law provision or rule.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

A-1116

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

KEY FOOD:

KEY FOOD STORES CO-
OPERATIVE, INC.

By: Shawn Kompe
Name: Shawn Kompe
Title: V.P. of Finance

A-1117

MEMBER:

JAR 259 FOOD CORP.

By 
Name: Jose Diaz
Title: President

MEMBERSHIP AGREEMENT

AGREEMENT, made the 5 day of Oct, 2015 between KEY FOOD STORES CO-OPERATIVE, INC., a corporation organized and existing under the Cooperative Corporations Law of the State of New York, and having its principal place of business at 1200 South Avenue, Staten Island, New York 10314 (hereinafter referred to as "Key"), and the undersigned (hereinafter referred to as "Member-Stockholder").

WITNESSETH:

WHEREAS, Key is engaged in business as a cooperative for the benefit of its members, who are also stockholders thereof, through the purchase, sale, marketing, merchandising, and advertising of groceries, fruits, meats, vegetables and other products carried in retail supermarket-type stores (hereinafter collectively referred to as "products"), on a centralized basis to obtain cost savings from promotional and distribution allowances, volume discounts and other concessions or allowances from manufacturers, producers and other suppliers, and the passing of cost savings and other benefits to Key's members; and

WHEREAS, Key has agreed to purchase products for re-sale to its members from C&S Wholesale Grocers, Inc. ("C&S") pursuant to a supply agreement with C&S; and

WHEREAS, Member-Stockholder has entered into a supply agreement with Key, pursuant to which Member-Stockholder has agreed to purchase its product requirements from Key (such agreement, as amended, modified, supplemented or restated from time to time, the "Supply Agreement"); and

WHEREAS, Member-Stockholder is the owner and operator of one or more retail supermarket-type stores at the location(s) hereinafter specified, and desires to purchase from Key

the aforesaid products and obtain the benefits of services available to Key's members, and in order to induce Key to sell such products and render such services, has agreed to secure Key, in the respects hereinafter provided, for all sums owed by Member-Stockholder to Key;

NOW, THEREFORE, it is hereby agreed between Key and Member-Stockholder, as follows:

1. Member-Stockholder agrees to comply with and be bound by all of the terms, provisions and conditions contained in the certificate of incorporation and by-laws of Key now in effect or as the same may hereafter be amended or adopted from time to time, and the rules and regulations established from time to time by Key's Board of Directors (the "Board").

2. (a) Member-Stockholder is authorized and permitted to use the name "KEY FOOD," "Key Food Marketplace," or "Food Dynasty," as applicable, and the corresponding emblem and logos for such names (or any other name or logo permitted to be used by the membership by the Board), solely at those locations specified on Schedule A hereto in which Member-Stockholder has been granted the right to use a particular name, and any corresponding emblem or logo for such name, and Member-Stockholder shall not use any such name, emblem or logo at any other locations or for any other purpose. If Member-Stockholder is granted the right to use the name "Grand Union" pursuant to a Trademark Sublicense Agreement between Key and Member-Stockholder, the use of the logo "Grand Union" shall in all respects be limited (i) to the same extent as the use of the "Key Food" logo as provided in this Agreement (it being understood that for purposes of this clause (i) any reference to the logo "Key Food" shall be deemed to mean and include the logo "Grand Union" and the parties shall complete an appropriate Schedule A to this Agreement for the store locations utilizing such logo), and (ii) as

provided in such Trademark Sublicense Agreement. In the event of any conflict between the provisions of such Trademark Sublicense Agreement and this Agreement (as it relates to the Grand Union logo), the provisions of such Trademark Sublicense Agreement shall control. Member-Stockholder agrees to erect and maintain at such locations, at its own cost and expense, signs in such form (including style and color content) as are approved by the Board for Key's members and their stores (such signs to bear the "Key Food" logo at the Key Food locations, the "Key Food Marketplace" logo at the Key Food Marketplace locations and any other logo approved by the Board for use at such other locations). Member-Stockholder agrees to fully comply with all rules and regulations now in existence or hereinafter promulgated by the Board with respect to the use of and discontinuance of use of said names, emblems and logos and the maintenance or removal of such signs incorporating any of the same. Member-Stockholder acknowledges that upon the occurrence of an Event of Default (as defined in Paragraph 4 below) with respect to Member-Stockholder, or upon termination of its membership if earlier, then Key may at any time thereafter give notice to Member-Stockholder to cease the use of such names, emblems and logos and remove and take down all signs incorporating such names, emblems or logos or any of them; and Member-Stockholder shall immediately comply with such notice. Key is hereby irrevocably granted permission to enter upon Member-Stockholder's premises to take down, at Member-Stockholder's cost, all signs which have not been taken down as so requested by Key.

(b) Member-Stockholder further covenants and agrees that, upon the sale of any store by Member-Stockholder to a person who is not then a member of Key, Member-Stockholder will, prior to turning over possession thereof, remove therefrom all signs, emblems

and logos and all references identifying said store with Key, Key Food Marketplace or any other name (and respective emblems and logos) approved for use by the Board (as applicable).

(c) Member-Stockholder further agrees that no monies shall be paid, refunded or returned by Key to Member-Stockholder if otherwise due unless and until all of the terms of this Agreement with respect to the use, maintenance and removal of the "KEY FOOD", the "Key Food Marketplace" or any other name approved for use by the Board, and their respective emblems, logos and signs incorporating the same shall have been fully and duly complied with by Member-Stockholder. The remedy set forth in this Paragraph 2(c) is in addition to any other remedy granted to Key under this Agreement or at law or in equity.

(d) Member-Stockholder agrees that except as expressly permitted hereby, it shall have no right in and to the name "Key Food", "Key Food Marketplace", or any other name approved for use by the Board of Directors of Key, or their respective emblems and logos.

3. (a) Member-Stockholder agrees to purchase from or through Key its requirements of products on the terms and conditions set forth in the Supply Agreement.

(b) Member-Stockholder agrees to fully comply with all rules and regulations now in existence or hereafter promulgated by Key's Board of Directors with respect to the sale of advertised products in member stores.

(c) Member-Stockholder agrees to fully comply with all rules and regulations now in existence or hereafter promulgated by Key's Board of Directors with respect to the maintenance of capital by members of Key.

(d) Key hereby restates and reconfirms its obligation to pay to Member-Stockholders, subject to the terms of this Agreement (including, without limitation, the

provisions of Paragraphs 5, 6 and 7 hereof), all patronage dividends earned in each fiscal year of Key, on or before the 15th day of the ninth month following the close of such fiscal year.

4. Each of the events referred to in clauses (a) through (m) of this Paragraph 4 shall constitute an "Event of Default":

(a) The Member-Stockholder shall fail to perform any obligation herein contained or otherwise breach this Agreement;

(b) Any representation or warranty made in this Agreement by Member-Stockholder shall prove to be false or misleading in any material respect;

(c) The Member-Stockholder shall fail to pay when due, any indebtedness owed to Key (beyond the expiration of any applicable grace or cure period contained in any instrument or document evidencing such debt, if any);

(d) The Member-Stockholder shall fail to pay when due any indebtedness of Member-Stockholder guaranteed by Key (beyond the expiration of any applicable grace or cure period contained in any instrument or document evidencing such debt, if any);

(e) The Member-Stockholder shall (i) suspend its business activities, (ii) become insolvent, (iii) be unable to pay its debts as they mature, or (iv) make an assignment for the benefit of creditors;

(f) A meeting of Member-Stockholder's creditors is called;

(g) A receiver, custodian or trustee shall be appointed for Member-Stockholder or its property;

(h) Except as may be permitted by Section 10 hereof, Member-Stockholder's property shall become subject to any security interest, mortgage, encumbrance, lien or attachment (which has not been consented to in advance by Key in writing);

(i) Any material portion of the Collateral Security (as determined by Key) shall become subject to any foreclosure or attachment proceedings;

(j) A petition under the federal bankruptcy laws shall be filed by or against Member-Stockholder;

(k) Member-Stockholder shall seek relief under any insolvency statute, federal, state or other;

(l) Any guaranty of Member-Stockholder's obligations to Key shall be terminated without the prior written consent of Key; or

(m) Member-Stockholder shall sell all or substantially all of its assets (other than inventory in the ordinary course of business).

Upon the occurrence of (x) any Event of Default described in clause (j) of this Paragraph 4, all obligations of Member-Stockholder to Key, whether or not yet due, shall forthwith become immediately due and payable, automatically and without any act of Key or (y) any other Event of Default, all obligations of Member-Stockholder to Key, whether or not yet due, shall at Key's option, forthwith become immediately due and payable, in each case without presentment, demand, protest, notice or other requirement of any kind, all of which are hereby expressly waived by Member-Stockholder. Upon the occurrence and continuation of an Event of Default, Key, in its sole and absolute discretion, and without limitation to any other remedy it may have under this Agreement, any other agreements with Member or any affiliate of Member, or at law

or in equity, may refuse to provide the benefits of membership to the Member-Stockholder, including, without limitation, by stopping the shipment of any products to Member-Stockholder and by no longer providing insurance, computer support and advertising support to the Member-Stockholder.

5. (a) To secure the payment of any and all sums which Member-Stockholder may now owe or hereafter may owe to Key (whether under this Agreement, under the Supply Agreement or otherwise), and further, to secure the full, faithful and timely performance by Member-Stockholder of the terms, covenants, and conditions on its part to be performed under this Agreement or under any other agreement between Member-Stockholder and Key, Member-Stockholder does hereby grant to Key a security interest in, and to the extent applicable, does hereby pledge, assign and transfer to and deposit with Key, all shares of capital stock of Key issued in the name of Member-Stockholder, whether now owned or hereafter acquired, together with the capital, capital surplus and all other such accounts related thereto, and all other rights and monies flowing therefrom, including, but not limited to, dividends and patronage earnings, patronage dividends and patronage refunds. To the extent that such shares of capital stock are uncertificated, Member-Stockholder and Key each hereby agree that the terms of the immediately preceding sentence constitute Key obtaining control of such shares for purposes of the New York Uniform Commercial Code. Key, by any officer, is hereby constituted as the attorney-in-fact of Member-Stockholder to execute Member-Stockholder's name with respect to all such shares of capital stock, such power being irrevocable and coupled with an interest.

(b) So long as an Event of Default shall not have occurred and be continuing with respect to Member-Stockholder, Member-Stockholder shall have the right to vote the

aforesaid stock.

(c) Upon termination of the membership in Key of Member-Stockholder for any reason whatsoever, Key, as attorney-in-fact for Member-Stockholder, shall have the absolute right and option to transfer and convey to Key all of the capital stock of Key then owned by Member-Stockholder in consideration of the par value thereof. In such event, Key shall pay to Member-Stockholder a sum equal to the amount, if any, by which the aggregate par value of such shares exceeds the indebtedness owed by Member-Stockholder to Key (which indebtedness shall include, whether or not then due, any indebtedness of Member-Stockholder guaranteed by Key). The remedy set forth in this Paragraph 5(c) is in addition to any other remedy granted to Key under this Agreement or at law or in equity.

6. (a) To further secure the payment of any and all sums which Member-Stockholder may now owe or hereafter may owe to Key (whether under this Agreement, under the Supply Agreement or otherwise) and further, to secure the full, faithful and timely performance by Member-Stockholder of the terms, covenants, and conditions on its part to be performed under this Agreement or under any other agreement between Member-Stockholder and Key, Member-Stockholder does hereby grant to Key a security interest in all assets of Member-Stockholder, whether now or hereafter existing or now owned or hereafter acquired and wherever located, of every kind and description, tangible or intangible, including, but not limited to, the assets and properties set forth on Schedule C hereto (collectively, the "Collateral Security").

(b) Key shall not be liable for failure to collect or realize upon Collateral Security or any part thereof or for any delay in so doing, nor shall Key be under any obligation to

take any action whatsoever in regard thereto. Key shall use reasonable care in the custody and preservation of the Collateral Security in its possession.

(c) Member-Stockholder hereby authorizes Key to file one or more financing statements and renewals thereof (with or, to the extent permitted by law, without the signature of Member-Stockholder) under the Uniform Commercial Code naming Member-Stockholder as debtor and Key as secured party and indicating therein the types or describing the items of Collateral Security. Member-Stockholder agrees upon demand by Key to execute, file and record any such financing statements and renewals thereof, notices, affidavits or other documents and to take all such other actions as Key may deem appropriate to protect or perfect Key's security interest in the Collateral Security or to otherwise accomplish the purposes of this Agreement. Member-Stockholder further agrees to pay all filing fees and to reimburse Key for all reasonable costs and expenses of any kind, including attorneys' fees and expenses, incurred by Key in any way in connection with the Collateral Security and/or the collection of any obligation of the Member-Stockholder to Key. Key shall have the right by any officer to sign Member-Stockholder's name to any financing statement or renewal thereof or similar instrument.

(d) With respect to each of the locations set forth on Schedule A hereto that is not owned by Member-Stockholder, Member-Stockholder shall use its reasonable best efforts to deliver to Key a collateral access and landlord waiver agreement in form attached as Exhibit A hereto.

(e) Member-Stockholder hereby covenants to Key that, unless Key shall otherwise consent thereto in writing, all of the Collateral Security shall be owned by Member-Stockholder free and clear of all security interests, liens and encumbrances of any kind.

7. (a) If an Event of Default shall have occurred and be continuing, Key shall have, in addition to all other rights and remedies, the remedies of a secured party under the New York Uniform Commercial Code with respect to the Collateral Security including, without limitation, the right to enter the premises where the Collateral Security is located and take possession of such Collateral Security without judicial process, and neither Member-Stockholder nor its agents shall resist or interfere with Key's exercise of such right. Key may dispose of the Collateral Security at private or public sale, upon not less than five (5) days notice in writing to Member-Stockholder before the time of the sale or disposition, which notice the parties agree is reasonable; provided that no such notice need be given by Key with respect to Collateral Security which may be perishable or threaten to rapidly decline in value. Key may apply the net proceeds of any sale or other disposition of Collateral Security, after deducting all costs and expenses of every kind occurred therein or incidental thereto, including reasonable attorneys' fees and expenses, if any, to the payment or satisfaction in whole or in part of the obligations of Member-Stockholder to Key whether due or not, absolute or contingent. After the application of such net proceeds and the retention of reasonable reserves for charges to Key for Member-Stockholder's purchases from third parties, and after the payment by Key of any other amount required by any existing or future provision of law, Key shall account for the surplus, if any. The Member-Stockholder shall remain liable to Key for the payment of any deficiency, which deficiency shall bear interest at the rate set forth in Paragraph 13 hereof.

(b) If an Event of Default shall have occurred and be continuing, then in addition to any other remedy of Key contained in this Agreement or provided at law or in equity, Key is hereby authorized at any time and from time to time, to the fullest extent permitted by

law, to set-off and apply any and all deposits and other amounts at any time held and other indebtedness at any time owing by Key to or for the credit or the account of Member-Stockholder (including, without limitation, any dividends, patronage earnings, patronage dividends and patronage refunds, capital, capital surplus, earned surplus and all other monies held for the account of Member-Stockholder) against any and all of the obligations of Member-Stockholder now or hereafter owing by Member-Stockholder to Key (whether or not any such obligations shall have matured). Any right of set-off exercised by Key shall be deemed to have been exercised immediately on the occurrence of an Event of Default, even though such set-off is made or entered on the books of Key subsequent thereto. If an Event of Default shall have occurred and be continuing, Key shall also have the right, in its sole and absolute discretion, to withhold payment to Member-Stockholder of any and all such deposits, amounts and other indebtedness.

8. Member-Stockholder agrees to keep and maintain the following insurance coverage so long as it is a member of Key and such coverage is available to the members of Key generally under the Key Food Members Insurance Program:

(a) Commercial General Liability with a \$1,000,000 combined single limit for bodily injury and property damage and \$2,000,000 annual aggregate per location, with a separate \$2,000,000 annual aggregate for products liability and completed operations. The coverage should include blanket contractual, personal injury, liquor law liability, broad form property damage, fire, legal liability, employee benefits errors and omissions, landlords and lessors as additional insureds where applicable, knowledge of occurrence, notice of occurrence, unintentional errors and omissions, and the hostile fire and heating, ventilation and air-

conditioning exceptions to the pollution exclusion. The policy should be on an "occurrence" form and provide for defense costs in addition to the limits of liability. In addition, the policy should not contain any exclusions beyond those in a standard Insurance Services Office Comprehensive General Liability form. If a deductible applies to the policy, it should be no more than \$1,000 per occurrence;

(b) Comprehensive Automobile Liability with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage, including coverage for all owned, non-owned and hired vehicles. If there are no owned automobiles, the non-owned and hired car coverage must be provided on a stand alone basis or as part of the Comprehensive General Liability coverage referred to in Subparagraph (a);

(c) Umbrella Liability for a minimum limit of \$10,000,000 with coverage to be at least as broad as the primary liability provided in Subparagraphs (a) and (b);

(d) Property insurance for personal property, including inventory of the Member-Stockholder, and Key's interest in such property. Coverage shall be on an "All Risk" basis including Flood, Earthquake, Windstorm, Terrorism, Spoilage and Backup of Sewers and Drains, on a full replacement cost basis with no coinsurance penalty, up to the full replacement cost for all property. Coverage should also be extended to include Blanket Business Interruption and Extra Expense. The application of a deductible to this coverage is acceptable, but in no event shall the deductible be greater than \$10,000 per occurrence without prior written approval from Key;

(e) Boiler & Machinery coverage, for Property, Business Interruption and Extra Expense, including spoilage from off premises power interruption. If the Boiler &

Machinery coverage is underwritten by an insurer other than the property insurer, then both the Boiler & Machinery policy and the property policy should have a "joint loss" provision;

- (f) Workers' Compensation; and
- (g) Statutory State Disability and any other applicable State requirements.

Key shall be named as additional insured on all insurance included in Subparagraphs (a) through (e) above, and as a loss payee on all insurance included in Subparagraphs (d) and (e) above. All such policies should be placed with companies reasonably acceptable to Key, have an A.M. Best's ratings of A-VII or better, and be licensed in the State of New York as well as all states in which Member-Stockholder has a store. Key is irrevocably authorized to file all claims for loss under each insurance policy, and if an Event of Default shall have occurred and then be continuing, Key is granted and shall have the sole right to adjust, settle and collect any claims for loss filed under each of the policies by such means, at such times, on such terms and in the name of Key or Member-Stockholder, or both, as Key may see fit; and, in furtherance of said right, Member-Stockholder hereby irrevocably grants a power of attorney to Key, which power is coupled with an interest, in the name and on behalf of Member-Stockholder to, upon the occurrence and during the continuance of an Event of Default, execute releases and all other documents and endorse checks or drafts payable in respect of any claims for loss filed by or on behalf of Key or Member-Stockholder under each such policy.

Member-Stockholder further agrees to deliver as promptly as practicable to Key, or to such consultants as directed by Key, Binders, Certificates of Insurance, and copies of the broker/agents submission to the carriers, including any applications, for each policy listed above evidencing such coverage, or Key shall have the right to place such insurance to protect Key's

interest at Member-Stockholder's expense. The certificates shall require Key be given at least sixty (60) days written notice, by registered or certified mail, prior to cancellation or material change or non-renewal thereof. Once the policies are issued, full copies of such policies including all forms and endorsements shall be forwarded to Key or to such consultants as directed by Key.

In the event that Member-Stockholder does not participate in any available insurance program provided on behalf of the Co-Op, Member-Stockholder shall reimburse Key for any additional cost such non-participation creates as determined at the end of the program year.

In the event that Member-Stockholder participates in any program made available to it, Member-Stockholder shall remain a participant in such program until the next anniversary date of the program. Not more than 45 days or less than 15 days prior to each renewal date of the program, Key shall provide Member-Stockholder with pricing information for the next program year. Not more than 15 days following Member-Stockholder's receipt of such pricing information, Member-Stockholder shall notify Key in writing whether it will participate in the program for the next program year. If Member-Stockholder elects not to participate in the program for the next program year, such notification by Member-Stockholder to Key shall include details of the intended replacement coverage including the submission made to the replacement insurance company on its behalf along with any applications completed. If Member-Stockholder fails to comply with the foregoing requirement, it shall reimburse Key for reasonable costs incurred as a result of Member-Stockholder leaving the program as determined at the end of the program year (including, without limitation, the costs of retaining an independent insurance consultant selected by Key to verify Member-Stockholder's compliance

with the requirements of this Section 8).

9. Member-Stockholder hereby covenants and agrees that it will indemnify and defend Key and its officers, directors, servants, agents, representatives and employees from and against, and hold each of them harmless from, any and all loss, liability, damage, cost and expense, including reasonable attorneys' fees and expenses, arising out of or relating to the ownership, management, operation or control of any stores or other premises of Member-Stockholder, the equipment and machinery thereat or utilized in deliveries thereto and the business thereat conducted, including, without limitation, arising out of or related to the negligence or alleged negligence of Member-Stockholder or any of its agents, representatives, servants or employees.

10. (a) Key may, in its sole and absolute discretion, subordinate its security interest in the assets of a Member-Stockholder on such terms and conditions as its Chief Executive may determine consistent with the past practices of Key (and, in such event, Key shall be deemed to have consented in writing to any security interest as to which Key's security interest is subordinated).

(b) Key may, in its sole and absolute discretion, waive its requirement for a security interest to be granted by Member-Stockholder under the provisions of Section 6(a) hereof, and no such security interest shall be granted by Member-Stockholder to Key, provided that (1) Key shall be granted a first priority, perfected security interest or mortgage in collateral that is acceptable to the Chief Executive of Key in his sole discretion, and (2) such collateral shall have a fair market value (as reasonably determined by the Chief Executive of Key in accordance with valuation standards utilized by major banking institutions doing business in the

City of New York) at least equal to 150% of the aggregate indebtedness, liabilities and obligations (whether fixed or contingent) of Member-Stockholder to Key. If the provisions of this Section 10(b) are applicable, then Key shall not file a financing statement with respect to all of the assets of Member-Stockholder under Section 6 (and, if such provisions become applicable after the filing of any such financing statement by Key, Key will promptly amend or terminate the same).

(c) The filing of a financing statement by a lessor of equipment to a Member-Stockholder with respect to leased equipment shall not be deemed a breach or violation of this Agreement; provided that the scope of any such financing statement shall solely be limited to such leased equipment.

11. The location of all stores operated by Member-Stockholder, the employer identification number (EIN) of Member-Stockholder, and the names, residential addresses and telephone numbers of all owners, partners, stockholders, officers and directors of Member-Stockholder are set forth in, respectively, Schedules A and B annexed hereto. Member-Stockholder agrees to promptly notify Key in writing of the nature and timing of all proposed changes to either Schedules A or B, and further agrees that the same shall be subject to the provisions of Key's Certificate of Incorporation, By-laws and rules and regulations applicable thereto. At such times as Key may request, Member-Stockholder agrees to affirm in writing the continuing accuracy of the information set in Schedules A and B. In addition, Member-Stockholder represents and warrants to Key that its correct name, as set forth in its document of formation or organization (e.g., certificate of incorporation), is set accurately forth above its signature line to this Agreement. Member-Stockholder further agrees to notify Key of any change

in its corporate name or in its jurisdiction of formation, in each case not less than 30 days prior to taking any such action.

12. **This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to any conflicts of laws provisions that would result in the application of the substantive laws of another jurisdiction. Member-Stockholder hereby irrevocably consents to the exclusive jurisdiction in and venue of the Supreme Court of the State of New York for the County of New York and the United States District Court for the Southern District of New York in connection with any action or proceeding arising out of or relating to this Agreement or any agreement, document or instrument delivered pursuant hereto, and Member-Stockholder further irrevocably consents to the service of process in any such action or proceeding by the mailing of a copy of such process to Member-Stockholder by Certified Mail, Return Receipt Requested, at the address set forth on Schedule A hereto. In the event of litigation between Member-Stockholder and Key over any matter arising out of or related to this Agreement, the right to a trial by jury is hereby waived by Member-Stockholder and Key.**

13. In the event that Member-Stockholder owes Key any sum of money, whether under this Agreement or otherwise, and does not pay such amount when due, then Member-Stockholder shall pay (i) interest on the amount due from its due date to the date the amount is paid in full at a rate of interest equal to 1 ½ % per month (18% per annum) and (ii) on account of all sums that are not paid when due in respect of merchandise sold by Key to Member-Stockholder (which for this purpose shall include drop shipments that are centrally billed to and paid by Key on behalf of Member-Stockholder) or services provided by or through Key to

Member-Stockholder, a service fee of up to 3% (as determined by Key in its sole discretion) of the amount that is not paid when due; provided, however, that if such amounts would constitute a rate in excess of the maximum rate of interest permitted to be charged to Member-Stockholder under applicable law, such rate shall not exceed the maximum rate of interest permitted to be charged. All such interest and service fees which may be payable by a Member-Stockholder to Key shall be payable on demand. Member-Stockholder shall pay Key \$100.00 if Key deposits any check given by Member-Stockholder to Key and such check is not paid for any reason whatsoever (including insufficient funds); provided that following the first such check that is unpaid for any reason whatsoever, the \$100.00 charge shall be \$200.00. In the event that Key shall institute any legal action to enforce the obligations owed by Member-Stockholder to Key, whether under this Agreement or otherwise, Key shall be entitled to receive its costs of collection, including reasonable attorneys' fees and disbursements.

14. Member-Stockholder hereby authorizes Key to obtain credit reports from time to time on Member-Stockholder and its owners, partners, stockholders, officers and directors.

15. Neither this Agreement nor any provision hereof may be amended or waived unless such amendment or waiver is in writing and signed, in the case of an amendment, by Key and Member-Stockholder, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as specifically provided otherwise herein, the rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that a party may otherwise have

at law or in equity. Any provision hereof which may be adjudicated unenforceable shall not affect the validity of any other provision hereof.

16. All notices, reports, requests and other communications required or permitted to be given hereunder (all of the foregoing hereinafter collectively referred to as "Communications") shall be in writing and, except as provided in Paragraph 12, shall be deemed to have been duly given if delivered personally with receipt acknowledged or sent by U.S. first class mail, postage paid, or by recognized overnight courier for next day delivery, addressed in the case of Communications to Key, to it at 1200 South Avenue, Staten Island, New York 10314, Attn: Chief Executive, and in the case of Communications to Member-Stockholder, to it at its address for Communications set forth on Schedule A hereto, or to such other or additional address as any party shall hereafter specify by Communication to the other party. Notice of change of address shall be deemed given when actually received or upon refusal to accept delivery thereof; all other Communications shall be deemed to have been given, received and dated on the earlier of: (i) when actually received or upon refusal to accept delivery thereof; or (ii) on the date when delivered personally, one (1) day after being sent by overnight courier and four (4) business days after mailing, as aforesaid.

[The remainder of this page is intentionally left blank. Signatures follow.]

A-1137

IN WITNESS WHEREOF, Key and Member-Stockholder have caused this Agreement to be duly executed the day and year first above written.

KEY FOOD STORES CO-OPERATIVE, INC.

By: Chet Koby
Chet Koby, Vice President of Strategic Planning

JAR 259 FOOD CORP.

Printed Name of Member-Stockholder

By: Jose Diaz
Jose Diaz, President

By: Alvin Diaz
Alvin Diaz, Secretary & Treasurer

Exhibit A

SCHEDULE A
TO MEMBERSHIP AGREEMENT
BETWEEN KEY FOOD STORES CO-OPERATIVE, INC., AND
JAR 259 FOOD CORP. MEMBER-STOCKHOLDER

The stores operated by Member-Stockholder are as follows:

Store Address

Logo

259-01 Union Turnpike, Glen Oaks, NY 11004

KEY FOOD

Address for Communications:

SAME AS ABOVE

A-1139

SCHEDULE B
TO MEMBERSHIP AGREEMENT
BETWEEN KEY FOOD STORES CO-OPERATIVE, INC., AND
JAR 259 FOOD CORP. MEMBER-STOCKHOLDER

The names and addresses of all partners, stockholders, officers and directors of Member-Stockholder are:

| <u>Name</u> | <u>Title or Position</u> | <u>Percentage Ownership</u> | <u>Residential Address</u> | <u>Home Telephone No.</u> | <u>Mobile Phone No.</u> |
|-------------|--------------------------|-----------------------------|--|---------------------------|-------------------------|
| Jose Diaz | President | 50% | 68 Ridge Road Albertson, NY 11507 | | 516 659-1294 |
| Alvin Diaz | Secy/Treasurer | 50% | 73-22 260 th St. Glen Oaks, NY 11004 | | 646 708-4519 |

The employer identification number (EIN) of Member-Stockholder is: 47-5033365

JAR 259 FOOD CORP.

By: _____

Jose Diaz, President

By: _____

Alvin Diaz, Secretary & Treasurer

Dated 10/5, 2015

SCHEDULE C

TO MEMBERSHIP AGREEMENT

**BETWEEN KEY FOOD STORES CO-OPERATIVE, INC., AND
JAR 259 FOOD CORP., MEMBER-STOCKHOLDER**

DESCRIPTION OF COLLATERAL SECURITY

Pursuant to the Membership Agreement, Member-Stockholder has granted to Key a continuing security interest in all assets of the Member-Stockholder, whether now owned or existing or hereafter acquired or arising or in which Member-Stockholder now has or may hereafter acquire any rights, including, without limitation, the following:

1. All accounts (including health-care insurance receivables), accounts receivable, contract rights, letters of credit, letters of credit rights, rights to proceeds of letters of credit, acceptances, guarantees, drafts or other forms of obligations and receivables of Member-Stockholder(all of the foregoing herein collectively called accounts), whether or not the accounts be listed on any schedules, assignments or reports furnished to Key from time to time, whether or not the accounts are now existing or are created at any time hereafter; together with all goods, inventory and merchandise returned by or reclaimed by or repossessed from customers wherever such goods, inventory and merchandise is located, and all proceeds thereof, including but not limited to, proceeds of insurance thereon; and all guaranties, securities, and liens which Member-Stockholder may hold for the payment of any accounts, including without limitation, all rights of stoppage in transit, replevin and reclamation and all other rights and remedies of any unpaid vendor or lienor, and all liens held by the Member-Stockholder as a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, artisan, or otherwise.

2. All inventory of Member-Stockholder wherever located, including without limitation, all goods, raw materials, work in progress and finished merchandise, findings or component materials, and all supplies, goods, incidentals, office supplies, packaging materials and any and all items used or consumed in the operation of the business of the Member-Stockholder or which contribute to the finished product or to the sale, promotion and shipment thereof, in which Member-Stockholder now or at any time hereafter may have an interest, whether or not such inventory is listed on any schedule or on any reports furnished to Key from time to time; all inventory whether or not the same is in transit or in the constructive, actual or exclusive occupancy of possession of Member-Stockholder or is held by Member-Stockholder or by others for Member-Stockholder's account, including without limitation, all goods covered by purchase orders and contracts with suppliers and all goods billed and held by suppliers; insurance policies and proceeds thereof covering inventory; all proceeds and products of any and all of the foregoing resulting for the sale, lease or other disposition of inventory, including cash, accounts, contract rights, other non-cash proceeds and trade-ins.

3. All machinery, equipment, fixtures, furniture furnishings, improvements, tools, fuel and goods of any kind, whether now owned or hereafter acquired or in which Member-Stockholder may in the future acquire an interest.
4. All documents, instruments (including promissory notes), documents of title, policies and certificates of insurance, guaranties, securities, investment property, chattel paper, deposits, proceeds of insurance, cash, liens or other property owned by the Member-Stockholder or in which it has an interest which are now or may now or hereafter be in the possession of Member-Stockholder or as to which Member-Stockholder may now or hereafter control possession by documents of title or otherwise, including, but not limited to, all property allocable to unshipped orders.
5. All bank accounts, including, but not limited to, deposit accounts, now existing or hereafter arising, together with the right to withdraw from said bank accounts and make deposits to the same.
6. All general intangibles, now existing or hereafter owned or acquired, including, but not limited to, payment intangibles, patents, patent application, trademarks, trademark registrations and applications therefor, trade names, trade processes, copyrights, copyright registrations and applications therefor, licenses, franchises, tax refunds and the corporate name and good will of Member-Stockholder's business; and all licenses, permits, agreements of any kind or nature pursuant to which (i) the Member-Stockholder operates or has authority to operate, (ii) the Member-Stockholder possesses, uses or has authority to possess or use property (whether tangible or intangible) of others, or (iii) others possess, use or have authority to possess or use property (whether tangible or intangible) of the Member-Stockholder.
7. All of Member-Stockholder's existing and future leasehold interests in premises or facilities leased from third parties by Member-Stockholder.
8. All books, records, customer lists, supplier lists, ledgers, evidence of shipping, invoices, purchase orders, sale orders and all other evidences of Member-Stockholder's business records, regardless of the medium of recording, including all tapes, disks, diskettes and other data and software storage media and devices, file cabinets, drawers and furniture that may hold the same, all whether now owned or in existence or hereafter arising or acquired.
9. All tort claims of Member-Stockholder.
10. All patronage dividends, distributions and all other amounts owed by Key to Member-Stockholder; and all property of Member-Stockholder in the possession or under the control of Key.
11. All other property in which Member-Stockholder may have granted or may hereafter grant to Key a security interest.
12. The Member-Stockholder's membership interest in Key Food Stores Co-

Operative, Inc. including, without limitation, all of the Member-Stockholder's right, title and interest in and to the capital, capital and surplus and all other such accounts related thereto, and all other rights and monies flowing therefrom and all certificates, if any, representing such membership interest.

13. All renewals, substitutions, replacements, additions, accessions, proceeds and products of any and all of the foregoing.

Exhibit A

LANDLORD'S WAIVER AND CONSENT

This LANDLORD'S WAIVER AND CONSENT (this "Agreement") dated as of [●], 20[●] from [●] ("Landlord"), in favor of Key Food Stores Co-Operative, Inc., a New York cooperative corporation (the "Secured Party"), having an office at 1200 South Avenue, Staten Island, NY 10314.

WHEREAS, the Secured Party and [●] (the "Debtor") are party to that certain Supply Agreement dated as of [●] (the "Supply Agreement");

WHEREAS, the Secured Party has made and may make, pursuant to the Supply Agreement or otherwise, one or more loans, advances, and/or other financial accommodations to the Debtor, secured pursuant to that certain Membership Agreement dated as of [●] by and between the Secured Party and the Debtor (the "Membership Agreement") and one or more other agreements, instruments or documents (as amended, renewed, extended, modified, refinanced or replaced from time to time, the "Security Agreements") granting security interests in and liens on the Collateral (as defined in the Membership Agreement), including but not limited to all presently owned and hereinafter acquired inventory and equipment of the Debtor; and

WHEREAS, any or all of the Collateral is or may be installed or kept at the premises known as [●], more particularly described in Schedule A attached hereto and made a part hereof, which premises (the "Premises") are owned by Landlord and leased to the Debtor pursuant to that certain [Agreement of Lease] commencing [●] (the "Lease").

NOW, THEREFORE, Landlord, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged by Landlord, hereby agrees as follows:

1. Landlord agrees that any right, claim, title, interest or lien in respect of any of the Collateral (including without limitation any right of distraint, levy, execution or sale) that Landlord may have or acquire for any reason or in any manner (including by reason of the Collateral being installed in or on, attached to or located in or on the Premises, or otherwise), whether arising under any statute, contract (including the Lease) or common law, now or hereafter in effect, is hereby made fully subordinate, subject and inferior to every right, claim, title, interest and lien in respect of the Collateral in favor of the Secured Party to the full extent that the same secures or may hereafter secure any and all obligations and indebtedness of every kind, now existing or hereafter arising, of the Debtor to the Secured Party in accordance with the terms of the Supply Agreement, any other agreements governing such indebtedness and the Security Agreements. Landlord further agrees that the Collateral will remain personal property and will not become a fixture or part of the Premises.

2. Landlord hereby agrees that so long as this Agreement is in effect, Landlord shall not exercise any right, assert any claim, title or interest in or lien upon, or take any action or institute any proceedings with respect to, the Collateral. Landlord agrees to use all reasonable efforts to give the Secured Party written notice of any event which, with the giving of notice or passage of time or both, could result in the creation of the right of Landlord to terminate any

lease covering all or any part of the Premises. Notices to the Secured Party shall be sent to its address set forth in the first paragraph hereof to the attention of [●] (facsimile no. [●]).

3. The Secured Party and its agents, representatives and designees may, at any time and from time to time upon reasonable prior notice to Landlord, enter the Premises without the consent of Landlord and remove and take possession of the Collateral free of any right, claim, title, interest or lien of Landlord, provided the Secured Party restores any parts of the Premises physically damaged by them in the course of removal to the condition such parts were in prior to such entry and removal of the Collateral (but the foregoing shall not impose any liability upon the Secured Party for any damage by fire or other insurable casualty).

4. The provisions hereof shall be irrevocable and remain in full force and effect until the Debtor has fully paid and performed all of its obligations to the Secured Party under and in accordance with the terms of all present and future agreements, instruments and documents evidencing such obligations and all present and future Security Agreements (in each case including any extensions, modifications and renewals thereof or substitutions therefor at any time made), and until all obligations, if any, of the Secured Party to extend loans, advances or financial accommodations to the Debtor shall be terminated.

5. This Agreement shall be binding upon Landlord and its successors and assigns and shall inure to the benefit of the Secured Party and its respective successors, assigns and designees. This Agreement may not be waived, amended or modified except pursuant to an agreement in writing entered into by the Secured Party and Landlord. Landlord agrees to make this Agreement known to any transferee of the Premises and any person who may have an interest or right in the Premises. Landlord certifies that no consent is required by any mortgagee of the Premises as a condition precedent to Landlord executing this Agreement. Landlord acknowledges and agrees that the provisions set forth in this Agreement are, and are intended to be, an inducement and consideration to the Secured Party to make, or to permit to remain outstanding, loans, advances and/or financial accommodations to the Debtor, and the Secured Party shall be deemed conclusively to have relied upon such provisions in making, or permitting to remain outstanding, such loans, advances and/or financial accommodations.

7. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York.

8. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement.

[The remainder of this page is intentionally left blank. Signature pages follow.]

A-1145

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[LANDLORD]

By: _____
Name:
Title:

A-1146

KEY FOOD STORES CO-OPERATIVE,
INC.

By: _____

Name:

Title:

A-1147

Acknowledged, accepted and agreed to as of
the date first above written.

[DEBTOR]

By: _____
Name:
Title:

A-1148

Exhibit A

Description of Lease

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") dated as of October 26, 2015, is entered into between Key Food Stores Co-Operative, Inc., a New York corporation ("Key Food") and the undersigned ("Member"). Key Food and Member are referred to collectively herein as the "Parties". Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the A&P Asset Purchase Agreement (defined below).

RECITALS

WHEREAS, The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P Company"), Food Basics, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Food Basics"), APW Supermarkets, Inc., a New York corporation and a wholly-owned subsidiary of A&P ("APW"), Shopwell, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Shopwell"), Pathmark Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Pathmark"), A&P Live Better, LLC, a Delaware limited liability company ("Live Better"), A&P Real Property, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P ("A&P Real Property" and, together with A&P, Food Basics, APW, Shopwell, Pathmark and Live Better, "A&P") desire to transfer certain assets and liabilities associated with the operation of supermarkets under the names "A&P", "Pathmark", "Food Basics", "Waldbaums" and "Food Emporium" (the "A&P Stores");

WHEREAS, Key Food and certain of its members, including Member, desire to acquire certain assets and assume certain liabilities associated with the operation of certain A&P Stores (each a "Store" and, collectively, the "Stores", and such transaction, the "Acquisition"), and in connection with such Acquisition, Key Food (acting individually and on behalf of such members) and A&P entered into an Asset Purchase Agreement, dated as of July 19, 2015 (the "A&P Asset Purchase Agreement");

WHEREAS, pursuant to Section 9.6 of the A&P Asset Purchase Agreement, Key Food has the right to assign and transfer any of its rights and obligations under the A&P Asset Purchase Agreement, in whole or in part, to one or more of its members, or designate one or more of its members to perform its obligations under the A&P Asset Purchase Agreement, in whole or in part; and

WHEREAS, Key Food desires to transfer and assign to Member, and Member desires to acquire and assume from Key Food, certain of the rights and obligations under the Asset Purchase Agreement with respect to the Store(s) set forth on Schedule A (the "Member Stores") and at the time of Closing, Member shall, pursuant to a Sale Order entered into by the Bankruptcy Court and in accordance with the terms of the A&P Asset Purchase Agreement, acquire certain specified assets and assume certain specified liabilities in connection with such Member Stores directly from A&P.

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

ARTICLE I TRANSACTIONS

Section 1.1 Member Store Assignment and Assumption. On the terms and subject to the conditions set forth in this Agreement, at any time after the entry of the Bankruptcy Court Sale Order and prior to the Closing, Member and Key Food agree to enter into an assignment and assumption agreement substantially in the form attached hereto as Exhibit A (the "Assignment and Assumption Agreement") pursuant to which (A) Key Food shall transfer and assign to Member all of Key Food's rights and obligations under the A&P Asset Purchase Agreement with respect to the Acquired Assets (as defined in the A&P Asset Purchase Agreement) that are primarily used or held for use in the Member Stores (the "Member Acquired Assets"), and (B) Member will assume and become responsible for the Assumed Liabilities (as defined in the A&P Asset Purchase Agreement) relating to or arising out of the Member Stores and/or the Member Acquired Assets (the "Member Assumed Liabilities").

Section 1.2 Purchase Price. The purchase price for the Acquisition of the Member Stores shall be as set forth on Schedule B (the "Member Store Purchase Price") and be payable to A&P.

Section 1.3 Financing. Key Food shall provide a loan to Member at the Closing on terms acceptable to Key Food in an amount equal to the aggregate Member Store Purchase Price minus the amount of the aggregate Cash Installments (or such other lower amount agreed to by the Parties hereunder), which loan amount for the avoidance of doubt, shall not exceed 70% of the total Member Store Purchase Price ("Member Loan") for purposes of payment of the Member Store Purchase Price. Member shall issue a note to Key Food evidencing the Member Loan in form and substance to be reasonably determined by Key Food and shall enter into any other agreements or deliver any documents reasonably required in connection thereof (the "Loan Documents"). Member shall provide such collateral or other security as are reasonably required by Key Food and any of its lenders in connection with the Member Loan.

Section 1.4 Payment of Member Store Purchase Price. The Member Store Purchase Price shall be paid as follows:

(a) Member shall pay an amount in cash set forth under the heading "Cash Inst." on Schedule A (the "Cash Installment"). The Parties acknowledge and agree that Member has deposited with Key Food or agreed to Key Food withholding from the patronage due to such Member, an amount set forth on Schedule A pursuant to certain Letter Agreement between Member and Key Food dated as of July 2015 ("Member Deposit") and for administrative convenience, the Cash Installment may be paid to A&P by Key Food on behalf of Member from such Member Deposit.

(b) Member shall pay the remainder of the Member Store Purchase Price to A&P from the proceeds of the Member Loan. For administrative convenience, such amount may be paid directly by Key Food or its lenders from their respective accounts on behalf of Member.

For the avoidance of any doubt, no consideration shall be payable by the Member to Key Food with respect to the assignment and assumption transactions described in Section 1.1 above.

Section 1.5 Deposit. Member acknowledges and agrees that a portion of the Member Deposit, in an amount equal set forth on Schedule A under the heading "Member A&P Escrow Deposit" representing 12.5% of the Member Cash Purchase Price (as such term is defined herein) is required to be, and shall be, deposited with an escrow agent in accordance with the terms of the A&P Asset Purchase Agreement and the Escrow Agreement. The Member Deposit shall be treated as follows:

(a) If the Closing shall occur, the Member Deposit, if any, shall be applied towards the payment of the Cash Installment of the Member Store Purchase Price payable by Member to A&P under Section 1.4;

(b) If the Closing does not occur and the A&P Asset Purchase Agreement is terminated in circumstances in which A&P is entitled to receive all or a portion of the "Escrow Amount" (as such term is defined in the A&P Asset Purchase Agreement) the Member A&P Escrow Deposit shall be paid to A&P and the remainder of the Member Deposit, shall be returned to Member; or

(c) If the Closing does not occur and the A&P Asset Purchase Agreement is terminated in circumstances in which A&P is not entitled to receive all or a portion of the "Escrow Amount", the Member Deposit shall be delivered to Member upon return of such Escrow Amount to Key Food; or

(d) If any Member Store(s) is treated as an Excluded Store under the A&P Asset Purchase Agreement and the Member A&P Escrow Deposit associated with such Member Store(s) is returned to Key Food, the Member Deposit paid by Member shall be returned to Member upon return of such amount to Key Food.

Section 1.6 Right to Offset. Member agrees that Key Food may satisfy any amounts owed by Member to A&P pursuant to Sections 1.4 or 1.5 by an offset by Key Food against all patronage dividends, distributions and any other amounts owed by Key Food to Member.

Section 1.7 Allocation of Purchase Price. Member shall have the right to allocate the Member Store Purchase Price with respect to the Member Store in accordance with Section 2.7 of the A&P Asset Purchase Agreement. To the extent applicable, Member shall file all tax returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation.

Section 1.8 Repurchase Rights. In the event Member intends either to withdraw from Key Food in accordance with the Amended and Restated By-Laws of Key Food (the "Bylaws") and/or to sell a Member Store on or before the fifth (5th) anniversary of the Closing, Member shall promptly provide written notice of its intent to withdraw and/or to sell to Key Food, and Key Food or its designee may elect to purchase one or more Member Store(s) by delivering written notice to Member within sixty (60) days of receipt of Member's written

notice. If Key Food or its designee elects to purchase one or more Member Store(s) pursuant to this Section 1.8, (a) the purchase price for each Member Store shall not exceed the lower of (i) 90% of the total Member Store Purchase Price paid by Member for such Member Store(s) or (ii) the then fair market value of such Member Store(s) as reasonably determined by Member and Key Food, provided that, if Member and Key Food are unable to make such determination within thirty (30) days of Key Food's election, the parties shall promptly engage an independent appraiser experienced in the valuation of supermarkets for purposes of conducting such valuation and the determination of such appraiser shall be final and binding on Member and Key Food. Key Food shall prepare all repurchase documentation and shall be entitled to receive customary representations and warranties as to ownership, title, authority to sell and other similar customary representations and warranties from Member regarding such sale and to receive such other evidence, including applicable inheritance and estate tax waivers, as may reasonably be necessary to effect the purchase of the Member Stores. The provisions of Section 7(e) of the Bylaws currently in effect pertaining to leasehold interests shall apply to any purchase of Member Stores pursuant to this Section 1.8.

ARTICLE II Closing

Section 2.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Ropes & Gray, LLP located at 1211 Avenue of the Americas, New York, NY or any other location designated by Key Food on the date (the "Closing Date") upon which the closing under the A&P Asset Purchase Agreement occurs. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective at 12:01 am, New York City time, on the Closing Date.

Section 2.2 Closing Deliverables. At or prior to the Closing, Key Food and Member shall deliver the following documents:

- (a) the Assignment and Assumption Agreement duly executed by Key Food and Member, to be delivered at any time after the entry of the Bankruptcy Court Sale Order and prior to the Closing;
- (b) an assignment and assumption agreement substantially in the form as attached to the A&P Purchase Agreement duly executed by A&P and Member, effecting the assignment and assumption by Member of the Member Acquired Assets, including the Leases with respect to the Member Store, and the Member Assumed Liabilities;
- (c) a bill of sale (the "Bill of Sale") substantially in the form as attached to the A&P Purchase Agreement duly executed by A&P and Member, transferring the Member Acquired Assets to Member;
- (d) the Loan Documents with respect to the Member Loan; and
- (e) such other assignments and other good and sufficient instruments or documents of assumption and transfer, in form reasonably satisfactory to the Parties, as either Party may reasonably request, to transfer and assign the Member Acquired Assets.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF KEY FOOD**

Key Food hereby represents and warrants to Member that the statements contained in this Article III are true and correct as of the date hereof and as of the Closing Date.

Section 3.1 Organization of Key Food. Key Food is a corporation duly organized, validly existing, and in good standing under the laws of the State of New York and has all requisite corporate or other organizational power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

Section 3.2 Power and Authorization. Key Food has all requisite power and authority to execute and deliver this Agreement and the agreements referenced herein to which it is a party, and to perform its obligations under such agreements and to consummate the transactions contemplated thereby. The execution and delivery by Key Food of this Agreement and the agreements referenced herein to which it is a party have been duly and validly authorized by all necessary corporate action on Key Food's part.

Section 3.3 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article III or expressly contained in any of the agreements referenced herein, neither Key Food nor any other Person shall be deemed to have made any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding Key Food, any Member Acquired Assets, any Assumed Liabilities or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article III or any of the agreements referenced herein, KEY FOOD MAKES NO OTHER (AND HEREBY DISCLAIMS EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE MEMBER ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MEMBER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, MEMBER WILL ACQUIRE THE MEMBER ACQUIRED ASSETS AND ASSUME THE MEMBER ASSUMED LIABILITIES IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Key Food disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Member or its affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Member by any director, officer, employee, agent, consultant, or representative of Key Food or any of their affiliates).

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF MEMBER**

Member hereby represents and warrants to Key Food that the statements contained in this Article IV are true and correct as of the date hereof and as of the Closing Date.

Section 4.1 Organization of Member. Member, if Member is not a natural person, is a corporate entity duly organized, validly existing, and in good standing under the laws of the state of its incorporation or formation as the case may be and has all requisite corporate or similar power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

Section 4.2 Power and Authorization. Member has all requisite power and authority to execute and deliver this Agreement and the agreements referenced herein to which it is a party, and to perform its obligations under such agreements and to consummate the transactions contemplated thereby. The execution and delivery by Member of this Agreement and the agreements referenced herein to which it is a party have been duly and validly authorized by all necessary corporate action on Member's part.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article I) will (a) to the extent applicable, conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Member, (b) violate any law or order to which Member is, or its assets or properties are, subject or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Member is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, have a material adverse effect on Member. Member is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or agreement referenced herein, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, prevent or materially impair or delay Member's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Litigation; Decrees. Neither Member nor any affiliates is subject to any pending litigation or outstanding order or judgment that would prevent or materially impair or delay Member's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Sufficient Funds; Adequate Assurances. Assuming funding in full of the Member Loan pursuant to Section 1.3, at the Closing, Member will have immediately available funds sufficient for the satisfaction of all of Member's obligations under this Agreement and to the extent applicable, the A&P Asset Purchase Agreement, including the payment of the Member Store Purchase Price and all fees, expenses of, and other amounts required to be paid by Member in connection with the transactions contemplated hereby and the future performance of obligations under the applicable Leases being acquired by the Member.

Section 4.6 Member's Investigation. Member has conducted its own independent investigation, review and analysis of the business, operations, assets, liabilities, financial condition and prospects of the Member Stores, which investigation, review and analysis

was done by Member and, to the extent Member deemed appropriate, by Member's representatives. In entering into this Agreement, Member acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations of Key Food or their respective representatives except the specific representations and warranties of Key Food set forth in this Agreement, as qualified and limited by the schedules hereto. Member represents and warrants that Member has carefully read this Agreement, the A&P Asset Purchase Agreement and other documents related thereto, and executes this Agreement with full knowledge of the contents of this agreement, the legal consequences thereof, and any and all rights which the parties may have with respect to one another. Member has been advised to, and has had the opportunity to, consult with independent counsel prior to entering this Agreement. For the avoidance of doubt, Member agrees and acknowledges that it is not a third party beneficiary of the A&P Asset Purchase Agreement and nothing in this agreement, whether express or implied, is intended to or shall create any third party beneficiary rights in favor of Member.

ARTICLE V COVENANTS

Section 5.1 Regulatory Approvals. Each of the Parties will give any notices to, make any filings with and use its commercially reasonable efforts to obtain any authorizations, licenses, consents and approvals of Governmental Authorities as necessary and appropriate to consummate the transactions contemplated hereby, including but not limited to, any licenses or permit required to transfer any alcohol or Pharmaceutical Inventory; provided, that, Member shall bear any reasonable costs necessary to obtain such authorizations, licenses, consents and approvals.

Section 5.2 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with the transactions contemplated by this Agreement and the documents to be delivered hereunder, if any, shall be borne and paid by Member when due. Member shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and Key Food shall cooperate with respect thereto as necessary).

Section 5.3 Guarantees; Commitments. Member agrees to use its reasonable best efforts to cause, to the extent permissible under applicable Law and the A&P Asset Purchase Agreement and the Sale Order and subject to all requisite third party consents, itself or one of its affiliates to be substituted for Key Food and any of its Affiliates, and for Key Food and its Affiliates to be released, in respect of all obligations of Key Food and any of its Affiliates under any guarantees, indemnities, letters of credit, letters of comfort, commitments, understanding, agreements and other obligations (and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for) in respect of the Member Stores and/or the A&P Purchase Agreement (collectively, the "Substituted Guarantees"). If, as of the Closing, Member or one of its affiliates shall not have substituted itself for Key Food or its affiliates under, and caused Key Food and its Affiliates to be released from any Substituted Guarantee, Member shall indemnify and hold harmless Key Food and its Affiliates against any Damages that Key Food or its Affiliates suffer, incur or are liable for by reason of or arising out of or in consequence of such Substituted Guarantee.

Section 5.4 Modified Labor Agreements. Member acknowledges that pursuant to Section 6.3 of the A&P Asset Purchase Agreement, Key Food is obligated to engage in good faith negotiations, in coordination with A&P, toward reaching mutually satisfactory modifications to the relevant Affected Labor Agreement with each of the Affected Unions and to enter into a Modified Labor Agreement with each of the Affected Unions. Member hereby agrees to be bound by any such Modified Labor Agreement that is negotiated by Key Food or make any offers of employee as required by the A&P Asset Purchase Agreement.

Section 5.5 Further Assurances. From and after the Closing, upon the request of either Key Food or Member, each of the Parties hereto will do, execute, acknowledge and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or appropriate to carry out the transactions contemplated by this Agreement. Key Food shall, and shall cause its Affiliates to, assist Member with an orderly transfer of the Member Acquired Assets to Member.

ARTICLE VI INDEMNIFICATION

Section 6.1 Survival. All representations, warranties, covenants and agreements contained herein and all related rights to indemnification shall survive the Closing.

Section 6.2 Indemnification by Member. Member shall defend, indemnify and hold harmless Key Food, its affiliates and their respective stockholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements ("Damages"), arising from or relating to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Member contained in this Agreement or any document to be delivered hereunder;
- (b) any breach or non-fulfillment of any covenant, Agreement or obligation to be performed by Member pursuant to this Agreement or any document to be delivered hereunder; or
- (c) any Member Assumed Liabilities.

Section 6.3 Cumulative Remedies. The rights and remedies provided in this Article VI are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

ARTICLE VII MISCELLANEOUS

Section 7.1 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

Section 7.2 Specific Performance. Each of the Parties acknowledges and agrees that the other parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the parties agrees that, without posting bond or other undertaking, the other parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter in addition to any other remedy to which it may be entitled, at law or in equity.

Section 7.3 Termination. The Parties may terminate this Agreement at any time prior to the Closing (a) by the mutual written consent of the Parties or (b) by any Party upon the termination of the A&P Asset Purchase Agreement.

Section 7.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (b) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

If to Key Food: Key Food Stores Co-Operative, Inc.
 1200 South Avenue
 Staten Island, NY 10314
 Attention: Dean Janeway / Sharon Konzelman
 E-mail: DeanJ@keyfoods.com; skonzelman@keyfoods.com

With a copy, which
 shall not
 constitute notice: Ropes & Gray LLP
 1211 Avenue of the Americas
 Attention: Robert S. Fischler
 Email: robert.fischler@ropesgray.com

If to Member: As set forth on Schedule A

Section 7.5 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule), the statements in the body of this Agreement will control.

Section 7.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 7.7 No Third Party Beneficiaries. Except as expressly provided herein, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.8 Amendment; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving.

Section 7.9 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 its conflict of law rules.

Section 7.10 Member's Representative. Member hereby irrevocably constitutes and appoints Key Food as its true, exclusive and lawful agent and attorney-in-fact to act in the name, place and stead of Member in connection with the transactions contemplated by the A&P Asset Purchase Agreement, in accordance with the terms and provisions of the A&P Asset Purchase Agreement, and to act on behalf of Member in any action, suit or proceeding involving the A&P Asset Purchase Agreement, to do or refrain from doing all such further acts and things, and to execute all such documents as Key Food shall deem necessary or appropriate in connection with the transactions contemplated by the A&P Asset Purchase Agreement. Key Food will incur no liability to Member with respect to any action taken or suffered by any party in reliance upon any notice, direction, instruction, consent, statement or other document believed by Key Food to be genuine and to have been signed by the proper person (and Key Food shall have no responsibility to determine the authenticity thereof), nor for any other action or inaction, except its own gross negligence, bad faith or willful misconduct.

Section 7.11 Jurisdiction; Waiver of Jury Trial. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the city of New York City, borough of Manhattan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 7.12 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall

not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 7.13 Release. Effective as of the Closing, Member hereby releases, remises and forever discharges any and all rights and claims that it has had, now has or might now have against Key Food or its Affiliates with respect to the Member Stores other than any rights or claims under this Agreement, the agreements referenced herein or any agreement entered into after the date hereof.

Section 7.14 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.

[Remainder of page intentionally left blank]

A-1160

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

KEY FOOD:

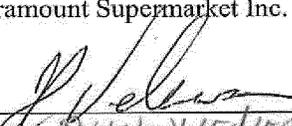
KEY FOOD STORES CO-
OPERATIVE, INC.

By 
Name: Sharon Karselman
Title: VP Finance

A-1161

Paramount Supermarket Inc.

MEMBER:

By 
Name: Joseph Verdross
Title: President

A-1162**Schedule A**

| Store Number | City | State | Address | Member Cash Purchase Price | Cash Inst. ¹ | Member A&P Escrow Deposit |
|--------------|----------|-------|-----------------------------|----------------------------|-------------------------|---------------------------|
| 1942 | Brooklyn | NY | 2424 Flatbush Ave. | \$1.2M | \$450,000 | \$150,000 |
| 1944 | Flushing | NY | 196-35 Horace Harding Blvd. | \$2.3M | \$248,718 | \$287,500 |
| | | | | | | |
| | | | | | | |

Member Notice Address and Contact Information

Paramount Supermarket Inc.

[Name of Member]

 196-35 Horace Harding Blvd.
 Flushing, NY 11362

[Address]

Attn: Joseph Verderosa

[Email Address] joeverderosa@aol.com

¹ "Cash Installment" means the amount of the aggregate cash paid for such Store, calculated as aggregate Member Store Purchase Price minus the amount of any Member Loans. Note Members loans shall not exceed 70% of the total Member Store Purchase Price.

Schedule B

Member Store Purchase Price

The Member Store Purchase Price shall be equal to the sum of:

(i) the amount set forth on Schedule A under the heading "Member Cash Purchase Price"
plus

(ii) the amount of the Inventory Purchase Price with respect to the Inventory of the Member Stores as determined under Section 2.6 of the A&P Asset Purchase Agreement (the "Member Inventory Purchase Price"), *plus*

(iii) the amount of the Prepaid Expenses with respect to the Member Stores (the "Member Prepaid Expenses"), *plus*

(iv) the Seller Proration Amount with respect to the Member Stores, as determined under Section 2.8 of the A&P Asset Purchase Agreement, if any, *minus*

(v) the Buyer Proration Amount with respect to the Member Stores, as determined under Section 2.8 of the A&P Asset Purchase Agreement (the "Member Proration Amount"), if any, *plus*

(vi) the amount that Sellers are required to pay as Cure Costs with respect to the Member Stores (the "Member Cure Costs"), *plus*

(vii) the Register Cash held in the Member Stores (the "Member Register Cash").

EXHIBIT A**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (the "Agreement") is made as of [•], 2015 by and between Key Food Stores Co-Operative, Inc., a New York corporation ("Key Food") and the undersigned ("Member"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Member Asset Purchase Agreement (defined below).

RECITALS

WHEREAS, Key Food and Member have entered into that certain Asset Purchase Agreement dated as of [•], 2015 by and between Key Food and Member (the "Member Asset Purchase Agreement"), pursuant to which, among other things, Key Food has agreed to assign all of its rights, title and interests in, and Member has agreed to assume and become responsible for all of Key Food's obligations under the A&P Asset Purchase Agreement (as such term is defined in the Member Asset Purchase Agreement) with respect to the Member Stores (as such term is defined in the Member Asset Purchase Agreement).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Subject to the terms and conditions set forth in the Member Asset Purchase Agreement, effective as of the Closing, Key Food hereby assigns, grants, conveys and transfers to Member all of Key Food's right, title and interest in and to the A&P Asset Purchase Agreement with respect to the Member Stores and Member hereby accepts such assignment and assumes all of Key Food's duties and obligations and agrees to pay, perform and discharge, as and when due, all of the obligations of Key Food under A&P Asset Purchase Agreement related to the Member Stores accruing on and after the Effective Date and Member agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all such obligations, including those in connection with the, Member Assumed Liabilities (as such term is defined in the A&P Asset Purchase Agreement) in a timely manner in accordance with the terms thereof.

2. Terms of the Member Asset Purchase Agreement. The terms of the Member Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Member Acquired Contracts are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Member Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between

the terms of the Purchase Agreement and the terms hereof, the terms of the Member Asset Purchase Agreement shall govern.

3. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

4. Effective Date. This Agreement is effective as of the Closing, and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

5. Amendment. This Agreement may be amended or modified, but only by an instrument in writing executed by each of Key Food and Member.

6. 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 any choice or conflict of law provision or rule.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

KEY FOOD STORES CO-
OPERATIVE, INC.

By _____
Name:
Title:

[MEMBER]
By _____
Name:
Title:

MEMBERSHIP AGREEMENT

AGREEMENT, made the 14 day of Oct, 2015 between KEY FOOD STORES CO-OPERATIVE, INC., a corporation organized and existing under the Cooperative Corporations Law of the State of New York, and having its principal place of business at 1200 South Avenue, Staten Island, New York 10314 (hereinafter referred to as "Key"), and the undersigned (hereinafter referred to as "Member-Stockholder").

WITNESSETH:

WHEREAS, Key is engaged in business as a cooperative for the benefit of its members, who are also stockholders thereof, through the purchase, sale, marketing, merchandising, and advertising of groceries, fruits, meats, vegetables and other products carried in retail supermarket-type stores (hereinafter collectively referred to as "products"), on a centralized basis to obtain cost savings from promotional and distribution allowances, volume discounts and other concessions or allowances from manufacturers, producers and other suppliers, and the passing of cost savings and other benefits to Key's members; and

WHEREAS, Key has agreed to purchase products for re-sale to its members from C&S Wholesale Grocers, Inc. ("C&S") pursuant to a supply agreement with C&S; and

WHEREAS, Member-Stockholder has entered into a supply agreement with Key, pursuant to which Member-Stockholder has agreed to purchase its product requirements from Key (such agreement, as amended, modified, supplemented or restated from time to time, the "Supply Agreement"); and

WHEREAS, Member-Stockholder is the owner and operator of one or more retail supermarket-type stores at the location(s) hereinafter specified, and desires to purchase from Key

the aforesaid products and obtain the benefits of services available to Key's members, and in order to induce Key to sell such products and render such services, has agreed to secure Key, in the respects hereinafter provided, for all sums owed by Member-Stockholder to Key;

NOW, THEREFORE, it is hereby agreed between Key and Member-Stockholder, as follows:

1. Member-Stockholder agrees to comply with and be bound by all of the terms, provisions and conditions contained in the certificate of incorporation and by-laws of Key now in effect or as the same may hereafter be amended or adopted from time to time, and the rules and regulations established from time to time by Key's Board of Directors (the "Board").

2. (a) Member-Stockholder is authorized and permitted to use the name "KEY FOOD," "Key Food Marketplace," or "Food Dynasty," as applicable, and the corresponding emblem and logos for such names (or any other name or logo permitted to be used by the membership by the Board), solely at those locations specified on Schedule A hereto in which Member-Stockholder has been granted the right to use a particular name, and any corresponding emblem or logo for such name, and Member-Stockholder shall not use any such name, emblem or logo at any other locations or for any other purpose. If Member-Stockholder is granted the right to use the name "Grand Union" pursuant to a Trademark Sublicense Agreement between Key and Member-Stockholder, the use of the logo "Grand Union" shall in all respects be limited (i) to the same extent as the use of the "Key Food" logo as provided in this Agreement (it being understood that for purposes of this clause (i) any reference to the logo "Key Food" shall be deemed to mean and include the logo "Grand Union" and the parties shall complete an appropriate Schedule A to this Agreement for the store locations utilizing such logo), and (ii) as

provided in such Trademark Sublicense Agreement. In the event of any conflict between the provisions of such Trademark Sublicense Agreement and this Agreement (as it relates to the Grand Union logo), the provisions of such Trademark Sublicense Agreement shall control. Member-Stockholder agrees to erect and maintain at such locations, at its own cost and expense, signs in such form (including style and color content) as are approved by the Board for Key's members and their stores (such signs to bear the "Key Food" logo at the Key Food locations, the "Key Food Marketplace" logo at the Key Food Marketplace locations and any other logo approved by the Board for use at such other locations). Member-Stockholder agrees to fully comply with all rules and regulations now in existence or hereinafter promulgated by the Board with respect to the use of and discontinuance of use of said names, emblems and logos and the maintenance or removal of such signs incorporating any of the same. Member-Stockholder acknowledges that upon the occurrence of an Event of Default (as defined in Paragraph 4 below) with respect to Member-Stockholder, or upon termination of its membership if earlier, then Key may at any time thereafter give notice to Member-Stockholder to cease the use of such names, emblems and logos and remove and take down all signs incorporating such names, emblems or logos or any of them; and Member-Stockholder shall immediately comply with such notice. Key is hereby irrevocably granted permission to enter upon Member-Stockholder's premises to take down, at Member-Stockholder's cost, all signs which have not been taken down as so requested by Key.

(b) Member-Stockholder further covenants and agrees that, upon the sale of any store by Member-Stockholder to a person who is not then a member of Key, Member-Stockholder will, prior to turning over possession thereof, remove therefrom all signs, emblems

and logos and all references identifying said store with Key, Key Food Marketplace or any other name (and respective emblems and logos) approved for use by the Board (as applicable).

(c) Member-Stockholder further agrees that no monies shall be paid, refunded or returned by Key to Member-Stockholder if otherwise due unless and until all of the terms of this Agreement with respect to the use, maintenance and removal of the "KEY FOOD", the "Key Food Marketplace" or any other name approved for use by the Board, and their respective emblems, logos and signs incorporating the same shall have been fully and duly complied with by Member-Stockholder. The remedy set forth in this Paragraph 2(c) is in addition to any other remedy granted to Key under this Agreement or at law or in equity.

(d) Member-Stockholder agrees that except as expressly permitted hereby, it shall have no right in and to the name "Key Food", "Key Food Marketplace", or any other name approved for use by the Board of Directors of Key, or their respective emblems and logos.

3. (a) Member-Stockholder agrees to purchase from or through Key its requirements of products on the terms and conditions set forth in the Supply Agreement.

(b) Member-Stockholder agrees to fully comply with all rules and regulations now in existence or hereafter promulgated by Key's Board of Directors with respect to the sale of advertised products in member stores.

(c) Member-Stockholder agrees to fully comply with all rules and regulations now in existence or hereafter promulgated by Key's Board of Directors with respect to the maintenance of capital by members of Key.

(d) Key hereby restates and reconfirms its obligation to pay to Member-Stockholders, subject to the terms of this Agreement (including, without limitation, the

provisions of Paragraphs 5, 6 and 7 hereof), all patronage dividends earned in each fiscal year of Key, on or before the 15th day of the ninth month following the close of such fiscal year.

4. Each of the events referred to in clauses (a) through (m) of this Paragraph 4 shall constitute an "Event of Default":

(a) The Member-Stockholder shall fail to perform any obligation herein contained or otherwise breach this Agreement;

(b) Any representation or warranty made in this Agreement by Member-Stockholder shall prove to be false or misleading in any material respect;

(c) The Member-Stockholder shall fail to pay when due, any indebtedness owed to Key (beyond the expiration of any applicable grace or cure period contained in any instrument or document evidencing such debt, if any);

(d) The Member-Stockholder shall fail to pay when due any indebtedness of Member-Stockholder guaranteed by Key (beyond the expiration of any applicable grace or cure period contained in any instrument or document evidencing such debt, if any);

(e) The Member-Stockholder shall (i) suspend its business activities, (ii) become insolvent, (iii) be unable to pay its debts as they mature, or (iv) make an assignment for the benefit of creditors;

(f) A meeting of Member-Stockholder's creditors is called;

(g) A receiver, custodian or trustee shall be appointed for Member-Stockholder or its property;

(h) Except as may be permitted by Section 10 hereof, Member-Stockholder's property shall become subject to any security interest, mortgage, encumbrance, lien or attachment (which has not been consented to in advance by Key in writing);

(i) Any material portion of the Collateral Security (as determined by Key) shall become subject to any foreclosure or attachment proceedings;

(j) A petition under the federal bankruptcy laws shall be filed by or against Member-Stockholder;

(k) Member-Stockholder shall seek relief under any insolvency statute, federal, state or other;

(l) Any guaranty of Member-Stockholder's obligations to Key shall be terminated without the prior written consent of Key; or

(m) Member-Stockholder shall sell all or substantially all of its assets (other than inventory in the ordinary course of business).

Upon the occurrence of (x) any Event of Default described in clause (j) of this Paragraph 4, all obligations of Member-Stockholder to Key, whether or not yet due, shall forthwith become immediately due and payable, automatically and without any act of Key or (y) any other Event of Default, all obligations of Member-Stockholder to Key, whether or not yet due, shall at Key's option, forthwith become immediately due and payable, in each case without presentment, demand, protest, notice or other requirement of any kind, all of which are hereby expressly waived by Member-Stockholder. Upon the occurrence and continuation of an Event of Default, Key, in its sole and absolute discretion, and without limitation to any other remedy it may have under this Agreement, any other agreements with Member or any affiliate of Member, or at law

or in equity, may refuse to provide the benefits of membership to the Member-Stockholder, including, without limitation, by stopping the shipment of any products to Member-Stockholder and by no longer providing insurance, computer support and advertising support to the Member-Stockholder.

5. (a) To secure the payment of any and all sums which Member-Stockholder may now owe or hereafter may owe to Key (whether under this Agreement, under the Supply Agreement or otherwise), and further, to secure the full, faithful and timely performance by Member-Stockholder of the terms, covenants, and conditions on its part to be performed under this Agreement or under any other agreement between Member-Stockholder and Key, Member-Stockholder does hereby grant to Key a security interest in, and to the extent applicable, does hereby pledge, assign and transfer to and deposit with Key, all shares of capital stock of Key issued in the name of Member-Stockholder, whether now owned or hereafter acquired, together with the capital, capital surplus and all other such accounts related thereto, and all other rights and monies flowing therefrom, including, but not limited to, dividends and patronage earnings, patronage dividends and patronage refunds. To the extent that such shares of capital stock are uncertificated, Member-Stockholder and Key each hereby agree that the terms of the immediately preceding sentence constitute Key obtaining control of such shares for purposes of the New York Uniform Commercial Code. Key, by any officer, is hereby constituted as the attorney-in-fact of Member-Stockholder to execute Member-Stockholder's name with respect to all such shares of capital stock, such power being irrevocable and coupled with an interest.

(b) So long as an Event of Default shall not have occurred and be continuing with respect to Member-Stockholder, Member-Stockholder shall have the right to vote the

aforesaid stock.

(c) Upon termination of the membership in Key of Member-Stockholder for any reason whatsoever, Key, as attorney-in-fact for Member-Stockholder, shall have the absolute right and option to transfer and convey to Key all of the capital stock of Key then owned by Member-Stockholder in consideration of the par value thereof. In such event, Key shall pay to Member-Stockholder a sum equal to the amount, if any, by which the aggregate par value of such shares exceeds the indebtedness owed by Member-Stockholder to Key (which indebtedness shall include, whether or not then due, any indebtedness of Member-Stockholder guaranteed by Key). The remedy set forth in this Paragraph 5(c) is in addition to any other remedy granted to Key under this Agreement or at law or in equity.

6. (a) To further secure the payment of any and all sums which Member-Stockholder may now owe or hereafter may owe to Key (whether under this Agreement, under the Supply Agreement or otherwise) and further, to secure the full, faithful and timely performance by Member-Stockholder of the terms, covenants, and conditions on its part to be performed under this Agreement or under any other agreement between Member-Stockholder and Key, Member-Stockholder does hereby grant to Key a security interest in all assets of Member-Stockholder, whether now or hereafter existing or now owned or hereafter acquired and wherever located, of every kind and description, tangible or intangible, including, but not limited to, the assets and properties set forth on Schedule C hereto (collectively, the "Collateral Security").

(b) Key shall not be liable for failure to collect or realize upon Collateral Security or any part thereof or for any delay in so doing, nor shall Key be under any obligation to

take any action whatsoever in regard thereto. Key shall use reasonable care in the custody and preservation of the Collateral Security in its possession.

(c) Member-Stockholder hereby authorizes Key to file one or more financing statements and renewals thereof (with or, to the extent permitted by law, without the signature of Member-Stockholder) under the Uniform Commercial Code naming Member-Stockholder as debtor and Key as secured party and indicating therein the types or describing the items of Collateral Security. Member-Stockholder agrees upon demand by Key to execute, file and record any such financing statements and renewals thereof, notices, affidavits or other documents and to take all such other actions as Key may deem appropriate to protect or perfect Key's security interest in the Collateral Security or to otherwise accomplish the purposes of this Agreement. Member-Stockholder further agrees to pay all filing fees and to reimburse Key for all reasonable costs and expenses of any kind, including attorneys' fees and expenses, incurred by Key in any way in connection with the Collateral Security and/or the collection of any obligation of the Member-Stockholder to Key. Key shall have the right by any officer to sign Member-Stockholder's name to any financing statement or renewal thereof or similar instrument.

(d) With respect to each of the locations set forth on Schedule A hereto that is not owned by Member-Stockholder, Member-Stockholder shall use its reasonable best efforts to deliver to Key a collateral access and landlord waiver agreement in form attached as Exhibit A hereto.

(e) Member-Stockholder hereby covenants to Key that, unless Key shall otherwise consent thereto in writing, all of the Collateral Security shall be owned by Member-Stockholder free and clear of all security interests, liens and encumbrances of any kind.

7. (a) If an Event of Default shall have occurred and be continuing, Key shall have, in addition to all other rights and remedies, the remedies of a secured party under the New York Uniform Commercial Code with respect to the Collateral Security including, without limitation, the right to enter the premises where the Collateral Security is located and take possession of such Collateral Security without judicial process, and neither Member-Stockholder nor its agents shall resist or interfere with Key's exercise of such right. Key may dispose of the Collateral Security at private or public sale, upon not less than five (5) days notice in writing to Member-Stockholder before the time of the sale or disposition, which notice the parties agree is reasonable; provided that no such notice need be given by Key with respect to Collateral Security which may be perishable or threaten to rapidly decline in value. Key may apply the net proceeds of any sale or other disposition of Collateral Security, after deducting all costs and expenses of every kind occurred therein or incidental thereto, including reasonable attorneys' fees and expenses, if any, to the payment or satisfaction in whole or in part of the obligations of Member-Stockholder to Key whether due or not, absolute or contingent. After the application of such net proceeds and the retention of reasonable reserves for charges to Key for Member-Stockholder's purchases from third parties, and after the payment by Key of any other amount required by any existing or future provision of law, Key shall account for the surplus, if any. The Member-Stockholder shall remain liable to Key for the payment of any deficiency, which deficiency shall bear interest at the rate set forth in Paragraph 13 hereof.

(b) If an Event of Default shall have occurred and be continuing, then in addition to any other remedy of Key contained in this Agreement or provided at law or in equity, Key is hereby authorized at any time and from time to time, to the fullest extent permitted by

law, to set-off and apply any and all deposits and other amounts at any time held and other indebtedness at any time owing by Key to or for the credit or the account of Member-Stockholder (including, without limitation, any dividends, patronage earnings, patronage dividends and patronage refunds, capital, capital surplus, earned surplus and all other monies held for the account of Member-Stockholder) against any and all of the obligations of Member-Stockholder now or hereafter owing by Member-Stockholder to Key (whether or not any such obligations shall have matured). Any right of set-off exercised by Key shall be deemed to have been exercised immediately on the occurrence of an Event of Default, even though such set-off is made or entered on the books of Key subsequent thereto. If an Event of Default shall have occurred and be continuing, Key shall also have the right, in its sole and absolute discretion, to withhold payment to Member-Stockholder of any and all such deposits, amounts and other indebtedness.

8. Member-Stockholder agrees to keep and maintain the following insurance coverage so long as it is a member of Key and such coverage is available to the members of Key generally under the Key Food Members Insurance Program:

(a) Commercial General Liability with a \$1,000,000 combined single limit for bodily injury and property damage and \$2,000,000 annual aggregate per location, with a separate \$2,000,000 annual aggregate for products liability and completed operations. The coverage should include blanket contractual, personal injury, liquor law liability, broad form property damage, fire, legal liability, employee benefits errors and omissions, landlords and lessors as additional insureds where applicable, knowledge of occurrence, notice of occurrence, unintentional errors and omissions, and the hostile fire and heating, ventilation and air-

conditioning exceptions to the pollution exclusion. The policy should be on an "occurrence" form and provide for defense costs in addition to the limits of liability. In addition, the policy should not contain any exclusions beyond those in a standard Insurance Services Office Comprehensive General Liability form. If a deductible applies to the policy, it should be no more than \$1,000 per occurrence;

(b) Comprehensive Automobile Liability with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage, including coverage for all owned, non-owned and hired vehicles. If there are no owned automobiles, the non-owned and hired car coverage must be provided on a stand alone basis or as part of the Comprehensive General Liability coverage referred to in Subparagraph (a);

(c) Umbrella Liability for a minimum limit of \$10,000,000 with coverage to be at least as broad as the primary liability provided in Subparagraphs (a) and (b);

(d) Property insurance for personal property, including inventory of the Member-Stockholder, and Key's interest in such property. Coverage shall be on an "All Risk" basis including Flood, Earthquake, Windstorm, Terrorism, Spoilage and Backup of Sewers and Drains, on a full replacement cost basis with no coinsurance penalty, up to the full replacement cost for all property. Coverage should also be extended to include Blanket Business Interruption and Extra Expense. The application of a deductible to this coverage is acceptable, but in no event shall the deductible be greater than \$10,000 per occurrence without prior written approval from Key;

(e) Boiler & Machinery coverage, for Property, Business Interruption and Extra Expense, including spoilage from off premises power interruption. If the Boiler &

Machinery coverage is underwritten by an insurer other than the property insurer, then both the Boiler & Machinery policy and the property policy should have a "joint loss" provision;

- (f) Workers' Compensation; and
- (g) Statutory State Disability and any other applicable State requirements.

Key shall be named as additional insured on all insurance included in Subparagraphs (a) through (e) above, and as a loss payee on all insurance included in Subparagraphs (d) and (e) above. All such policies should be placed with companies reasonably acceptable to Key, have an A.M. Best's ratings of A-VII or better, and be licensed in the State of New York as well as all states in which Member-Stockholder has a store. Key is irrevocably authorized to file all claims for loss under each insurance policy, and if an Event of Default shall have occurred and then be continuing, Key is granted and shall have the sole right to adjust, settle and collect any claims for loss filed under each of the policies by such means, at such times, on such terms and in the name of Key or Member-Stockholder, or both, as Key may see fit; and, in furtherance of said right, Member-Stockholder hereby irrevocably grants a power of attorney to Key, which power is coupled with an interest, in the name and on behalf of Member-Stockholder to, upon the occurrence and during the continuance of an Event of Default, execute releases and all other documents and endorse checks or drafts payable in respect of any claims for loss filed by or on behalf of Key or Member-Stockholder under each such policy.

Member-Stockholder further agrees to deliver as promptly as practicable to Key, or to such consultants as directed by Key, Binders, Certificates of Insurance, and copies of the broker/agents submission to the carriers, including any applications, for each policy listed above evidencing such coverage, or Key shall have the right to place such insurance to protect Key's

interest at Member-Stockholder's expense. The certificates shall require Key be given at least sixty (60) days written notice, by registered or certified mail, prior to cancellation or material change or non-renewal thereof. Once the policies are issued, full copies of such policies including all forms and endorsements shall be forwarded to Key or to such consultants as directed by Key.

In the event that Member-Stockholder does not participate in any available insurance program provided on behalf of the Co-Op, Member-Stockholder shall reimburse Key for any additional cost such non-participation creates as determined at the end of the program year.

In the event that Member-Stockholder participates in any program made available to it, Member-Stockholder shall remain a participant in such program until the next anniversary date of the program. Not more than 45 days or less than 15 days prior to each renewal date of the program, Key shall provide Member-Stockholder with pricing information for the next program year. Not more than 15 days following Member-Stockholder's receipt of such pricing information, Member-Stockholder shall notify Key in writing whether it will participate in the program for the next program year. If Member-Stockholder elects not to participate in the program for the next program year, such notification by Member-Stockholder to Key shall include details of the intended replacement coverage including the submission made to the replacement insurance company on its behalf along with any applications completed. If Member-Stockholder fails to comply with the foregoing requirement, it shall reimburse Key for reasonable costs incurred as a result of Member-Stockholder leaving the program as determined at the end of the program year (including, without limitation, the costs of retaining an independent insurance consultant selected by Key to verify Member-Stockholder's compliance

with the requirements of this Section 8).

9. Member-Stockholder hereby covenants and agrees that it will indemnify and defend Key and its officers, directors, servants, agents, representatives and employees from and against, and hold each of them harmless from, any and all loss, liability, damage, cost and expense, including reasonable attorneys' fees and expenses, arising out of or relating to the ownership, management, operation or control of any stores or other premises of Member-Stockholder, the equipment and machinery thereat or utilized in deliveries thereto and the business thereat conducted, including, without limitation, arising out of or related to the negligence or alleged negligence of Member-Stockholder or any of its agents, representatives, servants or employees.

10. (a) Key may, in its sole and absolute discretion, subordinate its security interest in the assets of a Member-Stockholder on such terms and conditions as its Chief Executive may determine consistent with the past practices of Key (and, in such event, Key shall be deemed to have consented in writing to any security interest as to which Key's security interest is subordinated).

(b) Key may, in its sole and absolute discretion, waive its requirement for a security interest to be granted by Member-Stockholder under the provisions of Section 6(a) hereof, and no such security interest shall be granted by Member-Stockholder to Key, provided that (1) Key shall be granted a first priority, perfected security interest or mortgage in collateral that is acceptable to the Chief Executive of Key in his sole discretion, and (2) such collateral shall have a fair market value (as reasonably determined by the Chief Executive of Key in accordance with valuation standards utilized by major banking institutions doing business in the

City of New York) at least equal to 150% of the aggregate indebtedness, liabilities and obligations (whether fixed or contingent) of Member-Stockholder to Key. If the provisions of this Section 10(b) are applicable, then Key shall not file a financing statement with respect to all of the assets of Member-Stockholder under Section 6 (and, if such provisions become applicable after the filing of any such financing statement by Key, Key will promptly amend or terminate the same).

(c) The filing of a financing statement by a lessor of equipment to a Member-Stockholder with respect to leased equipment shall not be deemed a breach or violation of this Agreement; provided that the scope of any such financing statement shall solely be limited to such leased equipment.

11. The location of all stores operated by Member-Stockholder, the employer identification number (EIN) of Member-Stockholder, and the names, residential addresses and telephone numbers of all owners, partners, stockholders, officers and directors of Member-Stockholder are set forth in, respectively, Schedules A and B annexed hereto. Member-Stockholder agrees to promptly notify Key in writing of the nature and timing of all proposed changes to either Schedules A or B, and further agrees that the same shall be subject to the provisions of Key's Certificate of Incorporation, By-laws and rules and regulations applicable thereto. At such times as Key may request, Member-Stockholder agrees to affirm in writing the continuing accuracy of the information set in Schedules A and B. In addition, Member-Stockholder represents and warrants to Key that its correct name, as set forth in its document of formation or organization (e.g., certificate of incorporation), is set accurately forth above its signature line to this Agreement. Member-Stockholder further agrees to notify Key of any change

in its corporate name or in its jurisdiction of formation, in each case not less than 30 days prior to taking any such action.

12. **This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to any conflicts of laws provisions that would result in the application of the substantive laws of another jurisdiction. Member-Stockholder hereby irrevocably consents to the exclusive jurisdiction in and venue of the Supreme Court of the State of New York for the County of New York and the United States District Court for the Southern District of New York in connection with any action or proceeding arising out of or relating to this Agreement or any agreement, document or instrument delivered pursuant hereto, and Member-Stockholder further irrevocably consents to the service of process in any such action or proceeding by the mailing of a copy of such process to Member-Stockholder by Certified Mail, Return Receipt Requested, at the address set forth on Schedule A hereto. In the event of litigation between Member-Stockholder and Key over any matter arising out of or related to this Agreement, the right to a trial by jury is hereby waived by Member-Stockholder and Key.**

13. In the event that Member-Stockholder owes Key any sum of money, whether under this Agreement or otherwise, and does not pay such amount when due, then Member-Stockholder shall pay (i) interest on the amount due from its due date to the date the amount is paid in full at a rate of interest equal to 1 ½ % per month (18% per annum) and (ii) on account of all sums that are not paid when due in respect of merchandise sold by Key to Member-Stockholder (which for this purpose shall include drop shipments that are centrally billed to and paid by Key on behalf of Member-Stockholder) or services provided by or through Key to

Member-Stockholder, a service fee of up to 3% (as determined by Key in its sole discretion) of the amount that is not paid when due; provided, however, that if such amounts would constitute a rate in excess of the maximum rate of interest permitted to be charged to Member-Stockholder under applicable law, such rate shall not exceed the maximum rate of interest permitted to be charged. All such interest and service fees which may be payable by a Member-Stockholder to Key shall be payable on demand. Member-Stockholder shall pay Key \$100.00 if Key deposits any check given by Member-Stockholder to Key and such check is not paid for any reason whatsoever (including insufficient funds); provided that following the first such check that is unpaid for any reason whatsoever, the \$100.00 charge shall be \$200.00. In the event that Key shall institute any legal action to enforce the obligations owed by Member-Stockholder to Key, whether under this Agreement or otherwise, Key shall be entitled to receive its costs of collection, including reasonable attorneys' fees and disbursements.

14. Member-Stockholder hereby authorizes Key to obtain credit reports from time to time on Member-Stockholder and its owners, partners, stockholders, officers and directors.

15. Neither this Agreement nor any provision hereof may be amended or waived unless such amendment or waiver is in writing and signed, in the case of an amendment, by Key and Member-Stockholder, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as specifically provided otherwise herein, the rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that a party may otherwise have

at law or in equity. Any provision hereof which may be adjudicated unenforceable shall not affect the validity of any other provision hereof.

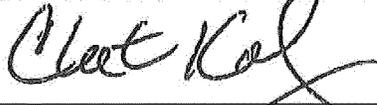
16. All notices, reports, requests and other communications required or permitted to be given hereunder (all of the foregoing hereinafter collectively referred to as "Communications") shall be in writing and, except as provided in Paragraph 12, shall be deemed to have been duly given if delivered personally with receipt acknowledged or sent by U.S. first class mail, postage paid, or by recognized overnight courier for next day delivery, addressed in the case of Communications to Key, to it at 1200 South Avenue, Staten Island, New York 10314, Attn: Chief Executive, and in the case of Communications to Member-Stockholder, to it at its address for Communications set forth on Schedule A hereto, or to such other or additional address as any party shall hereafter specify by Communication to the other party. Notice of change of address shall be deemed given when actually received or upon refusal to accept delivery thereof; all other Communications shall be deemed to have been given, received and dated on the earlier of: (i) when actually received or upon refusal to accept delivery thereof; or (ii) on the date when delivered personally, one (1) day after being sent by overnight courier and four (4) business days after mailing, as aforesaid.

[The remainder of this page is intentionally left blank. Signatures follow.]

A-1185

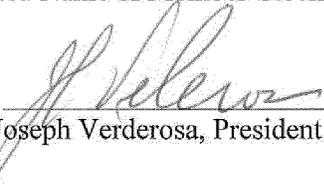
IN WITNESS WHEREOF, Key and Member-Stockholder have caused this Agreement to be duly executed the day and year first above written.

KEY FOOD STORES CO-OPERATIVE, INC.

By: 
Chet Koby, Vice President of Strategic Planning

PARAMOUNT SUPERMARKET INC.

Printed Name of Member-Stockholder

By: 
Joseph Verderosa, President

SCHEDULE A

TO MEMBERSHIP AGREEMENT

BETWEEN KEY FOOD STORES CO-OPERATIVE, INC., AND

PARAMOUNT SUPERMARKET INC., MEMBER-STOCKHOLDER

The stores operated by Member-Stockholder are as follows:

Store Address

Logo

196-35 Horace Harding Blvd., Flushing, NY 11365

2424 Flatbush Ave., Brooklyn, NY 11365

Address for Communications:

1209 Utica Ave., Brooklyn, NY 11203

A-1187

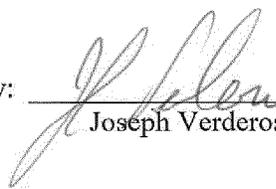
SCHEDULE B**TO MEMBERSHIP AGREEMENT****BETWEEN KEY FOOD STORES CO-OPERATIVE, INC., AND****PARAMOUNT SUPERMARKET INC., MEMBER-STOCKHOLDER**

The names and addresses of all partners, stockholders, officers and directors of Member-Stockholder are:

| <u>Name</u> | <u>Title or Position</u> | <u>Percentage Ownership</u> | <u>Residential Address</u> | <u>Home Telephone No.</u> | <u>Mobile Phone No.</u> |
|------------------|--------------------------|-----------------------------|-------------------------------|---------------------------|-------------------------|
| Joseph Verderosa | President | 100% | 75 Adler Lane SI, NY 10307 | | 718 757-9452 |

The employer identification number (EIN) of Member-Stockholder is 01-1771609

PARAMOUNT SUPERMARKET INC.

By: 
Joseph Verderosa, President

Dated Oct 14, 2015

SCHEDULE C

TO MEMBERSHIP AGREEMENT

**BETWEEN KEY FOOD STORES CO-OPERATIVE, INC., AND
PARAMOUNT SUPERMARKET INC., MEMBER-STOCKHOLDER**

DESCRIPTION OF COLLATERAL SECURITY

Pursuant to the Membership Agreement, Member-Stockholder has granted to Key a continuing security interest in all assets of the Member-Stockholder, whether now owned or existing or hereafter acquired or arising or in which Member-Stockholder now has or may hereafter acquire any rights, including, without limitation, the following:

1. All accounts (including health-care insurance receivables), accounts receivable, contract rights, letters of credit, letters of credit rights, rights to proceeds of letters of credit, acceptances, guarantees, drafts or other forms of obligations and receivables of Member-Stockholder(all of the foregoing herein collectively called accounts), whether or not the accounts be listed on any schedules, assignments or reports furnished to Key from time to time, whether or not the accounts are now existing or are created at any time hereafter; together with all goods, inventory and merchandise returned by or reclaimed by or repossessed from customers wherever such goods, inventory and merchandise is located, and all proceeds thereof, including but not limited to, proceeds of insurance thereon; and all guaranties, securities, and liens which Member-Stockholder may hold for the payment of any accounts, including without limitation, all rights of stoppage in transit, replevin and reclamation and all other rights and remedies of any unpaid vendor or lienor, and all liens held by the Member-Stockholder as a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, artisan, or otherwise.

2. All inventory of Member-Stockholder wherever located, including without limitation, all goods, raw materials, work in progress and finished merchandise, findings or component materials, and all supplies, goods, incidentals, office supplies, packaging materials and any and all items used or consumed in the operation of the business of the Member-Stockholder or which contribute to the finished product or to the sale, promotion and shipment thereof, in which Member-Stockholder now or at any time hereafter may have an interest, whether or not such inventory is listed on any schedule or on any reports furnished to Key from time to time; all inventory whether or not the same is in transit or in the constructive, actual or exclusive occupancy of possession of Member-Stockholder or is held by Member-Stockholder or by others for Member-Stockholder's account, including without limitation, all goods covered by purchase orders and contracts with suppliers and all goods billed and held by suppliers; insurance policies and proceeds thereof covering inventory; all proceeds and products of any and all of the foregoing resulting for the sale, lease or other disposition of inventory, including cash, accounts, contract rights, other non-cash proceeds and trade-ins.

3. All machinery, equipment, fixtures, furniture furnishings, improvements, tools, fuel and goods of any kind, whether now owned or hereafter acquired or in which Member-Stockholder may in the future acquire an interest.
4. All documents, instruments (including promissory notes), documents of title, policies and certificates of insurance, guaranties, securities, investment property, chattel paper, deposits, proceeds of insurance, cash, liens or other property owned by the Member-Stockholder or in which it has an interest which are now or may now or hereafter be in the possession of Member-Stockholder or as to which Member-Stockholder may now or hereafter control possession by documents of title or otherwise, including, but not limited to, all property allocable to unshipped orders.
5. All bank accounts, including, but not limited to, deposit accounts, now existing or hereafter arising, together with the right to withdraw from said bank accounts and make deposits to the same.
6. All general intangibles, now existing or hereafter owned or acquired, including, but not limited to, payment intangibles, patents, patent application, trademarks, trademark registrations and applications therefor, trade names, trade processes, copyrights, copyright registrations and applications therefor, licenses, franchises, tax refunds and the corporate name and good will of Member-Stockholder's business; and all licenses, permits, agreements of any kind or nature pursuant to which (i) the Member-Stockholder operates or has authority to operate, (ii) the Member-Stockholder possesses, uses or has authority to possess or use property (whether tangible or intangible) of others, or (iii) others possess, use or have authority to possess or use property (whether tangible or intangible) of the Member-Stockholder.
7. All of Member-Stockholder's existing and future leasehold interests in premises or facilities leased from third parties by Member-Stockholder.
8. All books, records, customer lists, supplier lists, ledgers, evidence of shipping, invoices, purchase orders, sale orders and all other evidences of Member-Stockholder's business records, regardless of the medium of recording, including all tapes, disks, diskettes and other data and software storage media and devices, file cabinets, drawers and furniture that may hold the same, all whether now owned or in existence or hereafter arising or acquired.
9. All tort claims of Member-Stockholder.
10. All patronage dividends, distributions and all other amounts owed by Key to Member-Stockholder; and all property of Member-Stockholder in the possession or under the control of Key.
11. All other property in which Member-Stockholder may have granted or may hereafter grant to Key a security interest.
12. The Member-Stockholder's membership interest in Key Food Stores Co-

Operative, Inc. including, without limitation, all of the Member-Stockholder's right, title and interest in and to the capital, capital and surplus and all other such accounts related thereto, and all other rights and monies flowing therefrom and all certificates, if any, representing such membership interest.

13. All renewals, substitutions, replacements, additions, accessions, proceeds and products of any and all of the foregoing.

Exhibit A

LANDLORD'S WAIVER AND CONSENT

This LANDLORD'S WAIVER AND CONSENT (this "Agreement") dated as of [●], 20[●] from [●] ("Landlord"), in favor of Key Food Stores Co-Operative, Inc., a New York cooperative corporation (the "Secured Party"), having an office at 1200 South Avenue, Staten Island, NY 10314.

WHEREAS, the Secured Party and [●] (the "Debtor") are party to that certain Supply Agreement dated as of [●] (the "Supply Agreement");

WHEREAS, the Secured Party has made and may make, pursuant to the Supply Agreement or otherwise, one or more loans, advances, and/or other financial accommodations to the Debtor, secured pursuant to that certain Membership Agreement dated as of [●] by and between the Secured Party and the Debtor (the "Membership Agreement") and one or more other agreements, instruments or documents (as amended, renewed, extended, modified, refinanced or replaced from time to time, the "Security Agreements") granting security interests in and liens on the Collateral (as defined in the Membership Agreement), including but not limited to all presently owned and hereinafter acquired inventory and equipment of the Debtor; and

WHEREAS, any or all of the Collateral is or may be installed or kept at the premises known as [●], more particularly described in Schedule A attached hereto and made a part hereof, which premises (the "Premises") are owned by Landlord and leased to the Debtor pursuant to that certain [Agreement of Lease] commencing [●] (the "Lease").

NOW, THEREFORE, Landlord, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged by Landlord, hereby agrees as follows:

1. Landlord agrees that any right, claim, title, interest or lien in respect of any of the Collateral (including without limitation any right of distraint, levy, execution or sale) that Landlord may have or acquire for any reason or in any manner (including by reason of the Collateral being installed in or on, attached to or located in or on the Premises, or otherwise), whether arising under any statute, contract (including the Lease) or common law, now or hereafter in effect, is hereby made fully subordinate, subject and inferior to every right, claim, title, interest and lien in respect of the Collateral in favor of the Secured Party to the full extent that the same secures or may hereafter secure any and all obligations and indebtedness of every kind, now existing or hereafter arising, of the Debtor to the Secured Party in accordance with the terms of the Supply Agreement, any other agreements governing such indebtedness and the Security Agreements. Landlord further agrees that the Collateral will remain personal property and will not become a fixture or part of the Premises.

2. Landlord hereby agrees that so long as this Agreement is in effect, Landlord shall not exercise any right, assert any claim, title or interest in or lien upon, or take any action or institute any proceedings with respect to, the Collateral. Landlord agrees to use all reasonable efforts to give the Secured Party written notice of any event which, with the giving of notice or passage of time or both, could result in the creation of the right of Landlord to terminate any

lease covering all or any part of the Premises. Notices to the Secured Party shall be sent to its address set forth in the first paragraph hereof to the attention of [●] (facsimile no. [●]).

3. The Secured Party and its agents, representatives and designees may, at any time and from time to time upon reasonable prior notice to Landlord, enter the Premises without the consent of Landlord and remove and take possession of the Collateral free of any right, claim, title, interest or lien of Landlord, provided the Secured Party restores any parts of the Premises physically damaged by them in the course of removal to the condition such parts were in prior to such entry and removal of the Collateral (but the foregoing shall not impose any liability upon the Secured Party for any damage by fire or other insurable casualty).

4. The provisions hereof shall be irrevocable and remain in full force and effect until the Debtor has fully paid and performed all of its obligations to the Secured Party under and in accordance with the terms of all present and future agreements, instruments and documents evidencing such obligations and all present and future Security Agreements (in each case including any extensions, modifications and renewals thereof or substitutions therefor at any time made), and until all obligations, if any, of the Secured Party to extend loans, advances or financial accommodations to the Debtor shall be terminated.

5. This Agreement shall be binding upon Landlord and its successors and assigns and shall inure to the benefit of the Secured Party and its respective successors, assigns and designees. This Agreement may not be waived, amended or modified except pursuant to an agreement in writing entered into by the Secured Party and Landlord. Landlord agrees to make this Agreement known to any transferee of the Premises and any person who may have an interest or right in the Premises. Landlord certifies that no consent is required by any mortgagee of the Premises as a condition precedent to Landlord executing this Agreement. Landlord acknowledges and agrees that the provisions set forth in this Agreement are, and are intended to be, an inducement and consideration to the Secured Party to make, or to permit to remain outstanding, loans, advances and/or financial accommodations to the Debtor, and the Secured Party shall be deemed conclusively to have relied upon such provisions in making, or permitting to remain outstanding, such loans, advances and/or financial accommodations.

7. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York.

8. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement.

[The remainder of this page is intentionally left blank. Signature pages follow.]

A-1193

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[LANDLORD]

By: _____
Name:
Title:

A-1194

KEY FOOD STORES CO-OPERATIVE,
INC.

By: _____
Name:
Title:

A-1195

Acknowledged, accepted and agreed to as of
the date first above written.

[DEBTOR]

By: _____
Name:
Title:

A-1196

Exhibit A

Description of Lease

EXECUTION VERSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Agreement") is made as of October 26, 2015 by and between Key Food Stores Co-Operative, Inc., a New York corporation ("Key Food") and the undersigned ("Member"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Member Asset Purchase Agreement (defined below).

RECITALS

WHEREAS, Key Food and Member have entered into that certain Asset Purchase Agreement dated as of October 26, 2015 by and between Key Food and Member (the "Member Asset Purchase Agreement"), pursuant to which, among other things, Key Food has agreed to assign all of its rights, title and interests in, and Member has agreed to assume and become responsible for all of Key Food's obligations under the A&P Asset Purchase Agreement (as such term is defined in the Member Asset Purchase Agreement) with respect to the Member Stores (as such term is defined in the Member Asset Purchase Agreement).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Subject to the terms and conditions set forth in the Member Asset Purchase Agreement, effective as of the Closing, Key Food hereby assigns, grants, conveys and transfers to Member all of Key Food's right, title and interest in and to the A&P Asset Purchase Agreement with respect to the Member Stores and Member hereby accepts such assignment and assumes all of Key Food's duties and obligations and agrees to pay, perform and discharge, as and when due, all of the obligations of Key Food under A&P Asset Purchase Agreement related to the Member Stores accruing on and after the Effective Date and Member agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all such obligations, including those in connection with the, Member Assumed Liabilities (as such term is defined in the A&P Asset Purchase Agreement) in a timely manner in accordance with the terms thereof.

2. Terms of the Member Asset Purchase Agreement. The terms of the Member Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Member Acquired Assets are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Member Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Member Asset Purchase Agreement shall govern.

3. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

4. Effective Date. This Agreement is effective as of the Closing, and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

5. Amendment. This Agreement may be amended or modified, but only by an instrument in writing executed by each of Key Food and Member.

6. 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 any choice or conflict of law provision or rule.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

A-1199

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

KEY FOOD:

KEY FOOD STORES CO-
OPERATIVE, INC.

By Sharon Engel
Name: Sharon Engel
Title: VP Finance

A-1200

Paramount Supermarket Inc.

MEMBER:

By 
Name: Joseph Verde rose
Title: President

Execution Version

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into and effective as of October 26, 2015, by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P"), Food Basics, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Food Basics"), APW Supermarkets, Inc., a New York corporation and a wholly-owned subsidiary of A&P ("APW"), Shopwell, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Shopwell"), Pathmark Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Pathmark"), A&P Live Better, LLC, a Delaware limited liability company ("Live Better"), A&P Real Property, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P ("A&P Real Property") and, together with A&P, Food Basics, APW, Shopwell, Pathmark and Live Better, "Sellers", and Key Food Stores Co-Operative, Inc., a New York corporation or any of its permitted assignees ("Buyer"). Sellers, Buyer and the Assignee (as hereinafter defined) are referred to collectively herein as the "Parties."

WHEREAS, Sellers and Buyer are parties to that certain Asset Purchase Agreement, dated July 19, 2015 (as amended, the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, the execution and delivery of this Agreement is contemplated by Sections 2.5(b)(ii) and 2.5(c)(ii) of the Purchase Agreement; and

WHEREAS, Buyer has assigned its rights and obligations under the Purchase Agreement (including, without limitation, under Article VI thereof), with respect to the Stores set forth on Schedule I, to Paramount Supermarket Inc. (the "Assignee") in accordance with and subject to the requirements and limitations of Section 9.6 thereof.

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

- 1) Assignment and Assumption. Effective as of the Closing related to the Acquired Assets related to the Stores listed on Schedule I attached hereto (the "Assigned Assets"), Sellers hereby assign, grant, convey, and transfer Seller's right, title, and interest in and to the Assigned Assets, and the Assignee hereby accepts such assignment and assumes and agrees to pay, discharge, or perform when due, on or after the Closing Date, the Assumed Liabilities with respect to the Assigned Assets to the extent provided in the Purchase Agreement.
- 2) Conflict. The assignment and assumption of the Assigned Assets and the Assumed Liabilities 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 Agreement 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 Agreement, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the representations, warranties, covenants, and obligations of the Parties contained in the Purchase Agreement or the survival thereof.

- 3) Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 9.7 of the Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties.
- 4) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement 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 Agreement.
- 5) Enforceability. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.
- 6) Amendments; Waivers. This Agreement may not be amended or modified except by an instrument in writing signed by, or on behalf of, the Parties. Any waiver of rights hereunder must be set forth in writing.
- 7) Further Assurances. Each of the Parties 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 Agreement.
- 8) 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.
- 9) 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 conflicts of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
- 10) Third Party Beneficiaries and Obligations. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Agreement, 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 Agreement.

- 11) Entire Agreement. This Agreement, together with the Purchase Agreement and the exhibits and the documents referred to in the Purchase Agreement, contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, representations and statements, oral or written, between the Parties on the subject matter hereof, which such prior agreements, understandings, representations and statements, oral or written, shall be of no further force or effect.

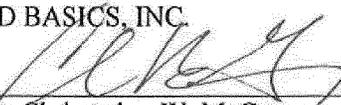
* * * * *

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

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

By: 
Name: Christopher W. McGarry
Title: Executive Vice President and Chief Administrative Officer

FOOD BASICS, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

APW SUPERMARKETS, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

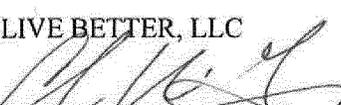
SHOPWELL, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

PATHMARK STORES, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

A&P LIVE BETTER, LLC

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

A&P REAL PROPERTY, LLC

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

A-1205

ASSIGNEE:

Paramount Supermarket Inc.

By Joseph S. Lewis
Name: Joseph S. Lewis
Title: President

A-1206

The undersigned hereby acknowledges that (a) pursuant to Section 9.6 of the Purchase Agreement, Buyer has assigned its rights and obligations with respect to the Stores set forth on Schedule I to Assignee and (b) Assignee is a Member. Buyer hereby confirms its continuing obligations in accordance with the Purchase Agreement.

KEY FOOD STORES CO-OPERATIVE, INC.

By: 
Name: Dean J. Amodeo
Title: CEO

SCHEDULE I

Stores

Store 70295 – 196-35 Horace Harding Expressway, Flushing, NY
(a.k.a Store 027-7243)

For reference purposes, Acquired Assets include the following Lease:

- AGREEMENT OF LEASE DATED JULY 6, 1955 BY AND BETWEEN CROSSPATH REALTY LLC (SUCCESSOR IN INTEREST TO CROSS ROADS VILLAGE, INC.) AND A&P REAL PROPERTY (SUCCESSOR IN INTEREST TO WALDBAUM, INC.), AS TENANT, AS EVIDENCED BY THAT CERTAIN MEMORANDUM OF LEASE DATED JANUARY 3, 1958, AS AMENDED BY AMENDMENTS DATED FEBRUARY 10, 1959, MARCH 1, 1963 AND JUNE 28, 1971, AS AMENDED BY THAT CERTAIN LEASE AMENDMENT DATED JUNE 27, 1991, AS AMENDED BY THAT CERTAIN EXTENSION AND AMENDMENT TO LEASE DATED OCTOBER 11, 2008, AS SUBJECT TO THAT CERTAIN GUARANTY DATED JULY 15, 1991, AS SUBJECT TO THAT CERTAIN ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED JULY 8, 2011, AS ASSIGNED PURSUANT TO THAT CERTAIN ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012, AS SUBJECT TO THAT CERTAIN GUARANTY MARCH 13, 2012.

EXECUTION VERSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Agreement") is made as of October 26, 2015 by and between Key Food Stores Co-Operative, Inc., a New York corporation ("Key Food") and the undersigned ("Member"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Member Asset Purchase Agreement (defined below).

RECITALS

WHEREAS, Key Food and Member have entered into that certain Asset Purchase Agreement dated as of October 26, 2015 by and between Key Food and Member (the "Member Asset Purchase Agreement"), pursuant to which, among other things, Key Food has agreed to assign all of its rights, title and interests in, and Member has agreed to assume and become responsible for all of Key Food's obligations under the A&P Asset Purchase Agreement (as such term is defined in the Member Asset Purchase Agreement) with respect to the Member Stores (as such term is defined in the Member Asset Purchase Agreement).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Subject to the terms and conditions set forth in the Member Asset Purchase Agreement, effective as of the Closing, Key Food hereby assigns, grants, conveys and transfers to Member all of Key Food's right, title and interest in and to the A&P Asset Purchase Agreement with respect to the Member Stores and Member hereby accepts such assignment and assumes all of Key Food's duties and obligations and agrees to pay, perform and discharge, as and when due, all of the obligations of Key Food under A&P Asset Purchase Agreement related to the Member Stores accruing on and after the Effective Date and Member agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all such obligations, including those in connection with the, Member Assumed Liabilities (as such term is defined in the A&P Asset Purchase Agreement) in a timely manner in accordance with the terms thereof.

2. Terms of the Member Asset Purchase Agreement. The terms of the Member Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Member Acquired Assets are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Member Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Member Asset Purchase Agreement shall govern.

3. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

4. Effective Date. This Agreement is effective as of the Closing, and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

5. Amendment. This Agreement may be amended or modified, but only by an instrument in writing executed by each of Key Food and Member.

6. 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 any choice or conflict of law provision or rule.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

A-1210

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

KEY FOOD:

KEY FOOD STORES CO-
OPERATIVE, INC.

By *Sharon Engel*
Name: *Sharon Engel*
Title: *VP Finance*

A-1211

Paramount Supermarket Inc.

MEMBER:

By 
Name: Joseph Verde rose
Title: President

Execution Version

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into and effective as of October 26, 2015, by and among The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P"), Food Basics, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Food Basics"), APW Supermarkets, Inc., a New York corporation and a wholly-owned subsidiary of A&P ("APW"), Shopwell, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Shopwell"), Pathmark Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Pathmark"), A&P Live Better, LLC, a Delaware limited liability company ("Live Better"), A&P Real Property, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P ("A&P Real Property") and, together with A&P, Food Basics, APW, Shopwell, Pathmark and Live Better, "Sellers"), and Key Food Stores Co-Operative, Inc., a New York corporation or any of its permitted assignees ("Buyer"). Sellers, Buyer and the Assignee (as hereinafter defined) are referred to collectively herein as the "Parties."

WHEREAS, Sellers and Buyer are parties to that certain Asset Purchase Agreement, dated July 19, 2015 (as amended, the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, the execution and delivery of this Agreement is contemplated by Sections 2.5(b)(ii) and 2.5(c)(ii) of the Purchase Agreement; and

WHEREAS, Buyer has assigned its rights and obligations under the Purchase Agreement (including, without limitation, under Article VI thereof), with respect to the Stores set forth on Schedule I, to Paramount Supermarket Inc. (the "Assignee") in accordance with and subject to the requirements and limitations of Section 9.6 thereof.

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

- 1) Assignment and Assumption. Effective as of the Closing related to the Acquired Assets related to the Stores listed on Schedule I attached hereto (the "Assigned Assets"), Sellers hereby assign, grant, convey, and transfer Seller's right, title, and interest in and to the Assigned Assets, and the Assignee hereby accepts such assignment and assumes and agrees to pay, discharge, or perform when due, on or after the Closing Date, the Assumed Liabilities with respect to the Assigned Assets to the extent provided in the Purchase Agreement.
- 2) Conflict. The assignment and assumption of the Assigned Assets and the Assumed Liabilities 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 Agreement 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 Agreement, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the representations, warranties, covenants, and obligations of the Parties contained in the Purchase Agreement or the survival thereof.

- 3) Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 9.7 of the Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties.
- 4) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement 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 Agreement.
- 5) Enforceability. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.
- 6) Amendments; Waivers. This Agreement may not be amended or modified except by an instrument in writing signed by, or on behalf of, the Parties. Any waiver of rights hereunder must be set forth in writing.
- 7) Further Assurances. Each of the Parties 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 Agreement.
- 8) 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.
- 9) 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 conflicts of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
- 10) Third Party Beneficiaries and Obligations. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Agreement, 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 Agreement.

- 11) Entire Agreement. This Agreement, together with the Purchase Agreement and the exhibits and the documents referred to in the Purchase Agreement, contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, representations and statements, oral or written, between the Parties on the subject matter hereof, which such prior agreements, understandings, representations and statements, oral or written, shall be of no further force or effect.

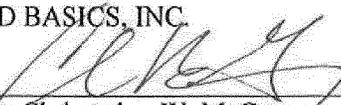
* * * * *

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

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

By: 
Name: Christopher W. McGarry
Title: Executive Vice President and Chief Administrative Officer

FOOD BASICS, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

APW SUPERMARKETS, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

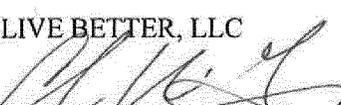
SHOPWELL, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

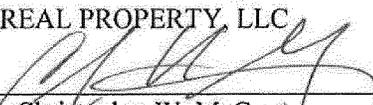
PATHMARK STORES, INC.

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

A&P LIVE BETTER, LLC

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

A&P REAL PROPERTY, LLC

By: 
Name: Christopher W. McGarry
Title: Vice President & Secretary

A-1216

ASSIGNEE:

Paramount Supermarket Inc.

By *Joseph S. Lewis*
Name: *Joseph S. Lewis*
Title: *President*

A-1217

The undersigned hereby acknowledges that (a) pursuant to Section 9.6 of the Purchase Agreement, Buyer has assigned its rights and obligations with respect to the Stores set forth on Schedule I to Assignee and (b) Assignee is a Member. Buyer hereby confirms its continuing obligations in accordance with the Purchase Agreement.

KEY FOOD STORES CO-OPERATIVE, INC.

By: 
Name: Dean J. Amodeo
Title: CEO

SCHEDULE I

Stores

Store 70295 – 196-35 Horace Harding Expressway, Flushing, NY
(a.k.a Store 027-7243)

For reference purposes, Acquired Assets include the following Lease:

- AGREEMENT OF LEASE DATED JULY 6, 1955 BY AND BETWEEN CROSSPATH REALTY LLC (SUCCESSOR IN INTEREST TO CROSS ROADS VILLAGE, INC.) AND A&P REAL PROPERTY (SUCCESSOR IN INTEREST TO WALDBAUM, INC.), AS TENANT, AS EVIDENCED BY THAT CERTAIN MEMORANDUM OF LEASE DATED JANUARY 3, 1958, AS AMENDED BY AMENDMENTS DATED FEBRUARY 10, 1959, MARCH 1, 1963 AND JUNE 28, 1971, AS AMENDED BY THAT CERTAIN LEASE AMENDMENT DATED JUNE 27, 1991, AS AMENDED BY THAT CERTAIN EXTENSION AND AMENDMENT TO LEASE DATED OCTOBER 11, 2008, AS SUBJECT TO THAT CERTAIN GUARANTY DATED JULY 15, 1991, AS SUBJECT TO THAT CERTAIN ORDER OF THE UNITED STATES BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF NEW YORK DATED JULY 8, 2011, AS ASSIGNED PURSUANT TO THAT CERTAIN ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 13, 2012, AS SUBJECT TO THAT CERTAIN GUARANTY MARCH 13, 2012.

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") dated as of October 26, 2015, is entered into between Key Food Stores Co-Operative, Inc., a New York corporation ("Key Food") and the undersigned ("Member"). Key Food and Member are referred to collectively herein as the "Parties". Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the A&P Asset Purchase Agreement (defined below).

RECITALS

WHEREAS, The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ("A&P Company"), Food Basics, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Food Basics"), APW Supermarkets, Inc., a New York corporation and a wholly-owned subsidiary of A&P ("APW"), Shopwell, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Shopwell"), Pathmark Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of A&P ("Pathmark"), A&P Live Better, LLC, a Delaware limited liability company ("Live Better"), A&P Real Property, LLC, a Delaware limited liability company and a wholly-owned subsidiary of A&P ("A&P Real Property" and, together with A&P, Food Basics, APW, Shopwell, Pathmark and Live Better, "A&P") desire to transfer certain assets and liabilities associated with the operation of supermarkets under the names "A&P", "Pathmark", "Food Basics", "Waldbaums" and "Food Emporium" (the "A&P Stores");

WHEREAS, Key Food and certain of its members, including Member, desire to acquire certain assets and assume certain liabilities associated with the operation of certain A&P Stores (each a "Store" and, collectively, the "Stores", and such transaction, the "Acquisition"), and in connection with such Acquisition, Key Food (acting individually and on behalf of such members) and A&P entered into an Asset Purchase Agreement, dated as of July 19, 2015 (the "A&P Asset Purchase Agreement");

WHEREAS, pursuant to Section 9.6 of the A&P Asset Purchase Agreement, Key Food has the right to assign and transfer any of its rights and obligations under the A&P Asset Purchase Agreement, in whole or in part, to one or more of its members, or designate one or more of its members to perform its obligations under the A&P Asset Purchase Agreement, in whole or in part; and

WHEREAS, Key Food desires to transfer and assign to Member, and Member desires to acquire and assume from Key Food, certain of the rights and obligations under the Asset Purchase Agreement with respect to the Store(s) set forth on Schedule A (the "Member Stores") and at the time of Closing, Member shall, pursuant to a Sale Order entered into by the Bankruptcy Court and in accordance with the terms of the A&P Asset Purchase Agreement, acquire certain specified assets and assume certain specified liabilities in connection with such Member Stores directly from A&P.

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

ARTICLE I TRANSACTIONS

Section 1.1 Member Store Assignment and Assumption. On the terms and subject to the conditions set forth in this Agreement, at any time after the entry of the Bankruptcy Court Sale Order and prior to the Closing, Member and Key Food agree to enter into an assignment and assumption agreement substantially in the form attached hereto as Exhibit A (the "Assignment and Assumption Agreement") pursuant to which (A) Key Food shall transfer and assign to Member all of Key Food's rights and obligations under the A&P Asset Purchase Agreement with respect to the Acquired Assets (as defined in the A&P Asset Purchase Agreement) that are primarily used or held for use in the Member Stores (the "Member Acquired Assets"), and (B) Member will assume and become responsible for the Assumed Liabilities (as defined in the A&P Asset Purchase Agreement) relating to or arising out of the Member Stores and/or the Member Acquired Assets (the "Member Assumed Liabilities").

Section 1.2 Purchase Price. The purchase price for the Acquisition of the Member Stores shall be as set forth on Schedule B (the "Member Store Purchase Price") and be payable to A&P.

Section 1.3 Financing. Key Food shall provide a loan to Member at the Closing on terms acceptable to Key Food in an amount equal to the aggregate Member Store Purchase Price minus the amount of the aggregate Cash Installments (or such other lower amount agreed to by the Parties hereunder), which loan amount for the avoidance of doubt, shall not exceed 70% of the total Member Store Purchase Price ("Member Loan") for purposes of payment of the Member Store Purchase Price. Member shall issue a note to Key Food evidencing the Member Loan in form and substance to be reasonably determined by Key Food and shall enter into any other agreements or deliver any documents reasonably required in connection thereof (the "Loan Documents"). Member shall provide such collateral or other security as are reasonably required by Key Food and any of its lenders in connection with the Member Loan.

Section 1.4 Payment of Member Store Purchase Price. The Member Store Purchase Price shall be paid as follows:

(a) Member shall pay an amount in cash set forth under the heading "Cash Inst." on Schedule A (the "Cash Installment"). The Parties acknowledge and agree that Member has deposited with Key Food or agreed to Key Food withholding from the patronage due to such Member, an amount set forth on Schedule A pursuant to certain Letter Agreement between Member and Key Food dated as of July 2015 ("Member Deposit") and for administrative convenience, the Cash Installment may be paid to A&P by Key Food on behalf of Member from such Member Deposit.

(b) Member shall pay the remainder of the Member Store Purchase Price to A&P from the proceeds of the Member Loan. For administrative convenience, such amount may be paid directly by Key Food or its lenders from their respective accounts on behalf of Member.