

GREAT ATLANTIC & PACIFIC TEA CO INC
Form S-4/A
September 28, 2007

As filed with the Securities and Exchange Commission on September 28, 2007

Registration No. 333-143212

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 3
TO

FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

The Great Atlantic & Pacific Tea Company, Inc.
(Exact name of registrant as specified in its charter)

Maryland (State or other jurisdiction of incorporation or organization)	5411 (Primary Standard Industrial Classification Code Number)	13-1890974 (I.R.S. Employer Identification No.)
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Two Paragon Drive
Montvale, New Jersey 07645
(201) 573-9700
(Address, including zip code, and telephone number, including area code,
of registrant's principal executive offices)

Allan Richards
Senior Vice President, Human Resources, Labor Relations, Legal Services & Secretary
The Great Atlantic & Pacific Tea Company, Inc.
Two Paragon Drive
Montvale, New Jersey 07645
(201) 573-9700
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

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San Francisco, California 94111-2562
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Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this Registration Statement is declared effective and upon completion of the merger described in the enclosed joint proxy statement/prospectus.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, please check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

PRELIMINARY SUBJECT TO COMPLETION DATED SEPTEMBER 28, 2007

**TO THE STOCKHOLDERS OF
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC. AND
PATHMARK STORES, INC.**

YOUR VOTE IS VERY IMPORTANT

On March 4, 2007, Pathmark Stores, Inc. (*Pathmark*), The Great Atlantic & Pacific Tea Company, Inc. (*A&P*) and Sand Merger Corp., a wholly owned subsidiary of A&P, entered into a merger agreement, pursuant to which A&P will acquire Pathmark and its subsidiaries through a merger. Upon completion of the merger, Pathmark stockholders will be entitled to receive, without interest, \$9.00 in cash and 0.12963 shares of A&P common stock for each share of Pathmark common stock that they own. Upon completion of the merger, we estimate that Pathmark's former stockholders will own approximately 14% of the then-outstanding common stock of A&P on a fully-diluted basis. A&P's stockholders will continue to own their existing shares, which will not be affected by the merger.

The merger cannot be completed unless (i) Pathmark stockholders approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, and (ii) A&P stockholders approve the issuance of A&P's common stock pursuant to the merger agreement. We are each holding a special meeting of stockholders in order to obtain the stockholder approvals necessary to complete the merger. The times, dates and places of the special meetings to consider and vote upon the proposals are as follows:

For A&P Stockholders:

[], 2007, 9:00 a.m., Eastern Daylight Time
The Woodcliff Lake Hilton
200 Tice Boulevard
Woodcliff Lake, New Jersey 07677

For Pathmark Stockholders:

[], 2007, [] a.m., Eastern Daylight Time
Pathmark Corporate Headquarters
200 Milik Street
Carteret, New Jersey 07008

After careful consideration, each of our boards of directors has determined that the merger agreement and the transactions contemplated thereby are fair to and in the best interests of our respective stockholders. **Accordingly, the A&P board of directors unanimously recommends that A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement and FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies. The Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger and FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.**

The affirmative vote of a majority of the votes cast by holders of A&P common stock at the special meeting is required to approve the issuance of A&P common stock in connection with the merger, *provided* that the total votes cast must represent a majority of the outstanding shares of A&P common stock entitled to vote on the matter.

The affirmative vote of a majority of the outstanding shares of Pathmark common stock is required to adopt the merger agreement and approve the transactions contemplated thereby, including the merger.

The joint proxy statement/prospectus attached to this letter provides you with information about A&P, Pathmark, the proposed merger and the special meetings of each of our companies' stockholders. **In particular, please see the section titled Risk Factors of the accompanying joint proxy statement/prospectus which contains a description of the risks that you should consider in evaluating the proposals.** You may also obtain more information about

A&P and Pathmark from documents each party has filed with the Securities and Exchange Commission. Shares of A&P

common stock are listed on the New York Stock Exchange under the symbol GAP. Shares of Pathmark common stock are listed on the NASDAQ Global Market under the symbol PTMK.

Your vote is important. Whether or not you plan to attend your respective company's special meeting, please take the time to vote by completing, signing and dating the enclosed proxy card and returning it in the appropriate envelope provided, or in the case of A&P stockholders, use the Internet or telephone proxy authorization options detailed on the proxy card. If your shares are held in street name by a bank, brokerage firm or nominee you should follow the instructions of your bank, brokerage firm or nominee, regarding the voting of your shares.

Thank you for your cooperation and continued support.

Allan Richards	John T. Standley
Senior Vice President, Human Resources, Labor Relations, Legal Services & Secretary Great Atlantic & Pacific Tea Company, Inc.	Chief Executive Officer Pathmark Stores, Inc.

Neither the SEC nor any state securities commission has approved or disapproved the securities to be issued in connection with the merger or determined if the accompanying joint proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

Information contained in this document is subject to completion or amendment. A registration statement relating to these securities has been filed with the SEC. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This joint proxy statement/prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under securities laws of such state.

THIS JOINT PROXY STATEMENT/PROSPECTUS IS DATED [], 2007, AND IS BEING FIRST MAILED TO STOCKHOLDERS OF A&P AND PATHMARK ON OR ABOUT [], 2007.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

2 Paragon Drive
Montvale, New Jersey 07645

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [], 2007**

To the stockholders of THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.:

We will hold a special meeting of stockholders of The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation (*A&P*), at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on [], [], 2007, at [] a.m., Eastern Daylight Time, for the following purposes:

1. to consider and vote on a proposal to approve the issuance of A&P common stock pursuant to the Agreement and Plan of Merger, dated as of March 4, 2007, by and among A&P, Sand Merger Corp. (*Merger Sub*) (a wholly owned subsidiary of A&P established for the purpose of effecting the merger) and Pathmark Stores, Inc. (*Pathmark*), as amended from time to time, which provides for the merger of Merger Sub with and into Pathmark, with Pathmark as the surviving

corporation;

2. to consider and vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies; and
3. to transact any other business as may properly come before the meeting and any adjournments or postponements thereof.

The A&P board of directors has fixed October 8, 2007, as the record date for this meeting. Only stockholders of record at the close of business on that date are entitled to receive notice and to vote at the meeting or at any adjournment or postponement thereof.

The affirmative vote of a majority of the votes cast by holders of A&P common stock at the special meeting is required to approve Proposal 1, *provided* that the total votes cast must represent a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. The adoption of Proposal 2 requires the affirmative vote of a majority of the votes cast by the holders of A&P common stock at the special meeting.

Whether or not you plan to attend the meeting, please either complete, sign and return the accompanying proxy card to A&P in the enclosed envelope, which requires no postage if mailed in the United States, or use the Internet or telephone proxy authorization options detailed on the proxy card. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares.

By Order of the Board of Directors

Allan Richards

*Senior Vice President, Human Resources,
Labor Relations, Legal Services & Secretary*

October 8 , 2007

You are cordially invited to attend the meeting. Whether or not you plan to do so, your vote is important. Please promptly submit your proxy by mail, telephone or the Internet.

**PATHMARK STORES, INC.
200 MILIK STREET
CARTERET, NEW JERSEY 07008**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [], 2007**

To the stockholders of PATHMARK STORES, INC.:

A special meeting of stockholders of Pathmark Stores, Inc. (*Pathmark*), a Delaware corporation, will be held on [], 2007, at [] a.m., Eastern Daylight Time, at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008, for the following purposes:

1. to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger, dated March 4, 2007, by and among Pathmark, The Great Atlantic & Pacific Tea Company, Inc. (*A&P*) and Sand Merger Corp. (*Merger Sub*), and the transactions contemplated by the merger agreement, as amended from time to time, including the merger, pursuant to which Merger Sub would merge with and into Pathmark and each outstanding share of Pathmark common stock would be converted into the right to receive, without interest, \$9.00 in cash and 0.12963 shares of A&P common stock;
2. to consider and vote upon a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies; and
3. to consider and vote on such other matters as may properly come before the special meeting or any adjournment or postponement thereof.

Only stockholders of record as of the close of business on October 8, 2007, are entitled to notice of and to vote at the special meeting and at any adjournment or postponement thereof. A list of these stockholders will be available for inspection by stockholders of record during regular business hours at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008, for ten days prior to the date of the special meeting. All stockholders of record are cordially invited to attend the special meeting in person. Your vote is important, regardless of the number of shares of Pathmark common stock that you own.

The adoption of the merger agreement requires the approval of the holders of a majority of the outstanding shares of our common stock entitled to vote on the matter. **The Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.**

The adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of shares of Pathmark common stock represented in person or by proxy at the special meeting and entitled to vote thereon. **The Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.**

Even if you plan to attend the meeting in person, we request that you complete, sign, date and return the enclosed proxy card and thus ensure that your shares will be represented at the special meeting even if you become unable to attend. If you sign, date and return your proxy card without indicating how you wish to vote, the shares represented by your proxy will be voted FOR the approval and adoption of the merger agreement and transactions contemplated thereby, including the merger, and FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies and will be voted in accordance with the recommendations of our board of directors on any other matters properly brought before the meeting for a vote. If you hold your shares through a bank, brokerage firm

or

nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares.

Whether you attend the meeting or not, you may revoke a proxy at any time before it is voted at the meeting. You may do so by executing and returning a proxy card dated later than the previous one or by attending the special meeting and voting in person. Simply attending the meeting, however, will not revoke your proxy. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding revocation of proxies. If your bank, brokerage firm or nominee allows you to submit a proxy by telephone or the Internet, you may be able to change your vote by submitting a subsequent proxy by telephone or the Internet.

By Order of the Board of Directors,

Marc A. Strassler

Senior Vice President, Secretary and General Counsel

References to Additional Information

The accompanying joint proxy statement/prospectus incorporates by reference important business and financial information about A&P and Pathmark from documents that are not included in or delivered with this joint proxy statement/prospectus. This information is available to you without charge upon your written or oral request. You can obtain the documents incorporated by reference in the accompanying joint proxy statement/prospectus by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

The Great Atlantic & Pacific Tea Company, Inc.	Pathmark Stores, Inc.
Two Paragon Drive	200 Milik Street
Montvale, New Jersey 07645	Carteret, New Jersey 07008
Telephone: (201) 573-9700	Telephone: (732) 499-3000
Attention: Secretary	Attention: Secretary

If you would like to request documents, please do so by [], 2007 in order to receive them before the special meetings.

See Where You Can Find More Information.

About This Document

This document, which forms part of a registration statement on Form S-4 filed with the SEC by A&P, constitutes a prospectus of A&P under Section 5 of the Securities Act of 1933, as amended, and the rules thereunder, with respect to the shares of A&P common stock to be issued to the holders of Pathmark common stock in connection with the merger. This document also constitutes (i) a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended, and the rules thereunder; (ii) a notice of meeting with respect to A&P's special meeting of stockholders, at which A&P stockholders will consider and vote upon the issuance of shares of A&P common stock to Pathmark stockholders on the terms and conditions set forth in the merger agreement; and (iii) a notice of meeting with respect to Pathmark's special meeting of stockholders, at which Pathmark stockholders will consider and vote upon adoption of the merger agreement and the transactions contemplated thereby, including the merger.

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**QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES
FOR THE SPECIAL MEETINGS**

The questions and answers below highlight only selected procedural information from this document. They do not contain all of the information that may be important to you. You should read carefully the entire document and the additional documents incorporated by reference into this document because each contains important information.

Q: What are the proposals upon which I am being asked to vote?

A: *A&P Stockholders.* Stockholders of The Great Atlantic & Pacific Tea Company, Inc. (*A&P*) are being asked to vote (i) to approve the issuance of shares of A&P common stock pursuant to the Agreement and Plan of Merger, dated March 4, 2007, as amended (the *merger agreement*), by and among Pathmark Stores, Inc. (*Pathmark*), A&P and Sand Merger Corp. (*Merger Sub*), under which A&P will acquire Pathmark and its subsidiaries through the merger of Merger Sub with and into Pathmark (the *merger*), and (ii) to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

Pathmark Stockholders. Stockholders of Pathmark are being asked to vote (i) to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, and (ii) to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

Q: What vote of Pathmark stockholders is required for adoption of the merger agreement?

A: Adoption of the merger agreement and the transactions contemplated thereby, including the merger, requires the affirmative vote of a majority of the outstanding shares of Pathmark common stock entitled to vote. Therefore, if a Pathmark stockholder abstains or fails to vote, it will have the same effect as voting against the merger agreement. You are entitled to vote on the proposal to approve and adopt the merger agreement and the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies if you held Pathmark common stock at the close of business on the Pathmark record date, which is October 8, 2007. On that date, [] shares of Pathmark common stock were outstanding and entitled to vote.

The largest stockholders of Pathmark, Yucaipa Corporate Initiatives Fund I, LP; Yucaipa American Alliance (Parallel) Fund I, LP and Yucaipa American Alliance Fund I, LP, which we refer to collectively as the *Yucaipa Investors*, have agreed to vote the shares of Pathmark common stock that they own as of the Pathmark record date in favor of adoption of the merger agreement and the transactions contemplated thereby, including the merger, *provided* that these voting obligations do not apply to any shares owned by the Yucaipa Investors in excess of 33% of the outstanding Pathmark common stock. The remaining shares owned by the Yucaipa Investors may be voted in the Yucaipa Investors' discretion, although the Yucaipa Investors have expressed their present intention to vote all of the Pathmark shares they own (approximately 38% of the outstanding Pathmark common stock as of the Pathmark record date) in favor of the adoption of the merger agreement.

Q: What vote of Pathmark stockholders is required for approval of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies?

A: The adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of shares of Pathmark common stock represented in person or by proxy at the special meeting and entitled to vote thereon.

Q: What vote of A&P stockholders is required for approval of the proposal to issue shares of A&P common stock pursuant to the merger agreement?

A: The proposal to issue shares of A&P common stock pursuant to the merger agreement must be approved by a majority of the votes cast by the holders of A&P common stock, *provided* that the total votes cast on the proposal must represent at least a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, *provided* that the total votes cast on the proposal represent at least a majority of all shares entitled to vote on the proposal, an A&P stockholder's failure to vote will not affect the outcome of the vote to approve the issuance of A&P common stock in connection with the merger, assuming more than a majority of the outstanding shares are voted on the proposal. Because the New York Stock Exchange (the *NYSE*) treats abstentions as votes cast with respect to the proposal to issue shares of A&P common stock pursuant to the merger agreement, an abstention will have the same effect as a vote *AGAINST* the proposal. A&P stockholders are entitled to vote on the proposal to approve the issuance of A&P common stock if they held A&P common stock at the close of business on the A&P record date, which is October 8, 2007. On the A&P record date, [] shares of A&P common stock were outstanding and entitled to vote.

Tengelmann Warenhandelsgesellschaft KG (*Tengelmann*) has agreed to vote all of its shares of A&P common stock, constituting approximately 53% of the outstanding A&P common stock as of the A&P record date, in favor of the issuance of A&P common stock in the merger. This means that the approval of the issuance of the A&P common stock pursuant to the merger agreement is assured.

Q: What vote of A&P stockholders is required for approval of the proposal to adjourn or postpone the meeting, if necessary, to solicit additional proxies?

A: The adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the votes cast by the holders of A&P common stock at the special meeting.

Q: When do you expect the merger to be completed?

A: We expect to complete the merger after (i) the Pathmark stockholders adopt the merger agreement and the transactions contemplated thereby, including the merger, at the special meeting, (ii) the A&P stockholders approve the proposal to issue shares of A&P common stock pursuant to the merger agreement at the A&P special meeting, and (iii) we receive all necessary regulatory approvals, including the expiration or termination of the waiting period under the HSR Act, including any extension of the waiting period. We currently anticipate completing the merger in the second half of A&P's 2007 fiscal year ending February 23, 2008.

Q: If my shares are held in street name by a bank, brokerage firm or nominee, will they vote my shares for me?

A: *A&P Stockholders*. You should instruct your bank, brokerage firm or nominee to vote your shares, following the directions they provide. If you do not instruct your bank, brokerage firm or nominee, they will generally not have the discretion to vote your shares. Because the approval of the proposal to issue A&P common stock in connection with the merger requires an affirmative vote of a majority of the votes cast by holders of A&P common stock at the special meeting, the failure to vote your shares will not affect the outcome of the vote on the proposal to approve the issuance of A&P common stock in connection with the merger, *provided* that the total votes cast on the proposal represent at least a majority of all shares entitled to vote on the proposal. Because the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the votes cast by the holders of A&P common stock at the special meeting, and because brokers do not have discretionary authority to vote on the proposal, the failure to instruct your broker how to vote your shares will have no effect on the approval of that proposal.

Pathmark Stockholders. You should instruct your bank, brokerage firm or nominee to vote your shares, following the directions they provide. If you do not instruct your bank, brokerage firm or nominee, they will generally not have the discretion to vote your shares. Because the adoption of the merger agreement requires an affirmative vote of a majority of the outstanding shares of Pathmark common stock for approval, the failure to vote your shares will have the same effect as votes cast **AGAINST** adoption of the merger agreement. Because the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the shares of common stock present or represented at the special meeting and entitled to vote thereon, and because brokers do not have discretionary authority to vote on the proposal, the failure to instruct your broker how to vote your shares will have no effect on the approval of that proposal.

Q: What do I need to do now?

A: *A&P Stockholders.* After carefully reading and considering the information contained in this joint proxy statement/prospectus, please fill out and sign the proxy card, and then mail your signed proxy card in the enclosed prepaid envelope as soon as possible so that your shares may be voted at the A&P special meeting. Your signed proxy card will instruct the persons named on the card to vote your shares at the special meeting as you direct on the card. If you sign and send in your proxy card and do not indicate how you want your shares to be voted, your proxy will be voted **FOR** the approval of each of (1) the A&P proposal to approve the issuance of A&P common stock in connection with the merger, and (2) the A&P proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies. You may also authorize a proxy by telephone or through the Internet by following the instructions included with your proxy card. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares. **YOUR VOTE IS VERY IMPORTANT.**

Pathmark Stockholders. After carefully reading and considering the information contained in this joint proxy statement/prospectus, please fill out and sign the proxy card, and then mail your signed proxy card in the enclosed prepaid envelope as soon as possible so that your shares may be voted at the Pathmark special meeting. Your signed proxy card will instruct the persons named on the card to vote your shares at the Pathmark special meeting as you direct on the card. If you sign and send in your proxy card and do not indicate how you want your shares to be voted, your proxy will be voted **FOR** the approval of each of (1) the Pathmark proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger, and (2) the Pathmark proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies. If you hold shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares. **YOUR VOTE IS VERY IMPORTANT.**

Q: May I change my vote after I have mailed my signed proxy card?

A: You may change your vote at any time before your proxy is voted at the A&P special meeting or the Pathmark special meeting, as the case may be. You can do this in one of the following ways. First, you can send a written notice stating that you want to revoke your proxy to:

In the case of A&P Stockholders:

Allan Richards
Senior Vice President, Human Resources, Labor Relations, Legal Services & Secretary
The Great Atlantic & Pacific Tea Company, Inc.
Two Paragon Drive
Montvale, New Jersey 07645

In the case of Pathmark Stockholders:

Marc A. Strassler
Senior Vice President, Secretary and General Counsel
Pathmark Stores, Inc.
200 Milik Street
Carteret, New Jersey 07008

Second, you can complete and submit a new, later-dated proxy card. Third, you can attend the A&P special meeting or the Pathmark special meeting, as the case may be, and vote in person. Simply attending the meeting, however, will not revoke your proxy; you must vote at the meeting. Fourth, A&P stockholders, but not Pathmark stockholders, can authorize a proxy by telephone or through the Internet at a later time, but not later than 11:59 p.m. (Eastern Daylight Time) on [], 2007 or the day before the meeting date if the special meeting is adjourned or postponed.

If you have instructed a broker to vote your shares, you must follow directions received from your broker to change your vote.

Q: Should I send in my Pathmark or A&P stock certificates now?

A: No. After the merger is completed, Pathmark stockholders will receive written instructions for exchanging their stock certificates.

A&P stockholders will continue to hold their A&P stock certificates following the merger and are not required to take any action with respect to their A&P stock certificates.

Q: Who can help answer my questions?

A: *A&P Stockholders.* If you have any questions about the A&P special meeting or if you need additional copies of this joint proxy statement/prospectus or the enclosed proxy card, please contact:

Investor Relations
The Great Atlantic & Pacific Tea Company, Inc.
Two Paragon Drive
Montvale, New Jersey 07645
Telephone: (201) 573-9700

or:

Mackenzie Partners, Inc.
105 Madison Avenue
New York, New York 10016
Telephone: (800) 322-2885

Pathmark Stockholders. If you have any questions about the Pathmark special meeting or if you need additional copies of this joint proxy statement/prospectus or the enclosed proxy card, please contact:

Investor Relations
Pathmark Stores, Inc.
200 Milik Street
Carteret, New Jersey 07008
Telephone: (732) 499-3000

or:

Mellon Investor Services LLC
480 Washington Boulevard, 27th Floor
Jersey City, New Jersey 07310
Telephone: (800) 580-6412

SUMMARY

The following summary highlights selected information from this joint proxy statement/ prospectus and may not contain all of the information that may be important to you. Accordingly, stockholders are encouraged to carefully read this entire joint proxy statement/prospectus, its annexes and the documents referred to or incorporated by reference into this joint proxy statement/prospectus. Each item in this summary includes a page reference directing you to a more complete description of that item.

The Merger (Page 40)

On March 4, 2007, A&P, Merger Sub, a newly formed, wholly owned subsidiary of A&P, and Pathmark entered into the merger agreement, pursuant to which A&P will acquire Pathmark and its subsidiaries through the merger of Merger Sub with and into Pathmark. After the merger, Pathmark will be the surviving corporation and a wholly owned subsidiary of A&P. Shares of A&P common stock received by Pathmark stockholders in the merger will be listed on the NYSE under the symbol GAP. After completion of the merger, shares of A&P common stock will continue to be traded on the NYSE, but shares of Pathmark common stock will no longer be publicly listed or traded. Upon completion of the merger, approximately 86% of A&P common stock will be held by existing A&P stockholders and approximately 14% will be held by former Pathmark stockholders on a fully diluted basis.

Merger Consideration (Page 106)

Pathmark Common Stock

Pursuant to the merger, each share of Pathmark common stock will be converted into the right to receive (i) 0.12963, which we refer to as the *exchange ratio*, of a share of A&P common stock and (ii) \$9.00 in cash, which we refer to as the *per share cash consideration*, without interest. No fractional shares of A&P common stock will be issued in connection with the merger; holders of Pathmark common stock will receive cash in lieu of any fractional shares of A&P common stock they otherwise would have received in the merger.

The exchange ratio is a fixed ratio, which means that it will not change between now and the time the merger is completed. Therefore, the market value of the A&P common stock received by Pathmark stockholders in the merger will depend on the market price of A&P common stock at the time the merger is completed.

For example, a Pathmark stockholder owning 1,000 shares of Pathmark common stock would receive total consideration of \$9,000.00 in cash and 129 shares of A&P common stock, plus a cash payment, in lieu of the fractional interest of 0.63 shares of A&P common stock that would otherwise be receivable, determined by multiplying (i) the number of fractional shares of A&P common stock otherwise receivable by such holder, or 0.63 shares in this example, by (ii) the closing price of the A&P common stock on the NYSE on the trading day immediately prior to the closing date.

Treatment of Pathmark Stock Options, Warrants and Equity-Based Awards

Outstanding Pathmark stock options granted under Pathmark stock compensation plans will become fully vested and exercisable no less than fifteen days prior to the closing date of the merger. Outstanding Pathmark stock options at the closing date of the merger and granted under Pathmark stock compensation plans, other than certain options described in the next paragraph, will be canceled. Any stock options with exercise prices less than the per share closing price of Pathmark common stock on the last trading day immediately prior to the closing date will entitle their holders to receive a lump sum cash payment to be paid as soon as practicable after the completion of the merger, in an amount based on the Pathmark closing price, as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards. Any stock options with

exercise prices equal to or greater than the Pathmark closing price will be canceled for no consideration.

With respect to Pathmark stock options that were granted under Pathmark stock plans prior to June 9, 2005, Pathmark has agreed to use commercially reasonable efforts to obtain consents to cancel any such options with exercise prices less than the Pathmark closing price on the last trading day immediately prior to the closing date in exchange for a lump sum cash payment as described in the previous paragraph. Any such Pathmark stock options not canceled and cashed out, or with exercise prices equal to or greater than the Pathmark closing price, will be converted into an option to purchase, on the same terms and conditions, a number of shares of A&P common stock and at an exercise price determined as described under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards.

Outstanding awards of Pathmark restricted stock units or restricted stock will become fully vested and will be converted into the right to receive a lump sum cash payment equal to the product of (a) the number of shares of Pathmark common stock subject to the award immediately prior to the closing and (b) the closing price of Pathmark common stock on the last trading day before the closing date, as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Treatment of Pathmark Stock Options, Warrants and Other Equity- Based Awards.

The Yucaipa Investors' existing Series A and Series B Warrants to purchase Pathmark common stock will be exchanged for warrants to purchase A&P common stock. See Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Warrant Agreement.

A&P will assume the obligations of Pathmark under the Warrant Agreement dated as of September 19, 2000 between Pathmark and ChaseMellon Shareholder Services, LLC (the *2000 Warrant Agreement*), and the warrants issued thereunder, so that the holders of the assumed warrants will have the right to purchase A&P common stock on the terms and subject to the conditions set forth in the 2000 Warrant Agreement and the warrants thereunder.

Recommendations of the Boards of Directors

A&P (page 67). The A&P board of directors has determined that entering into the merger agreement is advisable and in the best interests of A&P and has unanimously approved the merger agreement and the transactions it contemplates, recommended that its stockholders approve the issuance of A&P common stock pursuant to the merger agreement, and declared entering into the merger agreement advisable. For the factors considered by the A&P board of directors in reaching its decision to approve, and declare the advisability of entering into, the merger agreement and the transactions it contemplates, see Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors. The A&P board of directors unanimously recommends that the A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement, and FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

Pathmark (page 63). The Pathmark board of directors has determined that the merger is fair to and in the best interests of Pathmark and its stockholders and has unanimously approved the merger agreement and the transactions it contemplates, including the merger, and has declared the merger agreement advisable. For the factors considered by the Pathmark board of directors in reaching its decision to approve, and declare the advisability of entering into, the merger agreement and the transactions it contemplates, see Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Pathmark's Reasons for the Merger; Recommendation of the Pathmark Board of Directors. The Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, and FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

Opinions of Financial Advisors

A&P (page 79). In deciding to approve the merger and advise that A&P stockholders approve the share issuance, the A&P board of directors considered the opinion of its financial advisor, J.P. Morgan Securities Inc., which we refer to as *JPMorgan*, provided to the A&P board of directors on March 4, 2007, that as of the date of the opinion, and based on and subject to the qualifications, assumptions and limitations set forth therein, the merger consideration to be paid by A&P was fair, from a financial point of view, to A&P. A copy of the opinion of JPMorgan is attached to this document as Annex G. A&P stockholders should read the opinion completely and carefully to understand, among other things, the assumptions made, procedures followed, matters considered and limits on the review undertaken by JPMorgan in providing its opinion. Additionally, A&P agreed to pay JPMorgan a transaction fee in connection with the merger, a significant portion of which is payable upon completion of the merger. The JPMorgan opinion is not a recommendation as to how any stockholder of A&P should vote with respect to the A&P share issuance or any other matter.

Pathmark (page 69). In deciding to approve the merger and advise that Pathmark stockholders approve and adopt the merger agreement, the Pathmark board of directors considered the opinion of its financial advisor, Citigroup Global Markets Inc., which we refer to as *Citigroup*, provided to the Pathmark board of directors on March 4, 2007, that as of the date of the written opinion and based upon and subject to the considerations and limitations set forth in its written opinion, its work described in the written opinion and other factors it deemed relevant, the merger consideration was fair, from a financial point of view, to the holders of Pathmark common stock (other than the Yucaipa Group, as defined below). A copy of the opinion of Citigroup is attached to this document as Annex H. Pathmark stockholders should read the opinion completely and carefully to understand, among other things, the assumptions made, procedures followed, matters considered and limits on the review undertaken by Citigroup in providing its opinion. Additionally, Pathmark agreed to pay Citigroup a transaction fee in connection with the merger, a significant portion of which is payable upon completion of the merger. The Citigroup opinion is not a recommendation as to how any stockholder should vote with respect to the proposal to approve and adopt the merger agreement or any other matter.

Interests of Certain Persons in the Merger (Page 85)

Some of the members of A&P's and Pathmark's management, certain members of their boards of directors and certain of their significant stockholders have interests in the merger that are different from, or in addition to, the interests of A&P and Pathmark stockholders generally.

These interests include the right of certain of Pathmark's executive officers to receive severance payments and benefits under the terms of existing severance agreements and the acceleration of vesting of Pathmark stock options and other equity-based awards as a result of the merger.

The Yucaipa Companies LLC (*Yucaipa Companies*), an affiliate of the Yucaipa Investors, will receive a fee in connection with termination of the Management Services Agreement dated March 23, 2005 with Pathmark (the *Management Services Agreement*) and Yucaipa Advisors, LLC (*Yucaipa Advisors*), also an affiliate of the Yucaipa Investors, will receive a transaction fee for services rendered in connection with the merger. In addition, warrants to purchase Pathmark common stock owned by the Yucaipa Investors will be converted into warrants to purchase A&P common stock and the Yucaipa Investors will receive certain registration rights for A&P shares acquired by the Yucaipa Investors in connection with the merger and those issuable upon conversion of the Yucaipa Investors warrants.

In addition, subject to certain conditions, in connection with the merger, Gregory Mays, a director of Pathmark, will be elected by the existing A&P directors to fill the existing vacant position on the A&P board of directors without stockholder action, as provided for under the director election provisions in accordance with the bylaws of A&P and Maryland law.

The Pathmark board of directors was aware of these interests and considered them, among other matters, in approving and declaring the advisability of the merger agreement.

The largest stockholder of A&P, Tengelmann, has entered into a stockholder agreement with A&P whereby Tengelmann will have certain approval, registration, preemptive and other rights after the merger as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) Tengelmann Stockholder Agreement. Tengelmann and A&P have also agreed to negotiate in good faith to enter into a services agreement for services rendered by Tengelmann to A&P from time to time in exchange for reasonable compensation as agreed by Tengelmann and A&P.

The A&P board of directors was aware of these interests and considered them, among other matters, in approving and declaring the advisability of the merger agreement and the A&P share issuance.

Directors and Officers Following Completion of the Merger (Page 108)

Following the merger, Christian Haub, Executive Chairman of A&P, will continue as Executive Chairman of A&P; Eric Claus, President and CEO of A&P, will also maintain those same positions at A&P. Four directors who were serving on A&P's board immediately prior to the closing of the merger and were not designated for nomination by Tengelmann will continue in their current positions and four directors will be designated for nomination to A&P's board by Tengelmann. Gregory Mays, a director of Pathmark, will be elected to the A&P board of directors by the existing A&P directors, subject to certain conditions, as provided for under the bylaws of A&P and Maryland law.

Financing (Page 95)

A&P estimates that the total amount of funds necessary to pay the cash portion of the merger consideration will be approximately \$485.5 million. A&P expects that this amount will be provided through a combination of (i) \$190.0 million of net cash proceeds from the sale of 6,350,000 of its shares of Metro, Inc. (*Metro*) common stock, which A&P received in connection with the August 2005 sale of its Canadian operations to Metro, a Canadian supermarket and pharmacy operator, and (ii) up to \$780.0 million in senior secured notes (or, if the offering of senior secured notes is not completed on or prior to the closing of the merger, up to \$780.0 million under a senior secured bridge credit facility). On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for net cash proceeds of approximately \$203.5 million. A&P continues to hold approximately 11.7 million Metro shares. The merger is not conditioned on receipt of financing by A&P. Bank of America, N.A. (*Bank of America*), Banc of America Bridge LLC (*Banc of America Bridge*), Banc of America Securities LLC (*BAS*), Lehman Brothers Commercial Bank (*LBCB*), Lehman Brothers Inc. (*Lehman*) and Lehman Commercial Paper Inc. (*LCPI*) have entered into a commitment letter with A&P whereby (i) Bank of America has committed to provide a \$615.0 million senior secured revolving credit facility (the *ABL Facility*) to finance the working capital of A&P and certain of its subsidiaries (including Pathmark) upon consummation of the merger and (ii) Banc of America Bridge and LBCB have severally committed to provide in the aggregate up to \$780.0 million of senior secured loans (the *Bridge Facility* and together with the ABL Facility, the *Facilities*) as bridge or interim financing to senior secured notes which may be issued by A&P and/or certain of its subsidiaries for the purpose of refinancing advances made under the Bridge Facility.

Governmental and Regulatory Approvals (Page 98)

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, which we refer to as the *HSR Act*, the merger may not be consummated unless a waiting period has expired or been terminated and there can be no assurances that such expiration or termination will be obtained. A&P and Pathmark filed the required notification and report forms with the Antitrust Division of the Department of Justice and the Federal Trade Commission regarding the merger on March 19, 2007. On April 18, 2007, A&P and Pathmark each received a request for additional information and documentary materials, which we refer to as the *Second Request*, from the Federal Trade Commission. As a result of the Second

Request, A&P cannot complete the merger under the HSR Act until the earlier of (i) 30 days after both parties substantially comply with the Second Request (or on the next regular business day if the 30th day falls on a Saturday, Sunday or legal public holiday), unless that waiting period is extended by agreement between A&P and the Federal Trade Commission, or (ii) when the Federal Trade Commission terminates its review of the merger. On May 21, 2007, A&P announced that it had entered into a timing agreement with the Federal Trade Commission, pursuant to which A&P agreed, subject to certain conditions, to not (i) certify that they have substantially complied with the Second Request prior to June 30, 2007, or (ii) consummate the merger for at least 60 days following the date that A&P and Pathmark substantially comply with the Second Request. On July 13, 2007, A&P and Pathmark each certified substantial compliance with the Federal Trade Commission in response to the Second Request. On August 7, 2007, A&P and Pathmark entered into an extension of the timing agreement with the Federal Trade Commission pursuant to which A&P and Pathmark agreed, subject to certain conditions, that they will not consummate A&P's acquisition of Pathmark before 11:59 p.m. on September 25, 2007. On September 20, 2007, A&P and Pathmark entered into an agreement with the Federal Trade Commission pursuant to which A&P agreed to provide the Federal Trade Commission notice of its intention to consummate A&P's acquisition of Pathmark at least two weeks prior to closing such transaction. A&P and Pathmark further agreed to give such notice to the Federal Trade Commission no sooner than October 5, 2007.

Conditions to the Merger (Page 119)

The obligations of A&P and Pathmark to complete the merger are subject to the satisfaction or waiver of a number of conditions, including:

the receipt of the required approval of Pathmark stockholders to adopt the merger agreement and the required approvals of A&P stockholders to approve the issuance of A&P common stock in the merger and an amendment to A&P's charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter. (At A&P's annual meeting of stockholders on July 19, 2007, A&P stockholders

approved an amendment to eliminate such provisions from A&P's charter.);

the expiration or termination of the waiting period applicable to the merger under the HSR Act, including any extension of the waiting period;

the approval for listing of the shares of A&P common stock to be issued in connection with the merger on the NYSE;

the continued effectiveness of the registration statement on Form S-4, of which this joint proxy statement/prospectus forms a part; and

other customary conditions set forth in the merger agreement, including the accuracy of representations and warranties set forth in the merger agreement; the performance of obligations under the merger agreement; and the absence of orders, injunctions or other legal restraints or prohibitions preventing completion of the merger.

In addition, A&P's obligation to complete the merger is subject to the conditions that the aggregate number of shares of Pathmark stock held by Pathmark stockholders who are entitled to demand, and who properly demand, an appraisal of such holders' shares in accordance with Section 262 of the General Corporation Law of the State of Delaware, which we refer to as the *DGCL* (and who comply in all other respects with Section 262), does not exceed 10% of the shares of Pathmark common stock outstanding immediately prior to the completion of the merger; that there be no pending or threatened legal action or similar proceeding seeking to restrain or prohibit the merger, impose certain limitations on implementing the merger or which has had or would reasonably be expected to have a material adverse effect with respect to Pathmark; that no material adverse effect has occurred or would reasonably be expected to occur with respect to Pathmark; and that the Management Services Agreement and related consulting agreement have been terminated pursuant to their terms.

Restrictions on Solicitation of Other Offers (Page 113)

Subject to certain exceptions, the merger agreement restricts Pathmark, its subsidiaries and their respective directors, officers and other representatives from soliciting or knowingly encouraging or facilitating third-party proposals to acquire Pathmark or from entering into, initiating or participating in any discussions or negotiations, furnishing any nonpublic information or assisting or knowingly encouraging any third party with respect to such proposals. Under certain circumstances, however, if Pathmark receives an unsolicited acquisition proposal from a third party, Pathmark may furnish nonpublic information to, and engage in negotiations with, that third party, subject to specified conditions.

Termination of the Merger Agreement (Page 120)

A&P and Pathmark may terminate the merger agreement without completing the merger by agreement in writing at any time, even after the Pathmark stockholders have voted to adopt the merger agreement and the A&P stockholders have approved the issuance of A&P common stock and the A&P charter amendment. The merger agreement may also be terminated at any time prior to the effective time of the merger in other specified circumstances, including:

by either
A&P or
Pathmark
if:

the merger is
not completed
by the outside
date of March
4, 2008 (the
Outside Date),
which date
may be
extended once
for a period up
to ninety days
under certain
circumstances;

Pathmark
stockholders
fail to adopt
the merger
agreement at
the Pathmark
special meeting
or A&P
stockholders
fail to approve
both the
issuance of
A&P common
stock in the

merger and the A&P charter amendment at the A&P special meeting. (At A&P's annual meeting of stockholders on July 19, 2007, A&P stockholders approved an amendment to eliminate such provisions from A&P's charter.);

a governmental entity issues an order, injunction or other legal restraint or prohibition preventing completion of the merger; or

the other party breaches or fails to perform any representation, warranty, covenant or agreement in the merger agreement which breach or failure to perform would cause the failure of a closing condition which is not curable or is not cured following

notice; or

by
A&P
if:

prior to the
Pathmark special
meeting, the
Pathmark board
of directors
withdraws,
modifies or
qualifies in a
manner adverse
to A&P its
recommendation
of the merger; or

on September 4,
2007 or on
December 4,
2007, the A&P
board of
directors elects to
terminate the
merger
agreement based
on its good faith
determination
that completing
the merger would
be reasonably
likely to require
divesting stores,
businesses or
other assets of
A&P and
Pathmark in
excess of an
aggregate of
\$36.0 million of
scheduled store
level cashflow,
subject to
requirements to
discuss the
determination
with Pathmark
and to pay
certain fees and

expenses, if applicable, as described under Termination fees and expenses ; or

by Pathmark if:

A&P fails to obtain \$190.0 million of net cash proceeds by June 2, 2007 from the sale of Metro common stock or A&P common stock and/or preferred stock (on March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million) or such amount fails to remain unencumbered and held separately to pay the merger consideration; or

the marketing period provided under the merger agreement to arrange the debt financing for the merger has expired, the conditions to the

completion of
the merger
have been
satisfied or
waived and
A&P does not
have available
funds to pay
the aggregate
cash
consideration
payable in the
merger.

Termination Fees and Expenses (Page 122)

Pathmark will pay A&P a termination fee of \$25.0 million in connection with the termination of the merger agreement in certain circumstances involving a competing acquisition proposal by a third party or a change in the Pathmark board of directors' recommendation of the merger to Pathmark's stockholders.

In addition, A&P has agreed to pay Pathmark termination fees under the following circumstances:

a \$25.0 million termination fee, referred to as the *Nine-Month Termination Fee*, if (i) A&P terminates the merger agreement on December 4, 2007 because A&P has determined in good faith, subject to certain requirements, that required divestitures would be reasonably likely to exceed \$36.0 million of aggregate scheduled store level cashflow or (ii) A&P or Pathmark terminates the merger agreement after September 4, 2007 and on or before December 4, 2007 because any court or other governmental entity has restrained or prohibited

completion of the merger at the request of any person seeking relief under antitrust laws;

a \$50.0 million termination fee, referred to as the *One-Year Termination Fee*, if (i) March 4, 2008 has been reached and (a) the Outside Date for completing the merger has not been extended, (b) the antitrust-related conditions to closing the merger have not been satisfied and (c) A&P or Pathmark terminates the merger agreement because of failure to complete the merger by the Outside Date or (ii) A&P or Pathmark terminates the merger agreement after December 4, 2007 and on or before March 4, 2008 because any court or other governmental entity has restrained or

prohibited completion of the merger at the request of any person seeking relief under antitrust laws;

a \$75.0 million termination fee, referred to as the *Extension Termination Fee*, if (i) the Outside Date for completing the merger has been extended and A&P or Pathmark terminates the merger agreement because of failure to complete the merger by the extended Outside Date or (ii) A&P or Pathmark terminates the merger agreement after March 4, 2008 because any court or other governmental entity has restrained or prohibited completion of the merger at the request of any person seeking relief under antitrust laws;

a \$50.0 million termination fee if Pathmark terminates the merger agreement because of A&P's failure to obtain \$190.0 million of net cash proceeds by June 2, 2007 from the sale of Metro common stock or A&P common stock and/or preferred stock (on March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million) or because such amount fails to remain unencumbered and held separately to pay the merger consideration; and

a \$50.0 million termination fee if Pathmark terminates the merger agreement on or prior to March 4, 2008 (or \$75.0 million if so terminated after March 4, 2008) because (i) A&P does not have available funds

to pay the aggregate cash consideration payable in the merger, (ii) the marketing period provided under the merger agreement to arrange the debt financing for the merger has expired and (iii) the conditions to the completion of the merger have been satisfied or waived.

If A&P or Pathmark terminates the merger agreement because of the failure of the Pathmark stockholders to adopt the merger agreement at the Pathmark special meeting, then Pathmark must pay A&P all filing fees paid by A&P under the HSR Act as well as legal fees and expenses incurred by A&P in connection with the merger agreement and the transactions contemplated thereby. This payment of fees and expenses will reduce the amount of any termination fees to be paid by Pathmark.

If A&P or Pathmark terminates the merger agreement because of the failure of the A&P stockholders to approve both the issuance of the A&P common stock pursuant to the merger agreement and the A&P charter amendment at the A&P special meeting or if A&P terminates the merger agreement on September 4, 2007, pursuant A&P's right to terminate the merger agreement under certain circumstances if A&P determines that it is reasonably likely that divestitures required to meet antitrust requirements would exceed \$36.0 million of aggregate scheduled store level

cashflow, then A&P must pay Pathmark the legal fees and expenses incurred by Pathmark in connection with the merger agreement and the transactions contemplated thereby. (At A&P's annual meeting of stockholders on July 19, 2007, A&P stockholders approved an amendment to eliminate such provisions from A&P's charter.)

Certain Material United States Federal Income Tax Consequences (Page 100)

The receipt of the merger consideration, or cash pursuant to the exercise of dissenters' rights, by Pathmark stockholders in exchange for Pathmark common stock will be a taxable transaction for United States federal income tax purposes.

You should read Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Certain Material United States Federal Income Tax Consequences for a more complete discussion of the United States federal income tax consequences of the merger. Tax matters are complicated and the tax consequences of the merger to you will depend on the facts of your particular situation. Because individual circumstances may differ, we urge you to consult with your tax advisor as to the specific tax consequences of the merger to you, including the applicability of United States federal, state, local, foreign and other tax laws.

Comparison of Stockholders' Rights (Page 142)

As a result of the merger, the holders of Pathmark common stock will become holders of A&P common stock. Following the merger, Pathmark stockholders will have different rights as stockholders of A&P than as stockholders of Pathmark due to differences between the laws of the states of incorporation and the different provisions of the governing documents of A&P and Pathmark. See Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders' Rights.

Comparative Stock Prices and Dividends (Page 23)

Shares of A&P common stock are listed on the NYSE under the symbol GAP. Shares of Pathmark common stock are listed on the NASDAQ Global Market (NASDAQ) under the symbol PTMK. The following table presents the last reported sale prices of A&P common stock and Pathmark common stock, as reported on:

February 26, 2007,
the last full trading
day before both A&P
and Pathmark issued
press releases
regarding a potential
business combination
involving the
companies;

March 2, 2007, the
last full trading day
prior to the public
announcement of the
merger agreement;
and

[], 2007, the last full
trading day prior to

the printing date of
this proxy
statement/prospectus.

The table also presents the equivalent value of the merger consideration per share of Pathmark common stock on those dates.

	A&P Common Stock	Pathmark Common Stock	Equivalent Price Per Share of Pathmark Common Stock(1)
February 26, 2007	\$ 30.87	\$ 12.05	\$ 13.00
March 2, 2007	\$ 30.86	\$ 11.25	\$ 13.00
[], 2007	\$ []	\$ []	\$ []

- (1) Calculated by adding (i) the cash portion of the merger consideration, or \$9.00, and (ii) the A&P closing per share stock price on February 26, 2007, March 2, 2007 or [], 2007 (as the case may be) multiplied by 0.12963.

Trading prices of A&P and Pathmark common stock and, consequently, the value of the merger consideration will fluctuate prior to the closing date of the merger, and A&P and Pathmark stockholders are urged to obtain current market quotations prior to making any decision with respect to how such stockholders will vote regarding the merger or the A&P share issuance proposal, as the case may be.

Although A&P declared and paid a special one-time dividend to its stockholders of record on April 17, 2006 equal to \$7.25 per share in April 2006, A&P's policy is to not pay dividends. As such, A&P has not paid any dividends, other than the special one-time dividend paid in 2006, during the previous four years and does not intend to pay dividends in the normal course of business in fiscal 2007. A&P is permitted, however, under the terms of its credit agreements, to pay cash dividends on shares of common stock.

Pathmark did not pay any cash dividends to its stockholders during fiscal 2006 and does not currently anticipate paying cash dividends during fiscal 2007. Pathmark is prohibited from paying cash dividends to holders of Pathmark common stock under the terms of its amended and restated \$250 million senior secured credit facility dated as of October 1, 2004, as amended, with a group of lenders led by Fleet Retail Group. In addition, Pathmark is restricted from paying cash dividends to holders of Pathmark common stock under the indenture governing its \$350 million 8.75% Senior Subordinated Notes, due 2012.

Appraisal Rights (Page 101)

Under Delaware law, if the merger is completed, Pathmark stockholders of record who demand an appraisal of their shares, do not vote in favor of the merger and properly perfect their appraisal rights pursuant to, and in accordance with, Section 262 of the DGCL (and do not subsequently lose or withdraw such rights) will be entitled to receive payment in cash for the judicially determined fair value of their shares of Pathmark common stock plus a fair rate of interest, if any, on the amount determined to be the fair value of the shares. The relevant provisions of the DGCL relating to the rights of Pathmark stockholders to such appraisal are included as Annex J to this joint proxy statement/prospectus.

The A&P Special Meeting (Page 32)

The A&P special meeting will be held at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on [], [], 2007, at 9:00 a.m., Eastern Daylight Time, for the following purposes:

to consider and
vote on a
proposal to
approve the
issuance of
A&P common
stock pursuant
to the merger
agreement;

to consider and
vote on a
proposal to
adjourn or
postpone the
special
meeting, if
necessary, to
solicit
additional
proxies; and

to transact any
other business
that may
properly be
brought before
the A&P
special meeting
and any
adjournments
or
postponements
thereof.

Only record holders of A&P common stock at the close of business on October 8, 2007 will be entitled to vote at the A&P special meeting. Each share of A&P common stock is entitled to one vote for each matter presented at the meeting. As of the record date of October 8, 2007, there were [] shares of A&P common stock entitled to vote at the A&P special meeting.

The stock issuance proposal requires the affirmative vote of a majority of all votes cast by the holders of common stock at a meeting, *provided* that the total votes cast represent at least a majority of the outstanding shares entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, an A&P stockholder's failure to vote will not affect the outcome of the vote to approve the issuance of A&P common stock in connection with the merger, assuming the total votes cast on the proposal represent at least a majority of all shares entitled to vote on the proposal. Because the NYSE treats abstentions as votes cast with respect to the proposal to issue shares of A&P common stock pursuant to the merger agreement, an abstention will have the same effect as a vote **AGAINST** this proposal. Abstentions will be counted for the purposes of determining whether a quorum exists at the A&P special meeting.

The proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the votes cast by the holders of A&P common stock at the special meeting. Therefore, an A&P stockholder's failure to vote or an abstention will have no effect on the outcome of the vote on such proposal.

As of the A&P record date, directors and executive officers of A&P and their affiliates had the right to vote [] shares of A&P common stock, or []% of the outstanding A&P common stock entitled to be voted at the A&P special meeting.

Tengelmann has agreed to vote all of its shares of A&P common stock, approximately 53% of the outstanding A&P common stock as of the A&P record date, in favor of the issuance of A&P common stock in the merger. This means that the approval of the issuance of the A&P common stock pursuant to the merger agreement is assured.

The Pathmark Special Meeting (Page 35)

The Pathmark special meeting will be held at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008, on [], [], 2007, at [] a.m., Eastern Daylight Time, for the following purposes:

to consider and vote upon a proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger;

to consider and vote upon a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies; and

to consider and vote on such other matters as may properly be brought before the Pathmark special meeting and any adjournments or postponements thereof.

Only record holders of Pathmark common stock at the close of business on October 8, 2007 will be entitled to vote at the Pathmark special meeting. Each share of Pathmark common stock is entitled to one vote for each matter presented at the meeting. As of the record date of October 8, 2007, there were [] shares of Pathmark common stock entitled to vote at the Pathmark special meeting.

The proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger, requires an affirmative vote of the holders of a majority of the outstanding shares of Pathmark common stock entitled to vote at the Pathmark special meeting. A Pathmark stockholder's failure to vote or an abstention will have the same effect as a vote AGAINST the proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger, because approval is based on the affirmative vote of a majority of shares outstanding and entitled to vote. The proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of the holders of a majority of the shares of common stock present or represented at the special meeting and entitled to vote thereon. Accordingly, an abstention on the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies will have the same effect as a vote AGAINST that proposal, but the failure to attend the meeting and vote in person, to submit a proxy, or to provide voting instructions to your bank, brokerage firm or nominee will have no effect on the outcome of the proposal.

As of the Pathmark record date, directors and executive officers of Pathmark had the right to vote [] shares of Pathmark common stock, or []% of the outstanding Pathmark common stock entitled to be voted at the Pathmark special meeting.

The Yucaipa Investors have agreed to vote shares of Pathmark common stock that they own as of the Pathmark record date in favor of adoption of the merger agreement and the transactions contemplated thereby, including the merger, *provided* that these voting obligations do not apply to any other shares owned by the Yucaipa Investors in excess of 33% of the outstanding Pathmark common stock. The remaining shares owned by the Yucaipa Investors may be voted in the Yucaipa Investors' discretion, although the Yucaipa Investors have expressed their present intention to vote all of the Pathmark shares they own (approximately 38% of the outstanding Pathmark common stock as of the Pathmark record date) in favor of the adoption of the merger agreement.

Information about the companies

A&P

The address and telephone number of the executive offices are:

Two Paragon Drive
Montvale, New Jersey 07645
(201) 573-9700

A&P is a Maryland corporation and is engaged in the retail food business. A&P operated over 400 stores averaging over 40,000 square feet per store as of February 24, 2007.

Operating under the trade names A&P, Super Fresh, Sav-A-Center, Farmer Jack, Waldbaum's, Super Foodmart, Food Basics and The Food Emporium, A&P sells groceries, meats, fresh produce and other items commonly offered in supermarkets. In addition, many stores have bakery, delicatessen, pharmacy, floral, fresh fish and cheese departments and on-site banking. National, regional and local brands are sold, as well as private label merchandise. In support of A&P's retail operations, A&P sells other private-label products in its stores under other brand names of A&P which include, without limitation, America's Choice, Master Choice, Health Pride and Savings Plus.

Merger Sub

The address and telephone number of the executive offices are:

Two Paragon Drive
Montvale, New Jersey 07645
(201) 573-9700

Merger Sub is a Delaware corporation and a wholly owned subsidiary of A&P. Merger Sub was organized on February 22, 2007 solely for the purpose of effecting the merger with Pathmark. It has not carried on any activities other than in connection with the merger agreement.

Pathmark

The address and telephone number of the executive offices are:

200 Milik Street
Carteret, New Jersey 07008
(732) 499-3000

Pathmark is a Delaware corporation and is a leading supermarket chain in the densely populated New York-New Jersey and Philadelphia metropolitan areas, operating as a single segment with 141 stores. All of its stores are located within 100 miles of its corporate office in Carteret, New Jersey, and of its company-operated and outsourced distribution facilities. Pathmark was incorporated in Delaware in 1987 and is the successor by merger to a business established in 1966.

SELECTED HISTORICAL FINANCIAL AND OTHER DATA OF A&P

The following table sets forth selected historical consolidated financial information and other data of A&P for the periods presented. The selected financial information as of February 22, 2003, February 28, 2004, February 26, 2005, February 25, 2006 and February 24, 2007, and for each of the five fiscal years then ended, has been derived from A&P's consolidated financial statements audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm. The selected historical financial and other data of A&P for the first quarters ended June 16, 2007 and June 17, 2006 presented below has been derived from A&P's unaudited consolidated financial statements, which, in the opinion of management, reflect all adjustments, consisting of only normal, recurring adjustments, necessary for a fair presentation of such data and which have been prepared in accordance with the same accounting principles followed in the presentation of the A&P audited financial statements for the year ended February 24, 2007. The operating results for the quarter ended June 16, 2007 are not necessarily indicative for the results that may be expected for the fiscal year. This financial information and other data should be read in conjunction with the audited and unaudited consolidated financial statements of A&P, including the notes thereto, incorporated in this joint proxy statement/prospectus by reference. See [Where You Can Find More Information](#).

	Fiscal Quarter Ended		Fiscal Year Ended		Other	amounts)
	June 16, 2007	June 17, 2006	February 24, 2007(a)(b)	February 25, 2006(a)(b)		
(In millions, except per share and						
Operating Results						
Sales	\$ 1,986.9	\$ 1,994.4	\$ 6,437.7	\$ 8,345.9	\$ 10,456.1	\$
(Loss) income from operations	(114.2)	(10.8)	(40.0)	(306.2)	(63.8)	
Depreciation and amortization	56.3	54.9	(167.7)	(196.2)	(255.7)	
(Loss) gain on sale of Canadian operations	(0.3)	(0.3)	1.3	912.1		
Interest expense(c)	(21.4)	(21.3)	(71.3)	(89.7)	(112.0)	
Income (loss) from continuing operations	(26.1)	(8.6)	4.0	404.8	(172.7)	
Income (loss) from discontinued operations	(17.0)	2.5	22.9	(12.2)	(15.4)	
Income (loss) before cumulative effect of change in accounting principle	(43.1)	(6.1)	26.9	392.6	(188.1)	
Cumulative effect of a change in						

accounting
principle
FIN 46-R(d)

Net income (loss)	(43.1)	(6.1)	26.9	392.6	(188.1)
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Per Share Data

Income (loss) from continuing operations basic	(0.62)	(0.21)	0.10	10.04	(4.48)
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Income (loss) from discontinued operations basic	(0.41)	(0.06)	0.55	(0.30)	(0.40)
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Cumulative effect
of a change in
accounting
principle
FIN 46-R(d)

Net income (loss) basic	(1.03)	(0.15)	0.65	9.74	(4.88)
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Income (loss) from continuing operations diluted	(0.62)	(0.21)	0.10	9.94	(4.48)
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Income (loss) from discontinued operations diluted	(0.41)	(0.06)	0.54	(0.30)	(0.40)
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Cumulative effect
of a change in
accounting
principle
FIN 46-R(d)

Net income (loss) diluted	(1.03)	(0.15)	0.64	9.64	(4.88)
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Cash dividends(e)			7.25		
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Book value per share(e)	13.35	9.30	10.36	16.32	6.03
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See notes to selected financial data.

	Fiscal Quarter Ended				Other
	June 16, 2007	June 17, 2006	February 24, 2007(a)(b)	February 25, 2006(a)(b)	
Financial Position					
Current assets	\$ 944.3	\$ 880.7	\$ 748.9	\$ 1,210.0	\$
Current liabilities	513.7	584.9	558.4	610.3	
Working capital(e)	430.6	295.7	190.5	599.7	
Current ratio(e)	1.94	1.51	1.34	1.98	
Expenditures for property	(50.9)	(68.1)	208.2	191.1	
Total assets	2,307.8	2,196.4	2,111.6	2,498.9	
Current portion of long-term debt(f)	0.0	32.4	32.1	0.6	
Current portion of capital lease obligations	1.6	2.0	1.6	2.3	
Long-term debt(c)	254.2	284.8	284.2	246.3	
Long-term portion of capital lease obligations	29.5	31.8	29.9	32.3	
Total debt	285.3	351.0	347.8	281.4	
Debt to total capitalization(i)	34 %	48 %	45 %	30 %	
Equity					
Stockholders equity(g)	559.5	385.9	430.7	671.7	
Weighted average shares outstanding basic	41,801.4	41,280.6	41,430.6	40,301.1	
Weighted average shares outstanding diluted	42,259.8	41,839.3	41,902.3	40,725.9	
Number of registered stockholders(e)(h)	4,698	4,479	4,649	4,916	
Other(e)					
Number of employees	36,184	28,779	38,000	38,000	
New store openings	2	1	10	3	
Number of stores at year end	403	405	406	405	

Total store area (square feet)	16,466,870	16,494,793	16,538,410	16,508,969
Number of franchised stores served at year end				
Total franchised store area (square feet)				

- (a) At the close of business on August 13, 2005, A&P completed the sale of its Canadian business to Metro.
- (b) On February 27, 2005 the first day of A&P's 2005 fiscal year, A&P adopted the Financial Accounting Standards Board Statement of Financial Accounting Standards (SFAS) No. 123(R) and recorded share-based compensation expense of \$8.2 million and \$9.0 million in fiscal 2006 and fiscal 2005, respectively.

- (c) In fiscal 2005, A&P repurchased the majority of its 7.75% Notes due April 15, 2007 and its 9.125% Senior Notes due December 15, 2011.
- (d) In fiscal 2003, the Financial Accounting Standards Board (*FASB*) issued revised interpretation No. 46, Consolidation of Variable Interest Entities an interpretation of Accounting Research Bulletin No. 51. As of February 23, 2003, A&P adopted its guidance as A&P was deemed the primary beneficiary and included the franchise operations in A&P s consolidated financial statements for fiscal 2003, fiscal 2004 and fiscal 2005.
- (e)

Not derived
from audited
financial
information.

- (f) In April 2007, A&P's 7.75% Notes become due and payable in full.
- (g) On April 25, 2006, A&P paid a special one-time dividend to its stockholders of record on April 17, 2006 equal to \$7.25 per share. This dividend payout totaling \$299.1 million was recorded as a reduction of Additional paid in capital in A&P's Consolidated Balance Sheets at February 24, 2007.
- (h) Actual number, not millions.
- (i) Calculated as total debt divided by the sum of total debt and stockholders equity.

SELECTED HISTORICAL FINANCIAL AND OTHER DATA OF PATHMARK

The following table sets forth selected historical consolidated financial information and other data of Pathmark for the periods presented. The selected consolidated statements of income data for the fiscal years ended February 3, 2007, January 28, 2006 and January 29, 2005 and the selected consolidated balance sheet data as of February 3, 2007 and January 28, 2006 have been derived from Pathmark's audited consolidated financial statements, incorporated by reference in this joint proxy statement/prospectus. The selected consolidated statements of income data for the fiscal years ended January 31, 2004 and February 1, 2003 and the selected consolidated balance sheet data as of January 29, 2005, January 31, 2004 and February 1, 2003 are derived from audited consolidated financial statements not included or incorporated by reference in this joint proxy statement/prospectus. The selected historical financial and other data of Pathmark for the 26 weeks ended August 4, 2007 and July 29, 2006 presented below was derived from Pathmark's unaudited consolidated financial statements, which, in the opinion of management, reflect all adjustments, consisting of only normal, recurring adjustments, necessary for a fair presentation of such data and which have been prepared in accordance with the same accounting principles followed in the presentation of Pathmark's audited financial statements for the year ended February 3, 2007. The operating results for the 26 weeks ended August 4, 2007 are not necessarily indicative of the results that may be expected for the fiscal year. This consolidated financial information and other data should be read in conjunction with the audited and unaudited consolidated financial statements of Pathmark, including the notes thereto, incorporated in this joint proxy statement/prospectus by reference. See [Where You Can Find More Information](#).

	Fiscal Year-to-Date		53 Weeks Ended February 3, 2007	52 Weeks Ended January 28, 2006	Fiscal Year
	26 weeks ended August 4, 2007	26 weeks ended July 29, 2006			52 Weeks Ended January 29, 2005
(In millions, except per share amounts)					
Operating Results:					
Sales:	\$ 1,997.5	\$ 2,001.4	\$ 4,058.0	\$ 3,977.0	\$ 3,978.5
Cost of goods sold	(1,411.9)	(1,427.0)	(2,875.2)	(2,846.3)	(2,846.1)
Gross profit	585.6	574.4	1,182.8	1,130.7	1,132.4
Selling, general and administrative expenses(a)	(538.6)	(520.9)	(1,056.8)	(1,040.9)	(984.9)
Depreciation and amortization(b)	(47.1)	(46.1)	(92.6)	(90.8)	(89.4)
Impairment of goodwill and long-lived assets(c)	(2.2)				(309.0)
Operating earnings (loss)	(2.3)	7.4	33.4	(1.0)	(250.9)
Interest expense, net(d)	(31.8)	(30.9)	(62.3)	(64.7)	(67.0)

Earnings (loss) before income taxes and cumulative effect of an accounting change	(34.1)	(23.5)	(28.9)	(65.7)	(317.9)
Income tax benefit (provision)(e)	6.8	9.3	10.6	25.6	9.3
Earnings (loss) before cumulative effect of an accounting change	(27.3)	(14.2)	(18.3)	(40.1)	(308.6)
Cumulative effect of an accounting change, net of tax(f)					
Net earnings (loss)	\$ (27.3)	\$ (14.2)	\$ (18.3)	\$ (40.1)	\$ (308.6)
Weighted-average number of shares outstanding basic	52.4	52.0	52.1	43.5	30.1
Weighted-average number of shares outstanding diluted	52.4	52.0	52.1	43.5	30.1
Net earnings (loss) per share basic	\$ (0.52)	\$ (0.27)	\$ (0.35)	\$ (0.92)	\$ (10.26)
Net earnings (loss) per share diluted	\$ (0.52)	\$ (0.27)	\$ (0.35)	\$ (0.92)	\$ (10.26)
Same-store sales increase (decrease)	(0.3)%	0.2 %	0.4 %	(0.8)%	(0.8)%
Capital expenditures, including property acquired under capital leases and technology investments	\$ 36.1	\$ 34.7	\$ 71.8	\$ 64.5	\$ 119.0

See notes to selected historical financial and other data of Pathmark.

	August 4, 2007	July 29, 2006	February 3, 2007	At January 28, 2006	January 29, 2005	January 31, 2004	Feb 2004
Financial Position:							
Total assets(g)	\$ 1,125.5	\$ 1,225.7	\$ 1,132.4	\$ 1,254.6	\$ 1,253.4	\$ 1,520.9	\$
Cash and cash equivalents	33.2	61.8	28.1	73.4	42.6	8.9	
Debt (excluding capital lease obligations)	462.1	424.2	448.2	425.9	481.2	428.4	
Capital lease obligations	164.8	174.1	169.8	179.6	193.4	196.5	
Total debt, including capital lease obligations	626.9	598.3	618.0	605.5	674.6	624.9	
Stockholders equity(g)	102.6	161.6	128.4	171.3	65.2	375.0	

See notes to selected historical financial and other data of Pathmark.

Notes to Selected Historical Financial and Other Data of Pathmark

- (a) Selling, general and administrative expenses (*SG&A*) in the 26 weeks ended August 4, 2007 included a \$12.4 million charge related to the proposed merger with A&P, a \$7.0 million charge related to the withdrawal from a multi-employer pension plan to which Pathmark contributes, a \$4.5 million charge for early retirement and benefits-related expenses related to a voluntary retirement incentive program Pathmark offered to certain of its store associates covered by collective bargaining agreements (*Store Labor Buyout*) in which 152 store associates accepted the Store Labor Buyout and agreed to retire no later than May 5, 2007, and a gain of \$6.1 million on the sale of real estate, which is a normal part of Pathmark's ongoing operation. *SG&A*

in fiscal 2006 included a \$9.7 million non-cash charge related to stock-based compensation in accordance with SFAS No. 123(R), Share-Based Payment and \$2.9 million in expenses related to the proposed merger with A&P, partially offset by gift card breakage income of \$3.5 million. SG&A in fiscal 2005 included a \$14.6 million charge related to employee-related separation costs, comprised of (i) an \$8.4 million charge related to a corporate headcount reduction program, (ii) a \$3.6 million charge related to a store labor buyout initiative, and (iii) a \$2.6 million charge related to separation agreements with two former executives. In addition, SG&A in fiscal 2005 included a \$4.7 million charge related to the merchandising and store initiative. SG&A in fiscal 2004 is net of a \$1.4

million credit to correct, on a cumulative basis, the accounting related to straight-line rent expense and long-term disability and a \$1.5 million gain from the sale of real estate. Fiscal 2003 included a \$13.7 million gain from the sale of real estate related to the assignment of two real estate leases and an \$8.1 million charge related to a store labor buyout initiative and a corporate headcount reduction program. Fiscal 2002 included a \$2.0 million charge related to a store labor buyout program.

- (b) Depreciation and amortization in fiscal 2004 included a charge of \$2.0 million to correct, on a cumulative basis, the amortization of certain leasehold improvement.
- (c) During the 26 weeks ended August 4, 2007, Pathmark recorded a pre-tax non-cash charge

of \$2.2 million due to the impairment of a long-lived asset. In accordance with SFAS No. 142, Goodwill and Other Intangible Assets, Pathmark's goodwill balance is evaluated for impairment annually, or more frequently if events or changes in circumstances indicate that the asset might be impaired. Based on an evaluation of its fair value in fiscal 2002, fiscal 2003, fiscal 2005 and fiscal 2006, Pathmark concluded that there was no impairment of its goodwill. In fiscal 2004, based on Pathmark's evaluation of its goodwill and long-lived assets performed, Pathmark recorded a non-cash impairment charge of \$309.0 million. The goodwill impairment of \$293.8 million, which is not deductible for income tax purposes, represented the write-down of the

carrying value of Pathmark's goodwill to its implied fair value and was due to Pathmark's declining operating performance in fiscal 2004 and the reduced valuation multiples in the retail grocery industry, which were reflected in Pathmark's stock price and market capitalization. The long-lived assets impairment of \$15.2 million represents the write-down of under-performing stores to their fair market values.

- (d) Interest expense in fiscal 2005 included a charge of \$2.8 million as a result of the defeasance of Pathmark's mortgage borrowings utilizing a portion of the proceeds of certain purchased securities. Fiscal 2004 included a write-off of deferred financing costs of \$1.7 million related to the refinancing and pay down of Pathmark's previous credit agreement. Fiscal

2003 included a derivative settlement charge of \$3.7 million related to the termination and settlement of Pathmark's \$150 million interest rate zero-cost collar and the writeoff of deferred financing costs of \$2.1 million as a result of the repayment of \$153 million of Pathmark's term loan primarily from proceeds from the issuance of an additional \$150 million (\$100 million on September 19, 2003 and \$50 million on December 18, 2003) aggregate principal amount of Senior Subordinated Notes. Fiscal 2002 included the reversal of an accrued interest liability of \$2.2 million related to the favorable resolution of certain tax issues.

- (e) The income tax provision for the first 26 weeks of fiscal 2007 was based on an effective tax rate of 19.9% due to the impact of nondeductible

expenses, such as
legal and other
professional
services, related
to the proposed
merger with A&P.
In fiscal 2004, the
income tax
provision did

not include the goodwill impairment of \$293.8 million, which is not deductible for income tax purposes.

- (f) In fiscal 2002, Pathmark adopted Emerging Issues Task Force (*EITF*) Issue No. 02-16, Accounting by a Customer (Including a Reseller) for Certain Consideration Received from a Vendor. In adopting EITF Issue No. 02-16, vendor payments related to advertising reimbursements are recorded as a reduction of cost of goods sold when both the required advertising is performed and the inventory is sold; prior to this change, these reimbursements were recorded as a reduction of advertising expense when the required advertising was performed. As a result, Pathmark

recorded a charge in fiscal 2002 of \$0.6 million, net of an income tax benefit of \$0.4 million, for the cumulative effect of an accounting change.

- (g) On February 4, 2007, Pathmark adopted provisions of FASB Interpretation (*FIN*) No. 48, Accounting for Uncertainty in Income Taxes, an interpretation of SFAS NO. 109 . FIN No. 48 provides recognition criteria and a related measurement model for tax positions taken by Pathmark. On February 4, 2007, the total amount of unrecognized tax benefits was \$20.5 million, including accrued interest and penalties of \$1.2 million. As a result of the implementation of FIN No. 48, Pathmark recognized a \$5.7 million increase in the liability for

unrecognized tax benefits, which was accounted for as a reduction to stockholders equity, an increase to the noncurrent tax liability and a reduction to the deferred income tax asset.

Included in the \$20.5 million balance of unrecognized tax benefits was \$7.5 million of tax benefits that, if recognized, will impact the effective tax rate and \$4.4 million of tax benefits that, if recognized, will result in a decrease to goodwill. In fiscal 2006, Pathmark adopted SFAS No. 158.

Employers Accounting for Defined Benefit Pension and Other Postretirement Plans an amendment of SFAS Nos. 87, 88, 106 and 132(R). As a result, Pathmark recognized the funded status of its defined benefit postretirement

plans as an asset
or a liability,
with changes
resulting from
adoption
reducing
stockholders
equity by \$36.0
million as of
February 3,
2007. SFAS No.
158 did not
change the
existing criteria
for
measurement of
periodic benefit
costs, plan
assets or benefit
obligations.

COMPARATIVE PER SHARE DATA

The following table sets forth certain historical, pro forma combined and pro forma-equivalent per share financial information for A&P common stock and Pathmark common stock. The pro forma and pro forma-equivalent per share information gives effect to the merger as if the merger had been effective on February 24, 2007 and June 16, 2007 (as the case may be), in the case of the book value data presented, and as if the merger had become effective at the beginning of the fiscal year ended February 24, 2007 and the end of the fiscal quarter ended June 16, 2007 (as the case may be), in the case of the net income and dividends declared data presented.

The following information should be read in conjunction with the audited consolidated financial statements of A&P and Pathmark, which are incorporated by reference into this joint proxy statement/prospectus, and the unaudited pro forma condensed combined financial data beginning on page 124. The pro forma information below assumes that the merger will be accounted for using the purchase method of accounting, represents a current estimate based on available information and is subject to change as additional information becomes available. It is presented for informational purposes only and is not necessarily indicative of the operating results or financial position that would have occurred if the merger had been completed as of the beginning of the periods presented, nor is it necessarily indicative of the future operating results or financial position of the combined company.

Fiscal Year Ended February 24, 2007	A&P Historical	Pathmark Historical(1)	Unaudited Pro Forma Combined(1)	Unaudited Pro Forma Pathmark Equivalent(1)(2)
Diluted per common share:				
Income (loss) per share from continuing operations	\$ 0.10	\$ (0.35)	\$ (2.35)	\$ (0.30)
Dividends declared per common share	\$ 7.25	\$	\$	\$
Book value per share at period end	\$ 10.36	\$ 2.46	n/a	n/a

(1) Pathmark information is presented as of and for the period ended February 3, 2007.

(2) Pathmark equivalent per share amounts are calculated by multiplying

pro forma
amounts by
the
exchange
ratio of
0.12963.

Fiscal Quarter Ended June 16, 2007	A&P Historical	Pathmark Historical(1)	Unaudited Pro Forma Combined(1)	Unaudited Pro Forma Pathmark Equivalent(1)(2)
Diluted per common share:				
Income (loss) per share from continuing operations	\$ (0.62)	\$ (0.16)	\$ 0.33	\$ 0.04
Dividends declared per common share	\$	\$	\$	\$
Book value per share at period end	\$ 13.35	\$ 2.25	\$ 13.99	\$ 1.81

(1) Pathmark information is presented as of and for the period ended May 5, 2007.

(2) Pathmark equivalent per share amounts are calculated by multiplying pro forma amounts by the exchange ratio of 0.12963.

COMPARATIVE STOCK PRICES AND DIVIDENDS

A&P common stock is listed and traded on the NYSE under the symbol GAP. Pathmark common stock is listed and traded on NASDAQ under the symbol PTMK. The following table sets forth, for the calendar quarters indicated, the high and low sales prices per share of A&P common stock and Pathmark common stock. The table also sets forth the cash dividends per share declared by A&P and Pathmark with respect to its common stock.

Calendar Quarters	A&P Common Stock			Pathmark Common Stock		
	High	Low	Dividends	High	Low	Dividends
2005						
First Quarter	\$ 15.50	\$ 8.09		\$ 6.74	\$ 4.43	
Second Quarter	\$ 29.70	\$ 14.57		\$ 9.52	\$ 5.94	
Third Quarter	\$ 35.20	\$ 23.80		\$ 12.30	\$ 8.63	
Fourth Quarter	\$ 32.30	\$ 24.89		\$ 11.38	\$ 8.65	
2006						
First Quarter	\$ 35.90	\$ 28.04		\$ 11.54	\$ 9.59	
Second Quarter	\$ 37.02	\$ 20.93	\$ 7.25	\$ 11.48	\$ 8.43	
Third Quarter	\$ 24.54	\$ 20.67		\$ 10.49	\$ 7.60	
Fourth Quarter	\$ 28.64	\$ 23.95		\$ 11.43	\$ 9.75	
2007						
First Quarter	\$ 34.39	\$ 25.27		\$ 12.89	\$ 10.70	
Second Quarter	\$ 35.70	\$ 29.81		\$ 13.18	\$ 12.21	
Third Quarter*	\$ 35.89	\$ 28.54		\$ 13.36	\$ 11.90	

* Through
September
26, 2007

On February 26, 2007, the last trading day before A&P and Pathmark issued press releases regarding a potential business combination involving the companies, the last sale price of Pathmark common stock was \$12.05 per share and the last sale price of A&P common stock was \$30.87 per share. On March 2, 2007, the last trading day prior to the announcement of the execution of the merger agreement, the last sale price of Pathmark common stock was \$11.25 per share and the last sale price of A&P common stock was \$30.86 per share. On [], 2007, the most recent practicable trading day prior to the printing of this joint proxy statement/prospectus, the last sale price of Pathmark common stock was \$[] per share and the last sale price of A&P common stock was \$[] per share. The market prices of shares of Pathmark common stock and A&P common stock are subject to fluctuation. As a result, Pathmark stockholders are urged to obtain current market quotations. On October 8, 2007, the record date for the Pathmark special meeting, there were approximately [] shares of Pathmark common stock outstanding. On October 8, 2007, the record date for the A&P special meeting, there were approximately [] shares of A&P common stock outstanding.

Although A&P declared and paid a special one-time dividend to its stockholders of record on April 17, 2006 equal to

\$7.25 per share in April 2006, A&P's policy is to not pay dividends. As such, A&P has not made dividend payments, other than the special one-time dividend just described, in the previous five years and does not intend to pay dividends in the normal course of business in fiscal 2007. A&P is permitted, however, under the terms of its credit agreements, to pay cash dividends on shares of common stock.

Pathmark did not pay any cash dividends to its stockholders during fiscal 2006 and does not currently anticipate paying cash dividends during fiscal 2007. Pathmark is prohibited from paying cash dividends to holders of Pathmark common stock under the terms of its amended and restated \$250 million senior secured credit facility dated as of October 1, 2004, as amended, with a group of lenders led by Fleet Retail Group. In addition, Pathmark is restricted from paying cash dividends to holders of Pathmark common stock under the indenture governing its \$350 million 8.75% Senior Subordinated Notes, due 2012.

RISK FACTORS

In addition to general investment risks and the other information included or incorporated by reference into this joint proxy statement/prospectus, you should carefully consider the risk factors described below in evaluating whether to adopt the merger agreement and the transactions contemplated thereby, in the case of Pathmark stockholders, or to approve the A&P share issuance proposal, in the case of A&P stockholders.

Risk Factors Relating to A&P and Pathmark

A&P's and Pathmark's businesses are and will be subject to the risks described below relating to the merger. In addition, A&P and Pathmark are, and will continue to be, subject to the risks described in Part I, Item 1A in each of A&P's Annual Report on Form 10-K for the year ended February 24, 2007 and Quarterly Report on Form 10-Q for the quarter ended June 16, 2007 and Pathmark's Annual Report on Form 10-K, as amended, for the year ended February 3, 2007 and Quarterly Report on Form 10-Q for the quarter ended May 5, 2007, in each case as filed with the Securities and Exchange Committee (SEC) and incorporated by reference into this joint proxy statement/prospectus. See "Where You Can Find More Information" beginning on page 174 for the location of information incorporated by reference into this joint proxy statement/prospectus.

Risk Factors Relating to the Merger

Because the market price of A&P common stock will fluctuate, Pathmark stockholders cannot be sure of the market value of the shares of A&P common stock that they will receive.

The number of shares of A&P common stock to be received by holders of Pathmark common stock in the merger as part of the merger consideration is fixed at 0.12963 of a share of A&P common stock for each share of Pathmark common stock. That number will not be adjusted in the event of any increase or decrease in the price of either A&P common stock or Pathmark common stock. The price of A&P common stock may vary at the effective time of the merger from its price at the date of this joint proxy statement/prospectus and at the date of the special meeting. That variation may be the result of changes in the business, operations or prospects of A&P or Pathmark, market assessments of the likelihood that the merger will be completed and the timing of the merger, regulatory considerations, general market and economic conditions and other factors. In addition to the approval of Pathmark stockholders, completion of the merger is subject to the expiration or termination of the applicable waiting period and any extension of the waiting period under the HSR Act, and the satisfaction of other conditions that may not occur until some time after the special meeting. Therefore, at the time of the Pathmark special meeting, Pathmark stockholders will not know the precise dollar value of the merger consideration they will be entitled to receive upon completion of the merger. Pathmark stockholders are urged to obtain current market quotations for A&P common stock and Pathmark common stock.

Obtaining required approvals and satisfying closing conditions may delay or prevent completion of the merger or reduce the anticipated benefits of the merger.

Completion of the merger is conditioned upon the receipt of certain governmental authorizations, consents, orders and approvals, including the expiration or termination of the applicable waiting period (and any extension of the waiting period) under the HSR Act. These consents, orders and approvals may impose conditions on, or require divestitures relating to, the divisions, operations or assets of A&P or Pathmark. These conditions or divestitures may jeopardize or delay completion of the merger or may reduce the anticipated benefits of the merger. Further, no assurance can be given that the required consents and approvals will be obtained or that the required conditions to closing will be satisfied, and, if all required consents and approvals are obtained and the conditions are satisfied, no assurance can be given as to the terms, conditions and timing of the consents and approvals.

Pursuant to the merger agreement, A&P may be required to dispose of significant assets if required by governmental entities in order to resolve potential antitrust objections to the merger. A&P and Pathmark have agreed to use their respective best efforts to cause the expiration or

termination of the waiting period under the HSR Act. Subject to A&P's right to terminate the merger agreement prior to December 5, 2007 in the event that A&P has determined in good faith, subject to certain requirements, that required divestitures would be reasonably likely to exceed \$36.0 million of aggregate scheduled store level cashflow, A&P has agreed to use best efforts to take all actions necessary to, among other things, resolve any objections to the merger asserted by governmental authorities under antitrust laws and to prevent or have lifted any court order preventing or delaying the merger. This obligation includes, without limitation, executing settlements, undertakings, consent decrees, stipulations or other agreements and proposing to sell, divest, or otherwise convey any of its assets or the assets to be acquired in the merger, as necessary. Additionally, if the merger agreement is not terminated by December 5, 2007, the limitations on required asset dispositions set forth above will cease to apply, and A&P will remain obligated to use its best efforts to resolve any objections to the merger asserted by governmental authorities under antitrust laws and to prevent or have lifted any court order preventing or delaying the merger. The extent to which asset dispositions will be required and in what amount, and whether A&P will be able to dispose of such assets or, if those assets are sold, at which price they may be sold and the impact that such dispositions may have on A&P's profitability, is uncertain.

The failure to successfully integrate Pathmark's business and operations in the expected time frame may adversely affect A&P's future results.

The success of the merger will depend, in part, on the combined company's ability to realize the anticipated benefits from combining the businesses of A&P and Pathmark, including, as A&P has announced, anticipated annual integration synergies of approximately \$150 million within two years, through cost reductions in overhead, greater efficiencies, increased utilization of support facilities and the adoption of mutual best practices between the two companies. To realize these anticipated benefits, however, the businesses of A&P and Pathmark must be successfully combined. If the combined company is not able to achieve these objectives, the anticipated benefits of the merger may not be realized fully or at all or may take longer to realize than expected.

A&P and Pathmark have operated and, until the completion of the merger, will continue to operate independently. It is possible that the integration process could result in the loss of key employees, as well as the disruption of each company's ongoing businesses or inconsistencies in standards, controls, procedures and policies, any or all of which could adversely affect A&P's ability to maintain relationships with customers and employees after the merger or to achieve the anticipated benefits of the merger. Integration efforts between the two companies will also divert management attention and resources. These integration matters could have an adverse effect on each of A&P and Pathmark.

The market price for A&P common stock may be affected by factors different from those affecting the shares of Pathmark.

Upon completion of the merger, holders of Pathmark common stock will become holders of A&P common stock. A&P's businesses differ from those of Pathmark, and accordingly the results of operations of the combined company will be affected by factors different from those currently affecting the results of operations of Pathmark. For a discussion of the businesses of A&P and Pathmark and of certain factors to consider in connection with those businesses, see the documents incorporated by reference into this joint proxy statement/prospectus and referred to under [Where You Can Find More Information](#).

Some directors, executive officers and significant stockholders of A&P and Pathmark have interests in the merger that may differ from the interests of the A&P and Pathmark stockholders.

When considering the Pathmark board of directors' unanimous recommendation that the Pathmark stockholders vote **FOR** the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, and the A&P board of directors' unanimous recommendation that A&P stockholders vote **FOR** the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement, you should be

aware that certain directors and executive officers of Pathmark and A&P, the Yucaipa Investors, Pathmark's largest stockholder, and Tengelmann, A&P's largest stockholder, each have interests in the merger agreement and the merger that are different from, and may conflict with, your interests.

In addition, subject to certain conditions, in connection with the merger, Gregory Mays, a director of Pathmark, will be elected by the existing A&P directors to fill the existing vacant position on the A&P board of directors without stockholder action, as provided for under the bylaws of A&P and in accordance with Maryland law. The directors and executive officers of Pathmark will receive certain benefits in connection with the merger, including accelerated vesting of stock options and restricted stock. Additionally, certain executive officers may be entitled to receive severance payments in connection with the merger. A&P has agreed to continue certain indemnification arrangements for directors and executive officers of Pathmark. Affiliates of the Yucaipa Investors will receive certain fees in connection with the merger. Additionally, warrants to purchase Pathmark common stock owned by the Yucaipa Investors will be converted into warrants to acquire A&P common stock and the Yucaipa Investors will receive certain registration rights for shares of A&P common stock acquired by the Yucaipa Investors in connection with the merger and those issuable upon conversion of the Yucaipa Investors' warrants. Tengelmann has entered into a stockholder agreement with A&P whereby Tengelmann will have certain approval, registration, preemptive and other rights after the merger. The A&P and Pathmark boards of directors were aware of these interests and considered them, among other matters, in authorizing and advising stockholder approval of the merger agreement and the A&P share issuance. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Interests of Certain Persons in the Merger.

The shares of A&P common stock to be received by Pathmark stockholders as a result of the merger will have different rights than shares of Pathmark common stock.

Following completion of the merger, Pathmark stockholders will no longer be stockholders of Pathmark, a Delaware corporation, but will instead be stockholders of A&P, a Maryland corporation. There will be important differences between Pathmark stockholders' current rights and the rights to which they will be entitled as stockholders of A&P as a result of differences between Delaware law and Maryland law and the governing documents of Pathmark and A&P. See Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders' Rights for a discussion of the different rights associated with A&P and Pathmark common stock.

Two putative class action complaints were filed and subsequently consolidated and amended in connection with the transactions and, if decided adversely to the defendants, could result in the entry of an injunction against the completion of the merger and an order for other relief.

Two putative class action complaints were filed in New Jersey State court on March 6, 2007, and March 12, 2007, and were subsequently consolidated on June 15, 2007 and amended on July 16, 2007 (Superior Court of the State of New Jersey, Middlesex County, Civil Action No. C-111-07), alleging, *inter alia*, that the preliminary proxy statement included insufficient disclosures, breach of fiduciary duty by the directors of Pathmark, and aiding and abetting the breach of that duty by Pathmark and A&P. The consolidated amended complaint seeks, among other things, to enjoin the merger. On September 28, 2007, plaintiffs and defendants executed a Stipulation of Settlement providing for dismissal of the litigation and an exchange of releases. As part of the negotiated settlement, Pathmark and A&P agreed to make certain disclosures reflected in this joint proxy statement/prospectus, subject to any modifications to be made in response to additional SEC comments. As part of the negotiated settlement, A&P agreed to pay plaintiffs' attorneys' fees and expenses in an amount not to exceed \$1.25 million.

The Superior Court of the State of New Jersey, Middlesex County, has scheduled a hearing regarding preliminary approval of the parties' negotiated settlement for October 1, 2007. In the event the Court preliminarily approves the settlement, and following an appropriate class notice period, A&P and Pathmark would expect the Court to hold a hearing to consider final approval of the proposed settlement. A&P and Pathmark continue to believe that the case is without merit, but have determined that a prompt resolution of the litigation pursuant to the terms of the proposed settlement is in the best interests of A&P and Pathmark shareholders. In the event the proposed settlement is not approved or effected, any judgments in respect of this lawsuit adverse to A&P and Pathmark may adversely affect A&P and Pathmark's ability to consummate the merger, or may otherwise oblige them, through judicial order, to provide other relief.

Risks Relating to A&P's Operations (Including Pathmark) After Completion of the Merger

General economic conditions affecting the food industry may affect A&P's business and may adversely affect A&P's operating results.

The retail food and food distribution industries are sensitive to a number of economic conditions such as (i) food price deflation or inflation, (ii) softness in local and national economies, (iii) increases in commodity prices, (iv) the availability of favorable credit and trade terms, and (v) other economic conditions that may affect consumer buying habits. Any one or more of these economic conditions can affect A&P's retail sales, the demand for products A&P distributes to its retailer customers, its operating costs and other aspects of its business.

Threats or potential threats to food safety may adversely affect A&P's business.

Acts of war, threats of terror, acts of terror or other criminal activity directed at the grocery or drug store industry, the transportation industry, or computer or communications systems, could increase security costs, adversely affect A&P's operations, or impact consumer behavior and spending as well as customer orders. Other events that give rise to actual or potential food contamination, drug contamination, or food-borne illness could have an adverse effect on A&P's operating results.

A&P faces a high level of competition in the retail food and food distribution businesses from several retail formats, which may adversely affect A&P's profitability.

The industries in which A&P competes are extremely competitive. Both the retail food and food distribution businesses are subject to competitive practices that may affect (i) the prices at which A&P is able to sell products at its retail locations; (ii) sales volume; (iii) the ability of A&P's distribution customers to sell products it supplies, which may affect future orders; and (iv) A&P's ability to attract and retain customers. In addition, the nature and extent of consolidation in the retail food and food distribution industries could affect A&P's competitive position or that of its distribution customers in the markets it serves.

A&P's retail food business faces competition from other retail chains, supercenters, nontraditional competitors and emerging alternative formats in the markets where it has retail operations. In the food distribution business, A&P's success depends in part on the ability of its independent retailer customers to compete effectively, its ability to attract new customers, and its ability to supply products in a cost-effective manner. Declines in the level of retail sales activity of distribution customers due to competition, consolidations of retailers or competitors, increased self-distribution by A&P's customers, or the entry of new or nontraditional distribution systems into the industry may adversely affect A&P's revenues.

Risks Relating to Financing

A&P will take on substantial additional indebtedness to finance the merger, which will decrease A&P's business flexibility and increase its borrowing costs.

Upon completion of the merger, A&P will have consolidated indebtedness that will be substantially greater than its indebtedness prior to the merger. The increased indebtedness and higher debt- to-equity ratio of A&P in comparison to that of A&P on a historical basis will have the effect, among other things, of reducing the flexibility of A&P to respond to changing business and economic conditions and increasing borrowing costs. See Unaudited Pro Forma Condensed Combined Financial Information.

The financing arrangements that A&P expects to enter into in connection with the merger will contain restrictions and limitations that could significantly impact A&P's ability to operate its business.

A&P is incurring significant debt in connection with the merger. It is expected that A&P will utilize much of the financing to be made available pursuant to the financing commitments discussed in Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Financing to fund a portion of the cash consideration payable to the Pathmark stockholders in the merger. A&P, on a pro forma basis, will have approximately \$615 million of debt under its new senior secured revolving

credit facility, and either \$780 million in aggregate principal amount of new senior secured notes or a \$780 million bridge facility. In addition, approximately \$[] billion of existing debt of A&P and Pathmark will remain outstanding following the merger.

This debt could limit A&P's financial and operating flexibility, including by requiring A&P to dedicate a substantial portion of its cash flow from operations and the proceeds of equity issuances to the repayment of its debt and the interest on its debt, making it more difficult for the combined company to obtain additional financing on favorable terms, limiting the combined company's ability to capitalize on significant business opportunities and making the combined company more vulnerable to economic downturns.

A&P expects that the agreements governing the indebtedness that it will incur in connection with the merger will contain covenants that, among other things, will limit the ability of A&P and certain of its subsidiaries to:

- make payments in respect of, or redeem or acquire, debt or equity issued by A&P or its subsidiaries, including the payment of dividends on A&P common stock;

- incur additional indebtedness;

- incur guarantee obligations;

- pay dividends;

- create liens on assets;

- enter into sale and leaseback transactions;

- make investments, loans or advances;

enter into
hedging
transactions;

engage in
mergers,
consolidations
or sales of all
or
substantially
all of their
respective
assets; and

engage in
certain
transactions
with affiliates.

In addition, A&P will be required to comply with certain financial covenants set forth in these agreements. Certain of these agreements will require A&P to make an offer to purchase the related debt if A&P experiences specified changes of control or sells certain assets, and A&P's failure to purchase such debt agreements in accordance with the terms would result in a default under such agreements.

In addition, if A&P fails to maintain a specified minimum level of borrowing capacity under the senior secured revolving credit facility, which we refer to as the *ABL Facility*, which is more fully described in Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Financing, A&P will then be subject to a financial covenant under the ABL Facility that will obligate A&P to make mandatory prepayments under the ABL Facility to the extent the minimum level of borrowing capacity is exceeded.

A&P's ability to comply with this covenant in future periods will depend on its ongoing financial and operating performance, which in turn will be subject to economic conditions and to financial, market and competitive factors, many of which are beyond A&P's control. The ability to comply with this covenant in future periods will also depend on A&P's ability to successfully implement A&P's overall business strategy and realize contemplated merger synergies.

Various risks, uncertainties and events beyond A&P's control could affect its ability to comply with the covenants contained in its debt agreements. Failure to comply with any of the covenants in its existing or future financing agreements could result in a default under those agreements and under other agreements containing cross-default provisions. A default would permit lenders to accelerate the maturity of the debt under these agreements and to foreclose upon any collateral securing the debt. Under these circumstances, A&P might not have sufficient funds or other resources to satisfy all of its obligations. In addition, the limitations imposed by financing agreements on A&P's ability to incur additional debt and to take other actions might significantly impair its ability to obtain other financing. A&P cannot assure you that it will be granted waivers or

amendments to these agreements if for any reason it is unable to comply with these agreements, or that it will be able to refinance its debt on terms acceptable to it, or at all.

The terms of A&P's debt financing arrangements have not been finalized and are subject to market risk, which could result in less favorable borrowing costs and financial conditions than anticipated.

The terms of the various credit facilities and debt financing arrangements described under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Financing reflect the current state of discussions with respect to financing and have not yet been finalized. As such, those terms may materially change depending on market conditions at the time of the incurrence or offering of such indebtedness. The economic terms of the indebtedness, including interest rates and redemption prices, will be determined as part of the offering process and will vary depending on market conditions. Adverse market conditions could result in higher than expected redemption prices or subject A&P to restrictive covenants that impose restrictions and limitations that are in addition to, or more restrictive than, those currently expected. The funding of the bridge facility, if it occurs, would exacerbate these risks and could adversely affect the ability of A&P and/or its subsidiaries to obtain other debt financing on favorable terms. In addition, if the bridge facility is funded in lieu of issuing the notes, the interest expense payable by the borrower could increase. See Unaudited Pro Forma Condensed Combined Financial Information.

A&P cannot assure you that it will be able to generate sufficient cash flow needed to service its indebtedness, and its inability to do so would adversely affect A&P's financial condition.

A&P's ability to make scheduled payments on its indebtedness and to fund planned capital expenditures will depend on the ability of A&P and its subsidiaries to generate cash flow in the future. A&P's future performance is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond its control. In addition, A&P's ability to borrow funds in the future will depend on the satisfaction of the covenants in A&P's credit facilities and its other debt agreements and other financing arrangements it may enter into in the future. In the event that the credit facilities need to be refinanced, A&P cannot assure you that it will be able to do so or obtain additional financing, particularly because of its anticipated high levels of debt and the debt incurrence restrictions imposed by its debt agreements, as well as prevailing market conditions. A&P cannot assure you that its business will generate sufficient cash flow from operations or that future borrowings will be available in an amount sufficient to enable A&P to service its debt and fund its other liquidity needs.

If A&P's cash flow and capital resources are insufficient to fund its debt service obligations, A&P may be forced to reduce or delay capital expenditures, sell assets or seek to obtain additional equity capital, or refinance its indebtedness or obtain additional financing. In the future, A&P's cash flow and capital resources may not be sufficient for payments of interest on and principal of its debt and there can be no assurance that any of, or a combination of, such alternative measures would provide A&P with sufficient cash flows. In addition, such alternative measures could have an adverse effect on A&P's business, financial condition and results of operations.

In the absence of sufficient operating results and resources, A&P could face substantial liquidity problems and might be required to dispose of material assets or operations to meet its debt service and other obligations or otherwise risk default under the agreements governing its indebtedness. These agreements are expected to restrict A&P's ability to dispose of assets and restrict the use of proceeds from any such dispositions. If required, A&P cannot be sure as to the timing of such sales or adequacy of the proceeds that it could realize therefrom.

An increase in interest rates would increase the cost of servicing A&P's debt and could reduce A&P's profitability.

A significant portion of the debt that A&P will incur in connection with the merger will bear interest at variable rates. As a result, an increase in interest rates, whether because of an increase in market interest rates or a decrease in A&P's credit worthiness, would increase the cost of servicing A&P's debt and could materially reduce A&P's profitability and

cash flows. The impact of such an

increase would be more significant for A&P than it would be for less leveraged companies because of A&P's substantial debt.

A&P's bridge facility and ABL Facility agreement may contain conditions that may not be satisfied, in which case A&P would need to arrange for alternative sources of financing, which could result in a less favorable financial condition than anticipated.

A&P has entered into a debt financing commitment letter with respect to a bridge facility and the ABL Facility under which it may borrow up to \$1.395 billion. The commitment letter contemplates credit facilities containing various conditions to A&P's ability to borrow loans thereunder, including conditions that:

there has been no change, event or circumstance that has occurred that has had a material adverse effect on Pathmark that is continuing, or would reasonably be expected to have a material adverse effect on Pathmark since the date of the merger agreement; and no agreement, order or decree has been entered into, or issued, requiring A&P, Pathmark or their respective subsidiaries to divest, dispose of or

sell off any
businesses or
assets
representing
more than
\$36.0 million
of aggregate
scheduled
store level
cashflow.

If these conditions are not satisfied, or any of the other conditions contained in the commitment letter are not satisfied or the proceeds of the financing are unavailable for any reason, A&P may have to arrange for alternative sources of financing, which may be more expensive for A&P, may have an adverse impact on A&P's post-merger capital structure, or may be unavailable.

Despite current indebtedness levels, A&P and its subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks associated with A&P's substantial leverage.

A&P and its subsidiaries may be able to incur substantial additional indebtedness in the future. Although the contemplated facilities contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions, and any indebtedness incurred in compliance with these restrictions could be substantial. For example, A&P will have the right under the ABL Facility to request up to \$100 million of additional commitments under this facility, although the lenders under this facility will not be under any obligation to provide any such additional commitments. Any increase in commitments under this facility will be subject to customary conditions precedent, and A&P's ability to borrow under this facility as so increased would remain limited by the amount of the borrowing base. The bridge facilities would allow A&P to incur this additional indebtedness under the ABL Facility without any restriction.

A&P's ability to borrow under its revolving credit facility will be limited based on the value of a borrowing base that may fluctuate, which may diminish A&P's ability to use the revolving credit facility to meet its financing needs as anticipated.

The contemplated ABL Facility will provide A&P with revolving loans, the amounts of which are based upon the estimated value of the borrowing base. The borrowing base will be comprised of A&P assets such as inventory, credit card receivables, prescription lists, prescription receivables, Coinstar receivables, real estate and leaseholds. If any estimates of the value of these assets are diminished, the borrowing base may be reduced, which may affect the amounts available under the ABL Facility. Furthermore, A&P's ability to borrow under the ABL Facility is subject to borrowing base limitations, including an excess availability reserve.

SPECIAL NOTE CONCERNING FORWARD-LOOKING STATEMENTS

Some of the statements contained or incorporated by reference into this joint proxy statement/prospectus, including those relating to A&P's and Pathmark's strategies and other statements that are predictive in nature, that depend upon or refer to future events or conditions, or that include words such as will, should, may, expects, anticipates, intends, plans, believes, estimates and similar expressions, are forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the *Exchange Act*). Forward-looking statements include the information concerning possible or assumed future results of operations of A&P and Pathmark as set forth under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors, Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Pathmark's Reasons for the Merger; Recommendation of the Pathmark Board of Directors, Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Opinion of A&P's Financial Advisor and Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Opinion of Pathmark's Financial Advisor. These statements are not historical facts but instead represent only A&P's and Pathmark's expectations, estimates and projections regarding future events. These statements are not guarantees of future performance and involve certain risks and uncertainties that are difficult to predict, which may include the risk factors set forth above and other market, business, legal and operational uncertainties discussed elsewhere in this document and the documents that are incorporated herein by reference. Those uncertainties include, but are not limited to:

the ability to obtain requisite governmental approvals for the merger on the proposed terms and schedule, including the expiration or termination of the waiting period under the HSR Act, including any extension of the waiting period;

the failure of the Pathmark stockholders to adopt the merger agreement and the transactions contemplated thereby, including the merger;

the failure of
the A&P
stockholders to
approve the
issuance of
A&P's common
stock pursuant
to the merger
agreement;

the risk that the
businesses of
A&P and
Pathmark will
not be
successfully
integrated
following the
consummation
of the merger;

disruption
from the
merger,
including lost
business
opportunities
and difficulty
maintaining
relationships
with
employees,
customers and
suppliers;

legal risks,
including
litigation,
whether or not
related to the
merger, and
legislative and
regulatory
developments;
and

changes in
general
economic and
market

conditions.

A&P's and Pathmark's actual results and financial conditions may differ, perhaps materially, from the anticipated results and financial conditions in any forward-looking statements, and, accordingly, readers are cautioned not to place undue reliance on such statements.

For more information concerning factors that could affect A&P's and Pathmark's future results and financial conditions, see, in addition to the factors discussed under "Risk Factors," of this joint proxy statement/prospectus, "Management's Discussion and Analysis" and "Risk Factors" in each of A&P's annual report on Form 10-K for the year ended February 24, 2007 and Pathmark's annual report on Form 10-K, as amended, for the year ended February 3, 2007, which are incorporated by reference into this joint proxy statement/prospectus. A&P and Pathmark undertake no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

THE A&P SPECIAL MEETING

Date, Time and Place

The A&P special meeting will be held at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on [], [], 2007, at 9:00 a.m., Eastern Daylight Time.

Purpose of the Special Meeting

At the special meeting, A&P stockholders will be asked:

1. to consider and vote upon a proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement,
2. to consider and vote upon a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies, and
3. to transact any other business that may properly be brought before the special meeting and any adjournments or postponements thereof.

The A&P Board's Recommendation

The A&P board of directors has unanimously determined that the merger agreement and the A&P proposals are advisable and in the best interests of A&P and its stockholders and unanimously recommends that A&P

stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement and FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

Record Date; Required Vote; How to Vote; Quorum

The A&P board of directors has fixed the close of business on October 8, 2007 as the record date for determining the holders of A&P common stock entitled to notice of, and to vote at, the special meeting. Only holders of record of A&P common stock at the close of business on the record date will be entitled to notice of, and to vote at, the special meeting or any adjournment or postponement of the special meeting.

As of the record date, [] shares of A&P common stock were issued and outstanding and entitled to vote at the special meeting and there were approximately [] holders of record of A&P common stock. Each share of A&P common stock entitles the holder to one vote on each matter to be considered at the special meeting. If you are a record holder of A&P common stock, you may vote your shares of A&P common stock in person at the special meeting or by proxy as described below under Voting by Proxy; Revocation of Proxies.

The presence in person or by proxy at the special meeting of the holders of at least a majority of the outstanding shares of A&P common stock entitled to vote at the meeting will constitute a quorum for the special meeting. Properly signed proxies that are marked abstain are known as abstentions. Abstentions will be counted for the purposes of determining whether a quorum exists at the special meeting.

The stock issuance proposal requires the affirmative vote of a majority of all votes cast by the holders of common stock at a meeting at which a quorum is present, *provided* that the total votes cast on the proposal represent at least a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, an A&P stockholder's failure to vote will not affect the outcome of the vote on the proposal, assuming more than a majority of the outstanding shares are voted on the proposal. Because the NYSE treats abstentions as votes cast with respect to the stock issuance proposal, an abstention will have the same effect as a vote AGAINST this proposal.

Tengelmann has agreed to vote all of its shares of A&P common stock, approximately 53% of the outstanding A&P common stock as of the A&P record date, in favor of the issuance of A&P

common stock in the merger and the amendment to the A&P charter. This means that the approval of the issuance of the A&P common stock pursuant to the merger agreement is assured.

The adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the votes cast by the holders of A&P common stock at the special meeting.

Acting upon any procedural matters incident to the conduct of the special meeting will require the affirmative vote of a majority of the votes cast by the holders of A&P common stock with respect to such proposal.

A&P does not expect that any matter other than the proposals listed above will be brought before the special meeting. If, however, other matters are properly brought before the special meeting, or any adjournment of the special meeting, the persons named as proxies will vote in accordance with their discretion.

Voting by Proxy; Revocation of Proxies

Each copy of this joint proxy statement/prospectus mailed to A&P stockholders is accompanied by a form of proxy and a self-addressed postage pre-paid envelope.

If you are a registered stockholder (that is, if you hold your A&P common stock in certificate form), you should either complete and return the proxy card accompanying this joint proxy statement/prospectus, or authorize a proxy by telephone, through the Internet or by any other electronic means by following the instructions included with your proxy card, in each case, to ensure that your vote is counted at the special meeting, or at any adjournment or postponement thereof, regardless of whether you plan to attend the special meeting.

If you hold your shares through a bank, brokerage firm or nominee, you should follow the separate voting instructions, if any, provided by the bank, brokerage or nominee with this joint proxy statement/prospectus. Your bank, brokerage firm or nominee may permit proxy authorization through the Internet or by telephone. Please contact your bank, brokerage firm or nominee to determine how to vote your proxy.

You can revoke your proxy at any time before the vote is taken at the special meeting. If you have not voted through your bank, brokerage firm or nominee, you may revoke your proxy before the proxy is voted by:

delivering
a written
notice of
revocation
of proxy,
which is
dated a
later date
than the
initial
proxy, to
A&P's
Secretary;

delivering
a duly
executed

proxy
bearing a
later date
than the
initial
proxy;

authorizing
a new
proxy by
telephone
or through
the Internet
at a later
time, but
not later
than 11:59
p.m.
(Eastern
Daylight
Time) on [
, 2007 or
the day
before the
meeting
date if the
special
meeting is
adjourned
or
postponed;
or

voting in
person at
the special
meeting;
however,
simply
attending
the special
meeting
without
voting will
not revoke
an earlier
proxy.

To submit a written notice of revocation or other communications about revoking your proxy with respect to your shares of A&P common stock, or to request a new proxy card, you should contact:

The Great Atlantic & Pacific Tea Company, Inc.
Two Paragon Drive
Montvale, New Jersey 07645
Telephone: (201) 573-9700
Attention: Secretary

If your shares of A&P common stock are held in street name, you should follow the instructions of your bank, brokerage firm or nominee regarding the revocation of proxies. If your bank, brokerage firm or nominee allows you to authorize a proxy by telephone or through the

Internet, you may be able to change your vote by submitting a proxy again by telephone or through the Internet.

All shares represented by valid proxies received through this solicitation, and not revoked, will be voted in accordance with your instructions on the proxy card. If you authorize a proxy by telephone or through the Internet, your shares will be voted at the special meeting as instructed.

If you sign and return your proxy card for your shares of A&P common stock without specifying on the proxy card, as to one or both proposals, how you want your shares of A&P common stock voted, your proxy will be voted (1) FOR the proposal to approve the issuance of A&P common stock in connection with the merger, if you do not specify a vote FOR or AGAINST that proposal; and (2) FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies, if you do not specify a vote FOR or AGAINST that proposal. We intend, with respect to any procedural matters incident to the conduct of the special meeting, that the shares represented by properly submitted proxies will be voted, or not voted, by and at the discretion of the persons named as proxies on the proxy card.

A&P stockholders should NOT send stock certificates with their proxy cards. A&P stockholders will continue to hold their A&P stock certificates following the merger and are not required to take any action with respect to their A&P stock certificates.

Effects of Abstentions

Absent specific instructions from the beneficial owner of shares, brokers may not vote shares of A&P common stock with respect to the share issuance or the adjournment or postponement of the special meeting, any other matters that may properly come before the special meeting, or any adjournment of the special meeting. Because the NYSE treats abstentions as votes cast with respect to the stock issuance proposal, an abstention will have the same effect as a vote AGAINST this proposal. Because Maryland law does not treat abstentions as votes cast with respect to the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies, an abstention will have no effect on the outcome of the vote on such proposal.

Share Ownership of Management and Certain Stockholders

At the close of business on the A&P record date, A&P's directors and executive officers as a group owned and were entitled to vote [] shares of A&P common stock, representing approximately []% of the outstanding shares of A&P common stock entitled to vote (approximately []% if the shares held by Tengelmann are excluded). All of the directors and executive officers of A&P that are entitled to vote at the A&P special meeting have indicated that they currently intend to vote their shares of A&P common stock in favor of the proposal to approve the issuance of A&P common stock in connection with the merger.

Tengelmann has entered into a voting agreement with Pathmark pursuant to which Tengelmann has agreed to vote its shares of A&P common stock, approximately 53% of the shares of A&P common stock outstanding as of the A&P record date, in favor of the proposal to approve the issuance of A&P common stock in connection with the merger and against any proposal that would compete with or delay the merger, subject to specified exceptions. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Interests of Certain Persons in the Merger.

Solicitation of Proxies

A&P will bear the costs of soliciting proxies from its stockholders. Other than as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Termination Fees and Expenses, each of A&P and Pathmark will generally bear its own costs and expenses in connection with the merger. In addition to soliciting proxies by mail, directors, officers and employees of A&P, without receiving additional compensation therefor, may solicit proxies by telephone, by facsimile or in person. Arrangements may also be made with brokerage

firms and other custodians, nominees and fiduciaries to forward solicitation materials to the beneficial owners of shares held of record by those persons, and A&P will reimburse those

brokerage firms, custodians, nominees and fiduciaries for reasonable out-of-pocket expenses incurred by them in connection with those actions. In addition, MacKenzie Partners, Inc. (*Mackenzie Partners*) has been retained by A&P to assist in the solicitation of proxies. MacKenzie Partners may contact holders of shares of A&P common stock by mail, telephone, facsimile, telegraph or personal interviews and may request brokers, dealers and other nominee stockholders to forward materials to beneficial owners of shares of A&P common stock. MacKenzie Partners will receive reasonable and customary compensation for its services (estimated at \$25,000) and will be reimbursed for certain reasonable out-of-pocket expenses and other customary costs.

Adjournments

Although it is not expected, the A&P special meeting may be adjourned or postponed for the purpose of soliciting additional proxies or for any other reason. The Maryland General Corporation Law provides that if the special meeting is convened on the date for which it was called, any adjournment may be made from time to time to a date not more than 120 days after the original record date without further notice. The bylaws of A&P further state that if there is no quorum present at the A&P special meeting, the holders of a majority of the outstanding shares of voting stock present in person or represented by proxy at the A&P special meeting may adjourn the meeting from time to time, without notice other than an announcement made at the special meeting, until the requisite amount of voting stock shall be present. Any signed proxies received by A&P which are otherwise silent on the matter will be voted in favor of an adjournment in these circumstances. Any adjournment of the special meeting will allow A&P stockholders who have already sent in their revocable proxies to revoke them at any time prior to their use.

THE PATHMARK SPECIAL MEETING

Date, Time and Place

This joint proxy statement/prospectus is being furnished to Pathmark stockholders as part of the solicitation of proxies by the Pathmark board of directors for use at the special meeting to be held on [], 2007, at [] a.m., Eastern Daylight Time, at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008.

Purpose of the Special Meeting

At the special meeting, Pathmark stockholders will be asked:

1. to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger, dated March 4, 2007, by and among Pathmark, A&P and Merger Sub, and the transactions contemplated

by the merger agreement, as amended from time to time, including the merger, pursuant to which Merger Sub would merge with and into Pathmark and each outstanding share of Pathmark common stock would be converted into the right to receive \$9.00 in cash and 0.12963 shares of A&P common stock;

2. to consider and vote upon a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies; and
3. to consider and vote on such other matters as may properly come before the special meeting or any adjournment or postponement

thereof.

The Pathmark Board's Recommendation

The Pathmark board of directors has unanimously determined that that the merger is advisable, fair to and in the best interests of Pathmark and the Pathmark stockholders and has approved the merger agreement and the merger.

Accordingly, the Pathmark board of directors unanimously recommends that Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger. See Adoption of the

Merger Agreement (Pathmark Proposal 1) The Merger Pathmark's Reasons for the Merger; Recommendation of the Pathmark Board of Directors.

Additionally, the Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

Record Date

The record holders of shares of Pathmark common stock as of the close of business on October 8, 2007, the record date for the Pathmark special meeting, are entitled to receive notice of, and to vote at, the special meeting. On the record date, there were [] outstanding shares of Pathmark common stock.

Required Vote; How to Vote

Each outstanding share of Pathmark common stock on the record date entitles the holder to one vote at the special meeting. Adoption of the merger agreement and the transactions contemplated thereby, including the merger, requires the affirmative vote FOR the proposal to adopt the merger agreement by a majority of the shares of Pathmark common stock outstanding on the record date and entitled to vote on the matter. The adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote FOR the proposal by a majority of shares of Pathmark common stock represented in person or by proxy at the special meeting and entitled to vote thereon. In the absence of a quorum, holders of a majority of the shares present in person or represented by proxy may adjourn the meeting until a quorum shall be attained. The approval of any other such other matters as may be properly presented incident to the conduct of the special meeting requires the affirmative vote FOR the approval of any such proposed transaction by a majority of the shares present in person or by proxy at the meeting and entitled to vote on the matter. In order for your shares of Pathmark common stock to be included in the vote, you must submit a proxy to have your shares voted by completing, signing, dating and returning the enclosed proxy or by voting in person at the special meeting.

If your shares of Pathmark common stock are held in street name by your bank, brokerage firm or nominee, you should instruct them how to vote your shares of Pathmark common stock using the instructions provided by them. If you have not received such voting instructions or require further information regarding such voting instructions, contact your bank, brokerage firm or nominee and they can give you directions on how to vote your shares. Under NASDAQ rules, banks, brokerage firms or nominees who hold shares of common stock in street name for customers without investment discretion over a customer's account pursuant to an advisory contract and who have not been designated in writing by the customer to vote proxies may not exercise their voting discretion in respect of the proposal to adopt the merger agreement or the proposal to adjourn or postpone the meeting, if necessary, to solicit additional proxies. Accordingly, absent specific instructions from the beneficial owner of such shares, banks, brokerage firms or nominees are not empowered to vote such shares at the special meeting on the proposal to adopt the merger agreement or the proposal to adjourn or postpone the meeting, if necessary, to solicit additional proxies. If your shares are held in street name and you do not provide your bank, brokerage firm or nominee with instructions as to how such shares are to be voted, your shares will not be submitted in connection with the special meeting. Because adoption of the merger agreement and the transactions contemplated thereby, including the merger, requires the affirmative vote FOR the approval of the proposal to adopt the merger agreement by a majority of shares of Pathmark common stock outstanding on the record date and entitled to vote on the matter, abstentions and failures to vote by you will have the same effect as a vote AGAINST the proposal. Because approval of the proposal to adjourn or postpone the meeting, if necessary, to solicit additional proxies, and approval of any other such matters as may be properly presented incident to the conduct of the special meeting requires the affirmative vote FOR the approval of any such matters by a majority of the shares present in person or by proxy at the meeting and entitled to vote on the matter, abstentions will count as a vote AGAINST the proposed matters, and the failure to attend the meeting and vote in person, to

submit a proxy, or to instruct your bank, brokerage firm or nominee on how to vote your shares will not affect the outcome of the proposal.

Quorum

A quorum is necessary to hold the Pathmark special meeting. The holders of a majority of the outstanding shares of Pathmark common stock on the record date, represented in person or by proxy and entitled to vote at the Pathmark special meeting, will constitute a quorum for purposes of the Pathmark special meeting. For purposes of determining the presence of a quorum, abstentions will be included in determining the number of shares present and entitled to vote at the meeting; however, because brokers are not entitled to vote on the proposal to adopt the merger agreement absent specific instructions from the beneficial owner, shares held by brokers with respect to which instructions have not been provided will not be included in the number of shares present and entitled to vote at the meeting for purposes of establishing a quorum. Any shares of Pathmark common stock held in treasury by Pathmark or by any of its subsidiaries are not considered to be outstanding for purposes of determining a quorum. In the absence of a quorum, holders of a majority of the shares present or represented by proxy at the special meeting may adjourn the meeting until a quorum is present. Once a share is represented at the special meeting, it will be counted for the purpose of determining a quorum at the special meeting and any adjournment or postponement of the special meeting. If a new record date is set for the adjourned special meeting, however, then a new quorum will have to be established.

Proxies; Revocation

Each copy of this joint proxy statement/prospectus mailed to Pathmark stockholders is accompanied by a form of proxy and a self-addressed postage pre-paid envelope. If you are a registered stockholder (that is, if you hold your Pathmark common stock in certificate form), you should either complete and return the proxy card accompanying this joint proxy statement/prospectus to ensure that your vote is counted at the special meeting, or at any adjournment or postponement thereof, regardless of whether you plan to attend the special meeting.

If you vote your shares of Pathmark common stock by properly completing, signing and dating the enclosed proxy card, your shares will be voted at the Pathmark special meeting as you indicate on your proxy card. If no instructions are indicated on your signed and dated proxy card, your shares of common stock will be voted **FOR** the approval and adoption of the merger agreement and transactions contemplated thereby, including the merger, will be voted **FOR** the adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies and will be counted in accordance with the recommendations of Pathmark's board of directors on any other matters properly brought before the Pathmark special meeting for a vote.

You may revoke your proxy at any time before the vote is taken at the Pathmark special meeting. To revoke your proxy, you must either properly advise Pathmark's Secretary in writing, deliver a proxy dated after the date of the proxy you wish to revoke or attend the Pathmark special meeting and vote your shares in person. Attendance at the Pathmark special meeting will not by itself constitute revocation of a proxy. If you have instructed your bank, brokerage firm or nominee to vote your Pathmark shares, the above-described options for revoking your proxy do not apply and instead you must follow the directions provided by them to revoke your proxy.

To submit a written notice of revocation or other communications about revoking your proxy with respect to your shares of Pathmark common stock, or to request a new proxy card, you should contact:

Pathmark Stores, Inc.
200 Milik Street
Carteret, New Jersey 07008
Telephone: (732) 499-3000
Attention: Secretary

Pathmark does not expect that any matter other than the proposal to adopt and approve the merger agreement and the transactions contemplated thereby, including the merger, will be brought before the Pathmark special meeting. If, however, such a matter is properly presented at the special meeting or any adjournment or postponement thereof, the persons appointed as proxies will have discretionary authority to vote the shares represented by duly executed proxies in accordance with their discretion and judgment.

Solicitation of Proxies

Pathmark will pay the cost of this proxy solicitation. In addition to soliciting proxies by mail, directors, officers and employees of Pathmark may solicit proxies personally and by telephone, facsimile or other electronic means of communication. These persons will not receive additional or special compensation for such solicitation services. Arrangements may also be made with brokerage firms and other custodians, nominees and fiduciaries to forward solicitation materials to the beneficial owners of shares held of record by those persons, and Pathmark will reimburse those brokerage firms, custodians, nominees and fiduciaries for reasonable out-of-pocket expenses incurred by them in connection with those actions. In addition, Mellon Investor Services LLC has been retained by Pathmark to assist in the solicitation of proxies. Mellon Investor Services LLC may contact holders of shares of Pathmark common stock by mail, telephone, facsimile, telegraph or personal interviews and may request brokers, dealers and other nominee stockholders to forward materials to beneficial owners of shares of Pathmark common stock. Mellon Investor Services LLC will receive reasonable and customary compensation for its services (estimated at \$5,000) and will be reimbursed for certain reasonable out-of-pocket expenses and other customary costs.

Adjournments

Although it is not expected, the Pathmark special meeting may be adjourned or postponed for the purpose of soliciting additional proxies or for any other reason. Any adjournment or postponement may be made without notice, other than by an announcement made at the Pathmark special meeting, by approval of the holders of a majority of the shares of Pathmark common stock present in person or represented by proxy at the special meeting. Any signed proxies received by Pathmark which are otherwise silent on the matter will be voted in favor of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies. Any adjournment of the Pathmark special meeting for the purpose of soliciting additional proxies will allow Pathmark stockholders who have already sent in their proxies to revoke them at any time prior to their use.

Share Ownership of Management and Certain Stockholders

At the close of business on the record date, the directors and executive officers of Pathmark owned, in the aggregate, [] shares of Pathmark common stock, representing approximately []% of the outstanding shares of Pathmark common stock entitled to vote (approximately []% if the shares held by the Yucaipa Investors are excluded). The directors and executive officers have informed Pathmark that they intend to vote all of their shares of Pathmark common stock FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.

At the close of business on the record date, the Yucaipa Investors beneficially owned [] shares of Pathmark common stock (excluding shares of Pathmark common stock issuable upon the exercise of warrants owned by the Yucaipa Investors to purchase shares of Pathmark common stock). The Yucaipa Investors have entered into a voting agreement with A&P pursuant to which the Yucaipa Investors have agreed to vote shares of Pathmark common stock that they own as of the Pathmark record date in favor of adoption of the merger agreement and the transactions contemplated thereby, *provided* that these voting obligations do not apply to any other shares owned by the Yucaipa Investors in excess of 33% of the outstanding Pathmark common stock. The remaining shares owned by the Yucaipa Investors may be voted in the Yucaipa Investors' discretion, although the Yucaipa Investors have expressed their present intention to vote all of the Pathmark shares they own (approximately 38% of the outstanding Pathmark common stock) in favor of the adoption of

the merger agreement. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Interests of Certain Persons in the Merger.

Assistance

If you need assistance in completing your proxy card or have questions regarding the Pathmark special meeting, please contact:

Pathmark Stores, Inc.
200 Milik Street
Carteret, New Jersey 07008
Telephone: (732) 499-3000
Attn: Investor Relations

or

Mellon Investor Services
480 Washington Boulevard, 27th Floor
Jersey City, New Jersey 07310
Telephone: (800) 580-6412

ADOPTION OF THE MERGER AGREEMENT (PATHMARK PROPOSAL 1)

THE MERGER

General

On March 4, 2007, the Pathmark board of directors and the A&P board of directors each authorized and declared the advisability of the merger agreement, which provides for the acquisition by A&P of Pathmark through a merger of Merger Sub, a newly formed and wholly owned subsidiary of A&P, with and into Pathmark. After the merger, Pathmark will be the surviving corporation and will be a wholly owned subsidiary of A&P.

Upon completion of the merger, each share of Pathmark common stock (other than dissenting shares) will be converted into the right to receive (i) 0.12963 of a share of A&P common stock, par value \$1.00 per share, and (ii) \$9.00 in cash, without interest.

Background of the Transaction

In May 2004, Pathmark announced its preliminary first quarter results and revised downwards its earnings guidance for 2004. The first quarter results had been negatively affected by sales and gross profit pressures caused by steep inflation in certain product categories, unproductive sales promotions and increases in medical costs. Following this announcement, Pathmark's share price fell approximately 19% to close at \$6.91 on May 13, 2004. In light of these developments, Pathmark's board of directors determined that it should explore strategic alternatives for the company. During the remainder of 2004, Pathmark undertook a review of strategic alternatives, focusing in particular on a sale of Pathmark to a strategic buyer or private equity firm. During the course of that process, Pathmark hired an investment banker, Dresdner Kleinwort Wasserstein (*DrKW*), which solicited over fifty potentially interested parties. The list of potentially interested parties, which was compiled by DrKW based upon its familiarity with the supermarket industry and further input from Pathmark's board of directors and management team, was comprised of large strategic buyers, smaller strategic buyers with operations in geographic areas contiguous to those in which Pathmark operated, and financial buyers with a history of having made investments in the supermarket industry. DrKW was also retained to render a fairness opinion in the event that a sale of Pathmark was undertaken, and, as compensation for DrKW's services relating to its fairness evaluation, Pathmark agreed, among other things, to pay DrKW a customary fee (which was payable on the date on which DrKW rendered its opinion), to reimburse DrKW for its reasonable out-of-pocket expenses related to its engagement and to indemnify DrKW and specified related persons against specific liabilities relating to or arising out of its engagement.

Throughout the lengthy strategic review process, Pathmark received from a number of parties various proposals and indications of interest regarding potential strategic transactions, including change of control transactions. The Yucaipa Investors were among those parties who initially submitted an indication of interest in November of 2004, although they were not among the parties that were contacted by DrKW and, accordingly, had not signed a confidentiality agreement or received a confidential information memorandum prepared by DrKW and circulated to other potentially interested third parties. After considering the merits of these indications of interest, the Pathmark board arranged for management presentations to be given to certain parties in late November and early December of 2004. The Yucaipa Investors did not participate in these presentations and indicated that they were not prepared to move forward at that time unless the Yucaipa Investors were granted exclusivity or were reimbursed for certain expenses. On December 2, 2004 Pathmark publicly announced that it had retained DrKW to aid in reviewing strategic alternatives, which could result in a decision to sell the company.

On December 20, 2004, three parties submitted letters indicating varying degrees of interest in moving forward with a strategic transaction, but none submitted a definitive proposal. Although, the Yucaipa Investors did not submit a proposal at this time, the Yucaipa Investors entered into a confidentiality agreement with Pathmark on January 7, 2005 and submitted a proposal letter to Pathmark on January 20, 2005, which was accompanied by a term sheet and form of

exclusivity

agreement. During the weeks that followed, Pathmark continued to engage in negotiations with multiple parties who had submitted proposals and indications of interest, including the Yucaipa Investors, and, on March 9, 2005, the Pathmark board commenced exclusive negotiations with the Yucaipa Investors after considering, among other things, (i) the fact that two other potentially- interested parties indicated that they were several weeks away from being ready to sign a definitive acquisition agreement, (ii) the price-level signaled by the Yucaipa Investors (which represented a significant increase from its initial indication of interest) and the fact that the Yucaipa Investors were refusing to move forward without exclusivity, (iii) the execution risks associated with the other possible transactions, including the risk that employee departures in reaction to a possible break-up of the business would make it difficult to maintain Pathmark's business intact until closing; and (iv) the uncertainty of the financing needed to complete a number of the other remaining interested parties' proposals.

After evaluating the various strategic alternatives available to Pathmark, the Pathmark board decided that the sale of a substantial minority interest to the Yucaipa Investors, in the form of common stock and Series A and B Warrants for \$150 million in cash, was in the best interests of Pathmark and its stockholders and recommended its stockholders vote for the approval of the proposed transaction with the Yucaipa Investors. In the course of reaching its decision to approve the proposed transaction with the Yucaipa Investors, Pathmark's board of directors considered numerous factors, including, among others, (i) the fact that the consideration was all cash, so that Pathmark would be able to reduce its leverage and immediately use the invested funds in furtherance of its capital expenditure plans with the goal of improving its operating performance; (ii) the fact that a substantial portion of the Yucaipa Investors' upside was represented by the Series A and Series B Warrants giving the Yucaipa Investors an incentive to work to increase Pathmark's value and thereby helping to align their interests with those of the remaining stockholders; (iii) the generally successful record of the Yucaipa Group's investment performance; and (iv) the fact that Pathmark's stockholders would have the ability to share in any upside that might result from any future improved performance on the part of Pathmark. On May 6, 2005, Pathmark disseminated to its stockholders a proxy statement for a special meeting describing in detail the Yucaipa Investors transaction, the background of the transaction and the board's reasons for recommending the transaction. On June 9, 2005, the Pathmark stockholders approved the transaction with the Yucaipa Investors.

Pursuant to the Securities Purchase Agreement dated as of March 23, 2005 between Pathmark, the Yucaipa Investors and Yucaipa Companies (the *Yucaipa Purchase Agreement*), at the close of that transaction on June 9, 2005, Pathmark entered into the Stockholders Agreement with the Yucaipa Investors, which was subsequently amended and restated on August 23, 2005 and again on November 20, 2005, (the *Pathmark Stockholders Agreement*), relating to, among other matters, the governance of Pathmark after the closing, including the Yucaipa Investors' ability to designate representatives on Pathmark's board of directors, a requirement that Pathmark obtain written consent from the Yucaipa Investors prior to engaging in certain actions, and certain limitations on the Yucaipa Investors' ability to purchase or sell Pathmark securities. Four current members of the Pathmark board of directors were designated by the Yucaipa Investors to serve on the Pathmark board pursuant to the Pathmark Stockholders Agreement. These directors are: Michael Duckworth and Ira Tochner - both of whom are representatives of Yucaipa Companies - and David Jessick, the current Chairman of the Pathmark board, and Gregory Mays. Mr. Jessick and Mr. Mays had each previously held posts in companies in which the Yucaipa Group had invested and have each been determined by the Pathmark board of directors to be independent under the NASDAQ Marketplace Rules.

Concurrently with the execution of the Yucaipa Purchase Agreement, Pathmark also entered into the Management Services Agreement with Yucaipa Companies pursuant to which Yucaipa Companies would provide, in exchange for the payment of management fees and the reimbursement of expenses, general business and management consultation and advice regarding strategic planning and development, budgeting, capital expenditure strategy, store development plans, labor strategy, financing plans, general business and economic matters and such other similar management services as requested by Pathmark's board of directors or its chief executive officer.

Following the execution of the Yucaipa Purchase Agreement and the Management Services Agreement, Yucaipa Companies began exploration of strategic alternatives to enhance the value of the Yucaipa Investors' investment in Pathmark, including consideration of acquisitions of other businesses, stock-for-stock mergers with other companies, and a sale of control of Pathmark. Ronald Burkle, the chairman of Yucaipa Companies with many years of supermarket industry knowledge and substantial experience in negotiating strategic transactions, led this review of alternatives.

Mr. Burkle contacted Christian Haub, Executive Chairman of the Board of A&P and Co-Chief Executive Officer of Tengelmann, the owner of 53% of A&P's outstanding stock, as part of Yucaipa Companies' review of its alternatives and of ways to maximize the value of the Yucaipa Investors' investment in Pathmark. Mr. Burkle and Mr. Haub held several meetings during April, May and June of 2005 regarding a potential combination of Pathmark and A&P, including discussions regarding the potential benefits of a combination and operational synergies, as well as options for a pricing mechanism and exchange ratio that would be satisfactory to all parties. In addition, Mr. Burkle and Mr. Haub discussed the possibility of a merger of equals between A&P and Pathmark, the related options regarding pricing and governance, as well as A&P's goals with respect to the sale of its Canadian operations. These preliminary discussions, however, did not result in any specific acquisition proposals and Mr. Burkle and Mr. Haub decided not to proceed with further discussions because, in part, they believed at that time that the public market valuations of the companies did not adequately reflect, in the case of Pathmark, the Yucaipa Investors' purchase of a substantial minority interest in Pathmark, and in the case of A&P, the planned sale of its Canadian operations.

In August of 2005, John Standley was named by Pathmark to serve as its Chief Executive Officer and entered into an employment agreement with Pathmark pursuant to which he was retained to act in that capacity. Prior to his retention by Pathmark, Mr. Standley had held various executive posts in a number of companies engaged in the supermarket industry, including companies in which the Yucaipa Group had invested. Mr. Standley was also elected to the Pathmark board concurrently with his retention as Chief Executive Officer.

On October 25, 2005, the Pathmark board held a meeting at which the board discussed strategic alternatives for the company, including an acquisition of a supermarket chain with a significant number of stores in geographic areas that were contiguous to Pathmark's operating areas (*Company A*), and a merger of Pathmark with A&P.

Following the Pathmark board meeting, Mr. Haub, Mr. Burkle, Mr. Duckworth and Cameron Reilly, a representative of Yucaipa Companies, and representatives of JPMorgan, as financial advisor to A&P, held a meeting in New York City, at which the parties discussed the possibility of a stock-for-stock business combination between A&P and Pathmark. The parties discussed potential arrangements for the governance and management of the combined entity and transfer and standstill restrictions on Tengelmann and the Yucaipa Investors as well as options for an exchange ratio and pricing mechanism, alternatives for an extraordinary cash dividend by A&P, the exercise or conversion of the Yucaipa Investors' Series A and Series B Warrants and possible steps related to a merger of equals. Based on their discussion, Messrs. Haub and Burkle concluded that they could not reach common ground on a valuation that they could each recommend to their respective companies. Representatives of Yucaipa Companies also made preliminary inquiries regarding the acquisition of Company A; however, the pursuit of the acquisition was abandoned after Pathmark and Yucaipa Companies were informed that the owner of Company A had no interest in selling the stores in which Pathmark had expressed interest.

In early 2006, Mr. Burkle and Mr. Duckworth resumed discussions with Mr. Haub and Andreas Guldin, Co-Chief Financial Officer of Tengelmann, regarding a possible business combination of A&P and Pathmark. At the Pathmark board's direction, Mr. Burkle and Mr. Duckworth assumed an active role in these discussions because of, among other things, their interest, as representatives of Pathmark's largest stockholder, in ensuring that any transaction maximized stockholder value, the Yucaipa Group's extensive experience in supermarket industry acquisitions and because any strategic transaction of this nature would require the Yucaipa Investors' consent under the terms of the Pathmark Stockholders Agreement. In February 2006, Mr. Haub, Mr. Burkle, Mr. Duckworth and representatives of JPMorgan began discussions regarding a stock-for-stock merger of Pathmark and

A&P, structured as a merger of equals in which each company's stock would be valued based on then-current market prices, giving effect to an extraordinary cash dividend that A&P was otherwise planning to declare. Through an additional equity infusion, the Yucaipa Investors would have become significant stockholders of the combined company, with a stake approximately equal to that of Tengelmann, A&P's largest stockholder. As a result, Tengelmann and the Yucaipa Investors together would have owned more than 50% of the combined company and would have entered into agreements regarding board representation and governance and other stockholder rights. Under the potential transaction, the Yucaipa Investors' Series A Warrants would have been required by A&P to be exercised, but the exercise price would have been reduced in order to compensate the Yucaipa Investors for lost option value due to the forced early exercise. Under the potential transaction, the Series B Warrants would have been rolled over and exchanged for A&P warrants based on the transaction exchange ratio, which would have preserved the existing option value of the Series B Warrants.

At a regularly scheduled meeting of the Pathmark board of directors on March 13, 2006, Mr. Burkle advised the Pathmark board about the status of these discussions. In addition, Mr. Burkle advised the board that Yucaipa Companies had been approached by a third party regarding the possibility of Pathmark's partnering with such party in a major strategic acquisition of another company, whose operations included a supermarket chain with locations throughout the northeastern United States (*Company B*). The board concluded that Yucaipa Companies should continue to explore both of these potential transactions.

During March 2006, Mr. Burkle, Mr. Duckworth, Mr. Haub, Mr. Guldin and representatives of JPMorgan and Latham & Watkins LLP, counsel to Pathmark (*Latham & Watkins*), had numerous meetings and phone calls regarding the potential merger of equals between Pathmark and A&P outlined above, including with respect to valuation, form of consideration, board representation and governance and other stockholder rights in respect of the combined company. Although the parties made progress on some issues, valuation and other substantial issues were not resolved, including the relative valuations of the two companies as well as transfer restrictions, corporate governance and social issues relating to the operation of the consolidated company. Accordingly, the parties ceased further discussions.

Shortly thereafter and for the next several weeks, Yucaipa Companies continued to analyze the possibility of Pathmark's acquisition of Company B, as had been previously discussed with the Pathmark board on March 13, 2006. After a detailed review of valuation and multiple meetings with representatives of the third party that had expressed interest in partnering with Pathmark in the acquisition, Yucaipa Companies concluded that the potential third party partner and Pathmark would not be able to offer a sufficient premium price to make the proposal attractive to the owner of Company B.

In the summer of 2006, with rumors of a potential proposal by A&P to acquire Pathmark circulating publicly, Mr. Standley and Mr. Duckworth continued to review the possibility of a business combination between Pathmark and A&P, based on the strategic fit between the companies and the synergies that could be obtained. Since the earlier discussions involving a merger of equals between the two companies had not been successful and A&P did not make a proposal to acquire Pathmark, Mr. Standley and Mr. Duckworth began to explore the possibility of Pathmark acquiring A&P in a cash merger as part of their evaluation of available strategic alternatives for Pathmark. As part of this evaluation they developed a preliminary analysis of such a transaction for presentation to the Pathmark board at its next meeting.

Also during this period, Yucaipa Companies again had discussions with the owner of Company A regarding Pathmark acquiring a significant number of stores in contiguous markets as had previously been discussed at the October 25, 2005 Pathmark board meeting. Although these discussions proceeded further than they had in 2005, Yucaipa Companies ultimately determined that the owner of Company A planned to retain the stores in which Pathmark had expressed an interest and that further negotiations were unlikely to meet with any success.

On September 26, 2006, the Pathmark board of directors held a meeting at which Mr. Standley informed the board that he had been discussing with Yucaipa Companies the possibility of Pathmark

making a proposal to acquire A&P. Mr. Standley indicated that the companies would be a good strategic fit, and that there were substantial synergies to be obtained through elimination of duplicative administrative costs and efficiencies in the areas of distribution, transportation and marketing. Also, the combined companies would have increased economies of scale in purchasing. The board discussed some of the key issues in such a transaction. A&P had sold its Canadian operations and distributed a substantial portion of the sale consideration in the form of a special cash dividend to stockholders. A&P had significant liquid assets on its balance sheet, including a significant minority investment in Metro, the purchaser of A&P's Canadian operations. The board also discussed Pathmark's current market position, growth prospects, and liquidity needs within the next several years. The board acknowledged that, since Tengelmann held a majority of the stock of A&P, any transaction would require the support of Tengelmann. The board then authorized management and Yucaipa Companies to formulate a proposal for Pathmark to acquire A&P.

Following additional review and analysis by management and Yucaipa Companies, the Pathmark board held a special telephonic meeting on October 6, 2006. At this meeting, Mr. Standley and Frank Vitrano, the President and Chief Financial Officer of Pathmark, presented a proposed offer letter to acquire A&P and a highly confidential letter from Citigroup for the debt financing for the acquisition, and Mr. Duckworth presented a draft \$200 million equity commitment letter from Yucaipa Companies. Under this structure, the Series A and B Warrants would have remained in place. After discussion, the board authorized Mr. Standley to execute the proposed offer letter to A&P and instructed Mr. Burkle to deliver the proposal letter to A&P and to commence preliminary discussions regarding the proposed transaction.

Also at this meeting, the board noted the fact that Yucaipa Companies' existing Management Services Agreement with Pathmark provides that, if the board decides in its discretion to engage Yucaipa Companies for merger consultation on a matter such as a business combination with A&P, the fee for such services would be 1% of the transaction value. The board discussed Yucaipa Companies' extensive experience in supermarket industry acquisitions, Yucaipa Companies' familiarity with A&P's business based on its industry experience, and its deep knowledge of Pathmark's operations and finances. The board members in attendance, with Mr. Duckworth abstaining, unanimously authorized the retention of Yucaipa Companies as a consultant on Pathmark's acquisition of A&P, with the terms of the engagement to be subject to execution of a definitive engagement letter with Yucaipa Companies. Mr. Tochner was not in attendance at the meeting.

On October 9, 2006, Mr. Burkle and Mr. Duckworth had a meeting with Mr. Haub. They presented Mr. Haub with Pathmark's confidential, nonbinding letter setting forth an offer to acquire all outstanding shares of A&P for a purchase price of \$30.00 per share in cash. The letter included an equity commitment from Yucaipa Companies of up to \$200 million, and a highly confidential letter from Citigroup to raise the debt to finance the balance of the purchase price. Pathmark stated in the letter that it expected that the definitive acquisition agreement would not contain any financing condition. The letter indicated a two-week period for completion of confirmatory due diligence and stated that the proposal would expire on October 16, 2006.

At this meeting, Mr. Haub, speaking on behalf of Tengelmann, the majority stockholder of A&P, stated that Tengelmann would have no interest in the proposal. Mr. Haub also stated that he would inform the A&P board of the proposal at a meeting later that week.

Later on October 9, 2006, the Pathmark board held a telephonic meeting at which Messrs. Duckworth and Burkle updated the board on the meeting with Mr. Haub. During this meeting, the Pathmark board discussed its continued interest in acquiring A&P and expressed its disappointment with Mr. Haub's response.

On October 11, 2006, the A&P board of directors held a regularly scheduled meeting and, among other things, met with Mr. Claus, Mr. Guldin, Brenda Galgano, Allan Richards and Cahill Gordon & Reindel LLP (*Cahill*), its legal advisor, and JPMorgan, its financial advisor, to discuss and consider the terms of Pathmark's October 9 proposal as well as alternatives to such proposal. Mr. Haub reported that, speaking on behalf of Tengelmann, he had advised Pathmark's representatives that Tengelmann would have no interest in the proposal. The A&P board discussed

and considered Pathmark's October 9 proposal and unanimously determined that it had no interest in pursuing the proposal at this time and authorized Mr. Haub to communicate that conclusion to Pathmark.

On October 16, 2006, Mr. Haub sent a letter to Mr. Burkle, stating that the A&P board had reviewed the Pathmark proposal and unanimously concluded that A&P had no interest in pursuing the proposal at that time. Mr. Haub also reiterated in the letter that Tengelmann had no interest in the proposal.

On October 20, 2006, Mr. Burkle sent a letter to Mr. Haub, stating that Pathmark was prepared to improve its offer. Mr. Burkle requested a meeting with Mr. Haub to discuss an increase in the offer. Mr. Haub did not respond to this letter, and there were no further substantive discussions between Pathmark and A&P regarding Pathmark acquiring A&P.

From time to time after the discussions with Yucaipa Companies regarding a merger of equals which had ended in March 2006, A&P and Tengelmann also considered alternative structures for a combination of A&P and Pathmark. From July 2006 to November 2006, Tengelmann and A&P, together with JPMorgan and Cravath, Swaine & Moore LLP, counsel to Tengelmann (*Cravath*), explored a variety of ways to acquire Pathmark for consideration consisting entirely of cash and potential sources of financing for such a transaction. Beginning in August 2006, Tengelmann and JPMorgan, after consultation with the A&P board, approached a number of potential private equity investors on behalf of A&P to solicit interest in making a significant equity investment in A&P as part of the financing of the acquisition of Pathmark. Two separate investor groups indicated significant interest in making an investment in connection with an all-cash acquisition of Pathmark and, during October and November, Tengelmann, JPMorgan, Cravath and these investors continued discussions regarding valuation and other investment terms. In addition, the parties also discussed matters relating to board representation and governance and other stockholder rights as well as the possibility of Tengelmann selling some of its shares in A&P to the investors in order to equalize the levels of ownership of Tengelmann and the private equity investors. Beginning in November 2006, Tengelmann continued these discussions on an exclusive basis with one group that appeared to be prepared to offer terms which were more attractive to A&P and Tengelmann, but numerous significant issues could not be resolved, including with respect to the governance and management of the combined company, closing conditions to the investment, transfer restrictions and fees and expenses, and no final agreement was reached.

On November 15, 2006, A&P held a regularly scheduled telephonic executive committee meeting. Mr. Haub updated the other members of the executive committee of the A&P board on the status of an offer by A&P to acquire Pathmark for cash, including the status of discussions with potential debt financing sources. Mr. Haub also reviewed with the executive committee the possibility of a transaction involving a private equity investment. The consensus of the executive committee was to continue to pursue the Pathmark transaction and the financing alternatives and the executive committee authorized management to submit a proposal to Pathmark for an all-cash acquisition at \$12.00 per share.

On November 16, 2006, Mr. Haub sent to Mr. Jessick a confidential, nonbinding letter which set forth a proposal to acquire all outstanding shares of Pathmark common stock for \$12.00 per share in cash. The proposal stated that it was premised on Pathmark having at closing 56.1 million fully diluted shares of common stock (calculated based on the treasury stock method assuming all in-the-money options and warrants would be exercised), but did not specify how outstanding options and warrants would be treated in the proposed merger. The proposal stated that the definitive acquisition agreement would not be contingent on financing, and debt financing commitment letters were attached to the letter.

On November 21, 2006, the Pathmark board of directors held a special telephonic meeting. At this meeting, Mr. Standley reviewed with the board the November 16 letter that had been received from A&P. The board discussed the letter, as well as the possibility of exploring potential alternative transactions, including the acquisition of assets from either Company A or Company B. Mr. Burkle, on behalf of Yucaipa Companies, attended the board meeting. Mr. Burkle updated the Pathmark board on the status of discussions to acquire Company B and the obstacles to such

acquisition that had been encountered during Yucaipa Companies' preliminary discussions with the potential third party partner that had previously been discussed with the Pathmark board on March 13, 2006. Mr. Burkle also expressed the Yucaipa Investors' disappointment in the price offered by A&P. The board concluded that Mr. Burkle should discuss the proposal letter with A&P, indicating Pathmark's disappointment with the proposed terms, and attempt to obtain an alternative proposal from A&P that would offer greater value to Pathmark and its stockholders.

Also on November 21, 2006, Mr. Standley and Mr. Burkle delivered a letter to Mr. Haub indicating that Pathmark was not prepared at that time to pursue A&P's proposal on the terms proposed in the November 16 letter.

On November 28, 2006, the Pathmark board of directors held a regularly scheduled meeting. At this meeting, the board again discussed the proposal from A&P. The board discussed the fact that A&P apparently had no interest in being acquired by Pathmark and Tengelmänn would not support it, and in any event, such a transaction would put a heavy debt burden on Pathmark. Mr. Duckworth stated that Yucaipa Companies believed that at this time A&P was no longer interested in a merger of equals transaction, as had been discussed in March 2006. In the discussion of A&P's financing for the proposed transaction, it was noted that \$180 million of the proceeds to finance the acquisition of Pathmark were to come from A&P's sale of a portion of its minority interest in Metro, a Canadian public company. The board also discussed the status of Pathmark's business, new strategic initiatives including the possibility of a new format for certain of its stores, and the significant capital that would be required to be raised in order to remodel existing stores and to implement new merchandising concepts. The board decided to delay implementation of the new format, based on the possible further discussions with A&P that were expected to take place after Mr. Burkle contacted Mr. Haub.

On November 28, 2006 and November 30, 2006, the four members of the A&P board who were considered to be independent of Tengelmänn, Bobbie Gaunt, Dan Kourkoumelis, Edward Lewis and Maureen Tart-Bezer, who we also refer to as the independent members of the A&P board, held special telephonic meetings, with representatives of Cahill in attendance, to review the status of the Pathmark transaction and to discuss possible terms of the potential private equity investment. Representatives of Cahill reviewed the status of the potential private equity investment with the directors. The consensus of the independent directors was that they supported the business strategy of raising equity for an all-cash acquisition of Pathmark, but noted the reduced role that independent directors would have following the potential equity investment since they believed they would no longer constitute a majority of the board following the transaction. The directors determined to continue discussions at a later date depending upon the outcome of discussions with Pathmark.

On December 5, 2006, Messrs. Burkle and Haub met in New York City to discuss a possible transaction. After discussion, Mr. Burkle indicated that an all cash acquisition at \$12 per share of Pathmark common stock would not be acceptable to the Pathmark board and the Yucaipa Investors, but a transaction that consisted of \$8.00 in cash and \$5.00 in value of A&P common stock might be acceptable to the Yucaipa Investors because it represented an increase in value and included a substantial equity component in the type of consideration to be received by the Pathmark stockholders. In addition, Mr. Burkle noted the Yucaipa Investors would require that the option value of the Series A and B Warrants be preserved in any transaction, as would have occurred under both the March 2006 merger of equals discussions with A&P, as well as the September 2006 proposal by Pathmark to acquire A&P for cash. Mr. Haub noted that, in the proposed cash and stock merger structure, the Yucaipa Investors would have the potential to become significant stockholders of A&P. They discussed certain of the issues that Tengelmänn and A&P would have with that structure and Mr. Haub outlined in principle some of the restrictions that would be required by A&P to limit the influence of the Yucaipa Investors on A&P operations and activities following the transaction.

On December 6, 2006 and December 7, 2006, the independent members of the A&P board held special meetings. Representatives of Cahill updated the independent directors on the status of

discussions with Tengelmans representatives and the terms of the proposed private equity investment.

From December 7 to December 15, 2006, Mr. Duckworth, Mr. Burkle, Mr. Haub and Mr. Guldin had several discussions via teleconference regarding various aspects of the potential transaction, including the disparities between the purchase prices proposed by A&P and Pathmark, the form of consideration, the treatment of the Yucaipa Investors Series A and B Warrants, and the post-closing restrictions on the rights of the Yucaipa Investors.

On December 14, 2006, Mr. Haub sent a draft term sheet to Mr. Burkle. The term sheet reflected a proposed purchase price per Pathmark share of \$9.50 in cash and \$2.50 in A&P common stock (the A&P stock to be valued based on the average closing price for the 5 trading days prior to execution of a definitive agreement). In addition, the term sheet included extensive restrictions related to the Yucaipa Investors' ownership of A&P common stock and warrants after consummation of the proposed transaction, which restrictions would not be applicable to the other holders of Pathmark common stock and warrants, and required that the Management Services Agreement with Yucaipa Companies be terminated upon the consummation of the proposed transaction. The term sheet provided that the Yucaipa Investors' Series A and B Warrants would be rolled over and exchanged for warrants to acquire A&P common stock. The term sheet provided that the rollover warrants could only be exercised on a cashless basis, which would have the effect of limiting the Yucaipa Investors' ability to increase its share ownership in A&P, and, upon exercise, the rollover warrants could be settled, in the sole discretion of A&P, in cash, stock or a combination thereof. The term sheet also proposed prohibiting the Yucaipa Investors from exercising during any twelve month period more than 50% of the rollover warrants issued for the Series B Warrants, except during the one year period prior to expiration of the Series B Warrants or in connection with or following a change of control of A&P. In addition, the term sheet proposed various standstill restrictions on the Yucaipa Investors' ability to acquire additional shares of A&P stock, commence a proxy solicitation, seek A&P board representation, make any public acquisition proposal, or seek to control or influence management of A&P. The standstill restrictions, as proposed, could have continued for as long as 8 years from the closing. The transferability of the A&P stock and rollover warrants proposed to be issued to the Yucaipa Investors in the transaction would also be subject to restrictions. The transferability restrictions as proposed could have continued for as long as 10 years from the closing.

Also on that day, the independent members of the A&P board held a special telephonic meeting to review the status of the Pathmark transaction and to discuss the term sheet relating to a revised proposal to acquire Pathmark. The directors discussed, among other things, Mr. Haub's indication, based upon conversations with Mr. Burkle, that, at these valuation levels, the Yucaipa Investors would not accept an all-cash transaction. The directors noted that having a greater portion of merger consideration consisting of A&P stock rather than cash would obviate the need for any third party equity investors and also address the Yucaipa Investors' desire not to receive consideration consisting entirely of cash. Representatives of Cahill then reviewed with the directors the revised proposal for A&P to acquire Pathmark for a combination of cash and common stock.

On December 15, 2006, Mr. Haub and Mr. Burkle met in New York, at which time they discussed a number of principal terms of the proposed transaction, including the general mix of cash and stock consideration, the roll-over of the Pathmark warrants held by the Yucaipa Investors, and corporate governance matters related to the role of the Yucaipa Investors as an investor in the combined company.

On December 16, 2006, Cravath indicated to Cahill that because Tengelmans ownership of A&P stock following the proposed transaction would fall below 50%, Tengelmans would require A&P to enter into a stockholder agreement providing Tengelmans with board representation, governance and other stockholder rights appropriate for a significant stockholder. In that regard, Cravath delivered to Cahill a draft of a proposed stockholder agreement. Cravath also indicated that Tengelmans believed an advisory fee was appropriate for its role and efforts.

On December 18, 2006, Cahill delivered a proposed form of confidentiality agreement to Latham & Watkins. Also on that day, Cravath delivered to Latham & Watkins a revised draft term

sheet relating to the proposed acquisition of Pathmark, which indicated a proposed purchase price per Pathmark share of \$9.00 in cash and \$3.50 in A&P common stock. The A&P stock was to be valued for this purpose based on the average closing price of A&P's common stock for the twenty trading days preceding execution of a definitive agreement. In addition to restating the terms and restrictions relating to the warrants and common stock to be issued to the Yucaipa Investors, as set forth in the December 13 term sheet, the revised term sheet included a provision which allowed the Yucaipa Investors to exercise all, but not less than all, of the rollover warrants issued for the Series B Warrants at any time, but also permitted A&P to delay payment of 50% of the net value upon exercise of the Series B rollover warrants to be issued to the Yucaipa Investors, for a period of up to one year.

On December 19, 2006, the Pathmark board held a special meeting. Mr. Duckworth updated the board on discussions to date with A&P. The board authorized management to execute a confidentiality agreement with A&P and to continue further discussions. The board also discussed the fact that the board had previously decided, at the October 6, 2006 board meeting, to engage Yucaipa Companies as a consultant on the proposed acquisition of A&P by Pathmark. The board had at that meeting approved the engagement of Yucaipa Companies, subject to the execution of a definitive engagement letter, to act as a consultant to Pathmark in connection with its proposed acquisition of A&P; however, the parties had not proceeded with the negotiation of the engagement letter after it became clear that Pathmark would not be engaging in the acquisition of A&P. Now that the parties were moving forward with the negotiation of a transaction with A&P and because these negotiations had progressed far enough along to warrant Pathmark's entry into a contractual undertaking, the members of the board in attendance at the meeting, with Mr. Duckworth abstaining, unanimously approved the engagement of Yucaipa Companies as a consultant to Pathmark in connection with its potential acquisition by A&P, with the terms of such engagement subject to approval by the board of an engagement letter that would later be presented to the board for review. Mr. Tochner was not in attendance at the meeting.

Also that day, Yucaipa Companies transmitted to A&P certain comments on A&P's draft term sheet from December 18. Yucaipa Companies accepted many restrictions and limitations on the A&P common stock and warrants that would be issued to the Yucaipa Investors in the proposed transaction and their rights to exercise such warrants. Over the succeeding days, the parties held several conference calls to discuss open issues on the term sheet, including, among other things, the methodology of calculating the price per share to be used in determining the value of the A&P common stock to be received both in the merger and upon the exercise of the rollover warrants, the exercise features of the rollover warrants and the standstill, transfer restrictions and registration provisions that would apply to the Yucaipa Investors, without reaching resolution on these items. Ultimately, the parties decided to proceed directly to definitive documentation because they believed that they had reached substantial agreement on the framework of the transaction and that a protracted negotiation of the term sheet followed by the negotiation of definitive documentation would extend the total time to reach agreement. They discussed executing definitive agreements within thirty days.

On December 19, 2006, the A&P board held a special meeting at which Mr. Haub updated the board on the principal terms discussed between Mr. Haub and Mr. Burkle on December 15, 2006 and the implications of structuring the transaction in accordance with these terms rather than involving a new equity investor.

On December 20, 2006, A&P and Pathmark entered into a mutual confidentiality agreement covering the discussions between the companies and any information that might be exchanged by the parties.

On December 21, 2006, the independent members of the A&P board held a special telephonic meeting with representatives of Cahill and McGuireWoods LLP (*McGuireWoods*), its special Maryland counsel, also in attendance. Representatives of McGuireWoods discussed standards of conduct required of directors of a Maryland corporation and procedures applicable to the transaction generally, and in particular to the proposed stockholder agreement with Tengelmann and a potential

advisory fee, under Maryland law. The independent directors then discussed these matters, and determined to retain an independent financial advisory firm.

Later on December 21, 2006, the executive committee of the A&P board held a regularly scheduled meeting at which they reviewed and discussed the proposed terms and determined to continue to pursue the transaction with Pathmark.

In early January 2007, each of A&P and Pathmark commenced business and legal due diligence on the other.

On January 8, 2007, the independent members of the A&P board met. Representatives of Cahill and McGuireWoods updated the independent directors on the status of discussions with Pathmark's representatives regarding the proposed transaction and the retention of Peter J. Solomon Co., L.P. (*PJSC*) as financial advisor to the independent members of the A&P board with respect to the proposed stockholder agreement with Tengelmann and Tengelmann's request for an advisory fee. The independent members of the A&P board discussed the qualifications of PJSC and determined to engage them as financial advisor.

On January 11, 2007, Cahill distributed the first draft of a merger agreement for the proposed transaction. The draft merger agreement contemplated a cash and stock merger, based on a fixed exchange ratio equal to \$3.50 divided by the average closing price of A&P common stock for the twenty trading days immediately prior to execution of the merger agreement. Among other things, the draft merger agreement contained a nonsolicitation covenant which prohibited Pathmark from having discussions with any other party unless that party had submitted a bona fide proposal that the Pathmark board had determined to be superior to the terms of the A&P transaction. The merger agreement also contained a covenant that Pathmark would submit the merger to a vote of its stockholders even if a superior proposal had been received, and Pathmark would not be able to terminate the merger agreement in order to accept a superior proposal. Although the draft merger agreement provided that the Yucaipa Investors would enter into an agreement with A&P to vote their Pathmark shares in favor of the transaction, no terms of the voting agreement were provided. In the event of termination of the merger agreement under various circumstances (including where the Pathmark stockholders had voted against the merger agreement at a time when no competing transaction had been proposed), the draft merger agreement contained a termination fee of \$30 million. The draft merger agreement also included a provision that A&P would not be required to divest stores for antitrust reasons, above an unspecified store level cash flow threshold. The draft merger agreement also contemplated that the Yucaipa Investors' Series A and B Warrants would be assumed by A&P in the merger and converted into warrants to acquire A&P common stock in accordance with the term sheet.

On January 15, 2007, Cravath sent Cahill an initial draft stockholder agreement which reflected the term sheet provided in December and set forth Tengelmann's proposed board representation and governance and other stockholder rights which would apply after A&P's purchase of Pathmark.

On January 18, 2007, Latham & Watkins distributed comments to A&P's draft merger agreement. Among many other matters, in these comments, Pathmark objected to the failure to include an exception to the nonsolicitation covenant which would permit Pathmark to consider proposals that might reasonably be expected to lead to superior proposals. Pathmark also specified in the draft that it would be able to terminate the merger agreement in order to accept a superior proposal. Pathmark also objected to the provision requiring payment of a termination fee in the event that Pathmark stockholders failed to approve the merger at a time when no competing transaction had been proposed. In addition, Pathmark rejected the \$30 million termination fee as excessive, and proposed that if antitrust clearance required divestiture of stores, A&P would be required to make such divestitures without regard to amount.

Also on that day, the independent members of the A&P board held a special telephonic meeting with representatives of McGuireWoods, PJSC and Cahill to discuss the proposed terms of the Pathmark acquisition.

Also on January 18, 2007, the A&P board held a regularly scheduled meeting. Also in attendance were Mr. Claus, Mr. Guldin, Ms. Galgano and Mr. Richards, as well as representatives of

JPMorgan and Cahill. Mr. Haub, with the assistance of the executives in attendance, reviewed the status of the Pathmark acquisition, including updates on due diligence, synergies, financing and integration. The JPMorgan representatives then reviewed the status of negotiations and developments.

On January 19, 2007, Cahill contacted Latham & Watkins and stated that, in light of the many comments made by Pathmark on the draft merger agreement that were unacceptable to A&P, A&P had directed Cahill to cease further work on the draft until progress was made on the substantive issues.

On January 23, 2007, the Pathmark board of directors held a regularly scheduled meeting at which all directors were present in person or by telephone. At this meeting, the board discussed the status of negotiations with A&P, the draft merger agreement that had been presented by A&P, and the antitrust approval process that would be required in connection with the transaction, including the likely timing and uncertainties of obtaining approval.

The Pathmark board noted that the draft merger agreement proposed by A&P included a condition that the Yucaipa Companies' existing Management Services Agreement with Pathmark be terminated at or prior to closing. The board also noted that this termination would require a termination payment to Yucaipa Companies under that agreement in the amount of \$10 million. In addition, under the Pathmark Stockholders Agreement, a change of control transaction such as that proposed by A&P would require the affirmative vote of at least two Independent Directors (as defined below), as well as the affirmative consent of the Yucaipa Investors. These approvals would be in addition to any other approvals that would be required under applicable law or Pathmark's charter or bylaws.

Representatives of Citigroup joined the meeting and presented Citigroup's qualifications to act as financial advisor to the Pathmark board in connection with the proposed transaction with A&P.

The Pathmark board discussed the amendments that would be required to the existing warrant agreement with the Yucaipa Investors in order to provide for the rollover of the Series A and B Warrants into A&P warrants, as contemplated by the December 2006 term sheet. Under the existing warrant agreement, in the cash and stock merger proposed by A&P, the Series A and B Warrants would have been converted into the right to acquire, upon exercise, the merger consideration of \$9.00 in cash and a fixed number of shares of A&P stock. Under the warrant agreement amendment, in essence the right to acquire \$9.00 in cash would be converted into a right to acquire a fixed number of shares of A&P stock.

After further discussion and consideration of both the implications of the warrant agreement amendment and the fact that negotiations between Pathmark and A&P had advanced to the point where it seemed probable that the parties would engage in a strategic transaction, the Pathmark board determined to form a committee of independent, disinterested directors to review the terms of any amendments to the Yucaipa Investors' Series A and B Warrants to effect the warrant rollover. Sarah Nash, Daniel Fitzgerald, Larry Katzen, Bruce Hartman and John Zillmer, each directors of Pathmark who were considered to be independent of the Yucaipa Investors for the purpose of reviewing the proposed warrant agreement amendment (the *Independent Directors*), met separately with counsel from Shearman & Sterling LLP (*Shearman & Sterling*). The board then authorized the creation of a special committee, composed of the Independent Directors, which was empowered to review, in connection with any proposed business combination, any proposal that would provide for the treatment of the Yucaipa Investors' Series A and B Warrants in a manner that would be different from that provided under the existing warrant agreement. The special committee was given the power to evaluate any such warrant proposal, to negotiate directly with Yucaipa Companies, the Yucaipa Investors and their advisors, and to make a recommendation to the full Pathmark board as to what action, if any, Pathmark should take with respect to any such warrant proposal, as well as the power and resources to retain any advisors to the special committee that the special committee deemed necessary or desirable to conduct its review. Because the Yucaipa Investors were the only Pathmark stockholders that owned any of the Series A and Series B Warrants and the treatment of these warrants could potentially present a conflict of interest for the Yucaipa Investors as they evaluated the merits of an acquisition transaction, the board resolved that it would not recommend

any acquisition transaction that included a warrant proposal without the prior favorable recommendation of the special committee. In addition, because approval of the acquisition transaction would require the affirmative vote of at least two Independent Directors pursuant to the terms of the Pathmark Stockholders Agreement, the special committee was empowered to review any acquisition proposal, for the purpose of assisting the Independent Directors in their decisions under the existing stockholders agreement between Pathmark and the Yucaipa Investors as to whether they would vote in favor of an acquisition transaction.

The directors also were presented with a draft of an engagement letter between Pathmark and Yucaipa Advisors (an affiliate of Yucaipa Companies) that had been prepared in response to instructions given at the December 19, 2006 Pathmark board meeting, pursuant to which Yucaipa Advisors would be engaged to act as a consultant to Pathmark in connection with the negotiation of the A&P transaction. The board deferred a decision on the draft letter pending further review by the board and counsel. The directors then voted to retain Citigroup as financial advisor to Pathmark in connection with the proposed A&P transaction. In addition, the board requested that management, Yucaipa Advisors and Citigroup provide weekly updates to the board regarding the status of the transaction and negotiations.

Later that same day, a meeting of the Pathmark special committee was held to preliminarily discuss process and the issues the Pathmark special committee had been charged with by the board to consider. At the meeting, the Pathmark special committee also appointed Ms. Nash as its Chairperson and engaged Shearman & Sterling as its independent legal counsel.

On January 25, 2007, Latham & Watkins and Cahill held a conference call and discussed a number of the most significant outstanding items on the draft merger agreement.

On January 28, 2007, a special telephonic meeting of the Pathmark board of directors was held, at which the board considered the proposed engagement letter with Yucaipa Advisors to act as a consultant to Pathmark in connection with the proposed A&P transaction. After the full Pathmark board discussed the amount of the fees proposed to be paid to Yucaipa Advisors, the meeting was recessed, and a separate meeting of the Independent Directors took place. Thereafter, the meeting of the full Pathmark board resumed, and the Independent Directors indicated that they had determined to support the engagement of Yucaipa Advisors as a consultant to Pathmark on the terms specified in the existing Management Services Agreement. The board of directors took note of the Independent Director's determination and discussed the terms set forth in the engagement letter. The board members in attendance then unanimously approved the Yucaipa Advisors engagement letter. Neither Mr. Duckworth nor Mr. Tochner were in attendance for this portion of the meeting.

Also on that day, after considering a number of nationally recognized firms and their respective qualifications, the Pathmark special committee engaged Perella Weinberg Partners LP (*PWP*) as its independent financial advisor to assist the committee in its assessment of the value of the Series A and B Warrants and the impact of the proposed amendments to the warrant agreements, and to advise committee members in their role as Independent Directors under the Pathmark Stockholders Agreement. PWP was not engaged to provide any advice or opinion regarding the fairness of the proposed transaction with A&P. PWP received a fixed fee, a portion of which was paid concurrently with its engagement, and the balance when PWP first met with the Pathmark special committee.

On January 30, 2007, the parties held a meeting in New York City. In attendance were Mr. Duckworth, Mr. Standley, Mr. Vitano, Mr. Guldin, Ms. Galgano and Allan Richards as well as Pathmark's and A&P's respective counsel and financial advisors. At this meeting, the parties discussed at a general level the guiding principles for further negotiations, including the parties' sharing of any antitrust risk arising out of the proposed transaction, the relative level of reciprocity in the representations, covenants and conditions of Pathmark and A&P, certainty and speed of closing, and the treatment of outstanding employee stock options.

On January 30, 2007, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods and PJSC. The independent

directors discussed the status of the Pathmark transaction, including the proposed timeline. Representatives of PJSC then presented their analysis with respect to the Tengelmann advisory fee request based upon information they had considered in connection with

their analysis. Representatives of McGuireWoods then reviewed the December 2006 draft Tengelmann stockholder agreement term sheet with the independent directors. The independent directors then directed McGuireWoods to prepare a revised Tengelmann stockholder agreement term sheet reflecting the comments of the independent directors. The independent directors and McGuireWoods decided not to provide comments on the actual draft Tengelmann stockholder agreement distributed by Cravath on January 15, 2007 until progress had been made on the principal provisions reflected in the term sheet.

A telephonic meeting of the Pathmark special committee was held on February 1, 2007. At the meeting, a representative from PWP presented to the Pathmark special committee various financial issues relating to the proposed warrant agreement amendment to be entered into among the Yucaipa Investors and A&P in connection with the proposed transaction. The members of the Pathmark special committee discussed among themselves, as well as with representatives of PWP, various financial and other considerations relating to the proposed transaction, including that: (i) the current warrant agreement between the Yucaipa Investors and Pathmark already sets forth the manner in which the Series A and B Warrants were to be treated in a business combination transaction such as the proposed A&P transaction; (ii) additional value would accrue to the Yucaipa Investors as a result of the proposed warrant agreement amendment but not to the other stockholders of Pathmark; and (iii) the Yucaipa Investors would be able to participate to a greater degree than the other stockholders of Pathmark in any future appreciation in the A&P share price. The members of the Pathmark special committee also discussed certain additional considerations regarding the proposed transaction, including (i) the proposed transaction value represented a significant premium to the market price of Pathmark's common stock; (ii) there currently were no other transaction proposals offering the same or greater consideration; (iii) without the Yucaipa Investors' support for the A&P transaction, Pathmark risked losing the proposed transaction and the value it could provide to Pathmark's stockholders; and (iv) it was unlikely that the Yucaipa Investors or A&P would be prepared to make additional value available to Pathmark's other stockholders.

On February 2, 2007, the Pathmark board held an update call in which Mr. Standley and Mr. Duckworth and Citigroup advised the directors of the status of the proposed transaction.

On February 5, 2007, the parties held a meeting in New York City. In attendance were representatives from Pathmark and A&P and their respective counsel, as well as representatives from Tengelmann, Yucaipa Companies and A&P's financial advisor. The principal issue under discussion at this meeting related to a review of the risks raised by the proposed transaction from an antitrust standpoint, including both the risk of nonconsummation, and the risk that store divestitures would be required in order to obtain antitrust approval. The parties discussed in detail a number of alternatives to allocate these risks. A&P proposed that, in the event that divestitures were required over a certain store level cash flow threshold, a downward adjustment to the merger consideration would be made. Pathmark objected to this concept as overly complex and risky for the Pathmark stockholders. After discussion, the parties agreed in principle to the following terms. If, at a date that is six months after execution of the merger agreement, A&P reasonably determined that it was reasonably likely that it would be required to divest stores that have store level cash flow in excess of \$33 million, then A&P would have the right to terminate the merger agreement and reimburse Pathmark for its out-of-pocket legal expenses. If, at a date that is nine months after execution of the merger agreement, A&P reasonably determined that it was reasonably likely that it would be required to divest stores that have store level cash flow in excess of \$33 million, then A&P would have the right to terminate the merger agreement and pay Pathmark a termination fee of \$25 million. If, thereafter, the merger were to fail to close for reasons related to failure to obtain antitrust approval, A&P would pay Pathmark a termination fee of \$50 million.

Shortly thereafter, Messrs. Burkle and Haub had a telephone call regarding a disagreement over how store level cash flow would be calculated. After further discussion, they agreed that specific store level cash flow amounts for each A&P and Pathmark store would be set forth on a schedule to the merger agreement, and agreed to increase the divestiture threshold from \$33 million to \$36 million based upon the agreed calculation methodology.

Also that day, a telephonic meeting of the Pathmark special committee was held. At the meeting, a representative from PWP presented to the Pathmark special committee additional material that PWP had been asked by the Pathmark special committee to prepare on warrant valuation sensitivities relating to the proposed warrant agreement amendment.

Additionally on February 5, 2007, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods, Cahill and PJSC. The independent directors discussed the status of the Pathmark transaction. Representatives of PJSC reported on corporate governance rights typically granted to controlling or significant stockholders in the context of private equity and other investments. The independent directors then reviewed the December 2006 Tengelmann term sheet as proposed by Tengelmann and as revised by McGuireWoods. The independent directors directed representatives of McGuireWoods to propose certain revisions to the term sheet to Cravath.

On February 6, 2007, McGuireWoods sent to Cravath a revised version of the Tengelmann stockholder agreement term sheet which reflected the comments of A&P's independent directors. The revised version required that Tengelmann would vote all its shares in the same proportion as A&P's other stockholders in the election of directors that were not nominated by Tengelmann, which voting mechanism was referred to as mirror voting. In addition, among other things, the comments sought to modify and reduce the scope of Tengelmann's approval rights and eliminate Tengelmann's right to demand registration rights and addressed the termination of Tengelmann's various rights under the proposed Tengelmann stockholder agreement and the method of calculating Tengelmann's ownership percentage for that purpose.

On February 7, 2007, the Pathmark board held an update call in which Mr. Standley and Mr. Duckworth and Citigroup advised the directors of the status of the proposed transaction.

On February 9, 2007, Mr. Duckworth, on behalf of the Yucaipa Investors, met with the Pathmark special committee to review the warrant rollover proposal. He made a presentation that began with the history of the negotiation process and the treatment of the Series A and B Warrants under various transaction structures that had been considered. The presentation also illustrated the Yucaipa Investors' view that the A&P common stock that the Yucaipa Investors would receive in the proposed transaction would be worth significantly less than the A&P common stock received by other common stockholders of Pathmark, due to the transfer and standstill restrictions that A&P imposed upon the Yucaipa Investors that would result in diminished liquidity and limitations on the ability of the Yucaipa Investors to exercise the rights available to other holders of A&P common stock. In addition, he described the terms of the Series A and B Warrants, both as presently existing and as proposed to be amended, as well as the Yucaipa Investors' views as to the benefits to the Yucaipa Investors from the rollover of the warrants and detriments to the Yucaipa Investors resulting from the terms and restrictions that A&P would put on the rollover warrants, which terms and restrictions did not currently apply to the Series A and B Warrants.

During the period from February 9 through February 12, 2007, the parties held meetings in New York City. In attendance were Mr. Standley, Mr. Duckworth, Mr. Vitano, Mr. Guldin, Ms. Galgano and Mr. Richards, as well as Pathmark's and A&P's respective counsel and financial advisors. At these meetings the parties discussed many significant open issues on the draft merger agreement, including many of the items in dispute under A&P's original draft of the merger agreement from January 11. In addition, during this period Cahill transmitted a draft voting agreement to the Yucaipa Investors, which required the Yucaipa Investors to vote all shares owned or acquired by the Yucaipa Investors in favor of the proposed transaction with A&P and against all alternative transactions. The Yucaipa Investors owned approximately 40% of the outstanding Pathmark common stock at that time. In response, Pathmark proposed that the Yucaipa Investors would only be required to vote shares representing 33% of the outstanding stock in favor of the transaction, and that the remainder of their shares would be voted for or against the transaction in proportion to the votes cast by other stockholders. Pathmark also objected to A&P's proposal that a termination fee be payable in the event that the Pathmark stockholders failed to approve the merger at a time when no competing transaction had been proposed. A&P did agree to a nonsolicitation covenant which would allow Pathmark to have

discussions with another potential purchaser if that person were to

submit a bona fide proposal that the board determined to be reasonably likely to lead to a proposal that was superior to the terms of the A&P transaction.

On February 11, 2007, Cahill distributed a draft stockholders agreement relating to the Yucaipa Investors' ownership of A&P common stock after completion of the merger. The draft provided for a prohibition on purchases of shares of A&P common stock over 9.9%, and other standstill provisions that would restrict the Yucaipa Investors from taking any action to propose any extraordinary corporate transaction, participate in a proxy contest, form a group with other A&P stockholders or take any action (whether through communication with management or public statements) to seek to influence A&P. The draft also included restrictions on the transferability of the A&P common stock owned by the Yucaipa Investors, as well as a noncompetition agreement with respect to A&P.

On February 8 and 12, 2007, McGuireWoods and Cravath had telephone conferences to discuss and negotiate the February 6 comments to the Tengelmann stockholder agreement term sheet. Cravath indicated in those discussions that Tengelmann was not willing to support the proposed acquisition of Pathmark by A&P without proportional board representation and approval rights substantially as provided in the Tengelmann stockholder agreement term sheet, but that Tengelmann was willing to enter into a mirror vote provision, if Tengelmann's obligation was conditioned upon A&P honoring Tengelmann's proposed rights to proportional board representation, and to negotiate the other aspects of the term sheet. On February 13, 2007, McGuireWoods sent Cravath additional comments on the Tengelmann stockholder agreement term sheet relating to the points described above as well as others.

On February 13, 2007, Mr. Guldin, Ms. Galgano, Mr. Richards, Mr. Standley, Mr. Vitrano and Mr. Duckworth discussed potential synergies and integration plans as well as the financing of the proposed transaction. Also on February 13, 2007, Cahill and Latham & Watkins held a teleconference. They discussed and agreed that in the event that Pathmark's stockholders failed to approve the merger at a time when no competing transaction had been proposed, no termination fee would be payable, but Pathmark would reimburse A&P for its out-of-pocket legal expenses. They also discussed the size of the termination fee, as well as the percentage of the Yucaipa Investors' stock to be subject to the proposed voting agreement.

On the same day, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods. The independent directors discussed several open issues on the Tengelmann stockholder agreement term sheet. The independent members of the board were informed of Tengelmann's unwillingness to support the proposed acquisition of Pathmark by A&P without proportional board representation and approval rights substantially as provided in the Tengelmann term sheet but that Tengelmann was willing to enter into a mirror vote provision and negotiate other aspects of the term sheet.

On February 14, 2007, Cahill and Latham & Watkins held a conference call to discuss the proposed voting agreement and the termination fees. Specifically, Cahill requested that, in addition to the Yucaipa Investors agreeing to vote their full ownership position (amounting to approximately 40% of the outstanding Pathmark common stock) in favor of the proposed transaction, the Yucaipa Investors agree that they would vote their shares against any other acquisition proposal within the two-year period following termination of the merger agreement.

A telephonic meeting of the Pathmark special committee was held that day. At the meeting, a representative of PWP discussed with members of the Pathmark special committee the differences PWP believed existed between the Yucaipa Investors' and PWP's analyses of the proposed warrant agreement amendment. The members of the Pathmark special committee discussed these differences, as well as the question of whether either the Yucaipa Investors or A&P would be prepared to share any of the value represented by the proposed warrant agreement amendment with Pathmark's other stockholders. Members of the Pathmark special committee decided that Ms. Nash should call Mr. Duckworth and voice the Pathmark special committee's concerns with the Yucaipa Investors' analysis of the proposed warrant agreement amendment. In addition, the Pathmark special committee considered a draft letter to Yucaipa Companies to such effect, which the Pathmark special committee agreed Ms. Nash should send following her call with Mr. Duckworth.

Later that day, Ms. Nash had a discussion with Mr. Duckworth during which she conveyed the special committee's concerns. Mr. Duckworth told Ms. Nash that he would like to have a discussion with PWP and provide the special committee with further information on these issues. Thereafter, on behalf of the special committee, Ms. Nash sent a letter to Yucaipa Companies in which she stated that, taking into account advice from the special committee's financial advisor regarding the additional value that would accrue to the Yucaipa Investors as a result of the proposed amendments to the terms of the Series A and B Warrants, as well as the special committee's fiduciary duties and its understanding of the situation, the special committee did not see how it could approve the proposed warrant agreement amendment in its then-current form. Ms. Nash also stated that the special committee would be happy to consider any alternatives Yucaipa Companies might wish to propose.

On February 14, 2007, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods and PJSC. Representatives of McGuireWoods reviewed with the A&P directors the status of negotiations with Cravath regarding the Tengelmann stockholder agreement term sheet as well as the proposed Tengelmann advisory fee. The directors discussed the proposed advisory fee and considered PJSC's related advice.

Also on February 14, 2007, McGuireWoods sent to Cravath a revised version of the Tengelmann stockholder agreement that Cravath had distributed on January 15, 2007, which reflected comments of the independent directors on the outstanding open issues on the term sheet and, in addition, deleted Tengelmann's right to require A&P to file a shelf registration statement for the sale of A&P shares owned by Tengelmann, as well as indicated that the provision relating to an advisory fee for Tengelmann remained an open issue.

On February 15, 2007, Mr. Duckworth, on behalf of Yucaipa Companies, sent a letter to the Pathmark special committee. In the letter, Mr. Duckworth stated that Yucaipa Companies believed that the concessions the Yucaipa Investors had agreed to in limiting their rights as A&P stockholders and significantly reducing the liquidity of their securities had the effect of greatly diminishing the value of any consideration to be received by them in the proposed transaction. He stated that Yucaipa Companies did not believe that a transaction without the proposed amendments to the Series A and B Warrants represented compelling enough value for them to support.

A telephonic meeting of the Pathmark special committee was held on February 16, 2007. At the meeting, representatives of Shearman & Sterling and PWP shared their views on the letter received by the Pathmark special committee from Mr. Duckworth. After discussing the letter, the Pathmark special committee discussed the message that Ms. Nash should convey to the full board at the board meeting to be held later that day.

Later that day, the Pathmark board of directors held a telephonic board meeting. Mr. Burkle, as a representative of the Yucaipa Investors, was in attendance on the call. At this meeting, Mr. Standley and Mr. Vitrano updated the board on the status of the due diligence process with A&P, and the status of A&P's financing for the transaction, particularly as it related to the sale of Metro stock to fund a portion of the cash merger consideration. Representatives of Citigroup provided the board with Citigroup's preliminary financial analysis of the proposed merger, including the proposed merger consideration.

Also at this meeting, Mr. Burkle, on behalf of the Yucaipa Investors, addressed the special committee's preliminary concerns about the treatment of the Series A and B Warrants in the proposed transaction. Mr. Burkle explained to the board that the Series A and B Warrants had been purchased by the Yucaipa Investors in 2005 as part of a package of securities of Pathmark, in exchange for \$150 million in cash. He also explained that, in the proposed transaction with A&P, A&P was requiring that the Yucaipa Investors agree to numerous standstill and transferability restrictions on the Yucaipa Investors' rights with regard to the A&P common stock and warrants that the Yucaipa Investors would own after the merger, which were significant detriments to the value of the Yucaipa Investors' rights, which the Yucaipa Investors were under no obligation to agree to, and which the other common stockholders of Pathmark would not be subject to. He also noted that the terms of the rollover warrants were significantly less advantageous to the Yucaipa

Investors than the terms of the Series A and B Warrants. Mr. Burkle indicated, however, that the Yucaipa Investors would agree to these various terms and restrictions as part of facilitating an overall transaction with A&P for the benefit of all stockholders which, at the same time, would preserve the option value of the Series A and B Warrants. He also noted that several other transactions with A&P had been previously discussed with the board, including a merger of equals and an acquisition of A&P by Pathmark, and in these transactions the option value of the Series A and B Warrants would have been preserved. Mr. Burkle indicated that, if the Series A and B Warrants could not be rolled over into A&P warrants and therefore the existing option value of the Series A and B Warrants could not be preserved, then the Yucaipa Investors would not be willing to agree to the standstill and transferability restrictions on the Yucaipa Investors' common stock and warrants, and the other amendments to the terms of the Series A and B Warrants, that had been demanded by A&P, and the Yucaipa Investors would not be willing to support the transaction as stockholders of Pathmark. The members of the special committee attached great significance to the position expressed by Mr. Burkle because consummation of the proposed transaction was subject to the Yucaipa Investors' consent under the terms of the Pathmark Stockholders Agreement; moreover, in order to proceed with the proposed transaction, A&P had made clear that it would require the Yucaipa Investors to enter into a voting agreement in which they would agree to vote in favor of the proposed transaction.

Ms. Nash, on behalf of the special committee, informed the board that the Pathmark special committee could not respond to Mr. Duckworth's February 15 letter until (i) Citigroup had presented its views to the board regarding the fairness, from a financial point of view, to the stockholders of Pathmark of the consideration to be received by such stockholders in the proposed transaction and (ii) the documentation relating to the proposed transaction, including the proposed warrant agreement amendment to be entered into among the Yucaipa Investors and A&P, had been substantially finalized. Ms. Nash also indicated that the special committee was open to receiving additional information from the Yucaipa Investors, so that the special committee could better understand the views and analyses of the Yucaipa Investors and the terms of the restrictions imposed by A&P.

Following the board meeting, the Pathmark special committee reconvened and the members discussed the information obtained at the board meeting and further discussed the proposed warrant agreement amendment. As part of this discussion, the members of the special committee considered, among other things, the value that the proposed transaction with A&P would provide to Pathmark's stockholders and the risk of losing this value if the special committee did not approve the terms of the warrant agreement amendment and the Yucaipa Investors ceased to support the proposed transaction with A&P.

From February 16 through March 3, 2007, McGuireWoods and Cravath continued to exchange drafts of and discuss and negotiate the terms of the Tengelmann stockholder agreement.

On February 18, 2007, the independent members of the A&P board, held a special telephonic meeting to review the status of negotiations between McGuireWoods and Cravath. Also participating by telephone at the meeting were representatives of Cahill and PJSC.

During the period from February 18 through February 26, Ms. Galgano, Mr. Richards, Mr. Guldin, Mr. Duckworth, Mr. Standley and Mr. Vitrano, as well as A&P's and Tengelmann's respective counsel and advisors held a number of meetings and teleconferences to discuss the terms of the proposed merger agreement. A&P agreed that the Yucaipa Investors would be required to vote their shares representing only 33% of the outstanding Pathmark common stock in favor of the merger and against alternative transactions, and that the voting agreement would expire upon termination of the merger agreement. The remainder of the Yucaipa Investors' shares in excess of 33% of the outstanding shares could be voted in the Yucaipa Investors' sole discretion. A&P also agreed to a reduced termination fee of \$25 million. The parties also agreed that, if the merger agreement were terminated after the nine-month anniversary, or the one-year anniversary, of execution of the merger agreement, due to failure to receive antitrust approval (regardless of the level of store level cash flow that is required to be divested), the termination fee payable by A&P to Pathmark would be \$50 million, and \$75 million, respectively.

Also during this period, A&P provided to Pathmark the drafts of its financing commitment letters. The financing commitment letters were expressly conditioned on the receipt by A&P of proceeds of \$190 million from the sale of Metro shares that it owned, and there was no commitment by any third party to ensure that those proceeds would be obtained. Even though the transaction was not conditioned on receipt of financing, Pathmark required that all the financing be fully committed at the time of signing of the merger agreement. Pathmark discussed with A&P the fact that, because the receipt of proceeds from the sale of Metro shares was not assured, it was possible that the transaction would not close because of A&P's failure to obtain financing.

Pathmark also proposed to A&P a retention pay plan, change of control severance plans for employees and transaction bonuses for four key executives in order to better provide stability in the workforce prior to closing, which would increase the likelihood that the transaction closed and facilitate the post-closing integration of the companies. The retention pay plan would be offered to certain office associates (excluding the Chief Executive Officer, Co-Presidents and Executive Vice Presidents of Pathmark) and, subject to certain conditions, would entitle each such associate to receive a retention payment equal to 20-30% of his/her respective base salary, paid in three equal installments as follows: (i) 180 days after execution of the merger agreement, (ii) two weeks after closing of the merger, and (iii) after the closing of the merger, the earlier of a termination of the associate or 180 days after closing of the merger. The change of control severance plans would be offered to certain office and field associates (excluding Pathmark's executive officers) and, subject to certain conditions, would entitle each such associate to receive a severance payment upon involuntary termination of employment, other than for cause, within 12 months of a change of control (such as completion of the merger). The transaction bonuses would be offered to four key executives and, subject to certain conditions, would entitle such executives to receive bonus payments of either \$50,000 or \$100,000 in the event such executive remained continuously employed by Pathmark through the close of the merger or under certain other circumstances. See *Interests of Certain Persons In the Merger Transaction Bonus Agreements and Retention Pay Plan*.

On February 18, 2007, Mr. Duckworth spoke by telephone with representatives of PWP in order to describe the Yucaipa Investors' warrant valuation methodology.

A telephonic meeting of the Pathmark special committee was held on February 20, 2007. At the meeting, Mr. Duckworth presented the Pathmark special committee with the Yucaipa Investors' views regarding the Yucaipa Investors' valuations (and the underlying assumptions used in those valuations) with respect to the consideration the Yucaipa Investors would be entitled to receive under the terms of the proposed transaction, including the proposed warrant agreement amendment. During the course of this presentation, Mr. Duckworth noted the Yucaipa Investors' views on, among other things, (i) the valuation of the option life of the rollover warrants; (ii) the volatility assumptions for both Pathmark and A&P common stock and the risk free rate to be utilized in valuing the rollover warrants; (iii) the impact of the standstill and transfer restrictions and stockholder rights limitations on the value of the A&P common stock underlying the rollover warrants and to be received by the Yucaipa Investors in the proposed transaction; and (iv) the impact of the ability of A&P to defer delivery of A&P common stock or payment of cash upon the exercise of the rollover warrants. Following Mr. Duckworth's presentation, the members of the Pathmark special committee discussed Mr. Duckworth's presentation among themselves, as well as with their advisors.

On February 20, 2007, the A&P board held a regularly scheduled meeting to review the status of the Pathmark transaction. Also in attendance were Mr. Claus and Ms. Galgano, as well as representatives of JPMorgan, Axinn Veltrop & Harkrider LLP (*Axinn*), special antitrust counsel to A&P, and Cahill. Representatives of Axinn reviewed for the board the antitrust clearance process, including anticipated timing, historical context, the current competitive market setting, possible issues to address, and the range of possible outcomes. Members of management then reviewed with the board the status of the diligence effort, including the status of obtaining information from Pathmark, the status of evaluating anticipated synergies from the transaction, financial and operational evaluations and integration matters. Management also reviewed with the board the status of the financing. The JPMorgan representatives then reviewed with the board their

views of the transactions and reviewed and discussed with the board various factors, analyses, projections and valuation methodologies which would be part of their fairness analysis.

Later on February 20, 2007, the independent members of the A&P board, together, for a portion of the meeting, with John Barline, an A&P director affiliated with Tengelmans, held a special telephonic meeting, at which representatives of McGuireWoods, PJSC and Cahill were present, to review the status of discussions with Cravath regarding Tengelmans' requested board representation and governance and other stockholder rights. Following the departure from the meeting of Mr. Barline, the independent directors discussed appropriate responses to the remaining open issues with Tengelmans. Following the discussion, the independent directors indicated that McGuireWoods should seek to resolve the issues.

On February 23, 2007, the Pathmark board held an update call in which Mr. Standley, Mr. Duckworth and Citigroup advised the directors of the status of the proposed transaction.

As discussed by the parties in mid-December 2006, the merger consideration offered by A&P was \$9.00 in cash and \$3.50 in A&P stock, with the exchange ratio for the stock portion expected to be calculated based upon \$3.50 divided by the average closing price of the A&P common stock for the twenty trading days prior to the date of execution of the merger agreement. In mid-December, the parties targeted signing a merger agreement by mid-January, 2007, but had not met that target.

As a result, on or about February 24, 2007, Mr. Burkle discussed with Mr. Haub the possibility of revising the exchange ratio, because during the course of the previous weeks the market trading price of A&P common stock had moved substantially higher, and the agreements had not been finalized by mid-January as had been initially anticipated. Pathmark believed that the exchange ratio calculated under the 20-trading-day average formula no longer accurately reflected the business understanding and was not acceptable. Messrs. Burkle and Haub agreed to continue discussion of the issue.

On February 25, 2007, the independent members of the A&P board held a special telephonic meeting. Cahill updated the independent directors on the status of discussions with Pathmarks' representatives regarding the proposed transaction.

On February 26, 2007, the compensation committee of the Pathmark board held a telephonic meeting at which the committee approved a retention bonus plan, change of control severance plans for employees, and transaction bonuses for four executives who would each play a key role in consummating the proposed transaction.

Later that day, A&P proposed to Pathmark a new merger consideration structure. Under this structure, A&P would agree to sell up to 7.1 million shares of Metro stock within ninety days after execution of the merger agreement. In the event that the sale yielded less than \$190 million, then the aggregate cash portion of the merger consideration would be adjusted downward by the difference between \$190 million and the sale proceeds, and the aggregate amount of the stock portion of the merger consideration would be adjusted upward by the same amount.

On February 27, the trading volumes for both A&Ps' and Pathmarks' publicly traded securities increased above their average volumes, and the trading prices of the securities of the two companies also increased. In response to this market activity, A&P and Pathmark were separately contacted by the NYSE and NASDAQ, respectively, with requests for public disclosure of the pending negotiations. In response to these requests, A&P and Pathmark each issued press releases disclosing the fact that the parties were engaged in negotiations for A&P to acquire Pathmark for a possible purchase price of \$12.50 in cash and A&P common stock.

Later that day, the Pathmark board of directors held a special telephonic meeting at which all directors were present. Mr. Standley described for the board the change that A&P had proposed regarding altering the cash/stock mix of the merger consideration based on the results of the sale of Metro stock by A&P. They noted that this was a change in a

fundamental term and required further discussion with A&P before any recommendation could be made to the board.

Citigroup then presented a detailed preliminary financial analysis of the proposed transaction, including financial analyses of Pathmark, A&P and the proposed merger consideration of \$12.50 per share in cash and A&P common stock. Citigroup noted that, as a result of A&P's proposal to

change the cash/stock mix of the merger consideration, Citigroup would need to conduct further analysis when the terms of that proposal were further defined.

The directors discussed whether there was any likelihood that another purchaser would be interested in acquiring Pathmark at a higher valuation. The directors noted the publicly announced auction process in 2004 and 2005, which had failed to generate any attractive offers to acquire Pathmark. In addition, publicly available analyst commentary about Pathmark had repeatedly referred to Pathmark as a likely and most advantageous merger partner with A&P. Notwithstanding this commentary, Pathmark had not received any credible acquisition proposals from any person other than A&P. In addition, the Pathmark board believed that the February 27 press releases issued by A&P and Pathmark would alert any third parties interested in acquiring Pathmark to the potential transaction with A&P, and interested purchasers would presumably contact Pathmark if they were willing to offer a valuation higher than \$12.50 per share of Pathmark common stock.

Also at this board meeting, the board reviewed in detail the draft transaction documents, including the terms of the merger consideration, treatment of employee stock options and warrants, nonsolicitation covenant, termination fees, voting agreements, and antitrust provisions. They also reviewed the proposed stockholders agreement between A&P and the Yucaipa Investors, noting the restrictions that the agreement placed on the Yucaipa Investors' ability to exercise many of the rights normally attendant to the ownership of stock in a public company, including the right to influence the management and control of A&P, make proposals to the board of A&P, solicit other stockholders, and freely acquire or dispose of A&P shares and warrants.

On February 28, 2007, the A&P board held a special telephonic meeting to review the status of the Pathmark transaction. Also in attendance were Mr. Claus, Ms. Galgano, Mr. Richards and Chris McGarry, an executive officer of A&P, as well as representatives of JPMorgan, Cahill, Cravath and McGuireWoods. Mr. Haub updated the board on the process regarding the Pathmark acquisition. He reported that, in response to a call from the NYSE, A&P had issued a February 28 press release acknowledging negotiations for A&P's acquisition of Pathmark. Mr. Haub stated the transaction agreements were essentially complete with the main open issues regarding financing terms, the A&P stock price to be used to determine the Pathmark equity conversion and antitrust-related matters. The A&P board then discussed these matters and authorized management to continue negotiations.

A meeting of Mr. Haub, Mr. Guldin, Mr. Burkle, Mr. Duckworth and Mr. Standley was held in New York City on March 1, 2007. By that time, A&P had abandoned its proposal to adjust the cash/stock mix of the merger consideration depending on the future results of its sale of Metro stock. At this meeting, A&P agreed to a termination right by Pathmark, and a \$50 million termination fee, in the event that A&P failed to generate at least \$190 million of proceeds from the sale of Metro stock within ninety days following the execution of the merger agreement. A&P also agreed that if the proposed transaction failed to close due to the failure to obtain financing for the cash portion of the merger consideration, then A&P would pay Pathmark a termination fee of \$50 million, which amount would increase to \$75 million if the closing were delayed beyond one year for antitrust reasons. This termination fee would be in addition to breach of contract damages that Pathmark might have against A&P, because the proposed transaction was not conditioned upon the receipt of financing. A&P also agreed to reimburse Pathmark for its legal fees and expenses if the transaction was not approved by the stockholders of A&P.

Also as part of these meetings, Mr. Burkle proposed that the exchange ratio for the stock portion of the merger consideration would be determined by valuing A&P common stock at \$27 per share rather than the then-current 20-trading-day average of \$29.56. Mr. Haub agreed to consider the proposal. This change would have the effect of increasing the exchange ratio from 0.11840 to 0.12963 A&P shares for each share of Pathmark stock.

On March 2, 2007, the A&P board held a special telephonic meeting, to review the status of the Pathmark transaction. Also in attendance were Mr. Claus, Ms. Galgano and Mr. Richards, as well as representatives of JPMorgan, Cahill, Cravath and McGuireWoods. Mr. Haub reviewed with the board the status of negotiations regarding the acquisition of Pathmark. He reported that he and Mr. Burkle had met the previous day. The open issues continued to be financing

certainty, exchange ratio and price. He reported that, as part of reaching agreement on such terms, they had also

tentatively agreed to a revision of exchange value of each Pathmark share from the twenty day formula earlier discussed to a fixed exchange ratio.

Representatives from JPMorgan then reviewed with the board the price activity of the stock of A&P and of Pathmark for various time periods, and various metrics relating to the adjusted A&P stock value to be utilized in the merger, as well as various strategic and governance issues. JPMorgan representatives reviewed the financial implications of the increase on the terms of the merger, including the potential value of the warrants.

The board then discussed these matters and Mr. Haub summarized the advantages and disadvantages of the transaction and indicated his belief that it was advisable to proceed with the transaction. The board also discussed financing options, including the sale of Metro stock. The board then determined that the value adjustment was acceptable, that the transaction continued to have the potential to deliver significant value to A&P stockholders and that management should seek to reach agreement on the remaining terms and present its recommendation to the board on Sunday, March 4, 2007.

On the evening of March 2, 2007, Mr. Haub and Mr. Burkle spoke by telephone and agreed to recommend a final fixed exchange ratio for the stock portion of the merger consideration based on a price of \$27 per share of A&P common stock instead of the 20-trading-day average. Based on the closing market price of A&P common stock on March 2, 2007 of approximately \$30.86, the change in the exchange ratio formulation resulted in an increase of approximately \$25 million in aggregate value to Pathmark stockholders, or an increase of approximately \$0.50 per share of Pathmark common stock.

On March 3 and 4, 2007, A&P, Pathmark, Latham & Watkins and Cahill exchanged numerous drafts and finalized the agreements.

By March 3, 2007, A&P and Tengelmann had reached agreement on the open issues on the Tengelmann stockholder agreement. As a result of this negotiation, Tengelmann agreed that, if A&P nominates and recommends the election of a number of Tengelmann nominees proportional to its ownership of A&P common stock, then Tengelmann will vote all its shares of A&P common stock in a manner identical to the manner in which the non-Tengelmann-affiliated stockholders vote their shares in the election of directors other than the Tengelmann nominees, unless a person other than Tengelmann has initiated a proxy contest. Tengelmann also agreed to certain modifications of its proposed approval rights as reflected in the Tengelmann stockholder agreement term sheet, including that certain significant transactions would be subject to the approval of a majority of the A&P directors nominated by Tengelmann, but a more limited group of significant transactions would require Tengelmann's approval. Tengelmann also agreed to more narrow approval rights in a number of instances, including by agreeing to apply a liquidity test to its approval rights over the settlement with A&P stock of warrants exercised by the Yucaipa Investors, Tengelmann also agreed that it would not require A&P to file a shelf registration statement for the sale of A&P shares owned by Tengelmann. The parties agreed that while the calculation of Tengelmann's ownership percentage of A&P would protect Tengelmann from dilution from most share issuances, Tengelmann would lose its board representation, approval and most other stockholder rights if its actual ownership percentage of A&P were to fall below 10%. Tengelmann also agreed to forgo an advisory fee in exchange for A&P's agreement that it would negotiate in good faith with Tengelmann to enter a services agreement under which Tengelmann would agree to provide transactional and other services to A&P for reasonable compensation.

On March 4, 2007, the independent members of the A&P board held a meeting to discuss and consider whether to recommend to the full board of directors that the board authorize A&P to enter into a stockholder agreement with Tengelmann in connection with the contemplated acquisition by A&P of Pathmark. Also participating by telephone at the meeting were representatives from Cahill, McGuireWoods and PJSC. At this meeting, representatives of McGuireWoods reviewed with the directors the terms of the Tengelmann stockholder agreement and the draft of that agreement.

The independent directors noted that the Tengelmann stockholder agreement requires A&P and Tengelmann to negotiate in good faith an advisory services agreement whereby Tengelmann would

provide certain services to A&P for compensation to be agreed upon. Representatives of PJSC noted that no fee would be paid to Tengelmman in connection with the Pathmark acquisition and, in their view, the rights being granted to Tengelmman under the Tengelmman stockholder agreement were reasonable given the size of its ownership in A&P. Representatives of McGuireWoods then reviewed the standard of care required of directors of a Maryland corporation applicable to these decisions. The independent directors then deliberated on these matters and unanimously resolved to recommend to the A&P board of directors that it approve the Tengelmman stockholder agreement and the transactions contemplated thereby.

Immediately thereafter, on March 4, 2007, the A&P board held a special meeting. Also in attendance were Mr. Claus, Ms. Galgano, Mr. Richards and Mr. McGarry, as well as representatives of JPMorgan, Cahill, Axinn, PJSC and McGuireWoods. Mr. Haub reported to the board that agreement had been reached on all terms regarding A&P's proposed acquisition of Pathmark. Representatives of Cahill then reviewed with the board the terms of the transaction, including the closing conditions, the terms and effect on the combined company of the financing arrangements, the fees payable to Yucaipa Companies in connection with the Management Services Agreement, the merger consideration and the treatment of outstanding options and warrants for Pathmark shares (including the Yucaipa Investors' warrants) and provisions for payment of cash for certain Pathmark stock options and conversion of others into A&P stock options.

Representatives of Cahill then reviewed with the board the requirements of seeking regulatory approval of the acquisition and the terms of the merger agreement permitting A&P to terminate the merger agreement for antitrust-related reasons and representatives of Axinn and Cahill described antitrust issues. Cahill representatives also reviewed with the board the circumstances under which Pathmark would be permitted under the merger agreement to consider alternative transactions to A&P's acquisition. The board also considered provisions for employment benefits for retained Pathmark employees, the termination fee provisions of the merger agreement, and the provisions for Mr. Mays to become a new director of A&P unless he is an employee or director of a competitor, in which case Pathmark would be able to nominate another director to the A&P board and the covenants in the merger agreement governing conduct of the parties' business prior to closing of the merger. Representatives of Cahill also reviewed with the board the proposed financing for the acquisition, including the debt commitment letters received by A&P, the timing of the shareholder meetings of A&P and Pathmark and the required votes, as well as the matters on which the shareholders would be requested to vote at such meetings. Cahill also described the provisions in the merger agreement permitting a change in board recommendation in connection with observance of fiduciary duties applicable to Pathmark. Cahill also described Yucaipa's and Tengelmman's voting obligations under the voting agreements and their rights under the stockholder agreements. McGuireWoods reviewed with the board the required standard of conduct of directors of a Maryland corporation.

Representatives of JPMorgan then presented to the A&P board their analysis regarding the fairness of the transaction, from a financial point of view, to A&P and delivered JPMorgan's fairness opinion to the board, that as of the date of the opinion, and based on and subject to the qualifications, assumptions and limitations set forth therein, the merger consideration to be paid by A&P was fair, from a financial point of view, to A&P. After consideration, the A&P board resolved unanimously to approve the merger agreement and the transactions contemplated thereby and the independent members of the A&P board, with the non-independent members abstaining, unanimously approved the Tengelmman stockholder agreement.

A telephonic meeting of the Pathmark special committee was held on March 4, 2007. At the meeting, a representative of PWP updated the Pathmark special committee on the potential value attributable to the proposed warrant agreement amendment in light of the increase in merger consideration payable to Pathmark's stockholders in connection with the proposed transaction. The members of the Pathmark special committee discussed this revised valuation. A representative from Shearman & Sterling reviewed with the Pathmark special committee a draft resolution for adoption should a majority of its members determine to give a favorable recommendation to the full board with respect to the proposed warrant agreement amendment.

Later that day, the Pathmark board of directors convened a special telephonic meeting at which all directors were present, as well as Mr. Burkle, Mr. Vitrano, Citigroup, Latham & Watkins, and Shearman & Sterling. Mr. Standley noted that, since the announcement five days earlier that Pathmark was considering a sale of Pathmark to A&P and the extensive media and analyst commentary on that announcement, Pathmark had not received any contacts or inquiries from any potential interested purchasers. Mr. Duckworth informed the board that Yucaipa Companies had received one contact from a potential interested party and explained to the board that the potential interested party was a financial buyer that lacked committed debt and equity financing. Mr. Duckworth also noted for the board that the party appeared to be in the initial stages of developing a larger business plan that focused on the grocery sales industry but did not have existing operations or appear to have significant experience in the industry. After considering the foregoing information, Yucaipa Companies and the board determined that the potential interested party was not credible. In addition, Mr. Standley and Mr. Duckworth indicated that they were not aware of any market rumors that any other person was interested in making a bid for Pathmark. Representatives of Citigroup also indicated that they were unaware of any such rumors and that, to their knowledge, no one at Citigroup had been contacted during the course of the strategic review process by any third party expressing interest in acquiring Pathmark. This absence of any such market rumors or credible inquiries from third parties during the five-day period following the A&P and Pathmark press releases was significant because it had been expected that any third party that was interested in acquiring Pathmark for a valuation higher than \$12.50 per share of Pathmark common stock would have contacted Pathmark or one of its representatives after the proposed transaction was publicized but prior to the execution of a definitive merger agreement.

The board reviewed the most recent changes in the terms of the proposed transaction since the previous board meeting, including the increase in the exchange ratio referenced above. Representatives of Citigroup reviewed its financial analysis of the proposed transaction, as revised in light of the increased exchange ratio of 0.12963. Citigroup then rendered its oral opinion, confirmed in writing on March 4, 2007, to the Pathmark board of directors that, as of the date of its written opinion and based upon and subject to the considerations and limitations described in the opinion, the merger consideration was fair, from a financial point of view, to the holders of Pathmark common stock (other than the Yucaipa Group). The special committee of the board then met in a separate session, where it determined to give a favorable recommendation to the board with respect to the proposed warrant amendment.

When the board meeting reconvened, Ms. Nash delivered the report and determination of the special committee to the full board with respect to the proposal to amend the terms of the Yucaipa Investors Series A and B Warrants as part of the proposed transaction. In a letter to the board, she stated that, following her letter to Mr. Duckworth on February 14, 2007, the special committee had received additional information with respect to the warrant agreement amendment proposal and related matters. Having considered that information as well as other factors, the special committee had adopted resolutions which constituted its favorable recommendation to the board with respect to the proposed warrant agreement amendment. In the special committee resolutions attached to the letter, the special committee noted that it recognized that: (i) the special committee had reviewed the terms and conditions of the proposed warrant agreement amendment, as well as the terms and conditions of the proposed transaction with A&P; (ii) the special committee had received advice from PWP, the special committee's independent financial advisor, and Shearman & Sterling, in connection with the special committee's review of the proposed warrant agreement amendment; (iii) additional value could potentially accrue to the Yucaipa Investors as a result of the warrant agreement amendment but not to the other stockholders of Pathmark; (iv) the Series A and B Warrants held by the Yucaipa Investors would, in the absence of the warrant agreement amendment, suffer a significant reduction in value upon consummation of the proposed transaction compared with their then-current value; (v) the warrants and shares of A&P which the Yucaipa Investors would be entitled to receive in the proposed transaction would be subject to various transfer and other restrictions that adversely affect the value of such warrants and shares; (vi) the Yucaipa Investors had agreed, as part of the proposed transaction, to not dispose of their Pathmark shares or warrants pending completion of the proposed transaction; (vii) it was possible that

alternative transaction structures to the proposed transaction existed that, if used, could have resulted in the same treatment of the Series A and B Warrants as the proposed warrant agreement amendments but without requiring any amendments to their terms; (viii) the Yucaipa Investors had informed the special committee that they were not prepared to support the proposed transaction unless it included the proposed warrant agreement amendment without modification; (ix) Citigroup had rendered an opinion to the board that, as of March 4, 2007, the merger consideration to be received by holders of Pathmark's common stock pursuant to the proposed transaction was fair, from a financial point of view, to such holders (other than the Yucaipa Group); (x) neither Pathmark nor Yucaipa Companies had received proposals for any transaction that would offer consideration for the Pathmark stockholders (other than the Yucaipa Investors) that would be greater than that contemplated by the proposed transaction; (xi) there was the risk that, in the absence of an announcement of a transaction such as the proposed transaction, the trading price of Pathmark's common stock would decline significantly; (xii) without the support of the Yucaipa Investors, Pathmark would be unable to proceed with the proposed transaction and the value it could provide to Pathmark's stockholders; and (xiii) the special committee believed that it was in the best interests of Pathmark's stockholders (other than the Yucaipa Investors) to facilitate consummation of the proposed transaction by giving a favorable recommendation with respect to the proposed warrant agreement amendment.

Thereafter, Mr. Duckworth confirmed that the Yucaipa Investors consented to the proposed transaction with A&P, and would enter into the proposed Yucaipa Voting Agreement (as defined below), the proposed Yucaipa Stockholder Agreement (as defined below), and the proposed warrant agreement amendment. The directors then voted unanimously to approve the proposed merger agreement with A&P and the related transaction documents, and authorized management to execute the agreements.

Thereafter, Pathmark, A&P, the Yucaipa Investors and Tengemann executed and delivered the transaction documents. The transaction was announced by press release on the morning of March 5, 2007.

Pathmark's Reasons for the Merger; Recommendation of the Pathmark Board of Directors

After careful consideration, the Pathmark board of directors has unanimously approved the merger agreement, has determined that the merger is fair to, advisable, and in the best interests of, Pathmark and Pathmark stockholders and has unanimously recommended that Pathmark stockholders vote **FOR** the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.

In the course of reaching its decision to unanimously recommend that Pathmark stockholders vote **FOR** the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, the Pathmark board of directors consulted with its financial and legal advisors, and reviewed a significant amount of information and considered a number of factors, including the following:

- historical,
- current and
- projected
- information
- concerning
- Pathmark's
- business,
- financial
- performance
- and condition,
- capital
- requirements,
- operations

and competitive position, including the sensitivities and uncertainties related thereto, and current industry, economic and market conditions, including Pathmark's prospects if Pathmark were to remain an independent company and competitive conditions affecting Pathmark's stores;

Pathmark's board of directors' past consideration of the possible alternatives to the merger, including continuing to operate Pathmark on an independent basis and/or engaging in other acquisition transactions, and the risks associated with these alternatives,

each of which
the Pathmark
board of
directors
determined
not to pursue
in light of its
belief that the
entry into the
merger
agreement
was in the
best interest
of Pathmark
stockholders
and that the
merger was
more
favorable to
Pathmark
stockholders
than any other
alternative
reasonably
available to
Pathmark;

Pathmark's board of directors believe that, based on consultation with Pathmark's management team, the proposed merger with A&P would likely allow Pathmark to more effectively implement its long-term plan to grow its business, meet its cost challenges and make Pathmark's stores even more competitive and attractive to its customers;

the value of the consideration to be received by Pathmark stockholders pursuant to the merger agreement, as well as the fact that Pathmark stockholders will receive a portion of the consideration in cash, which provides certainty of value;

the fact that Pathmark stockholders will receive a portion of the consideration in A&P common stock, which will allow Pathmark stockholders to share in growth or other opportunities of A&P after the merger;

the fact that the fixed number of shares of A&P common stock that Pathmark stockholders will receive in the merger will allow Pathmark stockholders to benefit from any increase in the trading price of A&P common stock between the announcement of the merger agreement and the completion of the merger;

historical, current and projected information concerning A&P's business, financial performance and condition, capital requirements,

operations,
management
and
competitive
position,
including the
sensitivities
and
uncertainties
related thereto,
and current
industry,
economic and
market
conditions;

the per share
merger
consideration
of \$9.00 in cash
and \$4.00 in
A&P common
stock to be paid
to Pathmark
stockholders,
based upon an
exchange ratio
of 0.12963 and
A&P's closing
stock price of
\$30.86 on
March 2, 2007
(the last trading
day prior to the
announcement
of the
execution of
the merger
agreement),
represents a
premium of
approximately:

15.6%
over the
closing
price of
Pathmark
common
stock on
March 2,

2007,

12.5%
over the
average
closing
price of
Pathmark
common
stock for
the
30-day
period
ended
March 2,
2007,

11.8%
over the
highest
closing
price of
Pathmark
common
stock
during the
52-week
period
ended
February
16, 2007,
and

71.1%
over the
lowest
closing
price of
Pathmark
common
stock
during the
52-week
period
ended
February
16, 2007;

the fact that
financial
analysts and

others had commented for many years that Pathmark and A&P were likely merger partners;

the fact that, despite Pathmark's and A&P's announcement on February 26, 2007 that they were in merger negotiations, no bona fide acquisition proposals were received by Pathmark prior to announcement of the execution of a merger agreement on March 4, 2007;

the financial presentation of Citigroup (including the assumptions and methodologies underlying its analysis undertaken in connection therewith) and the written opinion of Citigroup, which is attached to this proxy statement as Annex H and

which you should read carefully in its entirety, to the effect that, as of March 4, 2007, and based upon and subject to the considerations and limitations set forth therein, the per share merger consideration to be received by the holders of Pathmark common stock was fair, from a financial point of view, to such stockholders (other than the Yucaipa Group);

the historical market prices of Pathmark common stock, including the possibility that if Pathmark remained as a publicly traded company, in the event of a decline in the market price of Pathmark common stock or the stock market in general, the price that might be received by holders of Pathmark

common stock
in the open
market or in a
future
transaction
might be less
than the
consideration
to be paid to
Pathmark
stockholders in
the merger;

the financial
and other terms
and conditions
of the merger
agreement, as
reviewed by
Pathmark's
board of
directors with
Pathmark's
financial and
legal advisors,
and the fact
that they were
the product of
arm's-length
negotiations
between the
parties;

Pathmark's board of directors' belief, in light of the provisions of the merger agreement requiring A&P to divest itself of certain assets in connection with obtaining antitrust approval and other factors, that the merger does not present an unacceptable level of nonconsummation risk and that the conditions to the merger are reasonable and can be reasonably expected to be satisfied;

the fact that, pursuant to the terms of the Tengemann Voting Agreement, Tengemann has agreed to vote shares of A&P common stock, representing approximately 53% of the outstanding shares of A&P common stock, in favor of the issuance of A&P common stock to Pathmark stockholders in connection with the merger;

the fact that Pathmark stockholders will be entitled to exercise dissenters' rights under Delaware law, as described under The Merger Agreement Dissenters Rights ;

the fact that the merger agreement affords Pathmark's board of directors flexibility to consider and evaluate alternative acquisition proposals in the period after signing and prior to adoption of the merger agreement by Pathmark stockholders, as follows:

subject to compliance with the merger agreement, Pathmark's board of directors is permitted to participate in negotiations or discussions with, and furnish nonpublic information to, any person or group in response to an acquisition proposal that is more favorable to Pathmark stockholders than the merger or that Pathmark's board of directors determines in good faith, after consultation with financial advisors and outside legal counsel, that such acquisition proposal would

reasonably be expected to result in an acquisition proposal that is more favorable to Pathmark stockholders than the merger and that Pathmark's board of directors determines in good faith, after consultation with outside legal counsel, that failure to do so would be inconsistent with the Pathmark board of directors fiduciary duties under applicable law;

subject to compliance with the merger agreement, Pathmark's board of directors is permitted to change its recommendation to stockholders with respect to an alternative transaction if the Pathmark board of directors determines in good faith, after consultation with outside legal counsel, that failure to take such action would be inconsistent with its fiduciary

duties under applicable law and has given A&P five business days prior notice of its intention to take such action, subject to A&P's right to terminate the merger agreement and require Pathmark to pay a termination fee of \$25 million; and

although they currently own approximately 38% of the outstanding Pathmark shares, the Yucaipa Investors are only obligated to vote 33% of the outstanding Pathmark shares for the adoption of the merger agreement and against alternative transactions, and the balance may be voted by the Yucaipa Investors in their sole discretion;

the fact that the Pathmark board of directors formed a special committee, composed entirely of independent directors, none of

whom were nominated by the Yucaipa Investors to serve on the Pathmark board of directors, to review any proposed amendment to the existing Yucaipa Investors warrant agreement (including the Yucaipa Warrant Agreement as defined below), and the fact that the special committee, after receiving advice from its own financial and legal advisors, unanimously delivered a favorable recommendation to Pathmark's board of directors with respect to the Yucaipa Warrant Agreement;

the fact that A&P's obligation to complete the merger is not subject to any financing condition;

the fact that A&P obtained and delivered a debt commitment letter from its lenders, pursuant to which A&P's

lenders
committed,
subject to the
conditions
provided therein,
to provide A&P
with a senior
secured
revolving credit
facility in the
amount of \$615
million and up to
\$780 million of
senior secured
loans in order to
complete the
merger and pay
the cash portion
of the
consideration to
be paid to
Pathmark
stockholders;

the fact that A&P
would be
obligated to pay
a termination fee
and/or expense
reimbursement,
up to a maximum
amount of \$75
million, to
Pathmark under
certain

circumstances
relating to
A&P's failure
to obtain
antitrust
approval or
financing for
the
transaction;
and

the provision
for one
member of the
Pathmark
board of
directors to be
appointed to
the A&P
board of
directors,
which the
Pathmark
board of
directors
believes will
provide a
degree of
continuity and
oversight in
the integration
of the two
companies.

In the course of its deliberations, the Pathmark board of directors also considered a variety of risks and other countervailing factors concerning the merger agreement and the merger, including the following:

the risks and
costs to
Pathmark if the
merger does not
close, including
the diversion of
management and
employee
attention,
employee
attrition and the
effect on
Pathmark's
business

relationships;

the fact that the fixed number of shares of A&P common stock that Pathmark stockholders will receive in the merger exposes Pathmark stockholders to the risk of a decrease in the trading price of A&P common stock between the announcement of the merger agreement and the completion of the merger, and the fact that the merger agreement does not provide Pathmark with a price- based termination right or similar protection in relation to such a decrease;

the fact that the completion of the merger is subject to a number of conditions, including antitrust approval;

the restrictions on the conduct of Pathmark's business prior to the completion of the merger, requiring

Pathmark to use commercially reasonable efforts to conduct its business in the ordinary course generally consistent with past practice and to refrain from taking certain actions, which may delay or prevent Pathmark from undertaking business opportunities that may arise pending completion of the merger;

the fact that Pathmark would no longer exist as an independent, publicly traded company and Pathmark stockholders would no longer participate in the future earnings or growth, and would not benefit from any appreciation in the value, of Pathmark as an independent company;

the restrictions that the merger agreement imposes on Pathmark's ability to actively solicit competing bids, and the fact that

Pathmark would be obligated to pay a termination fee and/or expense reimbursement, up to a maximum amount of \$25 million, to A&P under certain circumstances, which could raise the cost for a third party to make a competing bid for Pathmark;

the fact that the decision not to engage in an auction process or to actively solicit alternative acquisition proposals may have prevented Pathmark from receiving and evaluating such proposals;

Pathmark's obligation to call and hold a meeting of its stockholders to adopt the merger agreement regardless of whether Pathmark's board of directors has changed its recommendation to Pathmark stockholders with respect to the merger or Pathmark has received an

alternative
acquisition
proposal that is a
superior proposal
as defined in the
merger
agreement;

the fact that,
pursuant to the
terms of the
Yucaipa Voting
Agreement, the
Yucaipa
Investors have
agreed to vote
shares of
Pathmark
common stock
owned by the
Yucaipa
Investors,
representing up
to 33% of the
outstanding
shares of
Pathmark
common stock,
in favor of the
adoption of the
merger
agreement and
against any
action, proposal,
transaction or
agreement that
would constitute
an alternative
acquisition
proposal or that
would compete
with or would
delay,
discourage,
adversely affect
or inhibit the
timely
consummation of
the merger;

the fact that
gains from the
transaction
would be taxable
to Pathmark
stockholders for
U.S. federal
income tax
purposes; and

the interests of
the Yucaipa
Investors and
Pathmark's
directors and
officers in the
merger described
under The
Merger Interests
of Certain
Persons in the
Merger.

The foregoing discussion of the factors considered by the Pathmark board of directors is not intended to be exhaustive, but does set forth the principal factors considered by them. The Pathmark board of directors collectively reached the unanimous conclusion to recommend that the stockholders adopt the merger agreement in light of the various factors described above and other factors that each member of the board of directors believed were appropriate. In view of the wide variety of factors considered by Pathmark's board of directors in connection with their respective evaluation of the merger and the complexity of these matters, the Pathmark board of directors did not consider it practical to, and did not attempt to, quantify, rank or otherwise assign relative weights to the specific factors considered in reaching its decision, and the Pathmark board of directors did not undertake to make any specific determination as to whether any particular factor, or any aspect of any particular factor, was favorable or unfavorable to its ultimate determination. Rather, the Pathmark board of directors made its recommendations based on the totality of information presented to its members and the investigation conducted by them. In considering the factors discussed above, individual directors may have given different weights to different factors.

A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors

The A&P board of directors has unanimously approved and declared the advisability of the merger agreement, has determined that the merger agreement is in the best interests of A&P and the holders of A&P common stock and unanimously recommends that A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement.

In reaching its determination to authorize and declare the advisability of the merger agreement and unanimously recommend the A&P stockholders vote FOR the proposal to approve the share issuance of A&P common stock pursuant to the merger agreement, the A&P board of directors consulted with senior management and A&P's legal and financial advisors and considered various factors, including:

Pathmark's
financial
condition, results
of operations,
business,
competitive
position,
reputation and
business
prospects, as well
as current
industry,
economic,
government,
regulatory and
market conditions
and trends.

The
recommendations
and
determinations of
the A&P
independent
directors.

An assessment of the following:

The complementary strengths of each company.

A&P's integration capabilities.

The combined company's potential to better serve customers in the New York, New Jersey and Philadelphia metro areas.

Benefits that would accrue to customers through the breadth of offerings available from the combined entity, including the continuation of community outreach.

The convenience and reassurance of choice that retention of the Pathmark banner would provide.

Anticipated annual integration synergies of approximately \$150 million

within two years following the closing of the merger. In this regard, A&P expects the transaction to generate \$150 million of annual pretax cost savings within two years, over half of which are expected to be realized within six months, from reduced administrative expenses, including the consolidation of the combined companies headquarters and the integration of Pathmark stores with A&P s existing, state of the art information technology systems. The remainder of the synergies are expected to be achieved through reductions in costs of goods sold and are expected to be achieved within 18 to 24 months from the date of closing and are the result of larger scale in purchasing, sharing of best

practices within
merchandising,
merging of the
A&P and
Pathmark
private label
brands, and
logistical cost
savings as a
result of the
combined
companies.

Efficiencies
and
customer
knowledge
benefits
that the
integration
of A&P's
modern
systems
technology
platform
will
provide.

The regulatory risks
relating to the merger,
which the A&P board
of directors analyzed
with the assistance of
its outside antitrust
advisors.

The opinion dated as
of March 4, 2007
delivered to A&P by
JPMorgan to the
effect that, as of that
date, and subject to
and based on the
qualifications,
assumptions and
limitations set forth in
the opinion, the
merger consideration
was fair, from a
financial point of
view, to A&P, as
described under
Opinion of A&P's
Financial Advisor.

The judgment, advice
and analyses of A&P's
senior management,
including their
favorable
recommendation of
the merger and their
analyses of conditions

in the supermarket industry and the strategic options available to A&P.

Tengelmann's commitment to vote in favor of the merger after independently evaluating the merger's benefits and risks.

The fact that, because the exchange ratio under the merger agreement is fixed (i.e., will not be adjusted for fluctuations in the market price of A&P common stock or Pathmark common stock), the per share value of the merger consideration to be paid to Pathmark stockholders on completion of the merger could be significantly more or less than its implied value immediately prior to the announcement of the merger agreement.

The terms and conditions of A&P's debt financing commitment letters and the level of effort that A&P must use under the merger agreement to obtain the proceeds of the financing on the terms and conditions described in the commitment letters.

The terms and conditions of the merger agreement, the stockholder agreements and the voting agreements, including the form and amount of the consideration and the representations, warranties, covenants, conditions to closing and termination rights contained in those agreements.

That the Tengelmann Stockholder Agreement (as defined below) was negotiated by independent directors not affiliated with Tengelmann with the assistance of legal counsel and financial advisors.

The matters discussed under Risk Factors in this joint proxy statement/prospectus.

The A&P board of directors considered all of the foregoing factors as a whole and, on balance, concluded that they supported a favorable determination to authorize the merger agreement and declare its advisability.

The foregoing discussion of the information and factors considered by the A&P board of directors is not exhaustive, but A&P believes it includes all the material factors considered by the A&P board of directors. In view of the wide variety of factors considered in connection with its evaluation of the merger and the complexity of these matters, the A&P board of directors did not consider it practicable to, and did not attempt to, quantify or otherwise assign relative or specific weight or values to any of these factors. In addition, individual directors may have given different weights to different factors.

Opinion of Pathmark's Financial Advisor

Pathmark retained Citigroup as its financial advisor in connection with the merger. Pursuant to Citigroup's engagement letter with Pathmark, dated February 6, 2007, Citigroup rendered its oral opinion on March 4, 2007, confirmed in writing on March 4, 2007, to the Pathmark board of directors to the effect that, as of the date of its written opinion and based upon and subject to the considerations and limitations set forth in its written opinion, its work described below and other factors it deemed relevant, the merger consideration was fair, from a financial point of view, to the holders of Pathmark common stock (other than Yucaipa Companies and the Yucaipa Investors and their affiliates, which we refer to collectively as the *Yucaipa Group*).

The full text of Citigroup's written opinion dated March 4, 2007, which sets forth the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is included as Annex H to this proxy statement/prospectus and is incorporated herein by reference. Citigroup's opinion was limited solely to the fairness of the merger consideration from a financial point of view as of the date of the opinion. Neither Citigroup's opinion nor the related analyses constituted a recommendation of the proposed merger to the Pathmark board of directors. Citigroup makes no recommendation to any stockholder regarding how such stockholder should vote or act with respect to the merger or any other matter described herein. Citigroup was not requested to consider, and its opinion does not address, the relative merits of the merger compared to any alternative business strategies that might exist for A&P or Pathmark or the effect of any other transaction in which A&P or Pathmark might engage. This summary of Citigroup's opinion is qualified in its entirety by reference to the full text of the opinion. Stockholders are urged to read Citigroup's opinion carefully and in its entirety.

In arriving at its opinion, Citigroup:

reviewed a
draft, dated
March 4, 2007,
of the merger
agreement;

held
discussions
with certain
senior officers,
directors and
other
representatives
and advisors of
Pathmark and
certain senior
officers and
other
representatives
and advisors of
A&P
concerning the
businesses,
operations and
prospects of

Pathmark and
A&P;

examined
certain publicly
available
business and
financial
information
relating to
Pathmark and
A&P;

examined
certain
financial
forecasts and
other
information
and data
relating to
Pathmark and
A&P, including
projections for
the fiscal years
2006 through
2011, which
were provided
to or discussed
with Citigroup
by the
management of
each of
Pathmark and
A&P, including
information
relating to the
potential
strategic
implications
and operational
benefits
(including the
amount, timing
and
achievability
thereof)
anticipated by
the
management of
each of

Pathmark and A&P to result from the merger;

reviewed the financial terms of the merger as set forth in the merger agreement in relation to, among other things: current and historical market prices of Pathmark common stock and A&P common stock; the historical and projected earnings and other operating data of Pathmark and A&P; and the capitalization and financial condition of Pathmark and A&P;

considered, to the extent publicly available, the financial terms of certain other transactions that Citigroup considered relevant in evaluating the merger and analyzed certain financial, stock market and other publicly available

information relating to the businesses of other companies whose operations Citigroup considered relevant in evaluating those of Pathmark and A&P;

evaluated certain potential pro forma financial effects of the merger on A&P; and

conducted such other analyses and examinations and considered such other information and financial, economic and market criteria as it deemed appropriate in arriving at its opinion.

In rendering its opinion, Citigroup assumed and relied, without assuming any responsibility for independent verification, upon the accuracy and completeness of all financial and other information and data publicly available or provided to or otherwise reviewed by or discussed with Citigroup (including, without limitation, the projections referred to above) and upon the assurances of the

management of each of Pathmark and A&P that they were not aware of any relevant information that has been omitted or that remains undisclosed to Citigroup. With respect to financial forecasts (including, without limitation, the projections referred to above) and other information and data relating to Pathmark or A&P provided to or otherwise reviewed by or discussed with Citigroup, Citigroup was advised by the respective management of each of Pathmark and A&P that such forecasts and other information and data were reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of each of Pathmark and A&P as to the future financial performance of Pathmark and A&P, the potential strategic implications and operational benefits anticipated to result from the merger, and the other matters covered thereby Citigroup assumed, with the Pathmark board of directors' consent, that the financial results (including the potential strategic implications and operational benefits anticipated to result from the merger) reflected in such forecasts and other information and data will be realized in the amounts and at the times projected.

Citigroup assumed, with the consent of the Pathmark board of directors, that the merger will be consummated in accordance with its terms, without waiver, modification or amendment of any material term, condition or agreement and that, in the course of obtaining the necessary regulatory or third party approvals, consents and releases for the merger, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on Pathmark, A&P or the contemplated benefits of the merger. Representatives of Pathmark advised Citigroup, and Citigroup further assumed, that the final terms of the merger agreement will not vary materially from those set forth in the draft of the merger agreement dated March 4, 2007 reviewed by Citigroup. Citigroup did not express any opinion as to what the value of the A&P common stock actually will be when issued pursuant to the merger or the price at which the A&P common stock will trade at any time. Citigroup did not make and was not provided with an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of Pathmark or A&P, nor did Citigroup make any physical inspection of the properties or assets of Pathmark or A&P.

Citigroup was not requested to, and it did not, solicit third party indications of interest in the possible acquisition of all or part of Pathmark, nor was Citigroup requested to consider, and Citigroup's opinion does not address, the relative merits of the merger as compared to any alternative business strategies that might exist for Pathmark or the effect of any other transaction in which Pathmark might engage. Further, Citigroup expressed no view as to, and its opinion does not address, the relative impact on the holders of Pathmark common stock of any payments (other than the payment of the merger consideration in respect of shares of Pathmark common stock) to be made by Pathmark or A&P in connection with the merger to, or any arrangements entered into by Pathmark or A&P in connection with the merger with, the Yucaipa Group or any affiliate of the Yucaipa Group (other than Pathmark), including the Yucaipa Warrant Agreement and the Yucaipa Stockholder Agreement. Citigroup's opinion was necessarily based upon information available to it, and financial, stock market and other conditions and circumstances existing, as of the date of the opinion. Except as described above, Pathmark imposed no other instructions or limitations on Citigroup with respect to the investigations made or procedures followed by Citigroup in rendering its opinion.

A description of the material financial analyses performed by Citigroup in connection with the preparation of its fairness opinion is set forth below. The following summary does not, however, purport to be a complete description of all the financial analyses performed by Citigroup in connection with its fairness opinion. The preparation of a fairness opinion is a complex analytical process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and is not necessarily susceptible to partial analysis or summary description. In arriving at its fairness determination, Citigroup considered the results of all of its analyses and did not attribute any particular weight to any factor or analysis considered by it. Rather, Citigroup made its determination as to fairness on the basis of its experience and professional judgment after considering the results of all of its analyses. Accordingly, Citigroup believes that the analyses and factors described below must be considered as a whole and that selecting portions of such analyses and factors or focusing on information presented in tabular format, without considering all analyses and factors or the

narrative description of its analyses, could create a misleading or incomplete view of the processes underlying its analyses and opinion.

In its analyses, Citigroup made numerous assumptions with respect to industry performance, regulatory, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Pathmark and A&P. No company, business or transaction used in Citigroup's analyses as a comparison is identical or directly comparable to Pathmark or A&P, and an evaluation of those analyses is not entirely mathematical. Rather, the analyses involve complex considerations and judgments concerning financial and operating characteristics and other factors that could affect the acquisition, public trading, or other values of the companies, business segments or transactions analyzed.

Analyses based upon forecasts of future results are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. The analyses do not purport to be appraisals or to reflect the prices at which businesses or securities actually may be sold. Because these analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of the parties or their respective advisors, none of Pathmark, A&P, Citigroup, their respective affiliates or any other person assumes responsibility if future results are materially different from those forecast.

The order of the analyses described does not represent relative importance or weight given to those analyses by Citigroup. Some of the summaries of the financial analyses include information presented in tabular format. To the extent the following quantitative information reflects market data, except as otherwise indicated, Citigroup based this information on market data existing on or before March 2, 2007, the last trading day before public announcement of the proposed merger. Accordingly, this information does not necessarily reflect current or future market conditions.

The merger consideration was determined by arms'-length negotiations between Pathmark and A&P, in consultation with their respective financial advisors and other representatives, and was not established by such financial advisors.

The following is a summary of the material financial analyses presented to the Pathmark board of directors in connection with Citigroup's opinion. **Citigroup believes that the analyses and factors described below must be considered as a whole and that selecting portions of such analyses and factors or focusing on information presented in tabular format, without considering all analyses and factors or the narrative description of its analyses, could create a misleading or incomplete view of the processes underlying its analyses and opinion.**

Transaction Overview

Citigroup reviewed with the Pathmark board of directors the basic terms of the merger, including the following:

consideration
per share of
Pathmark
common stock
to consist of
\$9.00 in cash
and 0.12963
shares of A&P
common
stock;

implied value
for the merger

consideration
of \$13.00 per
share of
Pathmark
common stock
(based on the
closing price
of A&P
common stock
of \$30.86 on
March 2,
2007),
representing
total equity
value of \$742
million; and

pro forma
percentage
ownership by
current
Pathmark
stockholders
of
approximately
14% of the
combined
company,
based on basic
shares
outstanding;
and
approximately
16% on a fully
diluted basis
per the
treasury stock
method.

Citigroup calculated for the Pathmark board of directors the implied percentage premium of the merger consideration over the closing price of Pathmark common stock on March 2, 2007, the last trading day prior to announcement of the merger, the highest and lowest closing stock prices of the Pathmark common stock for the 52-week period ended on February 16, 2007 (which based on the increase in trading price from February 16, 2007 to February 20, 2007, Citigroup believed to be the last trading day unaffected by rumors of the proposed merger) and the average closing stock prices for the Pathmark common stock for the 30-day, 60-day, and 90-day periods ended on March 2, 2007.

These calculations were based on historical information and public filings. The results of this analysis are set forth in the following table:

Premium to:*

Share Price at March 2, 2007	15.6 %
52 Week High	11.8
52 Week Low	71.1
30 Day Average	12.5
60 Day Average	14.8
90 Day Average	15.8

* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.

Selected Companies Analysis Pathmark

Citigroup reviewed certain financial and stock market information and forecasted financial information of Pathmark and of seven selected publicly held companies that operate in the multiregional and regional supermarket retail sectors. The selected companies considered by Citigroup were:

Multiregional

Regional

The Kroger Co. Ruddick Corporation
 Safeway Inc. A&P
 SUPERVALU Inc. Weis Markets, Inc.
 Ingles Markets, Incorporated

For Pathmark and each of the selected companies for which information was available, Citigroup derived multiples of firm value to, among other things, estimated calendar year 2007 earnings before interest, taxes, depreciation and amortization, excluding extraordinary items and stock-based compensation expense, where applicable (*Adjusted EBITDA*). Citigroup calculated firm value as (a) equity value, based on the per share closing stock price on March 2, 2007 and fully diluted shares outstanding less any option proceeds, as reflected in each company's latest publicly available information, assuming exercise of all in-the-money options, warrants and convertible securities outstanding, less the proceeds from such exercise, plus (b) non-convertible indebtedness including capital leases, plus (c) minority interests, plus (d) non-convertible preferred stock, plus (e) all out-of-the-money convertible securities, plus (f) closed store reserves, minus (g) investments in unconsolidated affiliates (which, in the case of A&P, included A&P's interest in Metro at market value as of March 2, 2007) and cash and cash equivalents. Historical financial information for the selected companies was obtained from public filings. Estimated financial information for the selected companies and Pathmark, including estimated calendar year 2007 Adjusted EBITDA, was based on publicly available FirstCall consensus estimates, which are calculated as the mean of equity research analysts' respective financial projections for each company, as maintained in the Thomson First Call database.

Company	Firm Value* / CY2007E Adjusted EBITDA
The Kroger Co.	7.1 x
Safeway Inc	7.6
SUPERVALU Inc	6.7
Ruddick Corporation	6.0
A&P	9.0
Weis Markets, Inc	8.0
Ingles Markets, Incorporated	NA **
Pathmark	8.6

* Firm values for Pathmark and the selected companies were based on closing stock prices on March 2,

2007
(which, in
the case of
Pathmark,
was
\$11.25).

** CY2007E
EBITDA
estimates
not
available.

Based upon the selected companies analysis and taking into consideration other performance metrics, Citigroup selected a reference range of 6.5x to 8.0x, and applied this range to Pathmark's estimated fiscal year (FY) 2007 Adjusted EBITDA of \$152.8 million contained in the financial projections prepared by Pathmark's management, more fully described in The Merger Pathmark Projected Financial Information. Using Pathmark's estimated balance sheet data as of January 28, 2007 as provided by Pathmark's management, this analysis indicated the following approximate implied per share equity value reference range for Pathmark, as compared to the per share merger consideration:

Implied Per Share Equity Value Reference Range for Pathmark	Per Share Merger Consideration*
\$7.37 - \$11.10	\$13.00

* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.

Selected Companies Analysis A&P

Citigroup reviewed certain financial and stock market information and forecasted financial information of A&P and of seven selected publicly held companies that operate in the multiregional and regional supermarket retail sectors. The selected companies considered by Citigroup were:

Multiregional The Kroger Co.	Regional Ruddick Corporation
--	--

Safeway Inc. Pathmark
 SUPERVALU Inc. Weis Markets, Inc.
 Ingles Markets, Incorporated

For A&P and each of the selected companies for which information was available, Citigroup derived multiples of firm value to, among other things, estimated calendar year 2007 Adjusted EBITDA. Historical financial information for the selected companies was obtained from public filings. Estimated financial information for the selected companies and A&P, including estimated calendar year 2007 Adjusted EBITDA, was based on publicly available FirstCall consensus estimates, which are calculated as the mean of equity research analysts' respective financial projections for each company, as maintained in the Thomson First Call database.

Company	Firm Value* / CY2007E Adjusted EBITDA
The Kroger Co.	7.1 x
Safeway Inc	7.6
SUPERVALU Inc	6.7
Ruddick Corporation	6.0
Pathmark	8.6
Weis Markets, Inc	8.0
Ingles Markets, Incorporated	NA **
A&P	9.0

* Firm values for A&P and the selected companies were based on closing stock prices on March 2, 2007 (which, in the case of A&P, was \$30.86).

** CY2007E EBITDA estimates not

available.

Based upon the selected companies analysis and taking into consideration other performance metrics, Citigroup selected a reference range of 6.5x to 8.0x, and applied this range to A&P's estimated FY 2007 Adjusted EBITDA contained in the financial projections prepared by A&P's management. Using A&P's estimated balance sheet data as of February 28, 2007 as provided by

A&P's management, this analysis indicated the following approximate implied per share equity value reference range for A&P, as compared to the closing price of the A&P common stock on March 2, 2007, the last trading day prior to announcement of the merger:

Implied Per Share Equity Value Reference Range for A&P	A&P Stock Closing Price on March 2, 2007
\$24.55 \$31.06	\$30.86

Precedent Transactions Analysis Pathmark

Citigroup reviewed publicly available information for nine selected merger and acquisition transactions in the supermarket retail sector publicly announced from November 2000 through April 2006. For each selected precedent transaction, Citigroup derived the ratio of firm value of the acquired company, based on the consideration paid in the transaction, to Adjusted EBITDA for the last twelve-month period prior to the announcement of the transaction for which financial results were available (*LTM EBITDA*):

Date Announced	Acquiror	Target	Consideration Mix	Firm Value / LTM EBITDA
April 20, 2006	Sun Capital Partners, Inc.	Marsh Supermarkets, Inc.	Cash	8.5 x
January 23, 2006	SUPERVALU Inc.	Albertson's, Inc.	Cash/Stock	7.0 (1)
July 19, 2005	Metro Inc.	A&P Canada Co.	Cash/Stock	9.0
December 23, 2004	Lone Star Funds.	Bruno's Supermarkets Inc./ BI-LO, LLC	Cash	4.3 (2)
March 26, 2004	Albertson's, Inc.	JS USA Holdings, Inc. (Shaw's and Star Markets)	Cash	7.0
April 9, 2002	Willis Stein & Partners	Roundy's Inc.	Cash	6.2
September 4, 2001	Ahold USA, Inc.	Bruno's Supermarkets, Inc.	Cash	8.3
December 5, 2000	Safeway Inc.	Genuardi's Family Markets, Inc.	Cash	7.0 (3)
November 16, 2000	Delhaize Group	Delhaize America Inc.	Stock	7.2 (4)

(1) Albertson's was acquired by SUPERVALU Inc., CVS Corporation and an investor

group led by Cerberus Capital Management. LTM EBITDA was calculated for the portion of the business acquired by SUPERVALU Inc., which consisted of core grocery store assets.

(2) LTM EBITDA multiple based on FY 2004 (ended January 2, 2005).

(3) Value of Genuardi s is net of a \$100 million cash tax benefit received by Safeway as a result of deductible goodwill amortization created through the asset sale of Genuardi s.

(4) LTM EBITDA is pro forma for a full year of operations of Hannaford Brothers, which was acquired by Delhaize America in July of 2000.

With respect to the financial information, including LTM EBITDA, for the companies involved in the selected precedent transactions, Citigroup relied on information available in public documents, company press releases and information published by Wall Street research. For purposes of this analysis, firm value is based on the aggregate

consideration paid for the enterprise value of the target in the respective transaction and is otherwise calculated on the same basis as described above with respect to firm value under Selected Companies Analysis Pathmark, using latest balance sheet data as of the announcement date of the respective transaction, where available.

Based upon the precedent transactions analysis and taking into consideration other performance metrics, Citigroup selected a reference range of 7.0x to 9.0x LTM EBITDA and applied this range to Pathmark estimated FY 2006 Adjusted EBITDA of \$131.4 million contained in the financial projections prepared by Pathmark's management, more fully described in The Merger Pathmark Projected Financial Information. Using Pathmark's estimated balance sheet data as of January 28, 2007 as provided by Pathmark's management, this analysis indicated the following approximate implied per share equity value reference range for Pathmark, as compared to the per share merger consideration:

Implied Per Share Equity Value Reference Range for Pathmark	Implied Per Share Merger Consideration*
\$6.00 \$10.51	\$13.00

* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.

Discounted Cash Flow Analysis Pathmark

Citigroup performed a discounted cash flow analysis of Pathmark to calculate the estimated present value, as of the projected closing date of July 31, 2007, of the standalone unlevered, after-tax free cash flows that Pathmark could generate over Pathmark's projected fiscal years 2007 through 2011, based on the projections prepared by Pathmark management. For purposes of the discounted cash flow analysis, Citigroup assumed a closing date of July 31, 2007 and therefore calculated this estimated present value as of that date. Because Citigroup performed its discounted cash flow analysis with respect to Pathmark on a standalone basis and without giving effect to the merger, this discounted cash flow analysis excludes the value of any synergies that might result from the merger with A&P.

Citigroup calculated a range of estimated terminal values by applying a range of Adjusted EBITDA terminal value multiples of 6.4x to 8.0x to Pathmark's estimated FY 2011 Adjusted EBITDA contained in the financial projections prepared by Pathmark's management, more fully described in The Merger Pathmark Projected Financial Information. The unlevered, after-tax free cash flows and terminal values were discounted to present value as of July 31, 2007 using discount rates ranging from 8.0% to 9.0%. Citigroup assumed this range of discount rates after taking into consideration, among other things, (i) Citigroup's analysis of Pathmark's weighted average cost of capital (which resulted in a range of discount rates from 7.2% to 8.5%), (ii) market data for similar companies, including A&P, identified in the section entitled Selected Companies Analysis Pathmark, and (iii) Pathmark's cost of debt as of March 2, 2007. The terminal value multiples were determined based upon an assessment of public company trading values. Using Pathmark's estimated balance sheet data as of July 31, 2007 as provided by Pathmark's management, this

analysis indicated the following approximate implied per share equity value reference range for Pathmark, as compared to the implied per share merger consideration:

Implied Per Share Equity Value Reference Range for Pathmark	Implied Per Share Merger Consideration*
\$10.91 \$15.77	\$13.00

* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.

Discounted Cash Flow Analysis A&P

Citigroup performed a discounted cash flow analysis of A&P to calculate the estimated present value, as of February 28, 2007, of the standalone unlevered, after-tax free cash flows that A&P could generate over A&P's projected fiscal years 2007 through 2011, based on the projections prepared by A&P's management. Because Citigroup performed its discounted cash flow analysis with respect to A&P on a standalone basis and without giving effect to the merger, this discounted cash flow analysis excludes the value of any synergies that might result from the merger with Pathmark.

Citigroup calculated a range of estimated terminal values by applying a range of Adjusted EBITDA terminal value multiples of 6.4x to 8.0x to A&P's estimated FY 2011 Adjusted EBITDA. The unlevered, after-tax free cash flows and terminal values were discounted to present value as of February 28, 2007 using discount rates ranging from 8.0% to 9.0%, which range was derived taking into consideration, among other things, the estimated weighted average cost of capital for A&P using selected public company market data and A&P's cost of debt as of March 2, 2007. The

terminal value multiples were determined based upon an assessment of public company trading values. Citigroup used A&P's estimated balance sheet data as of February 28, 2007 (and not a date based on a projected closing date) because the implied per share merger consideration of \$13.00 used by Citigroup for its analysis was based on the exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007. Using A&P's estimated balance sheet data as of February 28, 2007 as provided by A&P's management, this analysis indicated the following approximate implied per share equity value reference range for A&P, as compared to the closing price of the A&P common stock on March 2, 2007, the last trading day prior to announcement of the merger:

Implied Per Share Equity Value Reference Range for A&P	A&P Stock Closing Price on March 2, 2007
\$33.72 \$44.46	\$30.86

Other Factors

In rendering its opinion, Citigroup also reviewed and considered other factors, including:

the
relationship
between
movements
in Pathmark
common
stock,
movements
in A&P
common
stock, and
movements
in the
common
stock of
selected
companies
in the
supermarket
retail sector;
and

publicly
available
research
analysts
reports for
Pathmark
and A&P.

Miscellaneous

Citigroup acted as financial advisor to Pathmark in connection with the transaction. Pursuant to Citigroup's engagement letter, Pathmark agreed to pay Citigroup the following fees for its services: (i) \$1,000,000 upon delivery

of Citigroup's opinion; and (ii) an additional \$2,500,000, payable upon either the consummation of the merger with A&P or the consummation of an alternative transaction which allows Pathmark to terminate a definitive agreement for the merger with A&P and accept such alternative transaction. In the event that Citigroup's engagement letter is terminated or expires prior to the consummation of the merger, the foregoing fees will be payable by Pathmark if the merger with A&P or any such alternative transaction is consummated, or if a definitive agreement is entered into with respect to any of the foregoing, at any time prior to the twelve-month anniversary of the termination or expiration of Citigroup's engagement letter. In addition, the Citigroup engagement letter provided that, solely to the extent that Pathmark had elected to pursue an alternative transaction following the public announcement of discussions involving the merger with A&P but prior to the execution of the merger agreement, Pathmark would have been required to pay the same fees outlined above to Citigroup with respect to such an alternative transaction as Citigroup would have received in connection with the merger.

Pathmark also has agreed, subject to certain limitations, to reimburse Citigroup for its reasonable expenses incurred in connection with its engagement, including the reasonable fees and expenses of its counsel. Pathmark has also agreed to indemnify Citigroup and related persons against certain liabilities and expenses relating to or arising out of its engagement, including liabilities under the federal securities laws.

Citigroup and its affiliates in the past have provided, and in the future may provide, services unrelated to the merger to Pathmark, A&P, the Yucaipa Group, and their respective affiliates. Citigroup and such affiliates have received, and in the future may receive, customary compensation for such services. In 2006 and 2007, these services included rendering services to Wild Oats, Inc. and Source Interlink Companies, Inc., two entities in which members of the Yucaipa Group have made significant investments and which could be deemed to be affiliates of the Yucaipa Group. Citigroup rendered a fairness opinion to Wild Oats in connection with its pending tender offer and merger with Whole Foods Market. Citigroup received a fee of \$1,500,000 upon delivery of the fairness opinion and expects to receive additional compensation that is contingent upon the outcome of the Wild Oats transaction. In addition, Citigroup provided to Source Interlink a substantial portion of an aggregate of \$1.645 billion of senior secured and senior subordinated debt financing in connection with Source Interlink's completed acquisition of PRIMEDIA Inc.'s Enthusiast Media division.

Citigroup received customary financing fees in connection with the transaction. In the ordinary course of business, Citigroup and its affiliates may actively trade or hold the securities of Pathmark and A&P for their own account or for the account of their customers and, accordingly, may at any time hold a long or short position in such securities. In that regard, as of March 2, 2007, the last trading day prior to the date Citigroup rendered its opinion to the board of directors of Pathmark, Citigroup and its affiliates held shares of Pathmark common stock representing approximately 1.0% of the outstanding Pathmark common stock (based on basic shares outstanding) and shares of A&P common stock representing approximately 0.7% of the outstanding A&P common stock (based on basic shares outstanding). In addition, Citigroup and its affiliates (including Citigroup Inc. and its affiliates) may maintain relationships with Pathmark, A&P and their respective affiliates, including providing financing and related services to A&P following the transaction.

Citigroup is an internationally recognized investment banking firm engaged in, among other things, the valuation of businesses and their securities in connection with mergers and acquisitions, restructurings, leveraged buyouts, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes. Pathmark selected Citigroup to act as its financial advisor on the basis of Citigroup's international reputation and Citigroup's familiarity with Pathmark.

As described above, Citigroup's opinion to Pathmark's board of directors was one of many factors taken into consideration by Pathmark's board of directors in making its determination to approve the merger and the merger agreement and the merger consideration was determined by arms'-length negotiations between Pathmark and A&P, in consultation with their respective financial advisors and other representatives, and was not established by such financial advisors.

Pathmark Projected Financial Information

Pathmark does not as a matter of course make public projections as to future sales, earnings, or other results. However, Pathmark's senior management prepared certain financial forecasts for internal use and for the use of Pathmark's board of directors and its advisors, and A&P and its advisors, in connection with the potential transaction. The accompanying financial forecasts were not prepared with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information, but, in the view of Pathmark's management, were prepared on a reasonable basis, reflect the best currently available estimates and judgments, and present to the best of management's knowledge and belief, the expected course of action and the expected future financial performance of Pathmark. However, this information is not fact and should not be relied upon as being necessarily indicative of future results, and readers of this joint proxy statement/prospectus are cautioned not to place undue reliance on the prospective financial information.

Neither Pathmark's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information.

The accompanying financial forecasts were made available to the board of directors of Pathmark, to A&P and to Citigroup. We have included a subset of these projections to give stockholders of Pathmark access to certain nonpublic information considered by the Pathmark board of directors for purposes of considering and evaluating the merger. The inclusion of this information should not be regarded as an indication that the Pathmark board of directors, Citigroup, A&P or any other person considered, or now considers, it to be predictive of actual future results.

Pathmark advised the recipients of the projections that its internal financial forecasts, upon which the projections were based, are subjective in many respects. The projections reflect numerous estimates and assumptions with respect to industry performance, general business, economic, regulatory, market and financial conditions, as well as matters

specific to Pathmark's business, all of which are difficult to predict and beyond Pathmark's or A&P's control. As a result, there can be no

assurance that the projected results will be realized or that actual results will not be significantly higher or lower than projected.

Since the projections cover multiple years, such information by its nature becomes less predictive with each successive year. The financial projections were prepared solely for internal use and for the use of Pathmark's board of directors and its advisors and A&P and its advisors in connection with the potential transaction and not with a view toward public disclosure or toward complying with generally accepted accounting principles (GAAP), the published guidelines of the SEC regarding projections. The projections included in this proxy statement/prospectus were prepared by, and are the responsibility of, Pathmark's management. Furthermore, the financial projections do not take into account any circumstances or events occurring after the date the projections were prepared and, in particular, do not take into account or give effect to the merger or the proposed financing of the merger.

Pathmark has made publicly available its actual results of operations for fiscal year 2006 and the first fiscal quarter of 2007. You should review Pathmark's Annual Report on Form 10-K, as amended, for the fiscal year ended February 3, 2007 and Quarterly Report on Form 10-Q for the quarter ended May 5, 2007, to obtain this information. See [Where You Can Find More Information](#). Readers of this proxy statement/prospectus are cautioned not to place undue reliance on the projections set forth below. No one has made or makes any representation to any stockholder regarding the information included in these projections.

For the foregoing reasons, as well as the bases and assumptions on which the financial projections were compiled, the inclusion of specific portions of the financial projections in this proxy statement/prospectus should not be regarded as an indication that such projections will be predictive of actual future events, and they should not be relied on as such. Except as required by applicable securities laws, Pathmark and A&P do not intend to update or otherwise revise the financial projections or the specific portions presented to reflect circumstances existing after the date when made or to reflect the occurrence of future events, even in the event that any or all of the assumptions underlying the projections are shown to be in error.

Management Projections Pathmark

(Dollars in millions)	Fiscal Years					
	2006	2007	2008	2009	2010	2011
Total Revenues	\$ 3,982.2	\$ 4,022.7	\$ 4,102.5	\$ 4,270.6	\$ 4,484.6	\$ 4,793.3
Gross Profit	\$ 1,162.0	\$ 1,200.9	\$ 1,239.7	\$ 1,306.1	\$ 1,386.2	\$ 1,496.0
Adjusted EBITDA(1)(2)	\$ 131.4	\$ 152.8	\$ 175.5	\$ 202.8	\$ 229.4	\$ 258.5
EBIT	\$ 35.9	\$ 45.6	\$ 68.4	\$ 85.9	\$ 107.2	\$ 128.5
Stock Compensation Expense	\$ 9.6	\$ 11.0	\$ 10.4	\$ 10.5	\$ 10.5	\$ 10.5
Depreciation and Amortization	\$ 92.2	\$ 91.2	\$ 96.6	\$ 106.4	\$ 111.8	\$ 119.4
Capital Expenditures	\$ 70.4	\$ 90.0	\$ 167.2	\$ 160.6	\$ 145.0	\$ 145.0

- (1) Represents earnings before interest, taxes, depreciation, amortization, excluding extraordinary items and stock compensation expense. Adjusted EBITDA and EBIT are non-U.S. GAAP financial measures.
- (2) 2006 Adjusted EBITDA excludes fifty-third week earnings. 2007 Adjusted EBITDA was determined without giving effect to labor buyout charges.

Key Assumptions for the Projected Financial Information for Years 2006 Through 2011

The Total Revenues, Gross Profit, Adjusted EBITDA, EBIT and Capital Expenditures as reflected in the above table were prepared taking into account the following assumptions:

Revenue growth, through increased offerings and additional breadth of products, particularly as a result of new store

openings and
the
renovation of
existing
stores, at a
compounded
annual rate of
under 4.0%
from 2006
through
2011.

Gross profit margin of 29.2% in 2006, increasing to 31.2% in 2011, driven by an improvement in the sales mix with a greater emphasis on perishable departments and an emphasis on improving Private Label penetration.

Selling, general and administrative costs, as a percentage of sales, decreasing from 25.9% in 2006 to 25.8% in 2011 as a result of continued emphasis on labor management, online auctions and higher revenues driving improved economies of scale.

Effective aggregate tax rate averaging 40%.

Capital expenditures, the majority of

which relate to new stores and the renovation of existing stores, as well as additional expenditures on management information systems, in each case to help drive revenue and profits, with the expectation that depreciation and amortization will trend in line with capital expenditures.

The Yucaipa Investors Series A Warrants are exercised in 2008 resulting in proceeds of approximately \$85 million.

Opinion of A&P's Financial Advisor

Pursuant to an engagement letter dated November 16, 2006, A&P retained JPMorgan as its financial advisor in connection with the proposed merger.

At the meeting of the A&P board of directors on March 4, 2007, JPMorgan rendered its oral opinion, subsequently confirmed in writing, to the A&P board of directors that, as of such date and based upon and subject to the factors and assumptions set forth in its opinion, the consideration to be paid by A&P in the proposed merger was fair, from a financial point of view, to A&P. No limitations were imposed by the A&P board of directors upon JPMorgan with respect to the investigations made or procedures followed by it in rendering its opinions.

The full text of the written opinion of JPMorgan, dated March 4, 2007, which sets forth, among other things, the assumptions made, procedures followed, matters considered and limits on the review undertaken, is attached as Annex G to this joint proxy statement/prospectus and is incorporated herein by reference. A&P stockholders are urged to read the opinion in its entirety. JPMorgan's written opinion is addressed to the A&P board of directors, is directed only to the consideration to be paid in the merger and does not constitute a recommendation to any stockholder of A&P as to how such stockholder should vote with respect to the proposed merger or any other matter, including the share

issuance. The summary of the opinion of JPMorgan set forth in this joint proxy statement/prospectus is qualified in its entirety by reference to the full text of such opinion.

In arriving at its opinions, JPMorgan, among other things:

reviewed the
merger
agreement
and certain
other related
agreements
dated March
4, 2007;

reviewed
certain
publicly
available
business and
financial
information
concerning
A&P and
Pathmark and
the industries
in which they
operate;

compared the
proposed
financial
terms of the
merger with
the publicly
available
financial
terms of
certain
transactions
involving
companies
JPMorgan
deemed
relevant and
the
consideration
received for
such
companies;

compared the financial and operating performance of A&P and Pathmark with publicly available information concerning certain other companies JPMorgan deemed relevant and reviewed the current and historical market prices of A&P common stock and Pathmark common stock and certain publicly traded securities of such other companies;

reviewed certain internal financial analyses and forecasts prepared by the managements of A&P and Pathmark relating to their respective businesses, as well as the estimated amount and timing of cost

savings and
related
expenses and
synergies
expected to
result from
the merger
(the
Synergies);

reviewed
certain
forecasts
prepared by
management
of A&P
giving effect
to certain
divestitures
contemplated
by the merger
agreement
(the
*Divestiture
Case*); and

performed
such other
financial
studies and
analyses
and
considered
such other
information
as
JPMorgan
deemed
appropriate
for the
purposes of
its opinion.

JPMorgan also held discussions with certain members of the management of A&P and Pathmark with respect to certain aspects of the merger, and the past and current business operations of A&P and Pathmark, the financial condition and future prospects and operations of A&P and Pathmark, the effects of the merger on the financial condition and future prospects of A&P and Pathmark, and certain other matters JPMorgan believed necessary or appropriate to its inquiry.

In giving its opinion, JPMorgan relied upon and assumed, without assuming responsibility or liability for independent verification, the accuracy and completeness of all information that was publicly available or was furnished to or discussed with JPMorgan by A&P and Pathmark or otherwise reviewed by or for JPMorgan. JPMorgan did not conduct or was not provided with any valuation or appraisal of any assets or liabilities, nor did JPMorgan evaluate the solvency of A&P or Pathmark under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, JPMorgan was not provided with any forecasts or other nonpublic information with respect to Metro, a Canadian supermarket chain in which A&P owns an equity stake, and at A&P's direction valued such equity stake on an after-tax basis based upon publicly available information and assuming a liquid market for Metro's shares. In relying on analyses and forecasts provided to it, including the Synergies, JPMorgan assumed that such analyses and forecasts were reasonably prepared based on assumptions reflecting the best currently available estimates and judgments by management as to the expected future results of operations and financial condition of A&P and Pathmark to which such analyses or forecasts related. JPMorgan expressed no view as to such analyses or forecasts, including the Synergies and the Divestiture Case, or the assumptions on which they were based. JPMorgan also assumed that the representations and warranties made by A&P and Pathmark in the merger agreement and the related agreements were and will be true in all ways material to its analysis. JPMorgan also assumed that the merger will have the tax consequences described in discussions with, and materials furnished to JPMorgan by, representatives of A&P, and that the other transactions contemplated by the merger agreement will be consummated as described in the merger agreement. JPMorgan relied as to all legal matters relevant to the rendering of its opinion upon the advice of counsel. JPMorgan further assumed that all material governmental, regulatory or other consents and approvals necessary for the closing of the merger would be obtained without any adverse effect on A&P or Pathmark or on the contemplated benefits of the merger, except as provided in JPMorgan's analysis of the Divestiture Case.

The projections furnished to JPMorgan for A&P and Pathmark were prepared by the respective management of each company. Neither A&P nor Pathmark publicly discloses internal management projections of the type provided to JPMorgan in connection with JPMorgan's analysis of the merger, and such projections were not prepared with a view toward public disclosure. These projections were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of management, including, without limitation, factors related to general economic and competitive conditions and prevailing interest rates. Accordingly, actual results could vary significantly

from those set forth in such projections.

JPMorgan's opinion and financial analyses were only one of the many factors considered by A&P in its evaluation of the proposed merger and should not be viewed as determinative of the views of the A&P board of directors or its management with respect to the proposed merger or the merger consideration. The consideration was determined through negotiation between A&P and Pathmark.

JPMorgan's opinion is based on economic, market and other conditions as in effect on, and the information made available to JPMorgan as of, the date of such opinion. Subsequent developments may affect JPMorgan's opinion, and JPMorgan does not have any obligation to update, revise or reaffirm such opinion. JPMorgan's opinion is limited to the fairness, from a financial point of view, of the consideration to be paid by A&P in the proposed merger, and JPMorgan has expressed no opinion as to the fairness of the merger to, or any consideration of, the holders of any other class of securities, creditors or other constituencies of A&P or the underlying decision by A&P to engage in

the merger. JPMorgan expressed no opinion as to the price at which shares of A&P common stock or Pathmark common stock will trade at any future time, whether before or after the closing of the merger.

In accordance with customary investment banking practice, JPMorgan employed generally accepted valuation methods in reaching its opinion. The following is a summary of the material financial analyses utilized by JPMorgan in connection with providing its opinion.

Pathmark Analyses

Public Trading Multiples. Using publicly available information, JPMorgan compared selected financial data of Pathmark with similar data for selected publicly traded companies engaged in businesses which JPMorgan judged to be analogous to Pathmark. The companies selected by JPMorgan were A&P and the following seven publicly held companies, five of which are large food retailers with national scale and two of which are regionally focused food retailers operating primarily in the northeastern United States.

Large/National Food Retailers	Regional Northeastern Food Retailers
Koninklijke Ahold N.V. (Royal Ahold)	Weis Markets, Inc.
Safeway, Inc.	Ruddick Corporation
Delhaize Group	
Kroger Co.	
Supervalu, Inc.	

JPMorgan compared, among other things, implied firm values on March 2, 2007 as multiples of estimated earnings before interest, taxes, depreciation and amortization, commonly and hereinafter referred to as EBITDA, for fiscal year 2007. JPMorgan then applied ranges of selected multiples of estimated EBITDA for fiscal year 2007 derived from the selected companies to corresponding financial data of Pathmark on a stand-alone basis and on a pro forma basis taking into account the Synergies and the Divestiture Case and other effects that were anticipated by management of A&P to potentially result from the merger. Financial data for the selected companies were based on equity research estimates produced by reputable brokerages, public filings and other publicly available information. Financial data for Pathmark is based on internal estimates of Pathmark's management and internal estimates of A&P management. This analysis resulted in the following implied valuation range of equity values for Pathmark common stock, as compared to the value as of March 2, 2007, of the consideration to be paid:

	Implied Valuation Reference Range	Implied Offer Value
Pathmark Management Case	\$ 8.75 \$14.40	\$ 13.00
A&P Base Case	\$ 7.60 \$12.90	\$ 13.00
A&P Base Case with the Divestiture Case	\$ 4.80 \$ 8.80	\$ 13.00

Selected Transaction Analysis. Using publicly available information, JPMorgan examined selected food retail industry transactions with respect to transaction values as multiples of the targets' sales and EBITDA for the twelve months prior to announcement of the transactions. Specifically, JPMorgan reviewed the following transactions:

Acquiror	Target
Delhaize Group	Hannaford Bros. Co.
The Kroger Co.	Fred Meyers Stores, Inc.
Safeway, Inc.	Dominick's Finer Foods, LLC
Safeway, Inc.	Randall's Food & Drugs, LP
Koninklijke Ahold N.V. (Royal Ahold)	Giant Food Inc.
Albertsons, Inc.	American Stores Co.
Whole Foods Market, Inc.	Wild Oats Markets, Inc.
Albertsons, Inc.	Shaw's Supermarkets, Inc.
Supervalu, Inc.	Albertsons, Inc. (Core Assets)
Safeway, Inc.	Genuardi's Family Markets, Inc.
J Sainsbury plc	Star Markets
Metro, Inc.	A&P Canada
Loblaw Companies Ltd.	Provigo, Inc.
Koninklijke Ahold N.V. (Royal Ahold)	Bruno's Supermarkets, Inc.
Sobeys, Inc.	Oshawa Group

JPMorgan applied a range of multiples derived from such analysis to Pathmark's EBITDA and sales for the twelve months prior to the announcement of the transactions, both with and without the Divestiture Case, and arrived at the following implied valuation range of equity values for Pathmark common stock, as compared to the value as of March 2, 2007, of the consideration to be paid:

	Implied Valuation Reference Range	Implied Offer Value
EBITDA	\$ 8.60 \$12.95	\$ 13.00
Sales	\$ 15.60 \$19.40	\$ 13.00
EBITDA with the Divestiture Case	\$ 4.45 \$ 7.45	\$ 13.00
Sales with the Divestiture Case	\$ 12.25 \$15.30	\$ 13.00

Note: EBITDA and sales are for the twelve months prior to the announcement of the transaction.

Discounted Cash Flow Analysis. JPMorgan conducted a discounted cash flow analysis for the purpose of determining the fully diluted equity value per share for Pathmark common stock. JPMorgan calculated the unlevered free cash flows that Pathmark is expected to generate during fiscal years 2007 through 2011 based upon financial projections prepared by the management of Pathmark through the fiscal year 2009 and upon A&P's projections adjusted to reflect more moderate growth in revenues and lower operating margins during the full five-year period. JPMorgan also calculated a range of terminal asset values of Pathmark at the end of the five-year period ending 2011 by applying a perpetual growth rate ranging from 2.5% to 3.5% of the unlevered free cash flow of Pathmark during the final year of the five-year period. The unlevered free cash flows and the range of terminal asset values were then discounted to

present values using a range of discount rates from 8.0% to 8.5%, which were chosen by JPMorgan based upon an analysis of the weighted average cost of capital of Pathmark. The present value of the unlevered free cash flows and the range of terminal asset values were then adjusted for Pathmark's fiscal year 2006 third quarter excess cash, option exercise proceeds and total debt. Taking into account the Synergies and the Divestiture Case and other effects that were anticipated by management of A&P to potentially

result from the merger, the discounted cash flow analysis indicated the following range of equity values for Pathmark common stock:

	Implied Valuation Reference Range		Implied Offer Value
Pathmark Management Case	\$ 7.30	\$14.15	\$ 13.00
Pathmark Management Case with 100% Synergies	\$ 19.75	\$27.25	\$ 13.00
A&P Base Case	\$ 9.20	\$15.65	\$ 13.00
A&P Base Case with 100% Synergies	\$ 21.65	\$28.75	\$ 13.00
A&P Base Case with the Divestiture Case	\$ 7.00	\$12.40	\$ 13.00
A&P Base Case with the Divestiture Case and 100% Synergies	\$ 19.45	\$25.50	\$ 13.00

A&P Analyses

Public Trading Multiples. Using publicly available information, JPMorgan compared selected financial data of A&P with similar data for selected publicly traded companies engaged in businesses which JPMorgan judged to be analogous to A&P. The companies selected by JPMorgan were Pathmark and the following seven publicly held companies, five of which are large food retailers with national scale and two of which are regionally focused food retailers operating primarily in the northeastern United States.

Large/National Food Retailers	Regional Northeastern Food Retailers
Koninklijke Ahold N.V. (Royal Ahold)	Weis Markets, Inc.
Safeway, Inc.	Ruddick Corporation
Delhaize Group	
Kroger Co.	
Supervalu, Inc.	

JPMorgan compared, among other things, implied firm values on March 2, 2007 as multiples of estimated EBITDA, for fiscal year 2007. JPMorgan then applied ranges of selected multiples of estimated EBITDA for fiscal year 2007 derived from the selected companies to corresponding financial data of A&P on a stand-alone basis. Financial data for the selected companies were based on equity research estimates produced by reputable brokerages, public filings and other publicly available information. Financial data for A&P are based on internal estimates of A&P management.

As of the date of JPMorgan's opinion, A&P owned 15.7% of Metro, a Canadian food retailer to whom it sold its Canadian operations in July 2005. JPMorgan independently valued A&P's stake in Metro on an after-tax basis based upon publicly available information, assuming a liquid market for the shares of Metro and using relevant multiples of firm value to EBITDA and stock price to earnings per share, both for fiscal year 2007. Adding the value of the Metro equity investment to the implied value of A&P common stock resulted in the following implied valuation range of equity values for A&P common stock, as compared to the reference price for the transaction exchange ratio:

	Implied Valuation Reference Range	Reference Price for Exchange Ratio
A&P Management Case	\$ 16.35 \$25.25	

Value of Stake in Metro, Inc. \$ 8.35 \$10.70

Total Value of A&P \$ 24.70 \$35.95 \$ 27.00

Discounted Cash Flow Analysis. JPMorgan conducted a discounted cash flow analysis for the purpose of determining the fully diluted equity value per share for A&P common stock. JPMorgan calculated the unlevered free cash flows that A&P is expected to generate during the five-year period ending 2011 based upon financial projections prepared by the management of A&P. JPMorgan also calculated a range of terminal asset values of A&P at the end of the five-year period ending 2011 by applying a perpetual growth rate ranging from 2.5% to 3.5% of the unlevered free cash flow of A&P during the final year of the five-year period. The unlevered free cash flows and the range of terminal asset values were then discounted to present values using a range of discount rates from 8.0% to 8.5%, which were chosen by JPMorgan based upon an analysis of the weighted

average cost of capital of A&P. The present value of the unlevered free cash flows and the range of terminal asset values were then adjusted for A&P's fiscal year 2006 third quarter excess cash, option exercise proceeds and total debt.

A&P currently has \$479 million of net operating losses (*NOLs*), commonly and hereinafter referred to as NOLs, which can be used, subject to certain limitations, to offset future tax payments. JPMorgan independently conducted a discounted cash flow valuation of A&P's NOLs assuming their unlevered impact to cash flows over a ten-year period. This incremental impact on unlevered cash flow was then discounted to present value using a range of discount rates from 5.0% to 5.5%, which were chosen by JPMorgan based upon the risk associated with U.S. government-issued notes with ten-year maturities.

Combining the stand alone A&P discounted cash flow value, the value of A&P's Metro stake (as described above) and the discounted cash flow value of A&P's NOLs indicated the following range of equity values for Pathmark common stock, as compared to the reference price for the transaction exchange ratio:

	Implied Valuation Reference Range	Reference Price for Exchange Ratio
A&P Management Case	\$ 10.75 \$19.95	
Value of Stake in Metro	\$ 8.35 \$10.70	
Value of A&P NOLs	\$ 2.80 \$ 2.90	
Total Value of A&P	\$ 21.90 \$33.55	\$ 27.00

The foregoing summary of certain material financial analyses does not purport to be a complete description of the analyses or data presented by JPMorgan. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. JPMorgan believes that the foregoing summary and its analyses must be considered as a whole and that selecting portions of the foregoing summary and these analyses, without considering all of its analyses as a whole, could create an incomplete view of the processes underlying the analyses and its opinion. In arriving at its opinion, JPMorgan did not attribute any particular weight to any analyses or factors considered by it and did not form an opinion as to whether any individual analysis or factor (positive or negative), considered in isolation, supported or failed to support its opinion. Rather, JPMorgan considered the totality of the factors and analyses performed in determining its opinion. Analyses based upon forecasts of future results are inherently uncertain, as they are subject to numerous factors or events beyond the control of the parties and their advisors. Accordingly, forecasts and analyses used or made by JPMorgan are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. Moreover, JPMorgan's analyses are not and do not purport to be appraisals or otherwise reflective of the prices at which businesses actually could be bought or sold. None of the selected companies reviewed as described in the above summary is identical to A&P, and none of the selected transactions reviewed was identical to the merger. However, the companies selected were chosen because they are publicly traded companies with operations and businesses that, for purposes of JPMorgan's analysis, may be considered similar to those of A&P. The transactions selected were similarly chosen because their participants, size and other factors, for purposes of JPMorgan's analysis, may be considered similar to those of the merger. The analyses necessarily involve complex considerations and judgments concerning differences in financial and operational characteristics of the companies involved and other factors that could affect the companies compared to A&P and the transactions compared to the merger.

As a part of its investment banking business, JPMorgan and its affiliates are continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, investments for passive and control purposes, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements and

valuations for estate, corporate and other purposes. JPMorgan was selected to deliver an opinion to the A&P board of directors with respect to the merger on the basis of such experience and its familiarity with A&P.

For services rendered in connection with the merger and the delivery of its opinion, A&P has agreed to pay JPMorgan fees of up to \$12 million in the aggregate, of which \$2 million was paid

upon the execution and delivery of a definitive merger agreement and the remaining amount of up to \$10 million is contingent upon the completion of the merger. In addition, A&P has agreed to reimburse JPMorgan for its expenses incurred in connection with its services, including the fees of counsel, and indemnify JPMorgan against certain liabilities arising out of its engagement. Moreover, in the event Pathmark pays a break-up fee to A&P, A&P shall pay to JPMorgan a certain percentage of such fee.

JPMorgan has provided financial advisory, commercial or investment banking services to A&P in the past, including advising on A&P's July 2005 sale of its Canadian assets. In addition, JPMorgan and its affiliates maintain banking and other business relationships with A&P and its affiliates, for which it receives customary fees. In the ordinary course of their businesses, JPMorgan and its affiliates may actively trade the debt and equity securities of A&P or Pathmark for their own accounts or for the accounts of customers and, accordingly, they may at any time hold long or short positions in such securities.

Interests of Certain Persons in the Merger

In considering the recommendations of the A&P and Pathmark boards of directors, you should be aware that the directors and executive officers of Pathmark and A&P, the Yucaipa Investors, Pathmark's largest stockholder, and Tengelmann, A&P's largest stockholder, each have interests in the merger agreement and the merger that are different from, or in addition to, your interests as a stockholder. These interests may present them with actual or potential conflicts of interest, and, to the extent material, are described below. The A&P and Pathmark boards of directors were aware of these potential conflicts of interest and considered them, among other matters, in reaching their decision to unanimously authorize and declare the advisability of the merger agreement and the transactions contemplated by the merger agreement.

Treatment of Stock Options and Other Equity-Based Awards Held by Pathmark's Executive Officers and Directors

Stock Options. As of the record date, there were approximately [] shares of Pathmark common stock issuable pursuant to stock options granted under Pathmark's equity incentive plans to certain Pathmark executive officers and directors. Under the terms of the merger agreement, each outstanding stock option held by any person, including Pathmark executive officers and directors, will become fully vested and exercisable no later than fifteen days prior to the closing of the merger and, at the effective time of the merger, will be treated as described in the following paragraphs.

Each such outstanding stock option (other than any Pre-Amendment Option described in the following paragraph) will be canceled in exchange for the right to receive a lump sum cash payment to be paid (net of applicable withholding taxes) as soon as practicable after the completion of the merger. The lump sum cash payment will equal the product of (i) the number of shares of Pathmark common stock that such executive officer or director could have purchased had he or she exercised such stock option in full immediately prior to the closing, and (ii) the excess, if any, of (x) the per share closing price of Pathmark common stock, as such price is quoted on the last trading day immediately prior to the closing date (the *Pathmark Closing Price*), over (y) the exercise price per share of such stock option. Any such stock options (other than Pre-Amendment Options) with exercise prices equal to or greater than the Pathmark Closing Price will be canceled for no consideration.

With respect to each such outstanding stock option that was granted under Pathmark's equity incentive plans prior to June 9, 2005 (a *Pre-Amendment Option*), Pathmark is obligated to use its commercially reasonable efforts to obtain any consents required to cancel any Pre-Amendment Options with an exercise price less than the Pathmark Closing Price, in exchange for a lump sum cash payment as provided in the preceding paragraph. Pathmark has already obtained such consents from John Derderian, Robert Joyce, Marc Strassler and Frank Vitano.

Any Pre-Amendment Option that is not canceled and cashed out, or that has an exercise price equal to or greater than the Pathmark Closing Price, will be converted into a stock option (a

Rollover Option) to purchase, on the same terms and conditions as were applicable under such Pre-Amendment Option, taking into account vesting and other changes resulting from the merger, (i) the number of shares of A&P common stock equal to the product of (a) the number of shares of Pathmark common stock such executive officer or director could have purchased had he or she exercised such Pre-Amendment Option in full immediately prior to the closing, and (b) the Option Exchange Ratio (as defined in the following sentence), at (ii) a price per share equal to (a) the exercise price per share of such Pre-Amendment Option, divided by (b) the Option Exchange Ratio. The *Option Exchange Ratio* means (i) the Pathmark Closing Price, divided by (ii) \$27.00.

The following table identifies, for certain Pathmark directors and executive officers, as of August 3, 2007 (the most recent practicable date prior to filing), with respect to stock options that will be cashed out in connection with the merger (excluding stock options set forth in Note 1 to such table that would be Rollover Options assuming the Pathmark Closing Price were determined as of August 3, 2007): the aggregate number of shares of Pathmark common stock subject to outstanding vested and unvested stock options, the number of shares of Pathmark common stock subject to such unvested stock options that will become fully vested in connection with the merger, the weighted average exercise price and the value of such unvested stock options, and the weighted average exercise price and the value of all such stock options. The information in the table assumes that all such stock options remain outstanding as of the closing of the merger.

Name	Aggregate Shares Subject to Options(1)	Number of Shares Underlying Unvested Options	Weighted Average Exercise Price of Unvested Options	Value of Unvested Options(2)	Weighted Average Exercise Price of Vested and Unvested Options	Value of Vested and Unvested Options(3)
Joseph Adelhardt(6)	20,000	0	\$		\$ 11.70	\$ 16,200
Kevin Darrington(4)	42,000	31,500	\$ 10.35	\$ 68,040	\$ 10.35	\$ 90,720
John Derderian(4)	151,900	58,300	\$ 9.80	\$ 157,993	\$ 8.32	\$ 636,461
Michael R. Duckworth(5)	0	0				
Daniel H. Fitzgerald(5)	20,000	6,666	\$ 9.67	\$ 18,931	\$ 8.36	\$ 83,000
Harvey Gutman(7)	23,000	0	\$		\$ 11.30	\$ 27,830
Bruce Hartman(5)	25,000	6,666	\$ 9.67	\$ 18,931	\$ 7.92	\$ 114,750
David R. Jessick(5)	21,667	14,444	\$ 10.09	\$ 34,954	\$ 10.10	\$ 52,217
Robert J. Joyce(4)	99,900	58,300	\$ 9.80	\$ 157,993	\$ 8.82	\$ 368,631
Larry R. Katzen(5)	20,000	13,333	\$ 10.07	\$ 32,533	\$ 10.07	\$ 48,800
Mark C. Kramer(4)	101,900	58,300	\$ 9.80	\$ 157,993	\$ 10.12	\$ 243,541

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Kenneth Martindale(4)	500,000	333,333	\$ 9.99	\$ 839,999	\$ 9.99	\$ 1,260,000
Gregory Mays(5)	22,500	14,999	\$ 10.11	\$ 35,998	\$ 10.11	\$ 54,000
Sarah E. Nash(5)	20,000	13,333	\$ 10.07	\$ 32,533	\$ 10.07	\$ 48,800
John T. Standley(4)(5)	1,500,000	1,000,000	\$ 10.39	\$ 2,120,000	\$ 10.39	\$ 3,180,000
Marc Strassler(4)	62,500	30,375	\$ 9.81	\$ 82,013	\$ 10.37	\$ 133,750
Ira Tochner(5)	0	0		0		
Frank G. Vitrano(4)	1,025,000	412,500	\$ 10.08	\$ 1,002,375	\$ 7.99	\$ 4,633,000
John J. Zillmer(5)	20,000	13,333	\$ 10.07	\$ 32,533	\$ 10.07	\$ 48,800

- (1) Does not include the following stock options held by Pathmark directors and executive officers, which would be Rollover Options, assuming the Pathmark Closing Price were determined as of August 3, 2007: 350,000 (Frank G. Vitrano), 325,000 (Robert J. Joyce),

76,000
(John
Derderian),
76,000
(Marc
Strassler),
74,215
(Harvey
Gutman),
62,300
(Joseph
Adelhardt),
52,000
(Mark C.
Kramer),
and 5,000
(Daniel H.
Fitzgerald).

- (2) Illustrates the economic value of all unvested stock options that will become fully vested and cashed out in connection with the merger. Calculated for each individual by multiplying the number of shares underlying unvested stock options by the difference, if any, between \$12.51, which was the per

share
closing
price of
Pathmark
common
stock on
August 3,
2007, and
the
weighted
average
exercise
price of the
unvested
stock
options.

- (3) Illustrates the economic value of all stock options to be canceled and cashed out in connection with the merger. Calculated for each individual by multiplying the aggregate number of shares subject to stock options by the difference between the per share closing price of Pathmark common stock and the weighted average exercise price of all such stock options.
- (4) Executive officer.
- (5) Director.
- (6) Former executive officer; retired in

July 2006.
Currently a
consultant
to
Pathmark.

- (7) Former
executive
officer;
retired in
April 2006.
Currently a
consultant
to
Pathmark.

Restricted Stock Units. As of the record date, there were approximately 88,807 restricted stock units granted under Pathmark's equity incentive plans to the Pathmark executive officers and directors listed below. Under the terms of the merger agreement, upon the closing of the merger, each award of restricted stock units held by an executive officer or director will become fully vested and converted into the right to receive a single lump sum cash payment (net of applicable withholding taxes) equal to the product of (i) the number of shares of Pathmark common stock applicable to such award immediately prior to the closing, and (ii) the Pathmark Closing Price.

The following table identifies, for certain Pathmark directors and executive officers, as of August 3, 2007, the aggregate number of shares of common stock subject to outstanding unvested restricted stock units, and the value of the unvested restricted stock units. The information in the table assumes that all such unvested restricted stock units remain outstanding as of the closing date of the merger.

Name	Aggregate Number of Shares Underlying Restricted Stock Units	Value of Restricted Stock Units(1)
Joseph Adelhardt(4)		
Kevin Darrington(2)	6,750	\$ 84,442
John Derderian(2)	8,063	\$ 100,868
Michael R. Duckworth(3)		
Daniel H. Fitzgerald(3)	6,924	\$ 86,619
Bruce Hartman(3)	6,924	\$ 86,619
Harvey Gutman(5)		
David R. Jessick(3)	6,924	\$ 86,619
Robert J. Joyce(2)	8,063	\$ 100,868
Larry R. Katzen(3)	6,294	\$ 86,619
Mark C. Kramer(2)	8,063	\$ 100,868
Kenneth Martindale(2)		
Gregory Mays(3)	6,924	\$ 86,619

Sarah E. Nash(3)	6,924	\$	86,619
John T. Standley(2)(3)			
Marc Strassler(2)	6,900	\$	96,319
Ira Tochner(3)			
Frank G. Vitrano(2)	2,500	\$	31,275
John J. Zillmer(3)	6,924	\$	86,619

(1) Illustrates the economic value of all restricted stock units that will become fully vested and cashed out in connection with the merger. Calculated for each individual by multiplying the aggregate number of shares underlying unvested restricted stock units by \$12.51, which was the per share closing price of Pathmark common stock on August 3, 2007.

(2) Executive officer.

- (3) Director.
- (4) Former executive officer; retired in July 2006. Currently a consultant to Pathmark.
- (5) Former executive officer; retired in April 2006. Currently a consultant to Pathmark.

Restricted Stock. As of the record date, Messrs. Standley, Vitrano and Martindale were the only executive officers or directors to hold shares of Pathmark common stock subject to transfer restrictions and/or forfeiture under Pathmark's equity incentive plans, and they held approximately 358,046 such shares.

Under the terms of the merger agreement, upon the closing of the merger, each outstanding award of restricted stock held by an executive officer or director will become fully vested and converted into the right to receive a single lump sum cash payment (net of applicable withholding taxes) equal to the product of (i) the number of shares of Pathmark common stock subject to such award immediately prior to the closing of the merger, and (ii) the Pathmark Closing Price.

The following table identifies, for Messrs. Standley, Vitrano and Martindale, the aggregate number of unvested restricted shares of Pathmark common stock outstanding as of August 3, 2007, and the value of such unvested restricted shares that will become fully vested in connection with the merger. The information in the table assumes that all such unvested restricted shares remain outstanding as of the closing of the merger.

Name	Aggregate Number of Restricted Shares	Value of Restricted Shares(1)
John T. Standley	208,250	\$ 2,605,207
Frank G. Vitrano	49,800	\$ 622,998
Kenneth Martindale	99,996	\$ 1,250,950

- (1) Illustrates the economic value of all restricted shares that will become fully vested and cashed out in connection with the merger. Calculated for each individual by multiplying the aggregate number of restricted

shares by
\$12.51,
which was
the per
share
closing
price of
Pathmark
common
stock on
August 3,
2007.

Employment Agreements

John T. Standley Employment Agreement. Pursuant to the terms of an employment agreement entered into between Pathmark and Mr. Standley as of August 23, 2005, the merger will constitute a change of control, and therefore, immediately prior to the merger:

the stock
options and
restricted stock
granted to Mr.
Standley on
August 23,
2005, will vest
in full (to the
extent not
otherwise
vested in
connection
with the
merger); and

Mr. Standley's
deferred
compensation
account
balance will
vest and
become
nonforfeitable.

In addition, Mr. Standley is entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in his employment agreement) or by his resignation for good reason (which term is defined to include a material and adverse change in Mr. Standley's duties or reporting responsibilities, or the failure to re-elect Mr. Standley as the Chief Executive Officer and most senior officer of Pathmark or any successor thereto or if the company becomes a subsidiary of another public company, such public company), including the following:

payment of his
salary and
target bonus
for a period of
two years
following the
date of such
termination,
subject to
acceleration in
certain
circumstances
in connection
with a change
of control ;

continued
health and
insurance
coverage for a
period of one
year following
the date of
such
termination;
and

payment of a
tax gross-up
payment, in
the event that
he becomes
subject to the
excise tax on
golden
parachute
payments
under the
Internal
Revenue
Code.

Frank G. Vitrano Employment Agreement. Pursuant to the terms of an employment agreement entered into between Pathmark and Mr. Vitrano, as amended in December 2005, the merger will constitute a change of control, and therefore, the stock options and restricted stock granted to him

on December 22, 2005, will vest in full immediately prior to the merger (to the extent not otherwise vested in connection with the merger).

In addition, Mr. Vitrano is entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in his employment agreement) or by his resignation for good reason (which term is defined to include a material adverse reduction or diminution in Mr. Vitrano's title, duties, positions or responsibilities), including the following:

payment of his
salary and
target bonus
for a period of
two years
following the
date of such
termination,
subject to
acceleration in
certain
circumstances
in connection
with a change
of control ; and

continued
health and
insurance
coverage for a
period of two
years
following the
date of such
termination.

Kenneth Martindale Employment Agreement. Pursuant to the terms of an employment agreements entered into between Pathmark and Mr. Martindale, as of December 14, 2005, the merger will constitute a change of control, and therefore, the stock options and restricted stock granted to him on January 1, 2006 will vest in full immediately prior to the merger (to the extent not otherwise vested in connection with the merger). In addition, Mr. Martindale will be entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in his employment agreement), due to Pathmark's nonrenewal of the term within six months prior to the merger, or by Mr. Martindale's resignation for good reason (which term is defined to include a material and adverse change in Mr. Martindale's duties or reporting responsibilities or the failure to reelect Mr. Martindale as the Co-President and Chief Marketing and Merchandising Officer of Pathmark or any successor thereto or if the company becomes a subsidiary of another public company, such public company), including the following:

payment of his
salary and
target bonus
for a period of

two years following the date of such termination, subject to acceleration in certain circumstances in connection with a change of control ; and

continued health and insurance coverage for a period of one year following the date of such termination.

Other Employment Agreements. Pathmark has entered into employment agreements with each of Messrs. Darrington, Derderian, Joyce, Kramer and Strassler, pursuant to which the executive will be entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in the applicable employment agreement) or by his resignation for good reason (which term is generally defined to include a material and adverse reduction or diminution in the executive's title, duties, positions or responsibilities), including the following:

payment of his base salary for a period of up to two years following the date of such termination;

in the case of Mr. Darrington, payment of a supplemental amount of \$45,000; and

continued health and insurance coverage for a period of up

to two years
following the
date of such
termination.

Assuming that the employment of each current executive officer of Pathmark is terminated by Pathmark without cause (as defined in the applicable employment agreement) or by such executive officer's resignation for good reason (as defined in the applicable employment agreement) immediately following the merger, the approximate amount of cash severance benefits that would be payable is:

Name	Potential Cash Severance Benefits(1)
John T. Standley	\$ 3,726,020
Frank G. Vitrano	2,335,374
Kenneth Martindale	2,070,000
Robert J. Joyce	661,448
John Derderian	517,500
Mark C. Kramer	538,200
Kevin Darrington	541,800
Marc Strassler	554,454

- (1) The amounts in the table are based on estimated base salaries as of August 3, 2007 and, if applicable, bonuses that will be paid to each executive officer in 2007. The amounts in the table exclude any prorated bonus awards for the year in which such termination occurs and the value of any continued health and insurance coverage or other noncash

severance benefits. The amounts in the table also exclude the value of any unexercised stock options and/or unvested restricted stock units or restricted stock that would accelerate and vest in the event of a termination of employment in connection with the merger. Such amounts are separately disclosed in the tables under

Treatment of Stock Options and Other Equity-Based Awards Held by Pathmark's Executive Officers and Directors.

Transaction Bonus Agreements

In connection with the execution of the merger agreement, Pathmark entered into transaction bonus agreements with each of Messrs. Darrington, Derderian, Joyce and Strassler. Pursuant to the transaction bonus agreements, each executive will be entitled to receive a bonus payment of \$50,000 (\$100,000, in the case of Mr. Strassler) in the event that (i) such executive remains continuously employed with Pathmark through the closing of the merger, (ii) such executive terminates his employment before the closing of the merger for good reason (as defined in his employment agreement), or (iii) Pathmark terminates such executive's employment before the closing of the merger for any reason that does not constitute cause (as defined in his employment agreement).

Retention Pay Plan

In connection with the execution of the merger agreement, the Pathmark board of directors adopted a Retention Pay Plan for certain office associates, including assistant vice presidents, vice presidents and senior vice presidents, who

were employed by Pathmark as of the date on which the merger agreement was signed. As senior vice president, Messrs. Darrington and Strassler are participants in the plan. Pursuant to the plan and subject to certain conditions, including each participant's continued employment with Pathmark up to the payment dates specified below, Messrs. Darrington and Strassler will be entitled to receive a retention payment equal to 20% of their respective base salary rate as each is in effect immediately prior to the closing date of the merger or February 23, 2007 (whichever is higher), paid in three installments on each of (i) September 4, 2007, subject to his continued employment up to such date; (ii) the date two weeks after the closing date of the merger, subject to his continued employment up to the closing date of the merger; and (iii) the date that is the earlier of 180 days after the closing date of the merger or a termination event (defined in the plan as the termination of the participant's employment by Pathmark for any reason (other than cause, as such term is defined in the plan), death or disability of the participant or resignation by the participant for good reason (as such term is defined in the plan), in each case on or after the closing date of the merger). Messrs. Darrington and Strassler are the only Pathmark executive officers participating in the Retention Pay Plan.

Continued Benefits

To the extent that any of Pathmark's executive officers remains employed by the surviving corporation following completion of the merger, each will be entitled to receive certain compensation and benefits following the merger. For a period of twelve months and one day following completion of the merger, A&P has agreed to provide the continuing employees of Pathmark with employee benefits that, in the aggregate, are no less favorable than the employee benefits received by those employees prior to the merger.

Subject to certain exceptions, A&P will, or will cause the surviving corporation in the merger to, (i) give continuing Pathmark employees full credit for purposes of eligibility to participate, vesting and benefit accrual (other than with respect to any defined benefit plan) under the employee benefit plans or arrangements maintained by A&P, the surviving corporation in the merger, or their subsidiaries, to the same extent recognized by Pathmark or its subsidiaries under the corresponding Pathmark benefit plans immediately prior to the closing of the merger; and (ii) with respect to certain welfare benefit plans maintained for the benefit of continuing Pathmark employees following the closing of the merger, (x) waive eligibility requirements or preexisting condition limitations, to the same extent waived under comparable Pathmark plans immediately prior to the closing of the merger, and (y) recognize deductible amounts paid by such continuing Pathmark employees under the corresponding Pathmark benefit plans immediately prior to the closing of the merger.

Indemnification Arrangements and Directors and Officers Liability Insurance Policy

A&P has agreed to maintain in effect after completion of the merger, for the benefit of current and former Pathmark directors and officers, the existing rights to indemnification and limitations on liability for acts or omissions occurring prior to the closing of the merger under the Pathmark certificate of incorporation, bylaws or disclosed agreements of Pathmark. In addition, the merger agreement provides that A&P will maintain, at its expense, directors' and officers' liability insurance policies with a claims period of at least six years from the effective time of the merger. For further details on these indemnification and insurance arrangements, please see Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Covenants and Agreements Indemnification; Insurance; Certain Benefit Plans.

Guarantee of Supplemental Retirement and Excess Benefit Arrangements

Under the terms of the merger agreement, A&P has agreed to pay, or cause to be paid, all of the benefits to which any employee (or his or her beneficiaries), including Pathmark's executive officers, is entitled under the terms of certain supplemental retirement and excess benefit plans, as in effect immediately prior to the closing of the merger.

Election of Pathmark Director to A&P Board of Directors

Upon the closing of the merger, Gregory Mays, a Pathmark director, will be elected to the A&P board of directors by the existing A&P directors, in accordance with the bylaws of A&P and Maryland law, unless at the closing he serves as an employee or director of a competitor, in which case another director from the Pathmark board deemed independent by the A&P independent directors will be elected to the A&P board.

Compensatory Arrangements for A&P's Executive Officers and Directors

On June 15, 2007 the Human Resources & Compensation Committee and the Governance Committee (together, the *A&P Committees*) of the A&P board of directors, under the authority of A&P's 1998 Long Term Incentive and Share Award Plan, approved the following actions in anticipation of the completion of the merger.

Turnaround Incentive Compensation Program. The A&P Committees decided to recognize A&P's performance to date under A&P's 2005 Turnaround Incentive Compensation Program (the *TIP*). Specifically, subject to the closing of

the merger, the applicable performance criteria will

have been met with respect to two-thirds of the Restricted Share Units (*RSUs*) that were granted to each participant under the TIP. Upon the closing of the merger, 50% of such RSUs will vest on the first day of A&P's 2008 Fiscal Year and the remaining 50% of such RSUs will vest on the first day of A&P's 2009 Fiscal Year. Vesting of the RSUs is further subject to all other terms, conditions, limitations, restrictions and eligibility requirements under the TIP.

The following table identifies, for certain A&P directors and executive officers, as of [], 2007, the aggregate number of shares of common stock subject to outstanding restricted stock units that were granted to each participant under the TIP, and the value of such restricted stock units. The information in the table assumes that all such unvested restricted stock units remain outstanding as of the closing date of the merger.

Name	Aggregate Number of Shares Underlying Restricted Stock Units	Value of Restricted Stock Units(1)
Christian W.E. Haub(3)	221,221	\$ []
Eric Claus(2)	189,618	[]
Brenda Galgano(2)	88,489	[]
Paul Wiseman(2)	88,489	[]
Allan Richards(2)	88,489	[]

- (1) Illustrates the economic value of all outstanding restricted stock units that were granted to each participant under the TIP. Calculated for each individual by multiplying the aggregate number of shares underlying

outstanding
restricted
stock units
that were
granted to
each
participant
under the
TIP by \$[],
which was
the per
share
closing
price of
A&P
common
stock on [],
2007.

(2) Executive officer.

(3) Director.

A&P 2006 Long-Term Incentive Program. The A&P Committees decided to recognize A&P's performance to date under A&P's 2006 Long-Term Incentive Program (the *LTIP*). Specifically, subject to the closing of the merger, the applicable performance criteria will have been met with respect to 125% of one-third of the RSUs that were granted to each participant under the LTIP. Upon the closing of the merger, such RSUs will vest on or around May of 2009 in accordance with and subject to all other terms, conditions, limitations, restrictions and eligibility requirements under the LTIP.

The following table identifies, for certain A&P directors and executive officers, as of [], 2007, the aggregate number of shares of common stock subject to outstanding restricted stock units that were granted to each participant under the LTIP, and the value of such restricted stock units. The information in the table assumes that all such unvested restricted stock units remain outstanding as of the closing date of the merger.

Name	Aggregate Number of Shares Underlying Restricted Stock Units	Value of Restricted Stock Units(1)
Christian W.E. Haub(3)	31,464	\$ []
Eric Claus(2)	48,381	[]
Brenda Galgano(2)	13,026	[]
Paul Wiseman(2)	13,026	[]
Allan Richards(2)	13,026	[]

- (1) Illustrates the economic value of all outstanding restricted stock units that were granted to each participant under the LTIP. Calculated for each individual by multiplying the aggregate number of shares underlying outstanding restricted stock units that were granted to each participant under the TIP by \$[], which was the per share closing price of A&P common stock on [], 2007.
- (2) Executive officer.
- (3) Director.

Acquisition Closing and Integration Incentive Compensation Program. The A&P Committees approved an Acquisition Closing and Integration Incentive Compensation Program (the *Integration Program*). The Integration Program is subject to: (i) the closing of the merger; (ii) the achievement of certain merger closing performance criteria or certain merger synergy targets; (iii) the achievement of certain A&P stock price targets over a performance period comprised of the three calendar years following the closing of the merger; and (iv) other terms, conditions, limitations, restrictions and eligibility requirements similar to those in the TIP and the LTIP. Depending on actual performance as compared with the foregoing targets, each executive officer can earn up to a maximum of 200% of the RSUs awarded them under the Integration Program. Subject to the foregoing, the following grants of RSUs were made to the directors and executive officers of A&P in connection with the Integration Program.

Name	Aggregate Number of Shares Underlying Restricted Stock Units	Value of Restricted Stock Units(1)
Christian W.E. Haub(3)	27,927	\$ []
Eric Claus(2)	27,927	[]
Brenda Galgano(2)	21,032	[]
Paul Wiseman(2)	17,513	[]
Allan Richards(2)	14,042	[]

- (1) Illustrates the economic value of all restricted stock units that may be earned under the Integration Program in connection with the merger if performance results in 100% of the restricted stock units being earned. Calculated for each individual by multiplying

the aggregate number of shares underlying restricted stock units granted under the Integration Program by \$[], which was the per share closing price of A&P common stock on [], 2007. The maximum amount that may be earned is 200% of the number of restricted stock units granted under the Integration Program, which would result in twice the value shown above based on the stock price assumption.

(2) Executive officer.

(3) Director.

Yucaipa Fees

It is a condition to the consummation of the merger that Pathmark or Yucaipa Companies terminate the Management Services Agreement in accordance with its terms, and upon the closing of the merger, Yucaipa Companies or Pathmark will terminate the Management Services Agreement. As a result of this termination, Yucaipa Companies will receive a termination fee of \$10 million, pursuant to the terms of the Management Services Agreement. In addition, effective January 23, 2007, Pathmark engaged Yucaipa Advisors to act as a consultant in connection with the merger agreement in accordance with Section 5 of the Management Services Agreement. Pursuant to Yucaipa Advisors' engagement letter, Pathmark agreed to (i) reimburse Yucaipa Advisors' fees and expenses in connection with

the provision of such consulting services (whether or not the merger is consummated), and (ii) pay Yucaipa Advisors a fee equal to 1.0% of the transaction value (as defined in the engagement letter), payable upon either the consummation of the merger or the consummation of an alternative transaction which allows Pathmark to terminate a definitive agreement for the merger and accept such alternative transaction, in each case, subject to certain conditions, including that, so long as the provision of Section 4.07 of the indenture relating to Pathmark's 8.75% Senior Subordinated Notes due 2012 continues to apply, no amount in excess of \$10.0 million shall be payable to Yucaipa Advisors. Subject to the foregoing, in the event that Yucaipa Advisors' engagement is terminated or expires prior to the consummation of the merger, the foregoing fees will be payable by Pathmark if the merger is consummated, or if a definitive agreement is entered into with respect to any of the foregoing, at any time prior to the eighteen-month anniversary of the termination or expiration of Yucaipa Advisors' engagement letter. In addition, Yucaipa Advisors' engagement letter provided that, solely to the extent that Pathmark had elected to pursue an alternative transaction following the public announcement of discussions

involving the merger but prior to the execution of the merger agreement, Pathmark would have been required to pay the same fees outlined above to Yucaipa Advisors with respect to such an alternative transaction as Yucaipa Advisors would have received in connection with the merger.

Pursuant to the Yucaipa Advisors engagement letter, Yucaipa Advisors provided consulting services to Pathmark. These services included assisting in evaluating, analyzing, structuring, negotiating (in its capacity as a significant stockholder) and effecting the merger; providing general financial and strategic advice; and communicating with Pathmark's management and board of directors concerning the merger.

Stockholder and Warrant Agreements

Yucaipa Stockholder Agreement

Concurrently with the execution and delivery of the merger agreement, the Yucaipa Investors entered into the Yucaipa Stockholder Agreement with A&P (the *Yucaipa Stockholder Agreement*). The Yucaipa Stockholder Agreement provides the Yucaipa Investors with certain demand and piggyback registration rights. The Yucaipa Investors have agreed to certain restrictions on their ownership, acquisition and disposition of A&P common stock and warrants to purchase A&P common stock that they will own and may acquire after the merger. In addition, the Yucaipa Investors have agreed not to take certain actions that would interfere with the governance of A&P. For further details of the Yucaipa Stockholder Agreement, see *Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Stockholder Agreement*.

Tengelmann Stockholder Agreement

Concurrently with the execution and delivery of the merger agreement, Tengelmänn entered into the Tengelmänn Stockholder Agreement with A&P. The Tengelmänn Stockholder Agreement provides Tengelmänn with certain nomination, approval, registration and other rights. In addition, Tengelmänn will be entitled to antidilution protection, access to A&P information and expense reimbursement upon the closing of the merger. A&P's bylaws will be amended as provided in Annex I to this joint proxy statement/prospectus in order to give effect to certain of these rights. For further details of the Tengelmänn Stockholder Agreement, see *Adoption of the Merger Agreement (Pathmark Proposal 1) Tengelmänn Stockholder Agreement*.

Yucaipa Warrant Agreement

Pursuant to the existing warrant agreement, in connection with the merger agreement the Series A and Series B Warrants would have been converted into the right to receive, upon exercise, the merger consideration of \$9.00 in cash and a fixed number of shares of A&P stock. In connection with the merger agreement, the Yucaipa Investors and A&P have entered into an Amended and Restated Warrant Agreement (the *Yucaipa Warrant Agreement*), pursuant to which the Yucaipa Investors will exchange their existing Series A and Series B Warrants to purchase Pathmark common stock for Series A and Series B Warrants to purchase A&P common stock, which we refer to as *rollover warrants*. Accordingly, the Yucaipa Investors will be entitled to receive the rollover warrants upon the closing of the merger, and no part of the consideration for the Yucaipa Investors' existing warrants will consist of cash to be paid at the time of the merger. Notwithstanding that the terms of the Yucaipa Warrant Agreement require that all exercises of the rollover warrants be on a cashless basis and permit A&P to settle the in-the-money amount of the rollover warrants for cash, the rollover warrants may enable the Yucaipa Investors to participate in the future earnings and growth, as well as benefit from any appreciation in the value, of the combined company to a greater extent than the cash and shares of A&P common stock to be received by Pathmark stockholders in the merger. The A&P Series A Warrants will represent the right to purchase an aggregate of 4,657,378 shares of A&P common stock at an exercise price of \$18.36 per share, and the A&P Series B Warrants will represent the right to purchase an aggregate of 6,965,858 shares of A&P common stock at an exercise price of \$32.40 per share.

Financing

A&P estimates that the total amount of funds necessary to pay the cash portion of the merger consideration will be approximately \$485.5 million. A&P expects that this amount will be provided through a combination of (a) \$190.0 million of net cash proceeds from the sale of shares of Metro common stock, which A&P received in connection with the August 2005 sale of its Canadian operations to Metro and (b) up to \$780.0 million in senior secured notes (or, if the offering of senior secured notes is not completed on or prior to the closing of the merger, up to \$780.0 million under a senior secured bridge credit facility). On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million. A&P continues to hold approximately 11.7 million Metro shares. The merger is not conditioned on receipt of financing by A&P.

Debt Financing

A&P has received a debt financing commitment letter, dated as of March 4, 2007, from Bank of America, Banc of America Bridge, BAS, LBCB, Lehman and LCPI (the *Commitment Letter*). In the Commitment Letter, and subject to the terms and conditions set forth therein:

Bank of
America has
committed to
provide a
\$615.0 million
senior secured
revolving
credit facility,
the ABL
Facility, to
finance the
working
capital of A&P
and certain of
its subsidiaries
upon
consummation
of the merger;
and

Banc of
America
Bridge and
LBCB have
severally
committed to
provide in the
aggregate up to
\$780.0 million
of senior
secured loans,
the Bridge
Facility, as

bridge or interim financing to senior secured notes (the *Senior Secured Notes*) which may be issued by A&P and/or certain of its subsidiaries after the date of the initial funding of the Facilities for the purpose of refinancing all or a portion of the advances made under the Bridge Facility.

The commitments under the Commitment Letter will expire on the earliest of (i) March 4, 2008 (unless the closing of the Facilities has occurred prior thereto), (ii) the closing of the merger (a) in the case of the ABL Facility, without a funding under the ABL Facility, and (b) in the case of the Bridge Facility, without a funding under the Bridge Facility and (iii) the acceptance by Pathmark of an offer for all or any substantial part of the capital stock or property and assets of Pathmark other than as pursuant to the merger. The documentation governing the Facilities has not been finalized and, accordingly, the actual terms of such Facilities may differ from those described in this joint proxy statement/prospectus.

Conditions Precedent

Under the terms of the debt financing commitment letter, the availability of the ABL Facility and the Bridge Facility are subject to various conditions precedent, including, but not limited to:

Prior to and during the syndication of the Facilities and the offering of the Senior Secured Notes, there shall be no offering, placement or arrangement of any equity

securities,
debt
securities or
bank
financing by
or on behalf
of A&P,
Pathmark or
their
respective
affiliates that
could
reasonably
be expected
to, in the
discretion of
BAS and
Lehman (the
*Lead
Arrangers*),
disrupt or
materially
interfere
with the
orderly
syndication
of the
Facilities
and the
offering of
the Senior
Secured
Notes, other
than:

the Senior
Secured
Notes,

pursuant to
Pathmark's
existing
credit
facility
(including
the
accordion
feature
thereof), or

as an
alternative
to the
accordion
feature of
Pathmark's
existing
credit
facility, up
to \$40
million of
mortgage
financing;

Since March
4, 2007, no
change, event
or
circumstance
has occurred
that has had a
material
adverse effect
on Pathmark
that is
continuing,
and no
change, event
or
circumstance
has occurred
and is
continuing
that would
reasonably be
expected to
have a
material
adverse effect
on Pathmark;

The merger has been consummated in accordance with the merger agreement and no provision of the merger agreement has been waived, amended or otherwise modified in a manner materially adverse to the lenders without the prior written consent of the Lead Arrangers;

No agreement, order or decree has been entered into or issued requiring A&P, Pathmark or their respective subsidiaries to hold separate, divest, dispose of or sell any of their respective businesses or assets representing in excess of \$36.0 million of aggregate scheduled store level cashflow;

In the case of the Bridge Facility, all conditions to drawing on the ABL Facility

on the closing date of the financing shall have been satisfied, and in the case of the ABL Facility, A&P shall have received \$780.0 million in gross proceeds from the sale of the Senior Secured Notes or the advance of the Bridge Facility;

A&P shall use its commercially reasonable efforts to obtain a rating for the Senior Secured Notes from each of Moody's and S&P;

the Lead Arrangers and the lenders under the Facilities shall have received certain historical and pro forma financial information and projections;

A&P and Pathmark shall have made available to (i) the Lead Arrangers and the lenders under the

Facilities
information
memoranda to
be used in
connection
with the
syndication of
the Facilities by
the Lead
Arrangers, and
(ii) the Lead
Arrangers and
potential
investors one or
more offering
memoranda for
the Senior
Secured Notes;

A&P and
Pathmark shall
have
cooperated in
marketing the
Senior Secured
Notes and the
syndication of
the ABL
Facility and the
Bridge Facility;

satisfactory
definitive
documentation
with respect to
the Facilities
shall have been
executed and
delivered
providing for
valid and
perfected
(subject to
certain
exceptions)
liens and
security
interests in the
collateral
securing the
ABL Facility

and the Bridge
Facility,
respectively;
and

the
representations
and warranties
of A&P and
Pathmark
specified in the
Commitment
Letter shall be
true and correct
on the closing
date of the
Facilities.

The ABL Facility

General. The borrower under the ABL Facility will be A&P and certain of its subsidiaries. The ABL Facility will be comprised of a \$615.0 million senior secured revolving credit facility. Extensions of credit under the ABL Facility will be subject to a borrowing base calculated periodically based on specific percentages of the value of certain assets, and subject to certain reserves and other adjustments. The ABL Facility will have a sublimit of \$300.0 million for the issuance of standby and documentary letters of credit. The ABL Facility may be increased by an amount up to \$100.0 million, at the borrower's request, provided that no default or event of default exists or would arise from the increase. The ABL Facility will have a term of five years. The ABL Facility may be prepaid without penalty.

BAS has been appointed the lead arranger and book running manager. Bank of America has been appointed the administrative agent and collateral agent.

Mandatory Prepayments. The ABL Facility shall be subject to mandatory prepayment requirements in amounts equal to (i) the amount by which outstanding extensions of credit thereunder exceed the lesser of the borrowing base and the commitments then in effect, (ii) the net proceeds of certain asset sales and equity issuances, and (iii) the proceeds from the collateral securing the ABL Facility if the availability under the ABL Facility is below a specified amount or if there is an event of default.

Interest Rate. Loans under the ABL Facility are expected to bear interest, at the borrower's option, at a rate equal to the adjusted London interbank offered rate or an alternative base rate, in each case plus a specified margin.

Fees. The borrower shall pay (i) fees on the unutilized portion of commitments under the ABL Facility, which are expected to vary depending on utilization level, (ii) a letter of credit fee on the stated amount of issued and undrawn letters of credit and a fronting fee to the issuing lender, and (iii) other customary fees, including an underwriting fee and an agent's fee.

Guarantors. All obligations under the ABL Facility will be guaranteed by A&P's material domestic subsidiaries.

Security. The obligations of the borrower and guarantors under the ABL Facility will be secured, subject to agreed upon exceptions, by a first priority perfected security position on all real and personal property of the borrower and guarantors, including all inventory, accounts, prescription lists, owned real property, material leased real properties of A&P and Pathmark, investment property (including the capital stock of subsidiaries, subject to certain exceptions), contract rights, documents, supporting obligations, letter-of-credit rights, instruments, money, cash, cash equivalents, securities and other property of any kind, deposit accounts, credits, and balances with any financial institution where A&P and certain subsidiaries maintain deposits, commercial tort claims, all books and records and other property related to or referring to any of the foregoing, proceeds from insurance policies, and claims against third parties, but excluding A&P's class A subordinate shares of Metro. Additionally, the ABL Facility will be secured by a second priority perfected security position on all of the collateral securing the Bridge Facility on a first priority basis, other than voting stock in the A&P subsidiary that owns the Metro shares.

If certain security is not provided at the closing of the financing despite the use of commercially reasonable efforts to do so, the delivery of such security will not be a condition precedent to the availability of ABL Facility on the closing date, but instead will be required to be delivered following the closing date.

Covenants. The ABL Facility shall contain covenants that, among other things, and subject to exceptions, will limit or restrict the ability of the borrowers to make acquisitions, mergers, consolidations, recapitalizations, dividends, distributions and stock repurchases, to create additional indebtedness, liens and investments, to sell assets, enter into hedging agreements and sale and leaseback transactions. The ABL Facility shall also contain certain affirmative and negative covenants, including a covenant that excess availability under the ABL Facility may not fall below 10% of the borrowing base, certain reporting covenants, and upon certain events, a covenant requiring the borrower to maintain a minimum EBITDA (to be defined in the definitive documentation for the ABL Facility).

Events of Default. The ABL Facility is expected to provide for customary events of default, including nonpayment of principal, interest or fees, violations of covenants, material inaccuracy of representations and warranties, specified cross defaults to other material indebtedness, certain bankruptcy events, certain ERISA events, material invalidity of guarantees or security interest, material judgments or change of control (to be defined in the definitive documentation for the ABL Facility).

The Bridge Facility

General. The borrower is expected to issue up to \$780.0 million of Senior Secured Notes. If the offering of the Senior Secured Notes by the borrower is not completed on or prior to the closing of the merger, Banc of America Bridge and LCB have severally committed to provide in the aggregate up to \$780.0 million of senior secured bridge loans which will mature twelve months from the initial advance. The borrower under the Bridge Facility will be A&P and certain of its subsidiaries. BAS and Lehman have been appointed joint lead arrangers and joint book running managers. Banc of America Bridge has been appointed administrative agent and collateral agent. LCPI has been appointed syndication agent.

Mandatory Prepayments. The Bridge Facility shall be subject to mandatory prepayment requirements in amounts equal to (i) the net proceeds from the issuance of any debt securities or equity securities of the borrower or any of its subsidiaries, (ii) the proceeds from any other indebtedness to the extent the proceeds of such indebtedness are not required to be paid to the

lenders under the ABL Facility, and (iii) the net proceeds from asset sales to the extent such proceeds are not required to be paid to the lenders under the ABL Facility or, in the case of certain assets, have not been reinvested (up to a specified reinvestment limit). The Bridge Facility is also subject to mandatory prepayment in full at the election of the lenders under the Bridge Facility upon a change in control of the borrower.

Interest Rate. Loans under the Bridge Facility shall bear interest at a rate equal to the three-month London interbank offered rate plus a specified margin that will be increased at the end of each quarter for so long as the bridge loans are outstanding, subject to a specified cap.

Guarantors. All obligations under the Bridge Facility will be guaranteed by borrower's material domestic subsidiaries.

Security. The obligations of the borrower and guarantors under the Bridge Facility will be secured, subject to agreed upon exceptions, by a first-priority perfected lien and security interest in general intangibles and 65% of the voting stock in an A&P subsidiary, A&P Bermuda Limited, which owns a required number of shares of Metro capital stock (the *Metro Shares*). In the event of certain events of default, the Bridge Facility shall also be secured by a direct pledge of the Metro Shares. Additionally, the Bridge Facility will be secured by a second-priority perfected security position on all of the collateral securing the ABL Facility on a first-priority basis.

Covenants. The Bridge Facility is expected to contain covenants including a negative pledge of the Metro Shares and the stock of A&P Bermuda Limited and A&P Luxembourg S.à.r.l., affirmative covenants similar to those contained in the ABL Facility, as well as customary high yield negative covenants.

Events of Default. The events of default are expected to be similar to those contained in the ABL Facility (to be defined in the definitive documentation for the Bridge Facility).

Rollover. If the Bridge Facility is not repaid in full on or prior to the maturity date, the principal amount of the Bridge Facility may be refinanced by a senior secured loan with a term of seven years.

Exchange Notes. At any time after the Bridge Facility is rolled over into senior secured loans, the bridge lenders may exchange the principal amount of the rollover loans for exchange notes of A&P and certain subsidiaries. These exchange notes will have certain registration rights, entitling holders to exchange the notes for publicly registered securities.

Governmental and Regulatory Approvals

U.S. Antitrust Filing. Under the HSR Act and related regulations, the merger may not be completed unless the parties to the transaction file all Premerger Notification and Report Forms with the Antitrust Division of the Department of Justice and the Federal Trade Commission that may be required and the applicable waiting periods, including any extension of the waiting periods, have either expired or been earlier terminated and there can be no assurances that such expiration or termination will be obtained. On March 19, 2007, A&P (with Tengelmann, its largest stockholder) and Pathmark filed all required premerger reporting forms. On April 18, 2007, A&P and Pathmark each received a Second Request from the Federal Trade Commission, requesting additional information and documentary materials. As a result of the Second Request, A&P cannot complete the merger under the HSR Act until the earlier of (i) 30 days after both parties substantially comply with the Second Request (or on the next regular business day if the thirtieth day falls on a Saturday, Sunday or legal public holiday), unless that waiting period is extended by agreement between A&P and the Federal Trade Commission, or (ii) when the Federal Trade Commission terminates its review of the merger. On May 21, 2007, A&P announced that it had entered into a timing agreement with the Federal Trade Commission, pursuant to which A&P agreed, subject to certain conditions, to not (i) certify that they have substantially complied with the Second Requests prior to June 30, 2007, or (ii) consummate the merger for at least 60 days following the date that A&P and Pathmark substantially comply with the Second Requests. On July 13, 2007, A&P and Pathmark each certified substantial compliance with the Federal Trade Commission in response to the

Second Requests. On August 7, 2007, A&P and Pathmark entered into an extension of the timing

agreement with the Federal Trade Commission pursuant to which A&P and Pathmark agreed, subject to certain conditions, that they will not consummate A&P's acquisition of Pathmark before 11:59 p.m. on September 25, 2007. On September 20, 2007, A&P and Pathmark entered into an agreement with the Federal Trade Commission pursuant to which A&P agreed to provide the Federal Trade Commission notice of its intention to consummate A&P's acquisition of Pathmark at least two weeks prior to closing such transaction. A&P and Pathmark further agreed to give such notice to the Federal Trade Commission no sooner than October 5, 2007. A&P and Pathmark will cooperate in this and any other agency reviews and work to resolve any objections to the merger asserted on antitrust grounds. There can be no assurance, however, that a challenge to the merger on antitrust grounds will not be made or, if such a challenge is made, that it would not be successful.

Cooperation with State Regulatory Agencies. A&P and Pathmark have also voluntarily supplied information to the attorneys general of New York, New Jersey and Pennsylvania to assist them in their understanding of the potential competitive effects of the merger.

Other Regulatory Approvals. Other than the filings described above, neither A&P nor Pathmark is aware of any regulatory notifications that must be filed, approvals that must be obtained, or waiting periods that must be observed, in order to complete the merger. If the parties discover that other notifications, approvals or waiting periods are necessary, they will seek to observe or obtain them. If any such approval or action is needed, however, A&P and Pathmark may not be able to obtain it or any of the other necessary approvals.

General. It is possible that any of the governmental entities with which filings have been made may seek additional regulatory concessions or impose additional conditions on the merger (including certain divestitures) or such governmental entities or states or private parties may commence litigation to prevent the completion of the merger. There can be no assurance that:

A&P or
Pathmark will
be able to
satisfy or
comply with
any such
conditions
imposed;

compliance or
noncompliance
with any such
conditions will
not have
adverse
consequences
on A&P after
completion of
the merger; or

litigation, if
any, will be
resolved
favorably by
A&P and

Pathmark.

Even if the parties obtain all necessary approvals and the merger agreement is adopted by Pathmark stockholders and the A&P proposals are approved by the A&P stockholders, conditions may be placed on the merger, or the merger could be delayed in a manner, that could cause A&P to abandon it. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Covenants and Agreements and Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Termination.

Merger Expenses, Fees and Costs

Generally, all fees and expenses incurred in connection with the merger agreement and the transactions contemplated by the merger agreement will be paid by the party incurring those expenses, subject to the specific exceptions discussed in this document. Upon termination of the merger agreement under specified circumstances, A&P or Pathmark may be required to pay the other party a termination fee and reimburse expenses. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Fees and Expenses for a discussion of the circumstances under which termination fees will be paid and expenses will be reimbursed.

Accounting Treatment

The merger will be accounted for by A&P using the purchase method of accounting. Under this method of accounting, the purchase price paid by A&P, together with the direct costs of the merger, will be allocated in accordance with GAAP to Pathmark's tangible and intangible assets and liabilities based on their fair market values, with any excess being treated as goodwill. The assets, liabilities and results of operations of Pathmark will be consolidated into the assets, liabilities and results of operations of A&P as of the closing date of the merger.

Structure of the Merger

Subject to the terms and conditions of the merger agreement and in accordance with Delaware law, at the effective time of the merger, Merger Sub (a newly formed and wholly owned subsidiary of A&P established to facilitate the acquisition of Pathmark) will be merged with and into Pathmark. Pathmark will survive the merger as a wholly owned subsidiary of A&P and will continue its corporate existence under Delaware law under the name Pathmark Stores, Inc.

Certain Material United States Federal Income Tax Consequences

The following is a summary of certain material United States federal income tax consequences of the merger to U.S. Holders (as defined below) of Pathmark common stock. This summary is based on the Internal Revenue Code of 1986, as amended (the *Code*), applicable Treasury regulations, and administrative and judicial interpretations thereof, each as in effect as of the date hereof, all of which are subject to change or different interpretations, possibly with retroactive effect. The parties have not requested, and do not plan to request, any rulings from the Internal Revenue Service (the *IRS*) concerning the tax consequences of the merger to holders of Pathmark common stock, and the statements in this proxy are not binding on the IRS or any court. There is no assurance that the tax consequences contained in this discussion will not be challenged by the IRS, or if challenged, will be sustained by a court.

This summary assumes that Pathmark common stock is held as a capital asset within the meaning of Section 1221 of the Code. This summary does not address all aspects of taxation that may be relevant to particular holders in light of their personal investment or tax circumstances. In addition, this summary does not address the tax treatment of special classes of holders of Pathmark common stock, including, for example:

banks and other
financial
institutions;

insurance
companies;

tax-exempt
entities;

mutual funds
and real estate
investment
trusts;

subchapter S
corporations;

dealers in
securities or
currencies;

traders in
securities that
elect to use a
mark-to-market
method of

accounting for
their securities
holdings;

U.S. Holders
whose
functional
currency is not
the United
States dollar;

persons holding
shares of
Pathmark
common stock
as part of a
hedging or
conversion
transaction or as
part of a
straddle or a
constructive
sale;

U.S.
expatriates;

persons subject
to the
alternative
minimum tax;

holders who
acquired
Pathmark
common stock
through the
exercise of
employee stock
options or
warrants or
otherwise as
compensation;

holders that are
properly
classified as a
partnership or
otherwise as a
pass-through
entity under the

Code or
investors in
such entities;
and

individuals,
corporations,
estates and
trusts that are
not U.S.
Holders.

This summary also does not address any U.S. federal estate or gift tax consequences, nor any state, local or foreign tax consequences, of the merger.

If any entity that is treated as a partnership for United States federal income tax purposes holds shares of Pathmark common stock, the tax treatment of its partners or members generally will depend upon the status of the partner or member and the activities of the entity. If you are a partner of a partnership or a member of a limited liability company or other entity classified as a

partnership for United States federal tax purposes and that entity is holding Pathmark common stock, you should consult your tax advisor regarding the consequences of the merger to you.

This discussion of certain material United States federal income tax consequences relating to the merger is not a complete analysis or description of all potential tax consequences of the merger and does not address any state, local or non-U.S. tax consequences of the merger. Therefore, holders are strongly urged to consult their tax advisors as to the specific tax consequences to them, including the applicability and effect of United States federal, state, local, foreign and other tax laws in their particular circumstances.

For purposes of this discussion, a *U.S. Holder* means a beneficial owner of shares of Pathmark common stock that is for United States federal income tax purposes one of the following:

an individual
who is a
citizen or
resident of the
United States;

a corporation
(or other entity
treated as a
corporation for
United States
federal income
tax purposes)
created or
organized in or
under the laws
of the United
States or any
state thereof,
or the District
of Columbia;

a trust (i) the
administration
of which is
subject to the
primary
supervision of
a United States
court and
which has one
or more United
States persons
who have the
authority to
control all
substantial
decisions of

the trust, or (ii) that has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person; or

an estate the income of which is subject to United States federal income taxation regardless of its source.

Consequences of the Transaction to U.S. Holders

The receipt of the merger consideration, or cash pursuant to the exercise of dissenters' rights of appraisal, by a U.S. Holder in exchange for Pathmark common shares will be a taxable transaction for United States federal income tax purposes. In general, a U.S. Holder will recognize capital gain or loss for United States federal income tax purposes equal to the difference, if any, between (i) the cash received (other than any cash received by dissenters that is treated as actual or imputed interest, which will be taxable as ordinary income) and/or the fair market value (as of the effective time of the merger) of the A&P common stock received and (ii) the U.S. Holder's adjusted tax basis in the Pathmark common shares exchanged therefor. Any such gain or loss would be long-term capital gain or loss if the holding period for the Pathmark common shares as of the effective time of the merger exceeded one year. Long-term capital gains of a non-corporate U.S. Holder generally are taxable at a maximum rate of 15%. Capital gains of a corporate U.S. Holder generally are taxable at the regular tax rates applicable to corporations. The deductibility of capital losses is subject to limitations.

A U.S. Holder's aggregate tax basis in any A&P common stock received pursuant to the merger will equal the fair market value of such stock as of the effective time of the merger. The holding period of such stock received in the transaction will begin on the day after the merger is consummated.

Information Reporting and Backup Withholding. Information reporting and backup withholding, presently at a rate of 28%, may apply to the merger consideration and any payments made to dissenters. Backup withholding will not apply, however, to a U.S. Holder who (i) furnishes a correct taxpayer identification number and certifies that it is not subject to backup withholding on the substitute IRS Form W-9 or successor form or (ii) is otherwise exempt from backup withholding and complies with other applicable rules and certification requirements. Backup withholding is not an additional tax, and any amount withheld under these rules may be credited against the holder's United States federal income tax liability and may entitle the holder to a refund if required information is timely furnished to the IRS.

Appraisal Rights

In connection with the merger, record holders of Pathmark common stock who comply with the procedures summarized below will be entitled to appraisal rights if the merger is completed. Under Section 262 of the DGCL (*Section 262*), as a result of completion of the merger, holders of shares of Pathmark common stock with respect to which appraisal rights are properly demanded and perfected and not withdrawn or lost are entitled, in lieu of receiving the merger consideration, to have the fair value of their shares at the effective time of the merger (exclusive of any element of value arising from the accomplishment or expectation of the merger), together with a fair rate of interest, if any, to be paid on the amount determined to be the fair value, judicially determined and paid to them in cash by complying with the provisions of Section 262. Pathmark is required to send a notice to that effect to each stockholder not less than twenty days prior to the special meeting. This joint proxy statement/prospectus, when mailed to the stockholders, constitutes such notice to Pathmark's stockholders.

The following is a brief summary of Section 262, which sets forth the procedures for demanding statutory appraisal rights. This summary is qualified in its entirety by reference to Section 262, a copy of the text of which is attached to this joint proxy statement/prospectus as Annex J.

Stockholders of record of Pathmark who desire to exercise their appraisal rights must satisfy all of the following conditions.

A Pathmark stockholder who desires to exercise appraisal rights must (i) not vote in favor of adoption of the merger agreement and (ii) deliver in the manner set forth below a written demand for appraisal of the stockholder's shares to Pathmark before the vote on the merger at the Pathmark special meeting.

A demand for appraisal must be executed by or for the stockholder of record, fully and correctly, as the stockholder's name appears on the certificates representing shares. If shares are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, such demand must be executed by the fiduciary. If shares are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand must be executed by all joint owners. An authorized agent, including an agent of two or more joint owners, may execute the demand for appraisal for a stockholder of record; however, the agent must identify the record owner and expressly disclose that, in exercising the demand, the agent is acting as agent for the record owner. In addition, the stockholder must continuously hold the shares of record from the date of making the demand through the effective time of the merger.

A record owner, such as a broker, who holds shares as a nominee for others may exercise appraisal rights with respect to the shares held for all or less than all beneficial owners of shares as to which the holder is the record owner. In that case, the written demand must set forth the number of shares covered by the demand. Where the number of shares is not expressly stated, the demand will be presumed to cover all shares outstanding in the name of the record owner.

Beneficial owners who are not record owners and who intend to exercise appraisal rights should instruct the record owner to comply strictly with the statutory requirements with respect to the exercise of appraisal rights before the vote on the adoption of the merger agreement at the special meeting. A beneficial owner of shares held in street name who desires to assert appraisal rights with respect to those shares must take such actions as may be necessary to ensure that a timely and proper demand for appraisal is made by the record owner of the shares. Shares held through banks, brokerage firms and other financial institutions are frequently deposited with and held of record in the name of a nominee of a central security depository, such as Cede & Co., The Depository Trust Company's nominee. Any holder of shares desiring to assert appraisal rights with respect to such shares who held such shares through a brokerage firm, bank or other financial institution is responsible for ensuring that the demand for appraisal is made by the record holder. The stockholder should instruct such firm, bank or institution that the demand for appraisal must be made by the record holder of the shares, which might be the nominee of a central security depository if the shares have been so deposited.

As required by Section 262, a demand for appraisal must be in writing and must reasonably inform Pathmark of the identity of the record holder (which might be a nominee as described above) and of such holder's intention to seek appraisal of such shares.

Stockholders of record who elect to demand appraisal of their shares must mail or deliver their written demand to: Pathmark Stores, Inc., 200 Milik Street, Carteret, New Jersey 07008, Attention: Secretary. The written demand for appraisal should specify the stockholder's name and mailing address, the number of shares owned, and that the stockholder is demanding appraisal of his or her shares. The written demand must be received by Pathmark prior to the taking of the vote on the proposal to adopt the merger agreement at the Pathmark special meeting. Neither voting (in person or by proxy) against, abstaining from voting on or failing to vote on the proposal to adopt the merger agreement will alone suffice to constitute a written demand for appraisal within the meaning of Section 262.

In addition, the stockholder must not vote its shares of common stock in favor of adoption of the merger agreement. A proxy that is signed and does not contain voting instructions will, unless revoked, be voted in favor of the adoption of the merger agreement, will constitute a waiver of that stockholder's right of appraisal and will nullify any previously written demand for appraisal. Therefore, a stockholder who submits a proxy and who wishes to exercise appraisal rights must indicate that such stockholder's shares are to be voted against the proposal to adopt the merger agreement or to abstain from voting on that proposal.

Within 120 days after the effective time of the merger, either Pathmark, as the surviving corporation in the merger, or any stockholder who has timely and properly demanded appraisal of such stockholder's shares and who has complied with the required conditions of Section 262 and is otherwise entitled to appraisal rights may file a petition in the Delaware Court of Chancery demanding a determination of the fair value of the shares of all stockholders who have properly demanded appraisal. Pathmark, as the surviving corporation, has no obligation, and no present intention, to file such a petition. Accordingly, the failure of a stockholder to file a petition within the specified period could nullify the stockholder's previously written demand for appraisal. If a petition for an appraisal is timely filed, after a hearing on such petition, the Delaware Court of Chancery will determine which stockholders are entitled to appraisal rights and thereafter will appraise the shares owned by those stockholders, determining the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest to be paid, if any, upon the amount determined to be the fair value. In determining fair value, the Delaware Court of Chancery is to take into account all relevant factors. In *Weinberger v. UOP, Inc., et al.*, the Delaware Supreme Court discussed the considerations that could be considered in determining fair value in an appraisal proceeding, stating that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court should be considered and that [f]air price obviously requires consideration of all relevant factors involving the value of a company." The Delaware Supreme Court stated that in making this determination of fair value the court must consider "market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts which were known or which could be ascertained as of the date of merger and which throw any light on future prospects of the merged corporation The Delaware Supreme Court construed Section 262 to mean that "elements of future value, including the nature of the enterprise, which are known or susceptible of proof as of the date of the merger and not the product of speculation, may be considered." The Delaware Supreme Court noted, however, that Section 262 provides that fair value is to be determined "exclusive of any element of value arising from the accomplishment or expectation of the merger."

Stockholders considering seeking appraisal should bear in mind that the fair value of their shares determined under Section 262 could be more than, the same as, or less than the merger consideration they are entitled to receive pursuant to the merger agreement if they do not seek appraisal of their shares, and that opinions of investment banking firms as to fairness from a financial point of view are not necessarily opinions as to fair value under Section 262.

The cost of the appraisal proceeding may be determined by the Delaware Court of Chancery and taxed upon the parties as the Delaware Court of Chancery deems equitable in the circumstances. Upon application of a stockholder seeking appraisal rights, the Delaware Court of Chancery may order that all or a portion of the expenses incurred by such stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorneys' fees and the fees and expenses of experts, be charged pro rata against the value of all shares entitled to appraisal. In the absence of such a determination of assessment, each party bears its own expenses.

Except as explained in the last sentence of this paragraph, at any time within sixty days after the effective time of the merger, any stockholder who has demanded appraisal shall have the right to withdraw such stockholder's demand for appraisal and to accept the cash and shares of A&P common stock to which the stockholder is entitled pursuant to the merger. After this period, the stockholder may withdraw such stockholder's demand for appraisal only with the consent of the surviving corporation in the merger. If no petition for appraisal is filed with the Delaware Court of Chancery within 120 days after the effective time of the merger, stockholders' rights to appraisal shall cease and all stockholders shall be entitled only to receive the cash and shares of A&P common stock which constitute the merger consideration as provided for in the merger agreement. Inasmuch as the parties to the merger agreement have no obligation to file such a petition, and have no present intention to do so, any stockholder who desires that such petition be filed is advised to file it on a timely basis. No petition timely filed in the Delaware Court of Chancery demanding appraisal shall be dismissed as to any stockholders without the approval of the Delaware Court of Chancery, and that approval may be conditioned upon such terms as the Delaware Court of Chancery deems just.

Failure to comply with all the procedures set forth in Section 262 will result in the loss of a stockholder's statutory appraisal rights.

The foregoing is a brief summary of Section 262 that sets forth the procedures for demanding statutory appraisal rights. This summary is qualified in its entirety by reference to Section 262, a copy of the text of which is attached hereto as Annex J.

Restrictions on Sales of Shares by Affiliates of Pathmark

The shares of A&P common stock to be issued in connection with the merger will be registered under the Securities Act of 1933, as amended (the *Securities Act*), and will be freely transferable under the Securities Act, except for shares of A&P common stock issued to any person who is deemed to be an affiliate of Pathmark at the time of the Pathmark special meeting. Persons who may be deemed to be affiliates include individuals or entities that control, are controlled by, or are under the common control of Pathmark and may include Pathmark's executive officers, directors and significant stockholders, including the Yucaipa Investors. Affiliates may not sell their shares of A&P common stock acquired in connection with the mergers except pursuant to:

an effective
registration
statement
under the
Securities
Act
covering
the resale of
those
shares;

an
exemption

under
paragraph
(d) of Rule
145 under
the
Securities
Act; or

any other
applicable
exemption
under the
Securities
Act.

Pathmark has agreed to use its commercially reasonable efforts to deliver to A&P a letter agreement executed by each of its affiliates prior to the completion of the merger, pursuant to which these affiliates will agree, among other things, not to transfer any shares of A&P common stock received in the merger except in compliance with the Securities Act. This joint proxy statement/prospectus may not be used for resales of A&P common stock received pursuant to the merger by affiliates of Pathmark. In the Yucaipa Stockholder Agreement, A&P has granted to the Yucaipa Investors registration rights in respect of the A&P common stock they receive pursuant to the merger.

Stock Exchange Listing

It is a condition to the completion of the merger that the shares of A&P common stock to be issued in connection with the merger be approved for listing on the NYSE, subject to official notice of issuance. Following the merger, the shares of A&P common stock will continue to trade on the NYSE under the symbol GAP.

Delisting and Deregistration of Pathmark Common Stock

If the merger is completed, Pathmark common stock will be delisted from NASDAQ and deregistered under the Exchange Act.

THE MERGER AGREEMENT

The following is a summary of the material provisions of the merger agreement. This summary is qualified in its entirety by reference to the merger agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex A. We encourage you to read the merger agreement in its entirety because it is the legal document that governs the merger. This summary is not intended to provide you with any other factual information about A&P or Pathmark. Such information can be found elsewhere in this joint proxy statement/prospectus and in A&P's and Pathmark's public filings with the SEC, as described in the section entitled Where You Can Find More Information.

Structure and Effective Time; Marketing Period

The merger agreement provides for the merger of Merger Sub with and into Pathmark. Pathmark will survive the merger and continue to exist after the merger as a wholly owned subsidiary of A&P.

The closing of the merger will occur after the satisfaction or waiver of the closing conditions set forth in the merger agreement, except for those closing conditions that, by their nature, are to be satisfied at the closing (but subject to the satisfaction or waiver of those conditions), on such date (the *closing date*) as A&P and Pathmark will mutually agree, which will be no later than the second business day after the satisfaction or waiver of the conditions set forth in the merger agreement. See Conditions to the Merger; except that if the Marketing Period, described below, has not ended at the time all such conditions have been satisfied or waived, then the closing date and the closing will occur on the earlier of (i) a date during the Marketing Period specified by A&P on at least two business days' notice to Pathmark and (ii) the final day of the Marketing Period.

The purpose of the Marketing Period is to provide A&P an appropriate period of time during which it can market and place the debt financing contemplated by the financing commitments to finance the merger. For purposes of the merger agreement, *Marketing Period* means the first period of twenty consecutive calendar days after the date of first mailing of this joint proxy statement/prospectus to the stockholders of A&P and Pathmark and throughout which:

A&P and its financing sources have certain financial information required to be provided by them under the merger agreement in connection with A&P's financing of the merger; and

nothing has occurred and no condition exists that would prevent satisfaction of closing conditions for the merger regarding expiration or termination of the waiting period and any extension under

the HSR Act;
effectiveness of the
Form S-4 registration
statement of which
this joint proxy
statement/prospectus
is a part; accuracy of
Pathmark's
representations and
warranties under the
merger agreement;
and compliance by
Pathmark with its
covenants and
agreements under the
merger agreement.

The merger agreement further provides that:

the Marketing Period will end no
earlier than five business days
after the later to occur of the date
the required Pathmark
stockholder approval of the
merger is obtained and the date
the required A&P stockholder
approval of each of the issuance
of A&P common stock pursuant
to the merger agreement and the
amendment to the A&P charter is
obtained;

if the financing of the merger is
completed on a date earlier than
the expiration of the
twenty-consecutive-calendar-day
period and the five-business-day
period, then the Marketing Period
will end on that earlier date;

calculations of the
twenty-consecutive-calendar-day
period will exclude the periods
from and including August 17
through September 3, 2007 and
December 21, 2007 through
January 1, 2008;

the Marketing Period will not be
deemed to have commenced if,
prior to the completion of the

Marketing Period, (i) Pathmark's accounting firm has withdrawn its audit opinion with respect to any financial statements required to be provided under the merger agreement in connection with the financing of the merger, (ii) Pathmark has publicly announced any

intention to restate any of its financial information or (iii) Pathmark has failed to file any Form 10-K or Form 10-Q with the SEC by the date required under the Exchange Act; in each case with the Marketing Period recommencing upon remedy of such events as specified in the merger agreement; and

if the financial statements provided to A&P under the merger agreement in connection with the financing of the merger would not be sufficiently current, as provided in the merger agreement, then a new twenty-consecutive-calendar-day period will commence upon delivery to A&P of updated financial information that would be sufficiently current to permit the financing to be completed in accordance with the merger agreement.

The merger will become effective at the time a certificate of merger is duly filed with the Delaware Secretary of State (or at a later time if agreed by the parties and specified in the certificate of merger). We currently expect to complete the Merger during the second half of A&P's fiscal year 2007 ending February 23, 2008; however, we cannot assure you when, or if, all the conditions to completion of the Merger will be satisfied or waived (see Conditions to the Merger).

Dissenters' Rights

Shares of Pathmark common stock that are outstanding immediately prior to the effective time of the merger and that are held by any person who properly demands appraisal of such shares pursuant to Section 262 of the DGCL, who did not vote in favor of adopting the merger agreement or consent thereto in writing, and who complies in all other respects with Section 262 of the DGCL, shall not be converted into the right to receive the per share merger consideration as provided in the merger agreement, but shall instead be entitled to receive payment of the fair value of such shares in accordance with Section 262 of the DGCL. The appraisal rights and procedures applicable to such dissenting stockholders are described further under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Appraisal Rights.

Merger Consideration

At the effective time of the merger, each share of Pathmark common stock (other than dissenting shares) will be converted into the right to receive (i) 0.12963 of a share of A&P common stock and (ii) \$9.00 in cash, without interest.

Pathmark stockholders will not receive any fractional shares of A&P common stock pursuant to the merger. Instead of any fractional shares, stockholders will be paid an amount in cash in lieu of such fraction calculated by multiplying (i)

the number of fractional shares of A&P common stock such holder would otherwise be entitled to receive and (ii) the closing price of the A&P common stock on the NYSE on the trading day immediately prior to the effective time of the merger.

Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards

Each outstanding option to purchase shares of Pathmark common stock granted under any stock compensation plan maintained by Pathmark or its subsidiaries, which we refer to as the *Pathmark stock plans*, will become fully vested and exercisable no less than fifteen days prior to the closing of the merger.

Each outstanding option to purchase shares of Pathmark common stock, other than *Pre-Amendment Options* described in the next paragraph, granted under the Pathmark stock plans will be canceled in exchange for the right to receive a lump sum cash payment to be paid as soon as practicable after the completion of the merger. The lump sum cash payment shall equal the product of (a) the number of shares of Pathmark common stock such holder could have purchased had they exercised their stock options in full immediately prior to the closing and (b) the excess, if any, of (i) the Pathmark Closing Price over (ii) the exercise price per share of such stock option. Any stock options, other than *Pre-Amendment Options*, with exercise prices equal to or greater than the Pathmark Closing Price will be canceled for no consideration.

With respect to Pathmark Pre-Amendment Options, Pathmark will seek to obtain any consents required to cancel any such options with exercise prices less than the Pathmark Closing Price in exchange for a lump sum cash payment in the amount provided in the previous paragraph. Any such Pathmark stock options not canceled and cashed out, or with exercise prices equal to or greater than the Pathmark Closing Price, will be converted into an option to purchase, on the same terms and conditions as were applicable under such option, and taking into account vesting and other changes resulting from the merger, (i) the number of shares of A&P common stock equal to the product of (a) the number of shares of Pathmark common stock such holder could have purchased had such holder exercised such option in full immediately prior to the closing, and (b) the Option Exchange Ratio (defined in the next sentence), *provided* that any fractional shares of A&P common stock resulting from such multiplication shall be rounded up or down to the nearest whole share, at (ii) a price per share equal to (a) the exercise price per share of such Pre-Amendment Option, divided by (b) the Option Exchange Ratio, *provided* that such exercise price shall be rounded up or down to the nearest cent. The *Option Exchange Ratio* means (i) the Pathmark Closing Price divided by (ii) \$27.00.

Upon the closing of the merger, each award of Pathmark common stock subject to transfer restrictions and/or forfeiture then outstanding under the Pathmark stock plans will become fully vested and converted into the right to receive a single lump sum cash payment equal to the product of (i) the number of shares of Pathmark common stock subject to such award immediately prior to the closing of the merger and (ii) the Pathmark Closing Price.

Upon the closing of the merger, each award of Pathmark restricted stock units then outstanding under the Pathmark stock plans will become fully vested and converted into the right to receive a single lump sum cash payment equal to the product of (i) the number of shares of Pathmark common stock applicable to such award immediately prior to the closing and (ii) the Pathmark Closing Price.

Upon the closing of the merger, A&P shall (i) issue the warrants provided for in the Yucaipa Warrant Agreement in exchange for the warrants issued under the warrant agreement dated as of June 9, 2005 among Pathmark, the Yucaipa Investors and the other parties thereto, on the terms and subject to the conditions set forth therein; and (ii) assume the obligations of Pathmark under the 2000 Warrant Agreement and the warrants issued thereunder (the *2000 Warrants*), so that the holders of the assumed warrants will have the right to purchase A&P common stock on the terms and subject to the conditions set forth in the 2000 Warrant Agreement and the warrants thereunder. For further details of the Yucaipa Warrant Agreement, see Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Warrant Agreement.

Exchange of Pathmark Stock Certificates for A&P Stock Certificates

Upon completion of the merger, A&P will deposit with American Stock Transfer & Trust Company, Pathmark's exchange agent for the merger, cash in an amount sufficient to pay the aggregate cash consideration in the merger, and certificates representing the shares of A&P common stock issuable in exchange for outstanding shares of Pathmark common stock in an amount sufficient to pay the aggregate stock consideration in the merger and, if required, any dividends or other distributions on A&P common stock with a record date occurring after completion of the merger in accordance with the merger agreement.

Promptly following completion of the merger, A&P or the exchange agent will mail to each record holder of Pathmark common stock a letter of transmittal and instructions for use to effect the surrender of their Pathmark stock certificates in exchange for A&P common stock and cash. Upon surrender of a Pathmark stock certificate to the exchange agent, along with a completed and properly executed letter of transmittal and any other required documents, the Pathmark stock certificate will be canceled and the Pathmark stockholder will receive, without interest, a certificate representing the number of whole shares of A&P common stock to which such holder is entitled, the cash consideration, cash in lieu of fractional shares which such holder has the right to receive, and dividends or distributions, if any, payable in accordance with the merger agreement.

Pathmark stockholders should not submit their Pathmark stock certificates for exchange unless and until they receive the transmittal instructions and a letter of transmittal from the exchange agent. A&P stockholders will continue to hold their A&P stock certificates following the merger and are not required to take any action with respect to their A&P stock certificates.

A&P and the exchange agent will be entitled to deduct and withhold from the merger consideration otherwise payable such amounts as are required by applicable law.

Directors and Officers

Upon closing of the merger, Gregory Mays will be elected by the existing A&P directors, unless he is serving as an employee or director of a competitor, to fill the existing vacant position on the A&P board of directors without stockholder action, as provided for under the director election provisions of the bylaws of A&P and Maryland law.

Transfers of Pathmark Shares; Lost Stock Certificates

Upon completion of the merger, all shares of Pathmark common stock outstanding immediately prior to the effective time of the merger will automatically be canceled and no longer be outstanding, and all Pathmark stockholders shall cease to have any rights with respect to such Pathmark common stock (except the right to receive the merger consideration). After the effective time of the merger, there will be no further transfers of shares of Pathmark common stock. If, after such time, any Pathmark common stock certificates are presented to the exchange agent, A&P or the surviving corporation, they will be canceled and exchanged for the merger consideration.

Unclaimed Amounts

Any portion of the merger consideration deposited with the exchange agent that remains undistributed to Pathmark stockholders 180 days after the effective time of the merger shall be delivered to A&P upon demand, and any Pathmark stockholders who have not surrendered their certificates by then can only look to A&P and the surviving corporation for satisfaction of their claims for the merger consideration.

Representations and Warranties

The merger agreement contains representations and warranties that the parties have made to each other as of specific dates. Except for its status as a contractual document that establishes and governs the legal relations among the parties with respect to the merger described therein, the merger agreement is not intended to be a source of factual, business or operational information about the parties. The representations and warranties contained in the merger agreement were made only for purposes of that agreement and as of specific dates, were solely for the benefit of the parties to that agreement, and may be subject to limitations agreed among those parties, including being qualified by disclosures among those parties. Those representations and warranties may have been made to allocate risks among the parties to the merger agreement, including where the parties do not have complete knowledge of all facts, instead of establishing matters as facts. Furthermore, those representations and warranties may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. The assertions embodied in such representations and warranties are qualified by information contained in disclosure letters that the parties exchanged in connection with signing the merger agreement. Accordingly, investors and security holders should not rely on such representations and warranties as characterizations of the actual state of facts or circumstances, since they were only made as of the date of the merger agreement and are modified in important part by the underlying disclosure letters. Moreover, information concerning the subject matter of such representations and warranties may change after the date of the merger agreement.

The merger agreement contains customary representations and warranties of A&P and Pathmark relating to their respective businesses. The representations and warranties in the merger agreement do not survive the effective time of

the merger.

Each of A&P and Pathmark has made representations and warranties to the other regarding, among other things:

corporate
matters,
including due
organization
and
qualification;

authority to
execute and
deliver the
merger
agreement and
the absence of
conflicts with,
or violations
of,
organizational
documents or
other
obligations as
a result of the
merger;

capital
structure and
subsidiaries;

real property;

intellectual
property;

environmental
matters;

legal
proceedings;

tax matters;

labor matters;

employee
benefit plans;

compliance
with
applicable

laws;

SEC reports
and financial
statements;

the absence of
material
adverse
changes; and

insurance.

In addition, Pathmark has made other representations and warranties about itself to A&P as to:

material
contracts;

inventories;

bank
accounts;

brokers
fees
payable in
connection
with the
merger;

ownership
of A&P
common
stock; and

the receipt
of a
financial
advisor's
opinion.

Also, A&P has made other representations and warranties about itself to Pathmark as to:

solvency;

ownership of
Pathmark
common
stock; and

available
funds and
financing to
consummate
the merger
and to fund
working
capital needs
following the
merger.

Certain of the representations and warranties made by the parties are qualified as to materiality or material adverse effect. For purposes of the merger agreement, *material adverse effect* means with respect to Pathmark or A&P, as the case may be, any change, event or circumstance that, individually or in the aggregate with all other changes, events and circumstances, has a material adverse effect on the business, results of operations, condition (financial or otherwise), assets or liabilities of each respective company and its subsidiaries, taken as a whole. In determining whether a material adverse effect has occurred or is reasonably likely to occur, the parties will disregard effects arising out of (i) general economic, legal, regulatory or political conditions in the United States of America or geographic regions in which each respective company and its subsidiaries operate, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (ii) conditions generally affecting the industries in which each respective company and its subsidiaries operate, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (iii) the announcement or pendency of the merger or the entry into the merger agreement or the voting and stockholder agreements entered into in connection with the merger agreement; (iv) any decrease in the market price of each respective company's common stock in and of itself (but not any change, event or circumstance that may be underlying such decrease to the extent that such change, event or circumstance would

otherwise constitute a material adverse effect); (v) any changes in the securities markets generally, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (vi) the commencement or escalation of a war or armed hostilities or the occurrence of acts of terrorism or sabotage, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (vii) earthquakes, hurricanes or other natural disasters, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; and (viii) compliance with the requirements of changes in law or generally accepted accounting principles in the United States of America or any interpretation thereof.

In addition, in determining whether a material adverse effect has occurred or is reasonably likely to occur with respect to Pathmark, the parties will disregard effects arising out of (i) (a) proposing, negotiating, committing to or effecting, by consent decree, hold separate order or otherwise, the sale, transfer, divestiture or disposition of stores, businesses or other assets arising from the parties' compliance with their obligations under the parties' covenant to seek antitrust and other governmental approvals and consents; (b) otherwise taking or committing to take actions that limit or would limit A&P's, Merger Subsidiaries or its subsidiaries (including, after the closing of the merger, Pathmark's and its subsidiaries as subsidiaries of A&P) freedom of action with respect to, or their ability to retain, one or more of their respective stores, businesses, product lines or assets arising from the parties' compliance with their obligations under the parties' covenant to seek antitrust and other governmental approvals and consents; or (c) the application of antitrust laws to the transactions contemplated by the merger agreement or the voting and stockholder agreements entered into in connection with the merger agreement; or (ii) (a) as a result of Pathmark's entry into, and as permitted by, the merger agreement, the payment of any amounts due to, or the provision of any other benefits (including benefits relating to acceleration of stock options) to, any officers or employees under specified employment contracts, noncompetition agreements, employee benefit plans, severance arrangements or other arrangements (except to the extent that payments under such contracts, agreements, plans or arrangements solely for retention exceed the specified estimated retention payments) or (b) the incurrence by Pathmark of out-of-pocket fees and expenses (including legal, accounting, investment banking and other fees and expenses) in connection with the transactions contemplated by the merger agreement (except to the extent that such fees and expenses exceed specified estimated amounts).

Also, in determining whether a material adverse effect has occurred or is reasonably likely to occur with respect to A&P, the parties will disregard effects arising out of (i) sales of stores, offices, plants or warehouses owned or leased by the parties or their subsidiaries (or agreements or plans to sell such facilities) that arise from the parties' compliance with their obligations under their covenant to seek antitrust and other governmental approvals and consents; or (ii) any legal action or similar proceeding brought by any governmental authority under any antitrust law relating to the transactions contemplated by the merger agreement and the voting and stockholder agreements entered into in connection with the merger agreement.

Covenants and Agreements

Conduct of Business by Pathmark. Pathmark has agreed, subject to certain exceptions and prior written consent of A&P (which consent will not be unreasonably withheld or delayed), between March 4, 2007 and the completion of the merger that Pathmark and its subsidiaries will use commercially reasonable efforts to conduct their business in the ordinary course of business generally consistent with past practice and to preserve intact their current business organization, keep available the services of their current officers and key employees and keep their relationships with key customers, suppliers, licensors, licensees, distributors and others having business dealings with them.

Pathmark has also agreed that during the same period, and again subject to certain exceptions or prior written consent of A&P (which consent will not be unreasonably withheld or delayed), Pathmark and each of its subsidiaries will not:

amend its
organizational
documents;

adopt a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization (other than between wholly owned subsidiaries);

subject to certain exceptions, including certain transactions between Pathmark and its subsidiaries and as contemplated by the provisions described under Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards :

issue, sell or otherwise dispose of any shares of its capital stock, voting securities or securities convertible into such stock or

voting
securities;

grant or
issue any
options,
warrants,
securities or
rights that
are linked
to the value
of its
common
stock, or
other rights
to purchase
or obtain
any shares
of its capital
stock or any
of the
foregoing;

split,
combine,
subdivide
or reclassify
any shares
of its capital
stock;

declare, set
aside or pay
any
dividend or
other
distribution
with respect
to any
shares of its
capital
stock; or

redeem,
purchase or
otherwise
acquire any
shares of its
capital
stock or any
rights,

warrants or
options to
acquire any
such shares
or effect
any
reduction in
capital;

amend or
otherwise
restructure
Pathmark's
existing credit
agreement;
incur any
additional
principal
indebtedness
under
Pathmark's
indenture dated
January 29,
2002; or issue
any bond or
other debt
security, incur
or guarantee
any
indebtedness,
or enter into
any agreement
to maintain the
financial
condition of
another person
other than in
the ordinary
course of
business,
pursuant to
Pathmark's
existing credit
agreement and
other specified
indebtedness,
and
indebtedness or
guarantees
solely between
Pathmark and

its subsidiaries;

subject to certain exceptions, increase the benefits under any employee benefit plan or collective bargaining agreement; increase the compensation or benefits payable to, or enter into any employment agreements with, any current or former director, officer, employee or consultant of Pathmark or its subsidiaries; grant any rights to severance, change in control or termination pay to, or enter into any severance or change in control agreement with any current or former director, officer, employee or consultant of Pathmark or its subsidiaries; or take any affirmative action to amend or waive any performance or vesting criteria

or accelerate
vesting,
exercisability
or funding
under any
employee
benefit plan or
collective
bargaining
agreement;

enter into or
complete the
acquisition of
any other
person or entity
that would
materially
impair or delay
the
consummation
of the
transactions
contemplated
by the merger
agreement or
for
consideration
in excess of
\$10,000,000 in
the aggregate,
other than other
acquisitions in
the ordinary
course of
business
generally
consistent with
past practice;

sell, lease,
license or
otherwise
dispose of
fixed assets or
personal
property for
consideration
in excess of
\$3,000,000 in
the aggregate,

other than pursuant to existing contracts in connection with the termination or closure of certain facilities, or in the ordinary course of business generally consistent with past practice;

encumber any material assets or property, except for specific permitted encumbrances;

subject to specific exceptions, make any new capital expenditures in excess of specified amounts;

settle any pending or threatened legal action or similar proceeding involving a payment that would reasonably be expected to have a material adverse effect on Pathmark;

except as
required by
generally
accepted
accounting
principles or
SEC
regulations,
change any
material
accounting
method,
principle or
practice;

make, change
or revoke any
material tax
election; adopt
or change any
material tax
accounting
method; enter
into any tax
allocation
agreement, tax
indemnity
agreement or
similar
agreement;
enter into any
material tax
settlement or
compromise; or
surrender any
right to claim a
material refund
of taxes;

effect any sale
and leaseback
transactions
other than in
the ordinary
course of
business
generally
consistent with
past practice;

terminate or
close any
store, office,
plant or
warehouse or
make any
announcement
of the intention
to do so, other
than in the
ordinary
course of
business
generally
consistent with
past practice;

enter into any
consulting
contract
requiring
payments by
Pathmark in
excess of
specified
amounts other
than in the
ordinary
course of
business
generally
consistent with
past practice
and other than
those
cancelable
without
penalty within
ninety days;

delay
payments of
accounts
payable and
other
obligations or
accelerate the
collection of or
modify the
payment terms
of receivables
other than in
the ordinary
course of
business
generally
consistent with
past practice;

subject to
specific
exceptions,
enter into any
new contract
or modify or
amend any
existing
contract with
an executive
officer,
director, or
control persons
of Pathmark or
any of its
subsidiaries or
with the
Yucaipa
Investors or
any of their
affiliates or an
executive
officer,
director or
control person
of the Yucaipa
Investors;

incur
out-of-pocket
fees and

expenses for investment banking, financial advisory services or due to the Yucaipa Investors and their affiliates in connection with the transactions contemplated by the merger agreement in excess of specified amounts;

materially adversely modify, amend or extend any material contract prior to its expiration date; or

adopt, or propose to adopt, or maintain any shareholders rights plan, poison pill or other similar plan or agreement, unless A&P and Merger Sub are exempted from the provisions of such plan or agreement.

Conduct of Business by A&P. A&P has agreed, subject to certain exceptions and prior written consent of Pathmark (which consent will not be unreasonably withheld or delayed), between March 4, 2007 and the completion of the merger that A&P and its subsidiaries will use commercially reasonable efforts to conduct their business in the ordinary course of business generally consistent with past practice and to preserve intact their current business organization, keep available the services of their current officers and key employees and keep their relationships with

key customers, suppliers, licensors, licensees, distributors and others having business dealings with them.

A&P has also agreed that during the same period, and again subject to certain exceptions or prior written consent of Pathmark (which consent will not be unreasonably withheld or delayed), A&P and each of its subsidiaries will not:

amend its
organizational
documents,
other than
specific
permitted
amendments,
including the
proposed
amendment to
the A&P
charter to
exempt the
transactions
contemplated
by the merger
agreement and
the agreements
entered into in
connection
therewith from
the preemptive
rights
provisions of
the A&P
charter and
amendments
necessary to
effect A&P's
possible
reorganization
into a holding
company
structure;

adopt a plan or
agreement of
liquidation,
dissolution,
restructuring,
merger,
consolidation,
recapitalization
or other
reorganization

(other than
between wholly
owned
subsidiaries);

subject to
certain
exceptions,
including
certain
transactions
between A&P
and its
subsidiaries:

issue or sell
any shares
of its capital
stock,
voting
securities or
securities
convertible
into such
stock or
voting
securities in
an amount
in excess of
one-third of
A&P's
outstanding
stock;

grant or
issue any
options,
warrants,
securities or
rights that
are linked to
the value of
its common
stock, or
other rights
to purchase
or obtain
any shares
of its capital
stock or any
of the

foregoing;

split,
combine,
subdivide or
reclassify
any shares
of its capital
stock;

declare, set
aside or pay
any
dividend or
other
distribution
with respect
to any
shares of its
capital
stock; or

redeem,
purchase
or
otherwise
acquire
any shares
of its
capital
stock or
any rights,
warrants
or options
to acquire
any such
shares or
effect any
reduction
in capital;

issue any bond
or other debt
security, incur
or guarantee
any
indebtedness
or enter into
any agreement
to maintain the
financial
condition of
another person
other than in
the ordinary
course of
business,
pursuant to any
existing credit
agreement and
other specified
indebtedness,
indebtedness
or guarantees
solely between
A&P and its
subsidiaries in
connection
with store
leases or
equipment
leases or in

connection
with insurance
premium
financing, and
indebtedness
not in excess
of specified
amounts;

enter into or
complete the
acquisition of
any other
person or
entity that
would
materially
impair or delay
the
consummation
of the
transactions
contemplated
by the merger
agreement or
for
consideration
in excess of
\$75,000,000 in
the aggregate,
other than
other
acquisitions in
the ordinary
course of
business
generally
consistent with
past practice;

sell, lease,
license or
otherwise
dispose of
fixed assets or
personal
property in a
transaction that
would
materially
delay A&P's

ability to
consummate
the financing
of the merger;
or

delay
payments of
accounts
payable and
other
obligations or
accelerate the
collection of or
modify the
payment terms
of receivables
other than in
the ordinary
course of
business.

Restrictions on Solicitation of Other Offers. From and after March 4, 2007 until the closing of the merger or the termination of the merger agreement, the merger agreement precludes Pathmark, its subsidiaries and their respective directors, officers, employees, advisors, agents and representatives, and the Yucaipa Investors and their controlled and controlling affiliates from, directly or indirectly:

soliciting or
knowingly
encouraging or
facilitating the
submission of
any Company
Proposal, as
such term is
described
below;

entering into,
initiating or
participating in
any
discussions or
negotiations
with,
furnishing any
nonpublic
information
relating to
Pathmark or
any of its

subsidiaries or
affording
access to the
business,
properties,
assets, books
or records of
Pathmark or
any of its
subsidiaries to,
otherwise
cooperating in
any way with,
or assisting or
knowingly
encouraging
any effort by
any third party
or group that is
seeking to
make, or has
made, or may
reasonably be
expected to
make, a
Company
Proposal;

granting any
waiver or
release under
any standstill
or similar
agreement
with respect to
any class of
equity
securities of
Pathmark or
any of its
subsidiaries,
other than a
standstill
provision
contained in a
confidentiality
agreement
entered into
with such
person
pursuant to

permitted
discussions of
nonpublic
information as
described
below; or

entering into
any agreement
with respect to
a Company
Proposal other
than a
confidentiality
agreement
permitted
pursuant to
permitted
discussions of
nonpublic
information as
described
below.

The merger agreement also provides that Pathmark shall, shall cause its subsidiaries to, and shall use its commercially reasonable efforts to cause their representatives to, cease immediately and cause to be terminated any and all existing activities, discussions and negotiations, if any, with any third party or group conducted prior to March 4, 2007 with respect to any Company Proposal.

The merger agreement provides further that, notwithstanding the restrictions described above, if Pathmark receives a Company Proposal:

that was not
solicited, or
knowingly
encouraged
or
facilitated,
by Pathmark
in violation
of the
restrictions
described
above;

which either
constitutes a
Superior
Proposal, as
described
below, or

which the Pathmark board of directors determines in good faith, after consultation with its financial advisors and outside counsel, would reasonably be expected to result in a Superior Proposal; and

the Pathmark board of directors determines in good faith, after consultation with its outside legal counsel, that failing to engage in discussions or furnish information as described in the next clause would be inconsistent with its fiduciary duties under applicable law;

then, prior to the adoption of the merger agreement by an affirmative vote of a majority of the outstanding shares of Pathmark common stock entitled to vote thereon, Pathmark may:

engage in negotiations or discussions (including the solicitation of a revised Company Proposal) with such third party or group, and

furnish to such third party or group and its attorneys, auditors, advisors and financing sources nonpublic information relating to, and afford such third party or group access to, the business, properties, assets, books and records of Pathmark or any of its subsidiaries pursuant to a confidentiality agreement no less favorable to Pathmark than the confidentiality agreement entered into with A&P in connection with the merger

agreement.

Pathmark has agreed to provide as promptly as practicable to A&P any material information provided to such third party or group that has not previously been provided to A&P.

For purposes of the merger agreement, *Company Proposal* means any inquiry, proposal or offer from any third party or group relating to:

any direct or indirect acquisition or purchase, in a single transaction or a series of transactions, of (i) 20% or more of the assets (including capital stock of Pathmark's subsidiaries) of Pathmark and its subsidiaries, taken as a whole (other than in connection with sales of inventory in the ordinary course of business or with the parties obligations to seek antitrust and other governmental consents and approvals), or (ii) 20% or more of the outstanding shares of Pathmark's common stock;

any tender offer or exchange offer that, if consummated, would result in any third party

or group
owning, directly
or indirectly,
20% or more of
the outstanding
shares of
Pathmark
common stock;
or

any merger,
consolidation,
business
combination,
recapitalization,
liquidation,
dissolution,
binding share
exchange or
similar
transaction
involving
Pathmark
pursuant to
which any third
party (or the
stockholders of
any third party)
or group would
own, directly or
indirectly, 20%
or more of any
class of equity
securities of
Pathmark or of
the surviving
entity in a
merger or the
resulting direct
or indirect
parent of
Pathmark or
such surviving
entity;

other than, in each case, the transactions contemplated by the merger agreement.

The merger agreement provides that the term *Superior Proposal* means any bona fide Company Proposal (*provided* that the applicable percentages in the definition of Company Proposal shall be 50% as opposed to 20%) which the Pathmark board of directors determines in good faith (after consultation with its financial advisors and outside counsel) (i) is reasonably likely to be consummated taking into the account the third party or group making such Company Proposal and all financial, legal, regulatory and other aspects of such Company Proposal and (ii) would, if

consummated, reasonably be expected to result in a transaction that is more favorable to the Pathmark stockholders than the merger, taking into account all financial, legal, regulatory and other aspects of such Company Proposal and of the merger agreement.

The merger agreement provides that Pathmark must as promptly as practicable advise A&P in writing of the receipt after March 4, 2007 of any Company Proposal or any inquiry that could reasonably be expected to lead to any Company Proposal or inquiry, the material terms and conditions of any such Company Proposal or inquiry and the identity of the third party or group making any such Company Proposal or inquiry. Pathmark has agreed to keep A&P fully informed in all material respects of the status of (including any material developments with respect to) any such Company Proposal or inquiry (including any material changes thereto).

Pathmark Stockholder Meeting and Duty of the Pathmark Board to Recommend the Transaction. The merger agreement requires Pathmark to call and hold a special meeting of its stockholders not later than the twenty-third business day following the mailing of this joint proxy statement/prospectus for the purpose of voting on the approval and adoption of the merger agreement and the transactions contemplated thereby. The Pathmark board of directors has agreed to recommend that Pathmark's stockholders vote in favor of adoption of the merger agreement and not to (i) withdraw (or modify in a manner adverse to A&P), or propose to withdraw (or modify in

a manner adverse to A&P), the recommendation or declaration of advisability by the Pathmark board of directors of the merger agreement or the merger, or publicly recommend the approval or adoption of, or propose to recommend, any Company Proposal or Superior Proposal (any such action being referred to as an *Adverse Recommendation Change*); or (ii) cause or permit Pathmark or any of its subsidiaries to enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement or other similar agreement related to any Company Proposal, other than any confidentiality agreement referred to under Restrictions on Solicitation of Other Offers.

Notwithstanding the above, at any time prior to the time Pathmark stockholders have adopted the merger agreement, the Pathmark board of directors may, if, after consultation with its outside counsel, it determines in good faith that failure to take such action would be inconsistent with its fiduciary duties under applicable law, make an Adverse Recommendation Change. The board of directors of Pathmark, however, may not make an Adverse Recommendation Change until after the fifth business day following Pathmark's delivery to A&P of written notice advising A&P that the Pathmark board of directors intends to take such action and specifying the reasons therefor, including (if such change is due to a Superior Proposal) the material terms and conditions of any Superior Proposal (including a summary of the financial, legal, regulatory or other aspects that relate to the Pathmark board of directors' determination that such Company Proposal is a Superior Proposal) that is the basis of the proposed action by the Pathmark board of directors, and prior to taking any such action, Pathmark shall discuss with A&P and consider in good faith any changes to the terms of the merger agreement proposed by A&P in response to such Superior Proposal or otherwise.

The merger agreement provides that the restrictions on solicitation of other offers described above do not prohibit the Pathmark board of directors from complying with Rule 14e-2(a) and Rule 14d-9 under the Exchange Act with regard to a Company Proposal, or from making any other legally required disclosure to Pathmark's stockholders with regard to the Company Proposal under federal securities laws, the regulations of any national securities exchange on which Pathmark's common stock is listed or as required under Delaware law.

A&P Stockholder Meeting and Duty to Recommend. The merger agreement requires A&P to call and hold a special meeting of its stockholders not later than the twenty-third business day following the mailing of this joint proxy statement/prospectus for the purpose of voting on the proposal to authorize the issuance of A&P common stock pursuant to the merger and the proposal to amend the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter. The A&P board of directors has agreed to recommend that A&P's stockholders vote in favor of the issuance of A&P common stock and the A&P charter amendment. (At A&P's annual meeting of stockholders on July 19, 2007, A&P stockholders approved an amendment to eliminate such provisions from A&P's charter.)

Financing. A&P and Merger Sub have agreed to use their best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or advisable to arrange and obtain the debt financing on the terms and conditions described in the debt financing commitment letters, including using their best efforts:

to maintain in effect the debt financing commitment letters;

to negotiate and enter into definitive agreements with respect

thereto on the terms and conditions contained therein;

to satisfy (or cause their affiliates to satisfy) on a timely basis all conditions, and otherwise comply with all terms, applicable to A&P, Merger Sub or their affiliates in such definitive agreements; and

to consummate the financing contemplated by the debt financing commitment letters at or prior to closing of the merger.

In the event that any portion of the financing becomes unavailable on the terms and conditions contemplated in the debt financing commitment letters, A&P and Merger Sub will use their best

efforts to arrange to obtain any such portion from alternative sources as promptly as practicable following the occurrence of such event but not later than the last day of the Marketing Period, as described under Structure and Effective Time; Marketing Period. A&P has agreed to provide Pathmark copies of any alternative financing agreements, to give Pathmark prompt notice of any material breach by any party or any termination of the debt financing commitment letters and to keep Pathmark fully informed of the status of its efforts to arrange the financing. A&P and Merger Sub have agreed not to amend, supplement, modify or waive any provision or remedy under the debt financing commitment letters or the definitive agreements relating to the financing, without the consent of Pathmark, which consent shall not be unreasonably withheld or delayed.

In addition, A&P has agreed that, in the event that:

all or a portion
of the
financing
structured as
notes has not
been
consummated;

subject to
limited
exceptions, all
closing
conditions
contained in
the merger
agreement
have been
satisfied or
waived; and

the bridge
facilities
contemplated
by the
financing
commitments,
or alternative
financing
contemplated
by the merger
agreement, are
available,

then A&P and Merger Sub will use the proceeds of such bridge financing or alternative financing for the purpose of consummating the transactions contemplated by the merger agreement.

A&P has also agreed to sell or otherwise dispose of up to 7.1 million shares of Metro common stock by June 2, 2007, and that, if the net cash proceeds to A&P of such disposition are less than \$190.0 million, then A&P will issue and sell, by June 2, 2007, shares of A&P common stock and/or preferred stock sufficient to generate aggregate net cash proceeds in the amount of \$190.0 million. (On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro

for proceeds of approximately \$203.5 million and placed \$190.0 million of the proceeds in a blocked account to fund a portion of the merger consideration.) A&P agreed to deposit the aggregate net cash proceeds of such sales or dispositions into a blocked bank account through the closing of the merger and to use the funds in the blocked account as part of the consideration for the transactions under the merger agreement and for other limited purposes contemplated by the merger agreement.

Pathmark has agreed to use its best efforts, including certain specific undertakings, to cooperate in obtaining the arrangement of the financing of the transactions contemplated by the merger agreement. If the merger agreement is terminated according to its terms, then A&P has agreed to reimburse Pathmark for fees and expenses incurred by or on behalf of Pathmark solely as a result of its compliance with the provisions described in this Financing section. Neither Pathmark nor any of its subsidiaries shall be required to pay any commitment or other fee or incur any other liability in connection with the financing prior to the effective time of the merger.

Governmental Approvals. A&P, Merger Sub and Pathmark have agreed, subject to A&P's termination rights in connection with an Antitrust Termination Determination, as such term is described under Termination, to use their respective best efforts to cause the expiration or termination of the applicable waiting period under the HSR Act as soon as practicable and to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by the merger agreement under any antitrust law.

To this end, A&P and Merger Sub have agreed to use their best efforts to seek to avoid the entry of, or seek to have vacated or terminated, any order, judgment, or similar determination of a court or governmental entity that would prevent or delay the closing of the merger. They have also agreed, subject to their termination rights, to use their best efforts to take all other actions necessary to avoid or eliminate all impediments under any antitrust law that may be asserted by any governmental entity regarding the merger, to enable the closing of the merger to occur as soon as reasonably possible, including (i) proposing and agreeing to, by consent decree, hold separate order, or otherwise, the divestiture or disposition of such stores, businesses or other assets of A&P and its subsidiaries or, after the closing of the merger, of Pathmark and its subsidiaries and (ii) otherwise taking or committing to take actions that limit or would limit A&P's and its subsidiaries' (including, after the closing of the merger, Pathmark's and its subsidiaries') freedom of action with respect to, or its ability to retain, one or more of their respective stores, businesses, product lines or assets, in

each case as may be required in order to avoid the entry of, or to effect the dissolution of, any judgment or similar order in any legal action or similar proceeding, which would otherwise have the effect of preventing or materially delaying the closing of the merger.

Notwithstanding the foregoing, A&P may enter into agreements with governmental entities to delay for reasonable periods of time the closing of the merger, subject to certain limitations, including that:

no such
agreement
shall delay
the closing of
the merger to
a date later
than
December 4,
2007;

if, at the time
of entering
into the
agreement, it
is reasonably
likely that the
parties to the
merger
agreement in
the aggregate
would not be
required to
divest, sell or
dispose of
stores,
businesses or
other assets
with an
aggregate
amount of
scheduled
store level
cash flow in
excess of
\$36.0 million
in order to
consummate
the
transactions
contemplated
by the merger
agreement,
then no such

agreement
may be
entered
without the
consent of
Pathmark,
which
consent may
not be
unreasonably
withheld or
delayed; and

prior to
entering into
any such
agreement,
A&P must
provide
Pathmark
with at least
five business
days prior
written notice
of its
intention to
do so and
during such
period A&P
must consult
in good faith
with
Pathmark
regarding the
agreement.

Notwithstanding anything in the merger agreement to the contrary, prior to December 5, 2007, A&P will not be required to divest, sell or otherwise dispose of, stores, businesses or other assets of A&P, Pathmark or their subsidiaries with an aggregate amount of scheduled store level cashflow in excess of \$36.0 million, or enter into any agreement to do so. On and after December 5, 2007, if the merger has not been completed and the merger agreement has not been terminated, this limitation on A&P's obligations will no longer apply. A&P will not be entitled to any adjustment to or diminution of the aggregate merger consideration as a result of any divestitures or otherwise.

Indemnification; Insurance; Certain Benefit Plans. A&P has agreed to maintain in effect after completion of the merger, for the benefit of current and former Pathmark directors and officers, the existing rights to indemnification and limitations on liability for acts or omissions occurring prior to the closing of the merger under the Pathmark certificate of incorporation, bylaws or disclosed agreements of Pathmark.

A&P has also agreed to pay the benefits to which any employee (or his or her beneficiaries) is entitled under the terms of disclosed supplemental retirement and excess benefit plans as in effect immediately prior to the closing of the merger.

The merger agreement provides that prior to the closing, Pathmark shall obtain, at A&P's expense, tail insurance policies with claims periods of at least six years from the closing with respect to directors' and officers' liability insurance in amount and scope at least as favorable as existing policies for claims arising from facts or events that occurred on or prior to the closing; provided that the aggregate premiums for such policies do not exceed an amount equal to 300% of the current annual premium of Pathmark's existing directors' and officers' liability insurance.

The merger agreement also provides that, for a period of six years after completion of the merger, the certificate of incorporation and bylaws of Pathmark, as the surviving corporation in the merger, will contain provisions no less favorable with respect to exculpation and indemnification than those set forth in the current certificate of incorporation and bylaws of Pathmark, except to the extent required by applicable law.

Employee Benefits. For twelve months and one day following the effective time of the merger, A&P has agreed with Pathmark that the continuing employees of Pathmark will be entitled to receive employee benefits (excluding equity-based plans) that, in the aggregate, are no less favorable than the employee benefits received by those employees prior to the merger. Subject to certain exceptions, A&P will or will cause the surviving corporation in the merger to give continuing Pathmark employees full credit for purposes of eligibility to participate, vesting and benefit accrual (other than with respect to any defined benefit plan) under the employee benefit plans or arrangements maintained by A&P, the surviving corporation in the merger or their subsidiaries to the same extent recognized by Pathmark or such subsidiaries under the corresponding Pathmark

benefit plans immediately prior to the closing of the merger, and with respect to certain welfare benefit plans maintained for the benefit of continuing Pathmark employees following the closing of the merger, waive eligibility requirements or preexisting condition limitations to the same extent waived under comparable Pathmark plans immediately prior to the closing of the merger, and recognize deductible amounts paid by such continuing Pathmark employees under the corresponding Pathmark benefit plans.

The parties have agreed that nothing in the covenants described in this **Employee Benefits** section shall create any third-party beneficiary or other right either (i) in any person other than the parties to the merger agreement, including any current or former directors, officers, employees or consultants of Pathmark or its subsidiaries, any participant in any Pathmark employee benefit plan, or any dependent or beneficiary thereof; or (ii) to continued employment with Pathmark, A&P, Merger Sub, the surviving corporation or any of their respective affiliates.

Cooperation; Commercially Reasonable Efforts. A&P and Pathmark have agreed to use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all actions necessary, proper or advisable under applicable law to complete the merger and the other transactions contemplated by the merger agreement.

Other Agreements. The merger agreement contains a number of mutual covenants of A&P and Pathmark, including covenants relating to:

providing to each of the other access to the officers, employees, properties, offices and facilities of each of A&P and Pathmark and to financial, operating and other information;

communicating and cooperating with respect to public statements concerning the transactions contemplated by the merger agreement;

notifying each other of the occurrence or failure to occur of any event that would cause, or would reasonably be expected to cause, the failure to satisfy any condition to

closing the merger
provided in the
merger agreement;

cooperating with
each other in
connection with any
stockholder litigation
or claims against
either of them or
their directors or
officers relating to
the merger;

preparing and filing
this joint proxy
statement/prospectus
and assuring the
accuracy of the
information in it;

not selling or
acquiring record or
beneficial ownership
of securities of each
other; and

taking actions
relating to
exemptions from
liability under Rule
16b-3 under the
Exchange Act.

The merger agreement also contains covenants requiring Pathmark:

to use
commercially
reasonable
efforts (i) to
conduct an
offer to
purchase and
related
consent
solicitation
with respect
to any and all
of Pathmark's
8.75% Senior
Subordinated

Notes due
2012
outstanding
on March 4,
2007 and
amend the
related
indenture as
reasonably
requested by
A&P or (ii) if
requested by
A&P and
permitted
under the
indenture, to
redeem all of
such
outstanding
notes pursuant
to the
redemption
provisions of
the indenture;

to deliver to
A&P a letter
identifying all
persons who
were, at the
date of the
Pathmark
special
meeting,
affiliates of
Pathmark for
purposes of
Rule 145
under the
Securities
Act; and

to use its
commercially
reasonable
efforts to
deliver to
A&P a letter
agreement
executed by
each of its

affiliates prior to the completion of the merger, pursuant to which these affiliates will agree, among other things, not to transfer any shares of A&P common stock received in the merger except in compliance with the Securities Act.

The merger agreement also contains covenants requiring A&P to take all action necessary, after the effective time of the merger, to cause Merger Sub and the surviving corporation to perform all of their obligations under the merger agreement and to consummate the merger on the terms and conditions set forth in the merger agreement.

Conditions to the Merger

Conditions to A&P's and Pathmark's Obligations to Complete the Merger. Each party's obligation to complete the merger is subject to the satisfaction or waiver of various conditions on or prior to the closing date of the merger that include the following:

the merger agreement has been adopted by the affirmative vote of a majority of the outstanding shares of Pathmark common stock entitled to vote at the Pathmark special meeting;

the issuance of A&P common stock pursuant to the merger has been approved by the affirmative vote of the holders of a majority of the shares of A&P common stock cast on such proposal at the A&P special meeting; *provided* that at least a majority of the outstanding shares of A&P common stock vote on the proposal;

the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter has been approved by the affirmative vote of the holders of two-thirds of A&P common stock outstanding. (At A&P's annual meeting of stockholders on July 19, 2007, A&P stockholders approved an amendment to eliminate such provisions from A&P's charter.);

the waiting periods applicable to the merger under the HSR Act have expired or been terminated and there is no obligation to delay the closing of the merger pursuant to any agreement between A&P and any governmental entity entered into in compliance with the provisions described under Covenants and Agreements Governmental Approvals ;

no judgment, injunction or ruling of a court of competent jurisdiction or any governmental entity is in effect that prevents or restrains completion of the merger or the other transactions contemplated by the merger agreement and the agreements entered into in connection therewith and no statute or regulation is in effect which prevents the consummation of or has the effect of making illegal the completion of the merger or the other transactions contemplated by the merger agreement and the agreements entered into in connection therewith;

the registration statement on Form S-4, of which this joint proxy statement/prospectus forms a part, has been declared effective by the SEC and is not the subject of any stop order or initiated or threatened proceedings seeking a stop

order; and

the shares of A&P
common stock issuable
pursuant to the merger
have been approved for
listing on the NYSE.

Conditions to A&P's and Merger Sub's Obligations to Complete the Merger. A&P's and Merger Sub's obligations to complete the merger are further subject to satisfaction or waiver of the following additional conditions:

Pathmark's representations and warranties made in the merger agreement must be true and correct as of the closing date of the merger as though made on the closing date, subject in certain cases to the materiality standards contained in the merger agreement; *provided* that this condition will not apply to a failure to be true and correct resulting from (i) the parties' compliance with the provisions described under Covenants and Agreements Governmental Approvals or (ii) the application of antitrust laws to the transactions contemplated by the merger agreement and the agreements entered into in connection therewith;

Pathmark must have performed in all material respects all obligations required to be performed by it under the merger agreement on or prior to the closing date of the merger;

Pathmark must have provided A&P with a certificate signed by Pathmark's chief executive

officer or chief financial officer certifying that the conditions described in the preceding two bullet points have been satisfied;

there is no suit, action or proceeding seeking to prohibit or restrain the completion of the merger or the other transactions contemplated by the merger agreement and the agreements

entered into in connection therewith that is pending or threatened in writing, and not withdrawn, by any governmental entity that is reasonably likely to succeed, other than certain complaints filed by a governmental entity under the antitrust laws related to a proposed consent decree or other settlement agreement entered into by A&P;

since March 4, 2007, no material adverse effect has occurred and is continuing or would reasonably be expected to occur with respect to Pathmark (see the definition of material adverse effect under Representations and Warranties);

the aggregate number of shares of Pathmark stock held by any

Pathmark stockholder who is entitled to demand, and who properly demands, an appraisal of such holder's shares in accordance with Section 262 of the DGCL (and who complies in all other respects with Section 262) does not exceed 10% of the shares of Pathmark stock outstanding immediately prior to the completion of the merger; and

the Management Services Agreement and the related consulting agreement with Yucaipa Advisors dated January 23, 2007 must have been terminated in accordance with their terms.

Conditions to Pathmark's Obligation to Complete the Merger. Pathmark's obligation to complete the merger is further subject to satisfaction or waiver of the following additional conditions:

A&P's representations and warranties made in the merger agreement must be true and correct as of the closing date of the merger as though made on the closing date, subject in certain cases to the

materiality standards contained in the merger agreement; *provided* that this condition will not apply to a failure to be true and correct resulting from (i) the parties' compliance with the provisions described under Covenants and Agreements Governmental Approvals or (ii) the application of antitrust laws to the transactions contemplated by the merger agreement and the agreements entered into in connection therewith;

A&P must have performed in all material respects all obligations required to be performed by it under the merger agreement on or prior to the closing date of the merger; and

A&P must have provided Pathmark with a certificate signed by A&P's chief executive officer or chief financial officer certifying that the conditions described in the preceding two bullet points have been satisfied.

Termination

The merger agreement may be terminated and the merger may be abandoned at any time prior to the closing date of the merger:

by mutual written consent of A&P, Merger Sub and Pathmark;

by written
notice
from
either
A&P or
Pathmark
if:

the closing of
the merger has
not occurred by
the Outside
Date, March 4,
2008, as such
date may be
extended as
follows, unless
the principal
cause or the
result of the
failure of the
effective time of
merger to occur
by that date is a
breach of the
merger
agreement by
the party
seeking to
terminate the
merger
agreement;
provided that if,
on the second
business day
before March 4,
2008, only
antitrust-related
closing
conditions have
not been
satisfied, then
A&P may elect
to extend the
Outside Date
once, for a
period of up to
ninety days, so
long as A&P's
financing
commitments

are similarly extended; and *provided further* that if antitrust-related closing conditions have not been satisfied, then A&P may not terminate the merger agreement under this provision unless it pays the One-Year Termination Fee or Extension Termination Fee, if applicable (as described under Termination Fees and Expenses);

the Pathmark stockholders fail to adopt the merger agreement at the Pathmark special meeting;

the A&P stockholders fail to approve both the issuance of A&P common stock pursuant to the merger and the amendment to the A&P charter to exempt the transactions

contemplated by
the merger
agreement and
the agreements
entered into in
connection
therewith from
the preemptive
rights
provisions of
the A&P charter
at the A&P
special meeting.
(At A&P's
annual meeting
of stockholders
on July 19,
2007, A&P
stockholders
approved an
amendment to
eliminate such
provisions from
A&P's charter.);

any court or
other
governmental
entity has issued
a final,
nonappealable
judgment,
injunction or
ruling or taken
any other action
restraining or
otherwise
prohibiting the
merger or the
other
transactions
contemplated by
the merger
agreement and
the agreements
entered into in
connection
therewith; or

the other party
has breached or

failed to perform any of its representations, warranties, covenants or agreements in the merger agreement, which breach or failure to perform (i) would give rise to the failure of a condition regarding representations and warranties and performance of obligations and (ii) cannot be cured or is not cured by the breaching party within twenty business days after receipt of written notice of the breach from the other party;

by
A&P
if:

prior to the Pathmark special meeting, the Pathmark board of directors makes an Adverse Recommendation Change, as described under Covenants and Agreements Pathmark Stockholder Meeting and Duty to Recommend ;

on September 4, 2007, on written

notice by A&P within the five preceding business days of its election to terminate the merger agreement due to an Antitrust Termination Determination (as defined below); *provided* that A&P must provide at least five business days written notice of its intention to terminate the merger agreement under this provision together with a detailed summary of the reasons for such Antitrust Termination Determination and A&P must discuss and consider in good faith any comments by Pathmark regarding such Antitrust Termination Determination; or

on December 4, 2007, on written notice by A&P within the five preceding business days of its election to terminate the merger agreement due to an Antitrust Termination Determination; *provided* that to exercise this termination right, A&P must pay the Nine-Month Termination Fee, provide at least five business days written notice of its intention to terminate the merger agreement under this provision together with a

detailed summary of the reasons for such Antitrust Termination Determination and must discuss such Antitrust Termination Determination in good faith with Pathmark; or

by Pathmark if:

within ten business days of A&P's written notice to Pathmark of A&P's failure to obtain and maintain \$190.0 million of net cash proceeds by June 2, 2007, in connection with the sale of Metro common stock or A&P common stock and/or preferred stock as described under

Covenants and Agreements Financing. (On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million. A&P continues to hold approximately 11.7 million Metro shares.); or

at any time, if the Marketing Period has ended as described under Structure and Effective Time; Marketing Period, all conditions described under Conditions to the Merger have been satisfied or waived and A&P does not have

available funds to pay
the aggregate cash
consideration payable
in the merger.

The merger agreement provides that *Antitrust Termination Determination* means that the A&P board of directors has determined in good faith, after consultation with its outside counsel, that it is reasonably likely that A&P, Merger Sub and Pathmark, in the aggregate, would be required to divest, sell, transfer or otherwise dispose of stores, businesses or other assets of A&P and Pathmark or of any of their subsidiaries with aggregate scheduled store level cashflow amounts in excess of \$36.0 million in order to consummate the transactions contemplated by the merger agreement.

Effect of Termination

If the merger agreement is terminated as described in Termination above, the agreement will be void, and there will be no liability or obligation of any party other than as set forth in Fees and Expenses. Designated provisions of the merger agreement, including the representations and warranties relating to brokers fees, the confidential treatment of information and the payment of fees and expenses, including, if applicable, the termination fees described below, will survive termination. Additionally, such termination shall not relieve any party of any liability for any willful breach of the merger agreement. Upon such termination, the parties shall comply with all the provisions of the confidentiality agreement entered into between A&P and Pathmark in connection with the merger agreement.

Fees and Expenses

Subject to certain exceptions, each party shall bear its own costs and expenses (including fees and expenses of financial advisors and legal counsel) incurred in connection with the merger agreement, the related agreements and the transactions contemplated thereby, whether or not the merger is consummated. Pathmark must pay A&P a \$25.0 million termination fee, decreased by the amount of certain fees and expenses paid by Pathmark as described in the next paragraph, if the merger agreement is terminated as follows:

if A&P terminates the merger agreement prior to the Pathmark special meeting because the Pathmark board of directors has withdrawn or modified its recommendation of the merger agreement in a manner adverse to A&P, or proposed to do so; or

if:

(i) A&P or Pathmark terminates the merger agreement because of the failure of the merger to be completed by the Outside Date, if the Pathmark special meeting has not been held before the Outside Date and this joint proxy statement/prospectus

has been declared effective no less than twenty business days prior to the Outside Date and remains effective through the Outside Date; (ii) A&P or Pathmark terminates the merger agreement because of the failure of the Pathmark stockholders to adopt the merger agreement at the Pathmark special meeting; or (iii) A&P terminates the merger agreement because of a material breach by Pathmark of a representation, warranty, covenant or agreement in the merger agreement that is uncurable or is uncured as described under Termination ; and

after March 4, 2007 and prior to such termination of the merger agreement a third party has publicly announced a Company Proposal to acquire Pathmark and within eighteen months of termination of the merger agreement Pathmark enters into a definitive agreement for a Company Proposal or consummates a Company Proposal; *provided* that for purposes of this provision all references to 20% in the definition of Company Proposal, as described under Covenants and Agreements Restrictions on Solicitation of Other

Offers, shall instead be
deemed to be 50%.

If A&P or Pathmark terminates the merger agreement because of the failure of the Pathmark stockholders to adopt the merger agreement at the Pathmark special meeting, then Pathmark must pay A&P all filing fees paid by A&P under the HSR Act, as well as legal fees and expenses incurred by A&P in connection with the merger agreement and the transactions contemplated thereby. This payment of these fees and expenses will reduce the amount of the termination fee described in the preceding paragraph.

If A&P or Pathmark terminates the merger agreement because of the failure of the A&P stockholders to approve both the A&P share issuance and the A&P charter amendment at the A&P special meeting or if A&P terminates the merger agreement on September 4, 2007, because A&P has made an Antitrust Termination Determination, as described under Termination, then A&P must pay Pathmark the legal fees and expenses incurred by Pathmark in connection with the merger agreement and the transactions contemplated thereby. (At A&P's annual meeting of stockholders on

July 19, 2007, A&P stockholders approved an amendment to eliminate such provisions from A&P's charter.)

A&P must pay Pathmark a \$25.0 million termination fee (the *Nine-Month Termination Fee*), if (1) A&P terminates the merger agreement on December 4, 2007, because A&P has made an Antitrust Termination Determination, as described under Termination, or (2) A&P or Pathmark terminates the merger agreement after September 4, 2007 and on or before December 4, 2007 because any court or other governmental entity, at the request of any person seeking relief under antitrust laws, has issued a final, nonappealable judgment, injunction or ruling or otherwise restrained or prohibited the merger or the transactions contemplated in connection with the merger.

A&P must pay Pathmark a \$50.0 million termination fee (the *One-Year Termination Fee*), if (1) March 4, 2008 has been reached and the Outside Date has not been extended as described under Termination, the antitrust-related conditions to closing the merger have not been satisfied and A&P or Pathmark terminate the merger agreement because of failure to complete the merger by the Outside Date; or (2) A&P or Pathmark terminates the merger agreement after December 4, 2007 and on or before March 4, 2008 because any court or other governmental entity, at the request of any person seeking relief under antitrust laws, has issued a final, nonappealable judgment, injunction or ruling or otherwise restrained or prohibited the merger or the transactions contemplated in connection with the merger.

A&P must pay Pathmark a \$75.0 million termination fee (the *Extension Termination Fee*), if (1) the Outside Date has been extended as described under Termination, and A&P or Pathmark terminates the merger agreement because of failure to complete the merger by the extended Outside Date or (2) A&P or Pathmark terminates the merger agreement after March 4, 2008 because any court or other governmental entity, at the request of any person seeking relief under antitrust laws, has issued a final, nonappealable judgment, injunction or ruling or otherwise restrained or prohibited the merger or the transactions contemplated in connection with the merger.

A&P must pay Pathmark a \$50.0 million termination fee if Pathmark terminates the merger agreement because of A&P's failure to obtain and maintain \$190.0 million of net cash proceeds by June 2, 2007, in connection with the sale of Metro common stock as described under Covenants and Agreements Financing.

A&P must pay Pathmark a \$50.0 million termination fee if Pathmark terminates the merger agreement on or prior to March 4, 2008 because A&P does not have available funds to pay the aggregate cash consideration payable in the merger, if the Marketing Period has ended as described under Structure and Effective Time; Marketing Period and all conditions described under Conditions to the Merger have been satisfied or waived.

A&P must pay Pathmark a \$75.0 million termination fee if Pathmark terminates the merger agreement after March 4, 2008, as otherwise described in the preceding paragraph.

The above-described termination fees, subject to certain exceptions, shall be the sole monetary remedy in the event of termination of the merger agreement on the bases described in this Fees and Expenses section; *provided* that fees payable by A&P pursuant to the two immediately preceding paragraphs shall be the nonexclusive remedy in the event of termination on the bases described in such paragraphs, and payment of such amounts shall not relieve A&P from liability for any breach of the merger agreement.

Amendment and Waiver

Amendment. The merger agreement may be amended only by an instrument in writing signed on behalf of the parties. However, no amendment may be made that by law requires further approval of the A&P stockholders or Pathmark stockholders unless the required approval is obtained.

Waiver. A&P and Pathmark may waive failure of any party to comply with obligations, covenants, agreements or conditions in the merger agreement only by a written instrument signed by the party granting the waiver. The failure of any party to the merger agreement to assert its rights under the merger agreement shall not constitute a waiver of

such rights.

**UNAUDITED PRO FORMA CONDENSED COMBINED
FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined financial information gives effect to the merger of A&P and Pathmark. The merger transaction will be accounted for using the purchase method of accounting, in accordance with accounting principles generally accepted in the United States, with A&P as the acquiror and Pathmark as the acquired company.

These pro forma financial statements and adjustments are based on preliminary estimates and assumptions made by management and have been made solely for purposes of developing these pro forma financial statements for illustrative purposes to aid in the analysis of the impact of the merger to A&P. These pro forma financial statements are not necessarily indicative of the results of operations that would have been achieved had the merger transaction actually taken place at the dates indicated and do not purport to be indicative of future financial position or operating results. The transaction is subject to regulatory approval and accordingly access to information required to prepare the pro forma financial statements has been limited. The actual results of the transaction reported by the combined company in periods following the merger may differ from that reflected in these pro forma financial statements depending on the actual amount of Pathmark debt and equity outstanding at the closing date, the actual assets acquired after potential required regulatory disposals, the actual interest rate on new debt to be negotiated, the final fair values assigned to amortizing assets and liabilities, the quoted market price of A&P and Pathmark common stock on the closing date, and the value of Pathmark common stock options on the closing date.

A&P and Pathmark stockholders should read the pro forma financial information in conjunction with A&P's and Pathmark's audited historical consolidated financial statements, accompanying footnotes and the section entitled Management's Discussion and Analysis of Financial Condition and Results of Operations in A&P's and Pathmark's Annual Reports on Form 10-K, as amended, for the fiscal years ended February 24, 2007 and February 3, 2007, respectively, and the Quarterly Reports on Form 10-Q for the fiscal quarters ended June 16, 2007 and May 5, 2007, respectively incorporated by reference into this joint proxy statement/prospectus. See Where You Can Find More Information.

As of June 16, 2007, A&P classifies its assets in the Greater New Orleans area as Assets held for sale on its Form 10-Q Consolidated Balance Sheet. The pro forma Balance Sheet has been adjusted in the Pending Disposition column to reflect the estimated impact of the disposition. A&P has reclassified these operations as discontinued, pursuant to SFAS 144, Accounting for the Impairment or Disposal of Long-Lived Assets on its Consolidated Statements of Operations. A&P's historical Consolidated Statements of Operations for fiscal years 2006, 2005 and 2004 have been revised in the Revised Historical A&P column of the pro forma financial statements to exclude these discontinued operations.

On April 24, 2007, A&P announced it was in negotiations for the sale of its stores, including inventory, within the Midwest. The Unaudited Consolidated Balance Sheet of A&P as of June 16, 2007 separately classified the Midwest assets that qualified for Assets held for sale treatment. These assets were written down to fair value less cost to sell. Sale transactions for a majority of these stores have been completed, with final negotiations pending on several additional locations. The pro forma Balance Sheet has been adjusted in the Pending Disposition column to reflect the estimated impact of the disposition. Further, A&P ceased sales operations at the unsold stores on July 7, 2007. These operations (stores to be sold and those considered abandoned) will be recorded as discontinued operations in A&P's second quarter. Accordingly, A&P's historical Consolidated Statements of Operations have not been revised to reflect discontinued operations classification for the Midwest; however, the impact of this disposition is reflected separately in the pro forma Statement of Operations in the Pending Disposition column.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET

As of June 16, 2007

(Dollars in millions, except share and per share amounts)

	Historical A&P	Pending Disposition(1)	Historical Pathmark	Pro Forma Adjustments	Note	Pro Forma Combined
ASSETS						
Current assets:						
Cash and cash equivalents	\$ 94.2	\$ 159.9	\$ 31.8	\$ (102.1)	(4)	\$ 183.8
Restricted cash	194.1		0.0	(194.1)	(4)	0.0
Accounts receivable, net	89.2		21.3			110.5
Inventories	314.8	0.8	193.0	6.9	(3)	515.5
Prepaid expenses and other current assets	87.6		92.6	19.4	(8)	199.6
Assets held for sale	164.4	(164.4)	0.0			0.0
Total current assets	944.3	(3.7)	338.7	(269.9)		1,009.4
Non-current assets:						
Property net	785.7	(1.9)	526.2	220.4	(3)	1,530.4
Investment in Metro, Inc.	411.3					411.3
Other assets	166.6	(5.2)	119.2	25.0	(5)	416.5
				63.0	(3)	
				(7.1)	(3)	
				55.0	(8)	
Goodwill	0.0		144.7	(144.7)	(3)	828.0
				828.0	(3)	
Total assets	\$ 2,307.9	\$ (10.8)	\$ 1,128.8	\$ 769.7		\$ 4,195.6

The accompanying notes are an integral part of the
Unaudited Pro Forma Condensed Combined Financial Statements.

	Historical A&P	Pending Disposition(1)	Historical Pathmark	Pro Forma Adjustments	Note	Pro Forma Combined
LIABILITIES & STOCKHOLDERS EQUITY						
Current liabilities:						
Current portion of long-term debt	\$ 0.0		\$ 23.3	\$ (23.3)	(4)	\$ 0.0
Current portion of obligations under capital leases	1.6	(0.2)	10.9			12.3
Accounts payable	181.4		82.6			264.0
Accrued and other liabilities	330.7	28.5	146.0			505.2
Total current liabilities	513.7	28.3	262.8	(23.3)		781.5
Non-current liabilities:						
Long-term debt	254.2		422.9	23.3	(4)	994.2
				780.0	(4)	
				(446.2)	(4)	
				(40.0)	(4)	
Long-term obligations under capital leases	29.5	(0.5)	156.6			185.6
Long-term real estate liabilities	303.0					303.0
Common Stock Warrants	0.0			238.8	(4)	238.8
Other non-current liabilities	648.0	54.6	168.5	16.0	(7)	1,013.4
		14.0		112.3	(8)	
Total liabilities	1,748.4	96.4	1,010.8	660.9		3,516.5
Stockholders equity:						
Common stock	41.9		0.5	(0.5)	(3)	48.6
				6.7	(4)	
Common stock warrants	0.0		69.7	(69.7)	(3)	1.1
				1.1	(4)	
Paid-in capital	222.7		758.2	(758.2)	(3)	443.8
				209.2	(4)	

				11.9	(4)	
Additional other comprehensive income	160.3		(39.5)	39.5	(3)	160.3
Accumulated earnings (deficit)	134.6	(107.2)	(670.9)	670.9	(3)	25.3
				(2.1)	(2)	
Total stockholders equity	559.5	(107.2)	118.0	108.8		679.1
Total liabilities and stockholders equity	\$ 2,307.9	\$ (10.8)	\$ 1,128.8	\$ 769.7		\$ 4,195.6

The accompanying notes are an integral part of the
Unaudited Pro Forma Condensed Combined Financial Statements.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
16 Weeks Ended June 16, 2007

(Dollars in millions, except share and per share amounts)

	Historical A&P	Pending Disposition(1)	Historical PTMK	Pro Forma Adjustments	Note	Pro Forma Combined
Sales	\$ 1,986.9	\$ (307.7)	\$ 999.0			\$ 2,678.2
Cost of merchandise sold	(1,386.6)	230.4	(702.7)			(1,858.9)
Gross margin	600.3	(77.3)	296.3	0.0		819.3
Store operating, general and administrative expenses	(714.5)	185.1	(290.8)	(5.7)	(3)	(829.9)
				(3.8)	(3)	
(Loss) income from operations	(114.2)	107.8	5.5	(9.5)		(10.4)
Loss on sale of Canadian operations	(0.3)					(0.3)
Gain on sale of shares of Metro, Inc.	78.4					78.4
Interest expense	(21.4)	1.7	(15.9)	(15.3)	(5)	(50.9)
Interest and dividend income	4.7		0.0	(3.3)	(5)	1.1
Equity in earnings of Metro, Inc.	7.9			(7.9)	(6)	0.0
Loss from continuing operations before income taxes	(44.9)	109.5	(10.4)	(36.0)		18.2
Benefit from income taxes	18.8	(21.9)	1.9		(8)	(1.2)

(Loss) income from continuing operations after taxes and before nonrecurring charges or credits directly attributable to the transaction	\$	(26.1)	\$	87.6	\$	(8.5)	\$	(36.0)	\$	17
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Per share data:

Income (loss) per share from continuing operations:

Basic	\$	(0.62)			\$	0.3
Diluted	\$	(0.62)			\$	0.3

Weighted average number of shares outstanding:

Basic	41,801,381			48,532,70
Diluted	41,801,381			51,062,42

The accompanying notes are an integral part of the Unaudited Pro Forma Condensed Combined Financial Statements.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
52 Weeks Ended February 24, 2007
(Dollars in millions, except share and per share amounts)

	Revised Historical A&P	Pending Disposition(1)	Pathmark	Pro Forma Adjustments	Note	Pro Forma Combine
Sales	\$ 6,437.7	\$ (1,068.5)	\$ 4,058.0			\$ 9,42
Cost of merchandise sold	(4,480.0)	777.1	(2,875.2)			(6,57
Gross margin	1,957.7	(291.4)	1,182.8			2,84
Store operating, general and administrative expense	(1,997.7)	304.2	(1,149.4)	\$ (18.5)	(3)	(2,87
				(12.6)	(3)	
(Loss) income from operations	(40.0)	12.8	33.4	(31.1)		(2
(Loss) on sale of Canadian operations	(1.3)	0.0				(
Interest expense	(71.3)	5.4	(62.3)	(37.5)	(5)	(16
Interest and dividend income	9.6	(0.6)	0.0	(3.4)	(5)	1
				4.4	(6)	
Equity in earnings of Metro, Inc.	40.0	0.0	0.0	(40.0)	(6)	0
(Loss) income from continuing operations before income taxes	(63.0)	17.6	(28.9)	(107.6)		(18
Benefit from income taxes	67.0	(8.9)	10.6		(8)	6

(Loss) income from continuing operations after taxes and before nonrecurring charges or credits directly attributable to the transaction	\$	4.0	\$	8.7	\$	(18.3)	\$	(107.6)	\$	(11.0)
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Per share data:

Income (loss) per share from continuing operations:										
Basic	\$	0.10					\$	(2.0)		(2.0)
Diluted	\$	0.10					\$	(2.0)		(2.0)
Weighted average number of shares outstanding:										
Basic		41,430,600								48,161,900
Diluted		41,902,358								48,161,900

The accompanying notes are an integral part of the Unaudited Pro Forma Condensed Combined Financial Statements.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
52 Weeks Ended February 25, 2006
(Dollars in millions, except per share amounts)

	Revised Historical A&P	Pending Disposition(1)	Continuing A&P
Sales	\$ 8,345.9	\$ (1,255.9)	\$ 7,090.0
Cost of merchandise sold	(5,943.7)	915.6	(5,028.1)
Gross margin	2,402.2	(340.3)	2,061.9
Store operating, general and administrative expense	(2,708.4)	475.7	(2,232.7)
(Loss) income from operations	(306.2)	135.4	(170.8)
Gain on sale of Canadian operations	912.1	0.0	912.1
Interest expense	(89.7)	5.3	(84.4)
Interest income	13.4	(0.6)	12.8
Minority interest in earnings of consolidated franchises	(1.1)	0.0	(1.1)
Equity in earnings of Metro, Inc.	7.8	0.0	7.8
Income from continuing operations before income taxes	536.3	140.1	676.4
(Provision for) benefit from income taxes	(131.4)	(26.9)	(158.3)
Income from continuing operations after taxes and before nonrecurring charges or credits directly attributable to the transaction	\$ 404.9	\$ 113.2	\$ 518.1
Per share data:			
Income per share from continuing operations:			
Basic	\$ 10.05		\$ 12.86
Diluted	\$ 9.94		\$ 12.72
Weighted average number of shares outstanding:			
Basic	40,301,132		40,301,132
Diluted	40,725,942		40,725,942

The accompanying notes are an integral part of the
Unaudited Pro Forma Condensed Combined Financial Statements.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
52 Weeks Ended February 25, 2005
(Dollars in millions, except per share amounts)

	Revised Historical A&P	Pending Disposition(1)	Continuing A&P
Sales	\$ 10,456.1	\$ (1,532.6)	\$ 8,923.5
Cost of merchandise sold	(7,518.8)	1,133.4	(6,385.4)
Gross margin	2,937.3	(399.2)	2,538.1
Store operating, general and administrative expense	(3,001.1)	486.4	(2,514.7)
(Loss) income from operations	(63.8)	87.2	23.4
Interest expense	(112.0)	4.6	(107.4)
Interest income	2.8	(0.6)	2.2
Minority interest in earnings of consolidated franchises	0.8	0.0	0.8
(Loss) income from continuing operations before income taxes	(172.2)	91.2	(81.0)
Provision for benefit from income taxes	(0.5)	0.0	(0.5)
(Loss) income from continuing operations after taxes and before nonrecurring charges or credits directly attributable to the transaction	\$ (172.7)	\$ 91.2	\$ (81.5)
Per share data:			
Loss per share from continuing operations:			
Basic	\$ (4.48)		\$ (2.11)
Diluted	\$ (4.48)		\$ (2.11)
Weighted average number of shares outstanding:			
Basic	38,558,598		38,558,598
Diluted	38,558,598		38,558,598

The accompanying notes are an integral part of the
Unaudited Pro Forma Condensed Combined Financial Statements.

Notes to Unaudited Pro Forma Condensed Combined Financial Statements
(Dollars in millions)

Note 1 Basis of Presentation

Acquisition

These unaudited pro forma condensed combined financial statements (*pro forma financial statements*) have been prepared based upon historical financial statements of A&P and Pathmark, giving effect to the merger transaction and other related adjustments described in these footnotes. These pro forma financial statements should be read in conjunction with the historical financial statements of A&P and Pathmark incorporated by reference into this prospectus.

These pro forma financial statements and adjustments are based on preliminary internal estimates and assumptions made by management and have been made solely for purposes of developing these pro forma financial statements to aid in the analysis of the impact of the merger to A&P. These pro forma financial statements are not necessarily indicative of the results of operations that would have been achieved had the merger transaction actually taken place at the dates indicated and do not purport to be indicative of future financial position or operating results.

The transaction is subject to regulatory approval and accordingly access to information required to prepare the pro forma financial statements has been limited. The actual results reported by the combined company in periods following the merger may differ materially from that reflected in these pro forma financial statements for a number of reasons. The purchase price may differ depending on the actual amount of Pathmark debt and equity outstanding at the closing date, the actual assets acquired after potential required regulatory disposals, the quoted market price of A&P and Pathmark common stock on the closing date, and the value of Pathmark common stock options on the closing date.

The allocation of the purchase price and its impact on the Statement of Operations may differ depending on the final fair values assigned to amortizing assets and liabilities and their related actual remaining useful lives; including the following categories of intangible assets and liabilities:

Favorable/unfavorable
leases

Favorable/unfavorable
contracts

Benefit plan
obligations

Pharmacy Scripts

Customer
Relationships

The allocation of the purchase price to assets which will not be amortized may also impact classification on the Balance Sheet depending on the final fair values assigned; including the following categories of intangible assets:

Trade
Name

Goodwill

The Unaudited Pro Forma Condensed Combined Balance Sheet was prepared using the unaudited historical consolidated financial statements of A&P and Pathmark as of June 16, 2007 and May 5, 2007, respectively. The pro forma adjustments give effect to the merger as if it occurred on June 16, 2007.

The Unaudited Pro Forma Condensed Combined Statement of Operations for the 52-week fiscal year ended February 24, 2007 was prepared using the audited revised historical consolidated statements of operations of A&P and Pathmark for the 52 weeks ended February 24, 2007 and the 53 weeks ended February 3, 2007, respectively. The audited historical consolidated statements of operations of A&P were revised to reflect the Greater New Orleans operations as discontinued operations. The Unaudited Pro Forma Condensed Combined Statements of Operations for the 16-week period ended June 16, 2007 was prepared using the historical consolidated statements of operations of A&P and Pathmark for the 16 weeks ended June 16, 2007 and the 13 weeks ended

May 5, 2007, respectively. The Unaudited Pro Forma Condensed Combined Statement of Operations for the fiscal year ended February 24, 2007 and for the period ended June 16, 2007 give effect to the acquisition as if the acquisition occurred on the first day of the period presented (i.e., February 26, 2006 and February 25, 2007 respectively).

Pending Disposition of Assets

Greater New Orleans

As of June 16, 2007 A&P classifies its assets in the Greater New Orleans area as *Assets held for sale* on its Form 10-Q Consolidated Balance Sheet. A&P has received signed binding asset purchase or termination agreements for all the locations in the Greater New Orleans area. Therefore, the pro forma Balance Sheet has been adjusted in the *Pending Disposition* column to reflect the estimated impact of the this disposition as if it had occurred on June 16, 2007. A&P has reclassified these operations as discontinued for all periods presented, pursuant to SFAS 144 on its Consolidated Statements of Operations. Therefore, A&P's historical Consolidated Statements of Operations for fiscal years 2006, 2005 and 2004 have been revised in the column *Revised Historical A&P* column of the pro forma financial statements to exclude these discontinued operations.

The Greater New Orleans area consists of 21 stores, all operating as of June 16, 2007. In addition, 20 stores were operating under an operating lease and one store was operating under a capital lease.

Midwest

On April 24, 2007, A&P announced it was in negotiations for the sale of its stores, including inventory, within the Midwest. The Unaudited Consolidated Balance Sheet of A&P as of June 16, 2007 separately classified the Midwest assets that qualified for *Assets held for sale* treatment. These assets were written down to fair value less cost to sell. Sale transactions for a majority of these stores have been completed, with final negotiations pending on several additional locations. The pro forma Balance Sheet has been adjusted in the *Pending Disposition* column to reflect the estimated impact of the disposition. Further, A&P ceased sales operations at the unsold stores as of July 7, 2007. These operations (stores to be sold and those considered *abandoned*) will be recorded as discontinued operations in A&P's second quarter and therefore the historical Consolidated Statements of Operations have not been revised to reflect discontinued operations classification for the Midwest. The impact of this disposition is reflected separately in the pro forma Statement of Operations in the *Pending Disposition* column.

The Midwest operations consist of 66 stores and two warehouses, all operating as of June 16, 2007. Of these, 63 stores and one warehouse were operating under an operating lease and three stores and one warehouse were operating under a capital lease.

A&P has assigned 28 of the operating leases and one of the capital leases for stores to third parties, terminated two operating leases and two capital leases for stores, entered into assignment agreements for four stores with third parties such that A&P agreed to pay 50% of the annual rent through the expiration date of the original lease, and entered into sublease agreements for three stores with third parties such that A&P agreed to pay 50% of the annual rent through the expiration date of the original lease. At the time leases were assigned, A&P generally remained secondarily liable with respect to these lease obligations. As such, if any of the assignees were to become unable to continue making payments under an Assigned Lease, A&P could be required to assume the lease obligation. A&P believes the likelihood of occurrence of this circumstance to be remote.

In addition, A&P has sold the assets of these stores as further described in *Property net*. Additional negotiations are expected to continue for the remaining 26 stores and two warehouses.

Pro forma adjustments to balance sheet

The pro forma adjustments to the Consolidated Balance Sheet include the following adjustments as it relates to these dispositions:

Cash and cash equivalents A&P has received net proceeds totaling \$85.1 million for sales of inventory and property. These pro forma financial statements assume additional proceeds of \$74.8 million will be received for sales of the remaining inventory in warehouses and property at closed and open locations. These total proceeds of \$159.9 million are assumed to be available to partially fund the Pathmark acquisition and ongoing operations.

Inventories A&P has received proceeds, including refunds from returns, of \$33.1 million and expects to receive additional proceeds net of disposal costs of \$27.4 million on the disposal of store inventory with a net cost of \$65.8 million, resulting in additional impairment in the second quarter of A&P's fiscal 2007 of \$5.3 million. In addition, stock losses of \$0.9 million are expected for inventory items that are not saleable.

Other Assets A&P had liquor licenses with a net book value of approximately \$1.4 million as of June 16, 2007 which were considered in the evaluation of the impairment as discussed in *Property-net*. While additional proceeds may be received for the individual sale of these licenses, proceeds are expected to be *de minimis* and the asset will be written off in the second quarter. See also the discussion below at *Closed Stores and Closed Warehouse Reserves*. In addition, A&P wrote off \$0.4 million in sub-tenant receivables for terminated subleases.

Property net A&P has received proceeds of \$52.0 million and expects to receive additional proceeds net of disposal costs of \$47.4 million on the disposal of property with a net book value of \$103.6 million (\$98.8 million of property, net, \$1.4 million of liquor licenses and \$3.4 million in other assets), resulting in additional impairment in the second quarter of \$4.2 million. These disposed assets included property under capital leases with obligations under capital lease totaling \$1.4 million that were terminated.

Pension Withdrawal In connection with the shutdown of these operations, A&P estimates it will record \$14.0 million for pension withdrawal in addition to the \$43.0 million already included in A&P's first quarter Balance Sheet.

Closed Store and Closed Warehouse Reserves In connection with the shutdown of these operations, A&P estimates that it will record a discounted liability using a risk free rate for the future minimum lease payments and related costs, such as utilities and taxes, from the date of closure to the end of the remaining lease term, net of estimated probable recoveries from projected sublease rentals of approximately \$76.5 million in the second quarter of fiscal 2007 and \$6.6 million in the remainder of fiscal 2007 (\$28.5 million in Accrued and other liabilities and \$54.6 million in Other Non-current liabilities) for closed stores and warehouses not disposed. A&P estimates future net cash flows based on its experience in and its knowledge of the market in which the closed stores and warehouses are located. However, these estimates project net cash flow several years into the future and are affected by variable factors such as inflation, real estate markets and economic conditions. While these factors have been relatively stable in recent years, variation in these factors could cause changes to A&P's estimates. As part of the adjustment for closed locations, A&P will write off a landlord subsidy of \$3.4 million that was recorded in Other Assets and being amortized through rent expense and interest income over the life of the lease. This adjustment was considered in the impairment discussed in *Property net*.

Note 2 Purchase Price

The purchase price allocation included in these pro forma financial statements is preliminary and is based on information that was available to management of A&P and Pathmark at the time these pro forma financial statements were prepared. Accordingly, the purchase price allocation will change and the impact of such changes could be material.

The merger agreement provides that each share of Pathmark common stock outstanding will be converted into the right to receive 0.12963 shares of A&P common stock (together with cash in lieu of fractional shares) and \$9.00 in cash.

A&P will assume the obligations of Pathmark in the 2000 Warrant Agreement such that the warrant holders under the 2000 Warrant Agreement shall have the right to purchase 0.12963 A&P common stock and receive \$9.00 per share upon receipt of the \$22.31 exercise price. The value of these warrants calculated using the Black-Scholes method is \$0.20 per warrant. See Treatment of Pathmark Stock Options, Warrants and Other Equity Based Awards.

For Pathmark stock options either (i) granted prior to June 9, 2005 that have exercise prices less than the fair market value of the underlying stock (where consents are not obtained) or (ii) granted prior to June 9, 2005 that have exercise prices greater than or equal to the fair market value of the underlying stock, A&P will issue A&P stock options in lieu of cash equal to (A) the number of shares of Pathmark common stock equal to the product of (I) the number of shares of Pathmark common stock such holder could have purchased had such holder exercised such stock option in full immediately prior to the closing date of the merger and (II) the Option Exchange Ratio at (B) a price per share equal to (I) the exercise price per share of such stock option divided by (II) the Option Exchange Ratio, where the Option Exchange Ratio means the quotient of (x) the Pathmark Closing Price and (y) \$27.00. (It is assumed for purposes of these pro forma financial statements that such consents will be obtained with respect to options granted prior to June 9, 2005 that have exercise prices less than the fair market value of the underlying stock.) For purposes of these pro forma financial statements the A&P stock options issued have a fair value in excess of the exchanged Pathmark stock options of approximately \$2.1 million which is recognized as compensation expense for purposes of these pro forma financial statements in the Accumulated earnings (deficit) line of the Unaudited Pro Forma Condensed Combined Balance Sheet. (This charge is not reflected in the Unaudited Pro Forma Condensed Combined Statement of Operations.) For further details on the treatment of Pathmark stock options, warrants and other equity-based award refer to page 106. See Note 4 Financing for additional information.

Each Pathmark restricted common stock unit or restricted share outstanding will be converted into cash equal to the product of (A) the number of shares of Pathmark common stock subject to award immediately prior the closing date and (B) the Pathmark Closing Price. Each Pathmark outstanding option granted on or after June 9, 2005 and each option granted prior to June 9, 2005 to the extent consents are obtained will be converted into cash equal to the product of (A) the number of shares of Pathmark common stock such holder could have purchased had such holder exercised such stock option in full immediately prior the closing date and (B) the excess, if any, of (I) the per share closing price of Pathmark common stock, as such price is quoted on the day immediately prior to the closing date of the merger over (II) the exercise price per share of such stock option. Any stock options, other than Pre-Amendment Options, with exercise prices equal to or greater than the Pathmark Closing Price will be canceled for no consideration; however, there are currently no such stock options. See Note 4 Financing for additional information.

Additionally, A&P will issue roll-over stock warrants to the Yucaipa Investors under a formula whereby each Pathmark warrant will be converted into the right to receive 0.46296 A&P warrants (together with cash in lieu of fractional shares) at an exercise price equal to their existing exercise prices divided by 0.46296. Settlement of these warrants is subject to the Tengemann Stockholder Agreement, which causes these instruments to be accounted for as a liability that is adjusted to market at each balance sheet date. For further details, see Yucaipa Warrant Agreement beginning on page 171. See Note 4 Financing for additional information.

A&P used a market price of \$32.08 for A&P shares, the average quoted market price of A&P common stock for two trading days before and two trading days after the merger was announced, when calculating the value of the A&P common stock that will be issued in this transaction and the value of warrants under the 2000 Warrant Agreement that will be assumed.

A&P used a market price of \$13.12 for Pathmark shares when estimating the amount of cash that would be paid to buy out Pathmark options, restricted stock and restricted stock unit holders and to calculate the value of roll-over options in accordance with the requirements stated below. This was the quoted closing market price of Pathmark common stock on June 15, 2007, the last trading day before A&P's quarter end. The actual market price of Pathmark shares that will be used to calculate the cash payout and the option exchange ratio will be the quoted closing price on the

closing date. The actual market price that will be used to calculate the value of roll-over options using the Black-Scholes valuation model will be the average quoted closing price for the two days prior to the closing date and the closing date. An increase in the quoted closing market price of Pathmark common stock of 10% would result in an additional 1,349,965 options being considered in-the-money and also require an additional \$6.8 million in cash being paid to Pathmark option holders and also cause the value of out-of-the-money options to decrease by \$5.4 million for a net increase in purchase price of \$1.4 million attributable to Pathmark options. A decrease in the quoted closing market price of Pathmark common stock of 10% would result in a decrease of 437,920 options being considered in-the-money and require \$6.2 million less cash paid to Pathmark option holders and also cause the value of out-of-the-money options to increase \$0.9 million for a net decrease in purchase price of \$5.3 million attributable to Pathmark options. Following are Black-Scholes values used for each of the roll-over stock options that had an exercise price exceeding market price of the Pathmark common stock as of June 15, 2007:

Option Tranche	Black-Scholes Value per Option
10/25/2000	\$ 4.58
3/29/2001	\$ 4.32
10/4/2001	\$ 3.99
6/13/2002	\$ 0.00

A change in the quoted closing market price of Pathmark common stock of 10% also would result in a change in cash paid to Pathmark restricted stock holders and Pathmark restricted unit holders of \$0.6 million and \$0.6 million, respectively.

A&P used a market price of \$34.83 for A&P shares when calculating the value of warrants under the Yucaipa Warrant Agreement that will be assumed. This was the quoted closing price of A&P common stock on June 15, 2007, the last trading day before A&P's quarter end. The actual market price of A&P shares that will be used to calculate the value of the obligation will be the quoted closing price on the closing date. An increase or decrease in the quoted closing market price of A&P common stock of 10% would result in a change in the obligation to Yucaipa warrant holders of approximately \$37.1 million and \$36.7 million, respectively.

Overall, a change of 10% in the market price of Pathmark and A&P stock would result in the following impact to the purchase price:

Security	10% Increase	10% Decrease
Pathmark Options	\$ 1.4	\$ (5.3)
Restricted stock	0.6	(0.6)
Restricted stock units	0.6	(0.6)
Yucaipa warrants	\$ 37.1	\$ (36.7)
Total change in purchase price	\$ 39.7	\$ (43.2)

Purchase price paid as:

Equity issued to Pathmark common stockholders	\$ 215.9
Issuance to Pathmark option holders	9.8

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Issuance to Pathmark 2005 warrant holders	238.8
Issuance to Pathmark 2000 warrant holders	1.1
Total equity consideration	465.6
Cash paid to redeem Pathmark debt	463.2
Cash paid to Pathmark common stockholders at \$9/share	467.3
Cash paid to Pathmark option, restricted stock and restricted stock unit holders	28.7
Cash paid for estimated transaction fees (excluding financing fees)	52.0
Total cash consideration	1,011.2
Total consideration	\$ 1,476.8

Note 3 Purchase Price Allocation

Under the purchase method of accounting, the aggregate consideration paid is allocated to the tangible and identifiable intangible assets acquired and liabilities assumed on the basis of their fair values on the transaction date. Because the transaction is still under regulatory review, access to the information required by management to value the assets and liabilities to be acquired has been limited. Therefore, these pro forma financial statements presume that the historical value of Pathmark's tangible assets and liabilities approximates fair value. The actual values assigned may change significantly after a valuation is made. The allocation of the purchase price and its impact on the Statement of Operations may differ depending on the final fair values assigned to amortizing assets and liabilities and their related actual remaining useful lives; including the following categories of intangible assets and liabilities:

Favorable/unfavorable
leases

Favorable/unfavorable
contracts

Benefit plan
obligations

Pharmacy Scripts

Customer
Relationships

The allocation of the purchase price to assets which will not be amortized may also impact classification on the Balance Sheet depending on the final fair values assigned; including the following categories of intangible assets:

Trade
Name

Goodwill

Pro forma adjustments are based on A&P management's preliminary internal estimates of fair values and eliminate the historical Pathmark Stockholders' equity accounts.

A&P management based the preliminary allocation of purchase price to favorable leases and certain owned property of approximately \$149.0 million and \$71.4 million, respectively, on a valuation performed on properties owned and under lease by Pathmark in 2004. It is assumed for purposes of these pro forma financial statements that the value of these properties and the specific properties valued in 2004 have not changed substantially from that date to the date these unaudited pro forma financial statements were prepared; however, A&P plans to obtain updated valuations for properties acquired at the merger closing date. Management will amortize the favorable leases over the remaining useful life of the original lease or the remaining useful life of the original lease plus one renewal option, depending on the probability of renewal at the closing date of the transaction. Management assumes the average estimated useful life is ten years and twenty years, respectively, for the favorable leases and owned property for purposes of calculating annual amortization expense of approximately \$18.5 million and \$5.7 million for the fiscal year 2006 and the first quarter fiscal 2007, respectively for these pro forma financial statements. This amount will change depending on the final valuations and actual useful lives of properties purchased. A change in the fair value assigned to favorable leases and owned property of \$1 million would result in a change in annual amortization expense of approximately \$0.1 and \$0.05 million, respectively.

A&P preliminarily estimates the increase in fair value of Inventories to be approximately \$6.9 million.

A&P preliminarily estimates the value of Pharmacy Scripts acquired to be approximately \$63.0 million with an estimated useful life of five years resulting in incremental estimated amortization expense of \$12.6 million and \$3.8 million for the fiscal year 2006 and the first quarter fiscal 2007, respectively, for the pro forma financial statements.

A&P management expects that a portion of the purchase price may be allocated to favorable and unfavorable contracts other than leases; however, management is not able to estimate the value of these contracts at this time. The value of any such contracts will be amortized over the estimated useful life of the contracts which will be determined at the time the valuation is made. Adjustments to reflect the value of benefit plan obligations will be determined upon the closing of the merger

and final valuations; therefore no adjustments have been made to the pro forma financial statements. A&P management also believes that a significant amount of the purchase price will be allocated to Customer Relationships and Trade Name; however, management does not have any indication of the value of these assets at this time or any other intangible assets that may be identified during the valuation process and therefore no adjustments have been made to the pro forma financial statements. Customer Relationships values will be amortized over the estimated useful life of the asset, which will be determined at the time the valuation is made. A&P intends to continue use of the Pathmark Trade Name indefinitely and therefore this asset will not be amortized.

The excess of the purchase price over the fair value of assets (tangible and intangible) and liabilities acquired will be allocated to Goodwill, which is not amortized. The amount of Goodwill assumed in these pro forma financial statements will change depending on the fair values allocated to the tangible and intangible assets and liabilities acquired.

These preliminary adjustments are subject to the final outcome of independent analyses to be conducted after the completion of the merger. The final valuation and amounts recorded will be based on (i) the actual net tangible and intangible assets assumed of Pathmark that exist as of the completion of the merger and (ii) certain valuations and other studies performed with the assistance of outside valuation specialists after the completion of the merger and may differ materially from the information presented in these pro forma financial statements.

Reconciliation of historical book value of Pathmark net assets acquired	
Historical book value of Pathmark net assets	\$ 118.0
Less:	
Goodwill	(144.7)
Deferred Financing Fees	(7.1)
Historical book value of Pathmark net assets acquired	(33.8)
Conforming accounting policy for insurance reserves (see Note 7)	(16.0)
Fair value of leased and owned property	220.4
Fair value of Pharmacy Scripts	63.0
Step-up in value of Inventory	6.9
Deferred tax assets	74.4
Deferred tax liability	(112.3)
Goodwill	828.0
Debt to be refinanced	
Current portion of long-term debt	23.3
Long-term debt	422.9
Total allocation of consideration	\$ 1,476.8

Note 4 Financing

These pro forma financial statements reflect A&P management's best estimate of the amounts of financing at the time these pro forma financial statements were prepared. The actual amounts of financing will not be determined until shortly before the closing date of the merger. These pro forma financial statements assume:

Restricted Cash

A&P will utilize its Revolving Credit Agreement to collateralize letters of credit thereby enabling A&P to fund a portion of the acquisition with the previously restricted cash of \$194.1 million, at June 16, 2007.

Debt

A&P has received \$780.0 million in commitments from financial institutions to finance this acquisition and expects to issue new eight-year long-term notes. In addition, A&P has a \$615.0 million commitment for a Revolving Credit Agreement.

Proceeds will be used to pay down the outstanding Pathmark debt (\$446.2 million at May 5, 2007 comprised of current and noncurrent debt of \$23.3 million and \$422.9 million, respectively, and a \$17.0 million premium to fund the tender offer for the Pathmark senior subordinated notes) concurrent with the consummation of the merger transaction; pay down the existing A&P Revolving Credit Agreement for \$40.0 million; and fund the cash portion of the merger consideration. The accompanying pro forma financial statements assume that all of Pathmark's senior subordinated notes outstanding have been tendered. However, in the event that not all of the notes are tendered, A&P will record, as of the acquisition date, the fair value of the obligation for the remaining outstanding notes pursuant to SFAS 141 Business Combinations.

A&P estimates the future maturities of long-term debt on a pro forma basis as follows:

	Total	Less than			Thereafter
		1 Yr	1-3 Yrs	4-5 Yrs	
9.375% Notes, due August 1, 2039	\$ 200.0				200.0
New Senior Secured Notes due 2015 (assumed 10.5%)	780.0				780.0
9.125% Notes due December 15, 2011	12.9			12.9	
Mortgages & Other	1.3	0.0	0.6	0.4	0.3
	\$ 994.2	0.0	0.6	13.3	980.3

The actual amount of debt to be issued depends on the final balances of the Pathmark notes at the closing date of the merger, the amount of notes not tendered, the amount of pre-June 9, 2005 stock options not surrendered, the actual Pathmark Closing Price at the date immediately prior to the closing date of the merger, the number of options, shares of restricted stock, and restricted stock units outstanding, and the number of fractional shares purchased for cash.

A&P expects to issue 11,623,236 roll-over warrants in exchange for Pathmark's 2005 warrants under the Yucaipa Warrant Agreement in the transaction. The number of warrants to be issued was computed based on the number of Pathmark warrants outstanding on May 5, 2007 totaling approximately 25,106,350. Settlement of these warrants is subject to the Tengelmann Stockholder Agreement which causes these instruments to be accounted for as a liability that is adjusted to market at each balance sheet date. These warrants are valued using the price of A&P common stock of \$34.83 per common share, the quoted market price of A&P common stock on June 15, 2007, the last trading day before A&P's quarter end. The actual market price of A&P shares will be used to calculate the final purchase price as well as the fair value of the obligation will be the quoted closing price on the closing date. Upon consummation of the merger, the warrant liability will be marked to market at each reporting period. See Note 2 Purchase Price for additional information.

Equity

A&P expects to issue 6,731,327 shares of A&P common stock to Pathmark common stockholders in the transaction. The number of shares to be issued was computed based on the number of shares of unrestricted Pathmark common stock outstanding on May 5, 2007 of 51,927,381. For purposes of computing the purchase price, the price of A&P common stock used is \$32.08 per common share, the average quoted market price of A&P common stock for two trading days before and two trading days after the merger was announced. See Note 2 Purchase Price for additional information.

A&P expects to issue 1,087,118 roll-over stock options in exchange for options granted prior to June 9, 2005 that have exercise prices greater than or equal to the fair market value of the underlying stock at the closing date of the merger

calculated using a ratio of the quoted closing market price for the Pathmark common stock on the merger closing date. (It is assumed for purposes of these pro forma financial statements that such consents will be obtained with respect to options granted prior to June 9, 2005 that have exercise prices less than the fair market value of the underlying stock.) The number of options to be issued was computed based on the number of shares underlying such options as of May 5, 2007 of 2,237,210. For purposes of computing the purchase price, the options are valued using a Black-Scholes valuation model and a market price of \$13.12,

the quoted closing market price of Pathmark common stock on June 15, 2007, the last trading day before the balance sheet date. The actual market price of Pathmark shares that will be used to calculate the option exchange ratio will be the quoted closing price on the closing date. The actual market price that will be used to calculate the value of roll-over options using the Black-Scholes valuation model will be the average quoted closing price for the two days prior to the closing date and the closing date. See Note 2 Purchase Price for additional information.

A&P will assume the 5,294,118 outstanding Pathmark 2000 warrants. Upon exercise each warrant will entitle the holder to receive 0.12963 shares of A&P common stock and \$9.00 in cash. For purposes of computing the purchase price, the 2000 Warrants are valued using a Black-Scholes valuation model using the price of A&P common stock of \$32.08 per common share, the average quoted market price of A&P common stock for two trading days before and two trading days after the merger was announced. See Note 2 Purchase Price for additional information.

Source & Use of Funds

Source of Funds

A&P Restricted cash		\$	194.1
New Senior Secured Notes		\$	780.0
Disposition proceeds			102.1
Issuance of 11.6 million A&P warrants to Pathmark 2005 warrant holders			238.8
Issuance of 5.3 million A&P warrants to Pathmark 2000 warrant holders			1.1
Issuance of 1.1 million A&P stock options to Pathmark option holders			11.9
Issuance of 6.7 million common shares of A&P at \$1.00 par value			215.9
Total Source of Funds		\$	1,543.9

Use of Funds

Purchase of Pathmark common shares			
Cash consideration at \$9.00 per share	\$	467.3	
Equity consideration		215.9	683.2
Purchase of Pathmark Options, Restricted Stock and RSUs			28.7
Exchange of Pathmark warrants			
Issuance of 11.6 million A&P warrants to Pathmark 2005 warrant holders		238.8	
Issuance of 5.3 million A&P warrants to Pathmark 2000 warrant holders		1.1	239.9
Exchange of Pathmark options			
Issuance of 1.1 million A&P stock options to Pathmark option holders			11.9
Pathmark Debt			463.2
Repay borrowings under former A&P Revolving Credit Agreement			40.0
Transaction Costs (including financing fees)			77.0
Total Use of Funds		\$	1,543.9

Note 5 Interest Expense and Income

A&P estimates that it will incur approximately \$25 million in financing fees (\$22 million for new notes and \$3 million for a new Revolving Credit Agreement) which will be capitalized in Other assets. For purposes of these pro forma financial statements, A&P has assumed that eight-year fixed rate notes will be issued at a rate of 10.5%, based on current indications of interest rates. The revolver will be at variable rates, assumed to be 7.3% and outstanding for a five-year period. The actual terms have not been finalized and may include variable rates and differing lives than assumed herein. Using these assumptions, incremental estimated interest expense is \$37.5 million and \$15.3 million for the fiscal year 2006 and first quarter fiscal 2007, respectively, as calculated below. Further, these pro forma financial statements reflect a reduction in interest income of \$3.4 million and is \$3.3 million for the fiscal year 2006 and first quarter fiscal 2007, respectively, due to the use of the restricted cash to fund a portion of the acquisition and collateralizing letters of credit with A&P's Revolving Credit Agreement. A change of 1/8% in the interest rate would result in an

annual change in interest expense and net loss of \$0.9 million and \$0.3 million for the fiscal year 2006 and first quarter fiscal 2007, respectively.

Incremental Interest Expense Adjustment	Annual Amount	1st Quarter
New Senior Secured Notes due 2015	\$ 81.9	\$ 25.2
Less interest expense on Pathmark repaid debt	\$ (36.6)	\$ (9.1)
Less interest expense on repaid debt from disposition proceeds	\$ (11.3)	\$ (3.6)
Incremental Revolver interest	\$ (0.1)	\$ 1.6
Incremental accretion for insurance reserves	\$ 1.7	\$ 0.5
Net incremental deferred financing fees	\$ 1.9	\$ 0.7
Total	\$ 37.5	\$ 15.3

Note 6 Investment in Metro

A&P sold approximately 35% of its investment in Metro on March 13, 2007 for approximately \$203.5 million and placed \$190.0 million of the proceeds in a blocked account to fund a portion of the merger consideration. The sale of these shares resulted in A&P's diminished influence over Metro such that the accounting treatment for this investment changed from the equity method to an available-for-sale investment pursuant to FAS 115, *Accounting for Certain Investments in Debt and Equity Securities* and requires an adjustment to the Investment in Metro, Inc. to the market price at each balance sheet date through Additional other comprehensive income.

For purposes of the Unaudited Pro Forma Condensed Combined Statement of Operations, A&P assumed the sale of shares occurred at the beginning of the year and has eliminated the equity income from this investment and recorded dividend income of approximately \$4.4 million for fiscal 2006 (as prescribed by the cost method of accounting in APB 18, *The Equity Method of Accounting for Investments in Common Stock*) which is equivalent to approximately 65% of the dividend proceeds received by A&P during fiscal year 2006. A&P has eliminated the equity income from its first quarter historical Form 10-Q. Dividend income is appropriately reflected.

Note 7 Conforming Accounting Methods

Based on A&P's preliminary review of Pathmark's significant accounting policies, A&P estimates recording an additional \$16.0 million for self-insurance reserves to conform Pathmark accounting policies to those of A&P which will be recorded through the purchase price allocation (see Note 3 Purchase Price Allocation). The difference in policy is attributable to A&P including expected legal fees in the calculation of the expected obligation. A&P does not expect this adjustment to have a significant impact on annual expense incurred. This amount could change based upon final valuation of the reserve.

Any additional adjustments are not expected to be significant. Upon consummation of the merger, further review of Pathmark's accounting policies may result in required revisions to Pathmark's policies to conform to A&P.

Note 8 Income Tax Effect

As a result of the merger, A&P calculated additional net deferred tax liabilities of approximately \$112.3 million calculated as the sum of the net adjustments to the balance sheet of \$267.4 (\$220.4 million increase in assets for property and \$63.0 increase in assets for Pharmacy Scripts less \$16 million increase in liability for self insurance

reserve) multiplied by A&P's effective tax rate of 42%. Prior to the merger, A&P maintained a valuation allowance of approximately \$74.4 million on its net deferred tax assets (\$19.4 million classified against current assets and \$55.0 million classified against noncurrent assets). Because the pro forma combined company would have a net deferred tax liability, A&P's valuation allowance would be released as part of the purchase price allocation.

Note 9 Cost Savings

These pro forma financial statements do not include any adjustments for any cost or other operating synergies that may result from the merger. A&P expects the transaction to generate significant synergies by the second year following the closing of the merger. Cost synergy opportunities in cost of goods and administration are expected to be achieved through increased scale, contract terminations, and the elimination of the overlap between the two companies. See Adoption of the Merger Agreement (Pathmark Proposal 1).

These pro forma financial statements do not include any adjustments resulting from integration planning or other nonrecurring charges resulting from the merger. The substantial majority of nonrecurring charges resulting from the merger will be comprised of employee termination costs and other exit costs related to the Pathmark business that are expected to be recognized in the opening balance sheet in accordance with EITF Issue No. 95-3, *Recognition of Liabilities in Connection with a Purchase Business Combination*. Other merger-related charges may be incurred that do not meet the criteria in EITF Issue No. 95-3, including employee termination and exit costs related to the A&P business, other integration-related costs, and the impacts of potential divestitures, if any, that may be required by governmental authorities. A&P and Pathmark have just recently begun collecting information in order to formulate the detailed integration plans to deliver planned synergies. At this time, however, the status of the integration plans and the merger-related costs are too uncertain to include in these pro forma financial statements. A&P, however, estimates costs incurred to restructure the combined organization to be approximately \$115.0 million to be incurred over the first eighteen months after the closing of the merger. This amount is comprised of \$30.0 million in capital costs mainly relating to Information System conversions and \$85.0 million of expenses related to severance, contract terminations, and other integration related expenses.

Note 10 Unaudited Pro Forma Combined Earnings Per Common Share

Unaudited pro forma combined earnings per common share are computed in accordance with SFAS No. 128, *Earnings Per Share*. Pro forma combined basic earnings per share of A&P common stock is computed by dividing: (i) pro forma combined net earnings by (ii) the weighted average number of shares of A&P common stock outstanding during the period as if the merger had occurred on the first day of the period presented, which are referred to as the basic shares.

The average number of shares of Pathmark common stock outstanding have been adjusted to reflect the impact of the merger by applying the exchange ratios to amounts historically reported by Pathmark.

Weighted average pro forma combined number of common shares:

	Fiscal 2006*	Q1 Fiscal 2007
A&P weighted average common shares, basic	41,430,600	41,801,381
Pathmark equivalent weighted average number of common shares outstanding of A&P	6,731,327	6,731,327
Total combined companies weighted average number of common shares outstanding, basic	48,161,927	48,532,708
A&P common stock equivalents		458,456
Pathmark equivalent roll-over warrants convertible to common shares outstanding of A&P		2,071,263

Total combined companies weighted average number of common shares outstanding, diluted	48,161,927	51,062,427
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* Because the Unaudited Pro Forma Condensed Combined Statement of Operations for fiscal 2006 presents a net loss, diluted earnings per share are presented as equivalent to basic earnings per share.

COMPARISON OF STOCKHOLDERS RIGHTS

The rights of A&P stockholders are currently governed by the Maryland General Corporation Law (the *MGCL*) and the Articles of Restatement of the Certificate of Incorporation, as amended, and the By-Laws of A&P, which we refer to as the charter and bylaws of A&P, respectively. The rights of Pathmark stockholders are currently governed by the DGCL and the Amended and Restated Certificate of Incorporation and the Amended and Restated By-Laws of Pathmark, which we refer to as the certificate of incorporation and bylaws of Pathmark, respectively.

This section of the joint proxy statement/prospectus describes the material differences between the rights of A&P's stockholders and Pathmark's stockholders.

This section does not include a complete description of all differences among the rights of A&P's stockholders and Pathmark's stockholders, nor does it include a complete description of the specific rights of these stockholders. Furthermore, the identification of some of the differences in the rights of these stockholders as material is not intended to indicate that other differences that may be equally important do not exist.

You are urged to read carefully the relevant provisions of the MGCL and the DGCL, as well as the charter and bylaws of A&P and the certificate of incorporation and bylaws of Pathmark. Copies of the charter and bylaws of A&P and the certificate of incorporation and bylaws of Pathmark are filed as exhibits to the reports of A&P and Pathmark incorporated by reference into this joint proxy statement/prospectus. See [Where You Can Find More Information](#).

Under the Tengelmann Stockholder Agreement, and the related bylaw amendments authorized by the A&P board of directors in connection with such agreement, the rights of A&P stockholders set forth below will be altered as provided in both the Tengelmann Stockholder Agreement and bylaw amendments. See [Adoption of the Merger Agreement \(Pathmark Proposal 1\) Tengelmann Stockholder Agreement](#).

Capitalization

A&P

The authorized capital stock of A&P currently consists of 80,000,000 shares of common stock, par value \$1.00 per share, and 3,000,000 shares of preferred stock without par value. All of the A&P preferred shares are available for future issuance in one or more series to be designated by the board of directors.

The preferred stock may be issued from time to time, in one or more series as authorized by the board of directors. Prior to issuance of shares of each series, the board of directors is required by the MGCL and the charter to file articles supplementary containing a description of the stock, including preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, terms and conditions of redemption, and other rights as set or changed by the board of directors and a statement that the stock has been classified or reclassified by the board of directors under the authority contained in the charter. The rights of preferred stockholders may supersede

Pathmark

The authorized capital stock of Pathmark currently consists of 100,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of preferred stock, par value \$0.01 per share. All of the Pathmark preferred shares are available for future issuance in one or more series to be designated by the board of directors.

The preferred stock may be issued from time to time, in one or more classes or series, as expressly authorized by the board of directors. Pathmark's certificate of incorporation authorizes the board of directors, without further stockholder action, to issue the preferred stock, in one or more classes or series, and determine by resolution the voting powers (if any) and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof. The rights of preferred stockholders may supersede the rights of common

the rights of common stockholders.

stockholders.

Voting Rights of Stockholders

A&P

Each outstanding share of A&P common stock is entitled to one vote on each matter submitted to a vote at a meeting of the stockholders, including the election of directors. Currently, there are no shares of any class outstanding other than common stock.

Pathmark

Each outstanding share of Pathmark common stock is entitled to one vote on all matters submitted to a vote of stockholders, including the election of directors. Currently, there are no classes of shares outstanding other than common stock.

Preemptive Rights

A&P

The holders of A&P common stock do not have preemptive rights to subscribe for and to purchase additional shares of stock of any class or classes of A&P.

Pathmark

The holders of common stock do not have preemptive rights to subscribe for and to purchase additional shares of stock of any class or classes of Pathmark.

Reverse Stock Splits

A&P

The MGCL permits the board of directors of a corporation with a class of securities registered under the Exchange Act, subject to any restriction in its charter, without stockholder action, to effect a reverse stock split resulting in a combination of shares at a ratio of not more than ten shares into one share in any twelve-month period. A reverse stock split is defined as a combination of outstanding shares of stock of a corporation into a lesser number of shares of stock of the same class without any change in the aggregate amount of stated capital of the corporation, except for a change resulting from an elimination of fractional shares. The A&P charter does not restrict such reverse stock splits.

Pathmark

Under the DGCL, a corporation may amend its certificate of incorporation to effect a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of the stock or rights of stockholders.

Size of the Board of Directors

A&P

Under the MGCL, a Maryland corporation must have a board of directors consisting of at least one director. The A&P charter provides that the A&P board of directors is to consist of twenty directors, which number of directors may be increased or decreased as provided in the bylaws. The A&P charter and bylaws provide that the number of directors must not be less than three. Pursuant to the bylaws, the board of directors may fix the number of directors from time to time by resolution of the board of directors. Currently, the number of members of the A&P board of directors is eight.

Pathmark

Under the DGCL, except in certain circumstances, such as a close corporation, a corporation must have a board of directors consisting of at least one director. The Pathmark certificate of incorporation provides that the board of directors is to be established in the manner provided in the bylaws. The Pathmark bylaws provide that the number of directors must not be less than nine or more than ten.

Pursuant to the bylaws, the board of directors may fix the number of directors from time to time by resolution of the board of directors. Currently, the number of members of the Pathmark board of directors is ten.

Classification of the Board

A&P

The MGCL permits classification of a Maryland corporation's board of directors if the corporation's charter or bylaws so provide. The A&P charter and bylaws do not provide for classification of the A&P board of directors. See the discussion under Subtitle 8 of Title 3 of the MGCL regarding board classification.

Pathmark

The DGCL permits classification of a Delaware corporation's board of directors if the corporation's certificate of incorporation, an initial bylaw or bylaw adopted by a stockholder vote so provides. Pathmark's certificate of incorporation and bylaws do not provide for classification of the Pathmark board of directors.

Vacancies on the Board

A&P

Under the MGCL, stockholders may elect a successor to fill a vacancy on the board of directors which results from the removal of a director. Under the MGCL and the bylaws of A&P, a majority of the remaining directors, whether sufficient to constitute a quorum or not, may also fill a vacancy unless it results from an increase in the size of the board, in which case the vacancy may be filled by a majority of the entire board of directors. See the discussion under Subtitle 8 of Title 3 of the MGCL regarding the filling of vacancies on the board if a corporation elects to be subject to relevant sections of Subtitle 8 of Title 3 of the MGCL.

Pathmark

Under the DGCL, vacancies and newly created directorships may be filled by a majority of the directors then in office, even though less than a quorum, or by a sole remaining director unless otherwise provided in the certificate of incorporation or bylaws.

Pathmark's bylaws provide that any vacancy occurring on the board of directors for any reason, including an increase in the authorized number of directors, may be filled by the board of directors, acting by a majority of the directors at any meeting, although less than a quorum, or by a sole remaining director. Any directors so chosen shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier removal or resignation.

Removal of Directors

A&P

Under the MGCL, the stockholders of a corporation may remove any director, with or without cause, by the affirmative vote of a majority of all votes entitled to be cast generally for the election of directors, except in certain circumstances including election of directors by a separate class or series, cumulative voting, a classified board or as otherwise provided in the charter.

Pursuant to the MGCL, the A&P bylaws provide that A&P stockholders may remove any of the A&P directors at any time by the affirmative vote of a majority of all votes entitled to be cast generally for the election of directors. See the discussion under Subtitle 8 of Title 3 of the MGCL regarding the vote required for removal of directors if a corporation elects to be subject to relevant sections of Subtitle 8 of Title 3 of the MGCL.

Pathmark

Under the DGCL, in the absence of cumulative voting or a classified board, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote in an election of directors.

Pathmark's certificate of incorporation and bylaws do not provide for cumulative voting or a classified board and do not otherwise address the removal of directors; *provided*, that whenever the holders of any class or series of stock are entitled to elect one or more directors by the certificate of incorporation, the right to remove directors without cause shall apply to the vote of the holders of the outstanding shares of such class or series and not to the vote of the outstanding shares as a whole.

Cumulative Voting

A&P

Under the MGCL, cumulative voting is permitted if the corporation's charter so provides. A&P's charter does not provide for cumulative voting.

Pathmark

Under the DGCL, cumulative voting is permitted if provided for in the certificate of incorporation. Pathmark's certificate of incorporation does not provide for cumulative voting.

Notice of Stockholders Meetings

A&P

The MGCL requires the secretary of a Maryland corporation to give notice in writing or by electronic transmission of each meeting of stockholders to each stockholder of record entitled to vote at the meeting and to each other stockholder entitled to notice of the meeting. The notice must state the place and time of the meeting and, if a special meeting, the purpose or purposes for which the meeting is to be held, not less than ten nor more than ninety days before each stockholder meeting.

Pathmark

The DGCL requires notice to stockholders of the date, time and place of each annual and special stockholders meeting at least ten days, but no more than sixty days, before the meeting date. However, notice of a stockholders meeting to vote upon a merger or a sale of all or substantially all of the corporation's assets, must be delivered at least twenty days, but no more than sixty days, before the meeting date.

A&P's bylaws require notice of stockholder meetings to be given not less than fifteen nor more than ninety days before the meeting and permit the meetings to be held at such place as designated by the board of directors.

Pathmark's bylaws provide for notice of at least ten days, but no more than sixty days, before the meeting date.

Right to Call Special Meetings of Stockholders

A&P

The MGCL provides that a special meeting of stockholders may be called by a Maryland corporation's president, board of directors or any other person specified in the corporation's charter or bylaws. The MGCL also provides that the secretary of a corporation shall call a special meeting of the stockholders on the written request of stockholders entitled to cast at least 25% of all the votes entitled to be cast at the meeting unless the charter or bylaws of the corporation contain a provision requiring the written request of stockholders entitled to cast a greater or lesser percentage of all votes entitled to be cast at the meeting, but such percentage may not be greater than a majority of all votes entitled to be cast at the meeting. See the discussion under Subtitle 8 of Title 3 of the MGCL regarding the percentage of the stockholders which must request a special meeting if a corporation elects to be subject to relevant sections of Subtitle 8 of Title 3 of the MGCL.

Pathmark

Under the DGCL, a special meeting of stockholders may be called by the board of directors or by any person or persons authorized by the certificate of incorporation or the bylaws.

Pathmark's bylaws provide that special meetings of stockholders may be called by the board of directors.

A&P's bylaws permit special meetings of stockholders to be called by the chief executive officer, the chairman of the board, the president,

the secretary upon the written request of stockholders entitled to cast at least 25% of all votes entitled to be cast at the meeting, or upon the written request of three or more directors. A&P's bylaws and the MGCL also provide that unless the special meeting is requested by stockholders entitled to vote at least a majority of all votes entitled to be cast at the meeting, a special meeting need not be called to consider any matter that is substantially the same as a matter voted on at any special meeting of the stockholders held during the preceding twelve months.

Action by Written or Electronic Consent of Stockholders

A&P

Under the MGCL, common stockholders may act without a meeting if a unanimous written or electronic consent that describes the action is signed or given by all stockholders entitled to vote on the matter and is filed in paper or electronic form with the records of stockholder meetings. The MGCL further provides that if authorized by the charter, the holders of common stock may act by written or electronic consent of the holders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a stockholders' meeting if the corporation gives notice of the action to each holder of the class of common stock not later than ten days after the effective date of the action.

Additionally, the MGCL provides that unless the charter requires otherwise, the holders of any class of stock, other than common stock entitled to vote generally in the election of directors, may take action by written or electronic consent of the holders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a stockholders' meeting if the corporation gives notice of the action to each holder of the class of stock not later than ten days after the effective time of the action.

A&P's charter and bylaws do not address stockholder action without a meeting.

Stockholder Proposals

A&P

The MGCL provides that the charter or bylaws of a Maryland corporation may require any stockholder

Pathmark

Under the DGCL, unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders, or any action that may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote if a consent or consents, in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take action at a meeting in which all shares entitled to vote on the matter were present and voting.

Pathmark's certificate of incorporation does not prohibit action by written consent.

Pathmark

The DGCL does not contain specific provisions regarding notice of stockholders' proposals or

proposing a nominee for election as a director or any other nominations for directors.
matter to be considered

at a meeting of stockholders to provide advance notice of the nomination or proposal to the corporation not more than ninety days before the date of the meeting, or, in the case of an annual meeting, ninety days before the first anniversary of the preceding year's annual meeting or the mailing date of the notice of the preceding year's annual meeting. The charter or bylaws may provide another time.

A&P's charter and bylaws do not address stockholder proposals.

Pathmark's bylaws provide that in order for a stockholder to bring business or nominate one or more persons for election to the board before an annual meeting of stockholders, the stockholder must give timely written notice to the secretary of Pathmark. To be timely, the notice must be delivered to, or mailed and received by, Pathmark's secretary not less than sixty days, but no more than ninety days, prior to the anniversary date of the previous year's annual meeting; *provided, however*, that in the event the annual meeting is called for a date that is not within thirty days before or after such anniversary date, notice by the stockholder must be received at the principal executive offices of Pathmark not later than the close of business on the tenth day following the day on which Pathmark's notice of the date of the meeting is first given or disclosed to the general public, whichever occurs first.

Notice proposing business to be brought before the annual meeting of stockholders shall set forth as to each matter of business:

a brief description of the business desired to be brought before the annual meeting of stockholders and the reasons for conducting such business at the annual meeting of stockholders;

the name and address, as they appear on Pathmark's books, of the stockholder proposing such business;

the class and number of shares of Pathmark which are beneficially owned by the stockholder; and

any material interest of the stockholder in such business.

The chairman of the annual meeting of stockholders shall, if the facts warrant, determine and declare to the meeting that the business was not properly brought before the meeting in accordance with the provisions the bylaws, and if so determined, the chairman shall also declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Director Nominations by Stockholders

A&P

Under the MGCL, director nominations by stockholders are treated as stockholder proposals. See [Stockholder Proposals](#).

A&P's charter and bylaws do not address director nominations by stockholders.

Pathmark

The DGCL does not contain specific provisions regarding notice of nominations for directors.

Pathmark's bylaws provide that in order for a stockholder to nominate a director for election by the stockholders, the stockholder must give

timely written notice to the secretary of Pathmark as described under Stockholder Proposals.

The notice must set forth the following information:

the name, age, business address and residence address of each such person in such notice;

the principal occupation or employment of each such person;

the number of shares of capital stock of Pathmark which are beneficially owned by each such person; and

such other information concerning each such person as would be required, under the rules of the SEC in a proxy statement soliciting proxies for the election of such person as a director.

The notice shall include a signed consent of each such nominee to serve as a director of Pathmark, if elected. The board of directors or a committee thereof shall consider nominating for election as director any person for whom a stockholder timely submits such recommendation in proper form.

Dividends

A&P

If authorized by its board of directors, a Maryland corporation generally may make distributions to its stockholders unless, after giving effect to the distribution, the corporation would not be able to pay its debts as they come due in the ordinary course of business or the corporation's total assets would be less than its total liabilities, plus, unless the charter permits otherwise (which the A&P charter does not), the amount that would be needed if the corporation were to be dissolved at the time of the distribution to satisfy the preferential rights of stockholders whose preferential rights on dissolution are superior to those receiving the distribution.

Amendment to Charter

A&P

Under the MGCL, amendments to a Maryland corporation's charter generally require the board of directors to (i) adopt a resolution declaring the amendments to be advisable on substantially the terms and conditions provided in such resolution, and (ii) direct that the amendments

Pathmark

The DGCL permits a corporation to declare and pay dividends out of surplus or, if there is no surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. *Surplus* is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by the board of directors. The capital of the corporation cannot be less than the aggregate par value of all issued shares of capital stock. Net assets equals total assets minus total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, the capital of the corporation is less than the amount of capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

Pathmark

Under the DGCL, an amendment to the certificate of incorporation requires (i) the approval of the board of directors, (ii) the approval of the holders of a majority of the outstanding stock entitled to vote upon the proposed amendment, and (iii) the approval of

be submitted for consideration at either an annual or special meeting of the stockholders. The corporation must provide notice to each stockholder entitled to vote on such amendments and each stockholder not entitled to vote on such amendment if the contract rights of such stockholder's stock, as expressly set forth in the charter, would be altered by the amendment. The stockholders must approve an amendment by the affirmative vote of two-thirds of all votes entitled to be cast on the matter unless a lesser proportion, but not less than a majority of all votes entitled to be cast, is provided for in the charter. The A&P charter does not so provide.

A&P reserves the right under its charter to make, from time to time, any amendments of its charter that are authorized by law, including any amendments that alter the contract rights of outstanding stock as expressly set forth in the charter.

Amendment to Bylaws

A&P

Under the MGCL, the power to adopt, alter and repeal a Maryland corporation's bylaws is vested in the stockholders, except to the extent that the charter or bylaws vest it in the board of directors. The A&P bylaws provide that the bylaws may be altered, amended or repealed, and new bylaws may be adopted, by the A&P board of directors or the stockholders by a majority vote at any meeting called for that purpose. However, no amendment adopted by the stockholders may be repealed by the board of directors.

Mergers and Share Exchanges

A&P

Under the MGCL, the board of directors of a Maryland corporation proposing a merger, consolidation, transfer of all or substantially all of the assets of the corporation or share exchange must generally (i) adopt a resolution declaring the proposed transaction to be advisable on substantially the terms and conditions provided in such resolution, and (ii) direct that the proposed transaction be submitted for consideration at either an annual or special meeting of the stockholders. The corporation must provide notice to each stockholder entitled to vote on such proposed transaction and each stockholder not entitled to vote on the proposed transaction, except the stockholders of a successor in a merger if the merger does not

the holders of a majority of the outstanding stock of each class entitled to vote thereon as a class. Pathmark's certificate of incorporation does not alter the standards for the approval of an amendment to the certificate of incorporation.

Pathmark

Under the DGCL, bylaws may be adopted, amended or repealed by the stockholders entitled to vote, and by the board of directors if the corporation's certificate of incorporation confers the power to adopt, amend or repeal the corporation's bylaws upon the directors.

Pathmark's certificate of incorporation confers the power to adopt, amend or repeal the bylaws upon the board of directors.

Pathmark

Under the DGCL, a merger, consolidation or sale of all or substantially all of a corporation's assets must be approved by the board of directors and, except with respect to certain mergers, by a majority of the outstanding stock of the corporation entitled to vote thereon. No vote of stockholders of a constituent corporation surviving a merger is required, unless the corporation provides otherwise in its certificate of incorporation, if:

the merger agreement does not amend the certificate of incorporation of the surviving corporation,

each share of stock of the surviving corporation outstanding before the merger is an identical outstanding or treasury share after

the

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alter the contract rights of their stock as expressly set forth in the charter. The stockholders must approve a merger, consolidation, transfer of all or substantially all of the assets of the corporation or share exchange by the affirmative vote of two-thirds of all votes entitled to be cast on the matter unless a lesser proportion, but not less than a majority of all votes entitled to be cast, is provided for in the charter. The A&P charter does not so provide.

Under the MGCL, a merger or share exchange need only be approved by:

a majority vote of the entire board of directors of each of the constituent corporations if the merger is between a ninety percent or more owned subsidiary and such subsidiary's parent if the charter of the successor is not amended other than for the purposes of changing the successor's name, the name or other designation of the par value of any class or series of the successor's stock, or the aggregate par value of the successor's stock, and the contract rights of the stock of the successor issued in the merger are identical to the contract rights of the stock for which the stock of the successor was exchanged.

a majority of the Maryland successor corporation's entire board of directors if (i) such merger does not reclassify or change the terms of any class or series of stock that is outstanding immediately before the merger becomes effective or otherwise amend such successor's charter and the number of its shares of stock of such class or series outstanding immediately after the effective time of the merger does not increase by more than 20% of the number of its shares of the class or series of stock that is outstanding immediately before the merger becomes effective, or (ii) there is no stock outstanding or subscribed for and entitled to be voted on the merger.

a share exchange must be approved for a Maryland successor corporation only by its board of directors and by any other action required by its charter.

With respect to a Maryland transferee corporation, a transfer of all or substantially all of the assets of a Maryland corporation need only be approved by the board of directors of the Maryland transferee. Under the MGCL, a transfer of all or substantially all of the assets of a Maryland

merger, and

either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered pursuant to the merger or the authorized unissued shares or treasury shares of the surviving corporation to be issued or delivered under the merger agreement, plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such agreement do not exceed 20% of the shares of common stock of such corporation outstanding immediately prior to the effective time of the merger.

corporation need only be approved by the board of directors of the corporation if all of the equity interests of the transferee are owned, directly or indirectly, by the corporation.

Appraisal Rights

A&P

Pathmark

Under the MGCL, appraisal rights are available only in connection with (i) a consolidation or merger with another corporation, (ii) acquisitions of the stockholder's stock in a share exchange, (iii) a transfer of assets requiring stockholder approval, (iv) an amendment of a corporation's charter in a way that alters the contract rights, as expressly set forth in the charter, of any outstanding stock and substantially adversely affects the stockholder's rights, unless the right to do so is reserved by the charter, or (v) transactions governed by the Maryland Business Combination Act relating to transactions with interested stockholders, or that are exempt from such Act pursuant to certain specified exemptions.

The DGCL generally provides stockholders of a corporation involved in a merger the right to demand and receive payment in cash of the fair value of their stock in certain mergers as determined by the Delaware Court of Chancery. As a general matter, appraisal rights are not available with respect to shares:

Unless, however, the transaction is subject to the Maryland Business Combination Act or exempted therefrom pursuant to certain specified exemptions, no appraisal rights are available to holders of shares of any class of stock if:

listed on a national securities exchange, designated as a national market system security on an interdealer quotation system operated by the National Association of Securities Dealers, Inc., or

the stock is listed on a national securities exchange, is designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or is designated for trading on the NASDAQ Small Cap Market,

held of record by more than 2,000 stockholders, *provided* that, notwithstanding the foregoing, appraisal rights shall be available to holders of shares of a constituent corporation if the holders are required to accept in the merger anything other than any combination of:

the stock is that of the successor in a merger, unless (i) the merger alters the contract rights of the stock as expressly set forth in the charter (or other organizational document of the successor), and the charter does not reserve the right to do so, or (ii) the stock is to be changed or converted into something other than either stock in the successor or cash, scrip or other rights or interests arising out of the provisions for the treatment of fractional shares of stock in the successor,

shares of stock of the surviving corporation in the merger or depository receipts in respect thereof,

the stock is generally not entitled to be voted on the transaction or the stockholder did not own the shares on the record date,

shares of stock (or depository receipts in respect thereof) of another corporation that, at the effective date of the merger, will be:

the charter provides that the stockholders are not entitled to exercise appraisal rights, or

listed on a national securities exchange,

the stock is that of an open-ended investment company registered under the Investment

designated as a national market system security on an interdealer quotation system operated by the National Association of Securities Dealers, Inc., or

held of record by more than 2,000

holders, and

cash instead of fractional shares of stock
or depository receipts received.

Company Act of 1940 and the value placed on the stock in the transaction is its net asset value.

Holders of A&P common stock will not have appraisal rights with respect to the merger because A&P is not a party to the merger, because the outstanding shares of A&P common stock are listed on the NYSE and because the transaction is not subject to the Maryland Business Combination Act, or exempted therefrom pursuant to certain specified exemptions. See Anti-takeover Statutes

Appraisal rights will be available to holders of Pathmark common stock under the merger because the stockholders are required to receive cash as merger consideration, and the merger consideration therefore does not consist entirely of the types of consideration under the Delaware appraisal statute, such as shares of stock of the surviving corporation, shares of common stock listed on a national securities exchange and cash in lieu of fractional shares that would otherwise result in appraisal rights not being available to holders of Pathmark common stock.

Anti-takeover Statutes

A&P

Maryland Business Combination Act

The provisions of the Maryland Business Combination Act do not apply to business combinations of A&P because A&P had an existing interested stockholder on July 1, 1983 and its charter and bylaws do not provide otherwise. A&P may, however, opt into these provisions by charter or bylaw provision or by board resolution.

Under the Maryland Business Combination Act, certain business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder became an interested stockholder. Under the MGCL, an interested stockholder includes a person who is:

the beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting stock of the corporation; or

an affiliate or associate of the corporation and was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding stock of the corporation at any time within the two-year period immediately prior to the date in question. A person is not an interested stockholder if, prior to the most recent time at which the person otherwise had become an interested stockholder, the board of directors of the corporation approved the transaction which otherwise would have resulted in the person becoming an interested stockholder.

Business combinations for the purposes of the preceding paragraph are defined by the MGCL to include certain mergers, consolidations, share

Pathmark

Section 203 of the DGCL generally prohibits business combinations, including mergers, sales and leases of assets, issuances of securities and similar transactions by a corporation or a subsidiary with an interested stockholder who beneficially owns 15% or more of a corporation's voting stock, within three years after the person or entity becomes an interested stockholder, unless:

the board of directors of the target corporation has approved, before the acquisition time, either the business combination or the transaction that resulted in the person becoming an interested stockholder,

upon consummation of the transaction that resulted in the person becoming an interested stockholder, the person owns at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the voting stock outstanding (but not the voting stock owned by the interested stockholder), those shares owned by directors who are officers and shares owned by employee stock plans in which participants do not have the right to determine confidentially whether shares will be tendered in a tender or exchange offer, or

after the person or entity becomes an interested stockholder, the business combination is approved by the board of directors and authorized by the vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

These restrictions on interested stockholders do not apply
under some circumstances, including if

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exchanges and asset transfers, some issuances and reclassifications of equity securities, the adoption of certain plans of liquidation or dissolution or the receipt by an interested stockholder or its affiliate of any loan, advance, guarantee, pledge or other financial assistance or tax advantage provided by the corporation. After the five-year moratorium period has elapsed, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation voting together as a single group; and

two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than voting stock held by the interested stockholder or its affiliates or associates with whom the business combination is to be effected, voting together as a single group.

The above voting requirements of the Maryland Business Combination Act do not apply if each of the following conditions is met:

The aggregate amount of cash and the market value as of the later of the day prior to the stockholder vote or the twenty days prior to the closing date (or, if no stockholder vote, as of the closing date), which is referred to as the *valuation date*, of consideration other than cash to be received per share by holders of common stock is at least equal to the highest of the following:

(i) the highest per share price paid by the interested stockholder for any shares of such stock of the same class or series within the five-year period immediately before the announcement date of the proposed business combination *plus* compound interest as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid, per share of such stock from the earliest date through the valuation date, up to the amount of interest;

(ii) the highest per share price paid by the interested stockholder for any shares of such stock of the same class or series on or within the five-year period

the corporation's original certificate of incorporation contains a provision expressly electing not to be governed by the Delaware statute regulating business combinations, or if the corporation, by action of its stockholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by these provisions of the DGCL (and such amendment is duly approved by the stockholders entitled to vote thereon) or, unless otherwise provided in the certificate of incorporation, if the corporation does not have a class of voting stock that is listed on a national securities exchange, authorized for quotation on the NASDAQ Stock Market, or held of record by more than 2,000 stockholders.

Pathmark's certificate of incorporation and by-laws do not contain provisions opting out of the restrictions prescribed by this section of the DGCL. The merger does not constitute a prohibited business combination with an interested stockholder under this statute.

immediately prior to the most recent date on which the interested stockholder became an interested stockholder, which is referred to as the *determination date*, plus compound interest

as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid per share of such stock from the earliest date through the valuation date, up to the amount of interest;

(iii) the market value per share of such stock of the same class or series on the announcement date of the proposed business combination *plus* compound interest as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid per share of such stock from the earliest date through the valuation date, up to the amount of interest;

(iv) the market value per share of such stock of the same class or series on the determination date *plus* compound interest as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid per share of such stock from the earliest date through the valuation date, up to the amount of interest; or

(v) the price per share equal to the market value per share of such stock of the same class or series on the announcement date of the proposed business combination or on the determination date, whichever is higher, multiplied by a fraction equal to (a) the highest per share price paid by the interested stockholder for any shares of such stock of the same class acquired by such interested stockholder within the five-year period immediately prior to the announcement date of the proposed business combination over (b) the market value per share of such stock of the same class on the first day in such five-year period on which the interested stockholder acquires any shares of such stock,

The aggregate amount of cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock in the business combination must be at least equal to the price required for such stock of any class or series under subsections (i) (v), above; or the highest preferential amount per share to which the holders of shares of such class or series of

stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation, whichever is greater,

the consideration to be received by holders of any class of outstanding stock is cash or the same form as the interested stockholder paid for its shares. If the interested stockholder has paid for shares with varying forms of consideration, the form of consideration for such stock shall be either cash or the form used to acquire the largest number of shares previously acquired, and

after the determination date and prior to the consummation of the business combination there has been: (i) no failure to declare and pay full periodic dividends on any outstanding preferred stock; (ii) no reduction in the annual rate of dividends paid on any class or series of stock that is not preferred stock, except as necessary to reflect or correct any capitalization changes to the corporation; and (iii) the interested stockholder did not become the beneficial owner of any additional shares of stock except as part of the transaction which resulted in such interested stockholder becoming an interested stockholder or by virtue of proportionate stock splits or stock dividends. Clauses (i) and (ii) above do not apply if no interested stockholder, or an affiliate or associate of the interested stockholder, voted as a director in a manner inconsistent with such clauses and the interested stockholder, within ten days after any such action, notifies the board in writing that such interested stockholder disapproves of such action and requests in good faith that the board rectify such act or failure to act.

The provisions of the Maryland Business Combination Act do not apply:

if the business combination has, either specifically, generally, or generally by types, whether as to specifically identified or unidentified existing or future interested stockholders or their affiliation, been approved or exempted therefrom, in whole or in part, by resolution of the board of directors either (i) prior to September 1, 1983 or such earlier date as may be irrevocably established by resolution of the board of directors or (ii) at any time prior to the most recent time that an interested stockholder became an interested stockholder if such business combinations involve transactions with a particular interested stockholder or its existing or future affiliates, and

unless otherwise provided by the charter or bylaws of the corporation, to business combinations of a corporation which, on July 1, 1983, had an existing interested stockholder, whether such business combination is with the existing stockholder or any other person that becomes an interested stockholder after July 1, 1983 unless the board of directors elects by resolution after July 1, 1983 to be subject to the Maryland Business Combination Act, in whole or in part, specifically, generally or generally by types as to specifically identified or unidentified interested stockholders.

Maryland Control Share Acquisition Act

A&P

Pathmark

The Maryland Control Share Acquisition Act provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock owned by the acquiror or by officers or by employees who are also directors of the corporation.

The DGCL does not contain a control share acquisition statute.

Control shares are voting shares of stock that, if aggregated with all other shares of stock previously acquired by that person or with respect to which such person is entitled to exercise voting power (other than pursuant to a revocable proxy), would entitle the acquiror, directly or indirectly, to exercise voting power in electing directors within one of the following ranges of voting power:

one-tenth or more but less than one-third,

one-third or more but less than a majority or

a majority or more of all voting power.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval.

A *control share acquisition* means the acquisition, directly or indirectly, of ownership of or power to direct the voting power of issued and outstanding control shares, subject to certain exceptions. A person who has made or proposes to make a control share acquisition may compel the board of directors, upon satisfaction of certain conditions, including the delivery of an acquiring person statement containing certain required information and the delivery of an undertaking to pay certain expenses, by written request made at the time of delivery of such

acquiring person statement, to call a special meeting of stockholders to be held within fifty days after receiving both the request and undertaking to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any meeting of stockholders.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the Maryland Control Share Acquisition Act, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares, except those for which voting rights have previously been approved. The corporation's redemption of the control shares will be for fair value determined, without regard to the absence of voting rights, as of the date of the last control share acquisition or, if a meeting of stockholders is held to consider the voting rights of the shares, as of the date of such meeting. Unless the corporation's charter or bylaws provide otherwise, if voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. A&P's charter and bylaws do not provide otherwise. The fair value of the shares as determined for purposes of the appraisal rights may not be less than the highest price per share paid in the control share acquisition. Certain limitations and restrictions otherwise applicable to the exercise of dissenters' rights do not apply in the context of a control share acquisition.

A control share acquisition does not include:

shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction;

shares acquired or under contract to be acquired before November 4, 1988;

shares acquired under the laws of descent and distribution;

shares acquired under the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Maryland Control Share Acquisition Act; or

acquisitions approved or exempted by our charter or bylaws.

Neither the charter nor the bylaws of A&P exempt identified or unidentified existing or future stockholders or their affiliates or

associates from the Maryland Control Share Acquisition Act. However, because Tengemann owned a majority of A&P's outstanding common stock prior to November 4, 1988, the control share acquisition provisions of the MGCL do not apply to acquisitions of A&P common stock by Tengemann made in good faith and not for the purposes of circumventing the Maryland Control Share Acquisition Act.

Subtitle 8 of Title 3 of the MGCL

A&P

Pathmark

Subtitle 8 of Title 3 of the MGCL allows a Maryland corporation with a class of equity securities registered under the Exchange Act to elect to be governed by certain Maryland law provisions, notwithstanding a contrary provision in the charter or bylaws. The election to be governed by one or more of these provisions can be made by a Maryland corporation in its charter or bylaws or by resolution adopted by the board of directors. The corporation however must have at least three directors who, at the time of electing to be subject to the provisions, are not:

The DGCL does not contain a comparable provision.

officers or employees of the corporation;

persons seeking to acquire control of the corporation;

directors, officers, affiliates or associates of any person seeking to acquire control; or

nominated or designated as directors by a person seeking to acquire control.

Articles supplementary must be filed with the Maryland State Department of Assessments and Taxation if a Maryland corporation elects to be subject to any or all of the provisions by board resolution or bylaw amendment or the board of directors adopts a resolution that prohibits the corporation from electing to be subject to any or all of the provisions of Subtitle 8 of Title 3. Stockholder approval is not required for the filing of articles supplementary.

The provisions to which a corporation can elect under Subtitle 8 to be subject are:

a classified board,

a requirement that the removal of directors requires the affirmative vote of two-thirds of all the votes entitled to be cast by the stockholders generally in the election of directors,

a requirement that the number of directors be fixed only by vote of the directors,

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is elected and qualifies, and

a requirement that special stockholders meetings must be called by the corporation at the request of stockholders only upon the written request of stockholders entitled to cast at least a majority of the votes entitled to be cast at the meeting.

A Maryland corporation's charter may contain a provision or the board of directors may adopt a resolution that prohibits the corporation from electing to be subject to Subtitle 8 of Title 3 of the MGCL. The A&P charter does not contain any such provision and A&P's board of directors has not adopted any resolution containing any such prohibition.

Standard of Conduct for Directors

A&P

Under the MGCL, the standard of conduct for directors is governed by statute. The MGCL requires that a director of a Maryland corporation perform his or her duties: (i) in good faith, (ii) in a manner he or she reasonably believes to be in the best interests of the corporation, and (iii) with the care that an ordinarily prudent person in a like position would use under similar circumstances. The MGCL presumes that any act of a director satisfies this standard of conduct. In addition, under the MGCL, the acts of directors of a Maryland corporation relating to or affecting an acquisition or potential acquisition of control of a corporation are not subject to any higher duty or greater scrutiny than is applied to any other act of a director.

A director's duty does not require him or her to (i) accept, recommend or respond to any proposal by a person seeking to acquire control of the corporation, (ii) authorize the corporation to redeem any rights under, or modify or render inapplicable, any stockholders rights plan, (iii) make a determination under the Maryland Business Combination Act or the Maryland Control Share Acquisition Act, (iv) elect to be subject to, or refrain from electing to be subject to, Subtitle 8 of Title 3 of the MGCL (see Subtitle 8 of Title 3 of the MGCL) or (v) act or fail to act solely because of the effect the act or failure to act may have on an acquisition or potential acquisition of control of the

Pathmark

The Delaware standards of conduct for directors have developed through written opinions of the Delaware courts. Generally, directors of Delaware corporations are subject to a duty of loyalty and a duty of care. The duty of loyalty has been said to require directors to make decisions in the best interests of the corporation and to refrain from self-dealing. According to the Delaware Supreme Court, the duty of care requires directors . . . in managing the corporate affairs. . . to use that amount of care which ordinarily careful and prudent men would use in similar circumstances.

corporation or the amount or type of consideration that may be offered or paid to the stockholders in an acquisition.

Limitations on Liability of Directors and Officers

A&P

Under the MGCL, the charter of a Maryland corporation may include a provision expanding or limiting the liability of the corporation's directors or officers for money damages in a suit under state law by stockholders or by or in the right of the corporation. However, a Maryland corporation may not include any provision that restricts or limits the liability of its directors or officers (i) to the extent that it is proved that the person actually received an improper benefit or profit in money, property or services for the amount of the benefit or profit in money, property or services actually received, or (ii) to the extent that a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding. The A&P charter provides that, to the maximum extent permitted by Maryland law, as in effect from time to time, no director or officer of A&P shall be liable to A&P or its stockholders for money damages.

Pathmark

The DGCL provides that a corporation may include in its certificate of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. However, the provision may not eliminate or limit the liability of a director for:

breach of the duty of loyalty,

acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law,

unlawful payments of dividends, certain stock repurchases or redemptions, or

any transaction from which the director derived an improper personal benefit.

Pathmark's certificate of incorporation contains a provision limiting the liability of its directors to the fullest extent permitted by the DGCL.

Indemnification of Directors and Officers

A&P

Under the MGCL, a Maryland corporation may indemnify any director or officer made or threatened to be made a party to any proceeding by reason of service in that capacity unless it is established that (i) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty, (ii) the director or officer actually received an improper personal benefit in money, property or services, or (iii) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

Under the MGCL, reasonable expenses may be advanced to a present or former director, or to an officer, employee or agent who is not a director to the same extent that they may be advanced to a director, unless limited by the charter. Advances of reasonable expenses to directors, officers, employees and agents prior to the final adjudication of a proceeding may be generally authorized in the corporation's charter or bylaws, or by contract, or upon a determination that indemnification is proper, made by the board of directors, special legal counsel or the stockholders as described below. The director, officer, employee or agent must give to the corporation a written affirmation of his or her good faith belief that the standard of conduct necessary for indemnification by the corporation has been met, and a written undertaking providing that if it is ultimately determined that the standard of conduct has not been met, the director, officer, employee or agent will repay the amount advanced.

Under the MGCL, unless limited by a corporation's charter, a court of appropriate jurisdiction may, under certain circumstances, order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director or officer has met the standards of conduct required under the MGCL or has been adjudged liable on the basis that a personal benefit was improperly received in a proceeding charging improper personal benefit to the director or the officer. If the proceeding was an action by or in the right of the corporation or involved a determination that the director or

Pathmark

The DGCL provides that a corporation may indemnify any person who is made a party to any third-party action, suit or proceeding on account of being a director, officer, employee or agent of the corporation (or was serving at the request of the corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise) against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with the action, suit or proceeding, if the person:

acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and

in a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of an action or suit by or in the right of the corporation (including derivative actions) if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and, except that no indemnification may be made in respect of any claim, issue or matter as to which the person is adjudged to be liable to the corporation unless and to the extent the Delaware Court of Chancery or the court in which the action or suit was brought determines upon application that the person is fairly and reasonably entitled to indemnity for the expenses which the court deems to be proper.

To the extent a present or former director or officer is successful in the defense of such an action, suit or proceeding, the corporation is required by the DGCL to indemnify such person for reasonable expenses incurred thereby.

Unless otherwise ordered by a court, any right to indemnification provided above shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the

present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct. With respect to a person who is a director or officer at the time of such determination, such

officer received an improper personal benefit, however, no indemnification may be made if the individual is adjudged liable to the corporation, except to the extent of expenses approved by a court of appropriate jurisdiction.

The MGCL also provides that, where indemnification is permissible, it must be authorized for a specific proceeding after a determination has been made that indemnification of the director or officer is permissible in the circumstances because the director or officer has met the standard of conduct described in the first paragraph under Indemnification of Directors and Officers. Such determination must be made (i) by a majority vote of a quorum of the board of directors consisting of directors who are not parties to the proceeding (or if such a quorum cannot be obtained, the determination may be made by a majority vote of a committee of the board which consists solely of one or more directors who are not parties to the proceeding and who were designated to act by a majority of the full board of directors), (ii) by special legal counsel selected by the board of directors or by a committee of the board of directors by vote as set forth in the preceding sentence (or if the requisite quorum of the board of directors cannot be obtained and the committee cannot be established, a majority of the full board of directors, including directors who are parties, may select the special counsel), or (iii) by a vote of the stockholders other than those stockholders who are directors or officers and a party to the proceedings. The MGCL provides that the indemnification and advancement of expenses provided under the MGCL are not exclusive of any other rights, by indemnification or otherwise, to which a director or officer may be entitled under the charter, the bylaws, a resolution of stockholders or directors, an agreement or otherwise.

The MGCL requires a corporation (unless its charter provides otherwise, which A&P's charter does not) to indemnify reasonable expenses for a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made or threatened to be made a party by reason of his service in that capacity.

determination must be made:

by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum,

by a committee of such directors designated by majority vote of such directors, even though less than a quorum,

if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or

by the stockholders.

Expenses (including attorneys fees) incurred by an officer or director in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of that officer or director to repay the amount if it is ultimately determined that that person is not entitled to be so indemnified. Such expenses incurred by former officers and directors and other employees and agents may be paid upon such terms and conditions, if any, as the corporation deems appropriate.

Pathmark's certificate of

incorporation and bylaws provide for mandatory indemnification of its officers, directors, employees and agents to the fullest extent permitted by the DGCL. Pathmark's certificate of incorporation and bylaws provide that the corporation may advance expenses to officers and directors upon receipt of an undertaking by such officer or director, and that the corporation may advance expenses for its former officers and directors and employees and agents upon such terms, if any, as Pathmark deems appropriate.

In addition, the MGCL provides that a corporation may not indemnify a director or officer or advance expenses for a proceeding brought by that director or officer against the

corporation, except for a proceeding brought to enforce indemnification, or unless the charter, bylaws, resolution of the board of directors, or an agreement approved by the board of directors expressly provides otherwise.

A&P's charter provides that A&P shall indemnify and advance expenses to any person who is or was a director or officer of A&P to the maximum extent now or hereafter permitted by law in connection with any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) arising out of such person's service as a director or officer of either A&P or of another organization at A&P's request.

A&P's charter provides that A&P shall indemnify any person who is or was an employee or agent of A&P as and to the extent required by law and may, as authorized at any time by general or specific action of the Board of Directors, further indemnify such individuals to the maximum extent now or hereafter permitted by law, in connection with any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) arising out of such person's service in such capacity to A&P or to another organization at A&P's request.

DESCRIPTION OF A&P S CAPITAL STOCK

The following description of A&P s capital stock is a summary and is qualified in its entirety by reference to A&P s charter and bylaws, which are filed as exhibits to the registration statement of which this joint proxy statement/prospectus forms a part, and by applicable law.

A&P s authorized share capital consists of 80,000,000 common shares, \$1.00 par value, and 3,000,000 preferred shares without par value. At [], 2007, [] common shares and no preferred shares were outstanding.

Preferred Stock

The A&P board of directors can, without the approval of stockholders, issue one or more series of preferred shares. The board of directors may also determine the rights, preferences and limitations of each series including the maximum number of shares in the series, voting rights, conversion rights, redemption rights, dividend rights, liquidation rights, any preferences over the common shares with respect to dividend or liquidation distributions, and the terms and conditions of issue. The preferred stock may be senior to the common stock with respect to dividends, distributions upon liquidation and other rights.

Common Stock

A&P s common stock is listed for trading on the NYSE under the symbol GAP. A&P s transfer agent and registrar for common shares is the American Stock Transfer and Trust Company, 59 Maiden Lane, New York, NY 10038, telephone: (800) 937-5449.

Common stockholders only receive dividends when, as and if authorized by the A&P board of directors and declared by A&P. If declared, dividends may be paid in cash, stock or other forms of consideration. If and when A&P issues preferred shares, common stockholders may not receive dividends until A&P has satisfied its obligations to the preferred stockholders. Some of A&P s outstanding debt securities, credit agreements and other loan agreements also restrict A&P s ability to pay dividends.

All outstanding shares of common stock are fully paid and nonassessable. Any additional common shares issued in connection with the merger would also be fully paid and nonassessable. There are no subscription rights, conversion or preemptive rights or redemption or sinking fund provisions with respect to the shares of common stock.

Each share of common stock is entitled to one vote in the election of directors and other matters. Directors are elected by the vote of a plurality in interest of stockholders present in person or by proxy and entitled to vote in the election at a meeting at which a quorum is present. Common stockholders are not entitled to cumulative voting rights. Members of the A&P board of directors serve one-year terms (and until their successors are elected and qualify) and all directors are elected annually. Directors may be removed from office by the vote of a majority of the outstanding shares entitled to vote generally for the election of directors.

The quorum required at a stockholders meeting is a majority of the votes entitled to be cast at the meeting, represented in person or by proxy. If a quorum is present, action on a matter is approved by the vote of a majority of all the votes cast at the meeting, unless otherwise required by law or the A&P charter. The MGCL requires approval by two-thirds of all votes entitled to be cast on the matter by each voting group entitled to vote, in the case of extraordinary corporate actions, such as:

certain
mergers;

with respect
to the party
other than
the
successor, a
share
exchange;

an
amendment
to the
charter, with
certain
exceptions;

with respect
to the
transferor
corporation,
the sale,
lease,
exchange or
other
disposition
of all or
substantially
all of the
corporation's
assets, other
than in the
usual and
regular
course of

business or
if all of the
equity
interests of
the
transferee
are owned,
directly or
indirectly,
by the
transferor
corporation;
or

the
dissolution
of the
corporation.

Provisions Restricting a Change of Control

A&P's charter and bylaws, as well as the provisions of the MGCL, contain provisions that may have the effect of delaying, deferring or preventing a change in control of A&P. These provisions are summarized under Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders' Rights in this joint proxy statement/prospectus. Although A&P's charter does not contain such a provision, the MGCL allows a corporation's charter to contain a provision requiring for any purpose a lesser proportion of the votes of all classes or of any class of stock than the proportion required by the MGCL for that purpose, but this proportion may not be less than a majority of all votes entitled to be cast on the matter. If a corporation's charter contains such a provision, it will affect the procedures necessary to effect a change of control.

YUCAIPA STOCKHOLDER AGREEMENT

The following is a summary of the material provisions of the Yucaipa Stockholder Agreement. This summary is qualified in its entirety by reference to the Yucaipa Stockholder Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex B. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

Concurrently with the execution and delivery of the merger agreement, A&P entered into the Yucaipa Stockholder Agreement with the Yucaipa Investors, which will not become effective until the closing of the merger.

Under the terms of the Yucaipa Stockholder Agreement, the Yucaipa Investors have agreed to certain standstill and transfer restrictions and will receive certain registration rights in respect of the A&P common stock they will own following the closing of the merger and any A&P common stock issuable upon exercise of the A&P Series A Warrants and Series B Warrants, the rollover warrants.

Standstill Provisions

The Yucaipa Stockholder Agreement provides that the Yucaipa Investors may not acquire beneficial ownership of more than 9.9% of the outstanding common stock of A&P (excluding any A&P common stock received upon the exercise of the rollover warrants) until the earliest to occur of the following (the *Standstill Expiration Date*):

June 9, 2015,
the expiration
date of the
A&P Series B
Warrants;

the third
anniversary
of the date on
which all
rollover
warrants have
been
exercised;

any date on
which the
A&P board of
directors
determines to
solicit, or
publicly
announces its
intention to
solicit, a
proposal for
the
acquisition of
A&P (an
*A&P
Acquisition
Proposal*), or
approves,
accepts,
authorizes or
recommends
to the A&P
stockholders
their approval
of an A&P
Acquisition
Proposal;

any date on
which A&P
or any of its
affiliates
enters into a
letter of
intent,
agreement in

principle or
definitive
agreement
regarding an
A&P
Acquisition
Proposal;

any date on
which the
Yucaipa
Investors own
less than 1%
of the
outstanding
A&P
common
stock;

any date on
which a third
party's
ownership of
A&P's
common
stock exceeds
Tengelmann's
ownership of
A&P's
common
stock; or

any date on
which
Tengelmann
and its
affiliates
beneficially
own, in the
aggregate,
less than 20%
of the
outstanding
A&P
common
stock.

The Yucaipa Investors have also agreed that until the Standstill Expiration Date they will not, without the prior approval of the A&P board of directors:

propose,
solicit or
knowingly
encourage any
proposal for
any
extraordinary
corporate
transaction
(including any
business
combination
or dissolution)
involving
A&P or its
subsidiaries or
propose or
attempt to
acquire
control of
A&P or its
subsidiaries;

make or
participate in
any
solicitation of
proxies to vote
or in any
election
contest or
agree or
announce an
intention to
vote with any
person
undertaking a
solicitation, or
seek to advise
or influence
any person or
group
regarding the
voting of any
voting stock of
A&P or its
subsidiaries,

or make any proposal to be voted upon by A&P stockholders;

form, join, participate in or encourage the formation of any group (subject to limited exceptions) with respect to any voting stock of A&P or its subsidiaries, including pursuant to any voting agreement or trust;

seek representation on the A&P board of directors, seek to remove any member of the A&P board of directors or act to influence A&P management or the A&P board of directors; or

seek to amend or waive any of the provisions described in this paragraph or enter into discussions or arrangements or disclose any

intention or arrangement inconsistent with the provisions described in this paragraph.

Transfer Restrictions

The Yucaipa Investors may not, until the second anniversary of the Standstill Expiration Date, transfer, assign or encumber any shares of A&P common stock except:

to an affiliate or partner of the Yucaipa Investors or to Tengemann or A&P (or one of their affiliates);

pursuant to a registered offering as described in Registration Rights or in a block trade with a financial institution, subject to certain transfer restrictions described below;

in any tender offer, business combination or exchange offer for A&P common stock which (i) was not solicited by the Yucaipa Investors or their affiliates, (ii) is for 100% of the

A&P

outstanding
common stock,
(iii) includes a
majority
tender
condition and
(iv) includes a
binding
commitment to
pay the same
or higher
consideration
in a back-end
merger;

in any tender
offer, business
combination or
exchange offer
for A&P
common stock
which (i) was
recommended
by the A&P
board of
directors, (ii)
was made by
or on behalf of
Tengelmann or
its affiliates or
(iii) that has
been accepted
by holders of a
majority of
outstanding
A&P common
stock (other
than A&P
stock owned
by the Yucaipa
Investors);

in a transaction
made in
compliance
with Rule 144
or Rule 145
under the
Securities Act
of 1933, as

amended;

in foreclosures of common stock or of the rollover warrants by a financial institution for the benefit of which an encumbrance on such common stock or warrants was created in connection with an extension of credit and not for the purpose of circumventing the transfer restrictions provisions and before which the financial institution has offered A&P a right of first refusal to purchase such common stock or warrants for cash at their fair market value and A&P has chosen not to purchase such common stock or warrants; or

in hedging transactions designed to protect against fluctuations in the value of A&P common

stock or the
rollover
warrants that
are not for the
purpose of
circumventing
the transfer
restriction
provisions.

Notwithstanding the foregoing, the Yucaipa Investors may not transfer A&P common stock in a registered offering pursuant to the provisions described in Registration Rights, a block trade or pursuant to Rule 144 or 145 if (i) the transferee would thereafter own more than 9.9% of A&P's outstanding common stock or (ii) the amount transferred to any person would be greater than 5% of A&P's outstanding common stock.

Registration Rights

The Yucaipa Stockholder Agreement provides that, subject to certain requirements, upon the Yucaipa Investors written demand, in accordance with the Yucaipa Stockholder Agreement, A&P will file with the SEC and maintain the effectiveness of a registration statement registering the sale of Yucaipa's shares of A&P common stock. The agreement provides that the Yucaipa Investors are entitled to up to two such demand registrations in any twelve-month period, and up to three in the aggregate. Each such demand registration must be in the amount of at least \$25.0 million, based on then-current market prices for A&P common stock.

The Yucaipa Stockholder Agreement also provides the Yucaipa Investors with piggyback registration rights, which provide that A&P will include the Yucaipa Investors' shares of A&P common stock in any registration statement that A&P files with respect to any sales of A&P common stock by A&P (other than for certain business combinations or benefit plans) or by any other A&P stockholder, subject to customary restrictions and limitations.

YUCAIPA VOTING AGREEMENT

The following is a summary of the material provisions of the Stockholder Voting Agreement, dated March 4, 2007, between A&P and the Yucaipa Investors (the *Yucaipa Voting Agreement*). This summary is qualified in its entirety by reference to the Yucaipa Voting Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex C. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

As an inducement to A&P to enter into the merger agreement and in connection with the merger agreement, A&P and the Yucaipa Investors entered into the Yucaipa Voting Agreement. As of the date of the Yucaipa Voting Agreement, the Yucaipa Investors owned an aggregate of 20,000,100 shares of Pathmark common stock, representing approximately 38% of the Pathmark common stock outstanding on that date.

Pursuant to the terms of the Yucaipa Voting Agreement, the Yucaipa Investors agreed to vote shares of Pathmark common stock that they own as of the Pathmark record date (i) in favor of the merger agreement, (ii) against any action that would reasonably be expected to result in a breach of the merger agreement, and (iii) against any action that would compete with or impair the merger. These voting obligations do not apply to any shares owned by the Yucaipa Investors in excess of 33% of the outstanding Pathmark common stock on the record date. The Yucaipa Investors have also agreed to grant, upon request, an irrevocable proxy to A&P to vote shares subject to the voting agreement to carry out the foregoing actions. The Yucaipa Investors are allowed to hedge their stock and warrants to purchase Pathmark stock so long as they retain their voting rights.

The Yucaipa Voting Agreement will terminate upon the earliest to occur of (i) the closing of the merger, (ii) termination of the merger agreement or (iii) the Outside Date, as described under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Termination.

TENGELMANN STOCKHOLDER AGREEMENT

The following is a summary of the material provisions of the Stockholder Agreement dated March 4, 2007, between A&P and Tengelmann (the *Tengelmann Stockholder Agreement*). This summary is qualified in its entirety by reference to the Tengelmann Stockholder Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex D. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

As an inducement to Tengelmann to support the merger and concurrently with the execution and delivery of the merger agreement, A&P entered into the Tengelmann Stockholder Agreement with Tengelmann, certain provisions of which will not become effective until the closing of the merger.

Under the terms of the Tengelmänn Stockholder Agreement, Tengelmänn will receive certain nomination, approval, registration, preemptive and other rights. In addition, Tengelmänn will be entitled to antidilution protection, access to A&P information, and expense reimbursement. Upon the closing of the merger, A&P's bylaws will be amended as provided in Annex I to this joint proxy statement/prospectus in order to give effect to certain of these rights. As more fully described below, certain of Tengelmänn's rights depend upon its ownership percentage of A&P stock and any calculation of this percentage will include the shares owned by Tengelmänn's affiliates.

Composition of A&P's Board of Directors

The Tengelmänn Stockholder Agreement provides that A&P's board of directors will have nine members. Any increase or decrease in the number of directors requires the approval of directors holding 66.67% of the total number of board seats (including vacancies) and, in the case of any decrease that reduces Tengelmänn's right to designate directors for nomination, the approval of Tengelmänn.

Upon completion of the merger, A&P's board of directors will consist of:

four directors
designated
for
nomination
by
Tengelmänn;

four directors
who were
serving on
A&P's board
immediately
before the
closing of the
merger and
were not
designated
for
nomination
by
Tengelmänn;
and

Gregory
Mays,
currently a
director on
Pathmark's
board of
directors, or
another
person
elected in
accordance

with the
merger
agreement.

Following completion of the merger and for so long as its aggregate actual ownership percentage of A&P common stock is at least 10%, Tengelmänn will have the right to designate for nomination to A&P's board a number of directors proportionate to Tengelmänn's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmänn's antidilution protection described below. A&P and its board of directors will include in management's slate of nominees, and recommend to the A&P stockholders the election of, each of the Tengelmänn nominees. A&P must use its reasonable best efforts to solicit from its stockholders that are eligible to vote for the election of directors proxies in favor of the Tengelmänn nominees. The A&P board may exclude, however, a particular Tengelmänn nominee from management's slate and its recommendation if it determines in good faith after receiving specific written advice from outside counsel that such recommendation would reasonably be expected to violate the directors' duties under Maryland law because the nominee is unfit to serve as the director of an NYSE-listed company, or the nominee's service as a director would reasonably be expected to violate an applicable law or result in a conflict of interest because the nominee is a director, employee or stockholder of another company, in which case A&P must provide Tengelmänn with a reasonable opportunity (no less than thirty days) to designate an alternate nominee. A nominee's relationship with Tengelmänn may not serve as a basis for such a determination by the A&P board.

If A&P nominates and recommends the election of all Tengelmänn nominees, then Tengelmänn has agreed to vote all shares of A&P common stock held by it in a manner identical to the manner in which the non-Tengelmänn affiliated stockholders vote their shares with respect to the election of directors other than the Tengelmänn nominees, described in the agreement as the "mirror vote" requirement. The mirror vote requirement does not apply to any election of directors in which any person other than Tengelmänn, its affiliates or certain other persons acting with Tengelmänn have initiated a proxy contest or other solicitation in favor of nominees not on management's slate. With respect to any other matters to be voted upon, Tengelmänn is free to vote its shares in its sole discretion.

Subject to any requirement to have a certain number of independent directors on a committee of the board of directors of A&P, the Tengelmänn nominees shall have pro rata membership on each such committee.

Approval Rights

Tengelmann

For so long as Tengelmann's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmann's antidilution protection described below is at least 25%, the following matters will require Tengelmann's approval (in addition to any other board or stockholder approval required by law or A&P's charter or bylaws):

any business combination involving, or sale or merger of, A&P, except for such business combinations involving consideration not exceeding \$50.0 million;

any issuance of equity, or right to acquire equity, of A&P, or change to the terms of any A&P equity security, requiring stockholder approval other than the issuance of the rollover warrants, pursuant to any employee compensation plan or other benefit plan or under rights existing as of the closing date after giving effect to the merger;

A&P charter or bylaws

amendments;

amendments to
A&P's
committee
charters or
corporate
governance
guidelines
which would
reasonably be
expected to
obviate any of
Tengelmann's
rights under the
Tengelmann
Stockholder
Agreement or
the exercise
thereof;

adoption,
amendment or
implementation
of, or
redemption
under, any
rights plan or
other takeover
defenses;

any
discriminatory
transaction or
transaction with
any affiliate
(other than
Tengelmann);
and

changes in
policies
concerning the
need for
approval by
A&P's board
intended or
reasonably
likely to have
the effect of
obviating any of

Tengelmann's
rights under the
Tengelmann
Stockholder
Agreement or
the exercise
thereof.

Tengelmann Directors

For so long as Tengelmann's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmann's antidilution protection described below is at least 25%, the following matters will require the approval of a majority of the directors on A&P's board that were designated for nomination by Tengelmann (in addition to any other board or stockholder approval required by law or A&P's charter or bylaws):

acquisitions
and
dispositions
with a fair
market value
above \$50.0
million
(including a
disposition of
any portion of
the Canadian
equity stake in
Metro);

any issuance
of equity, or
right to
acquire
equity, of
A&P, or
change to the
terms of any
A&P equity
security other
than the
issuance of
the rollover
warrants,
pursuant to
any employee
compensation
plan or other
benefit plan or
under rights
existing as of
the closing

date after
giving effect
to the merger;

repurchases of
A&P common
stock (other
than pursuant
to employee
stock plans or
from
Tengelmann
pursuant to
the
Tengelmann
Stockholder
Agreement);

dividends;

adoption or
amendment of
strategic
plans,
priorities or
direction for a
period of at
least three
years, except
for
amendments
not exceeding
\$10.0 million
individually
or in the
aggregate in
any
twelve-month
period;

adoption of or
changes to the
operating plan
or budget,
capital
expenditures
budget,
financing plan
or any
financial goal,
except for

changes not
exceeding
\$10.0 million
individually
or in the
aggregate in
any
twelve-month
period;

appointment
or removal of
the chairman
or
appointment
(but not
removal) of
the chief
executive
officer;

dissolution;

unbudgeted
capital
expenditures
of more than
\$10.0
million; and

debt
incurrences
over \$50.0
million
(other than
refinancings
of approved
debt on
consistent
terms or
terms more
favorable to
A&P that do
not increase
the principal
amount).

Non-Tengelmann Directors

The approval of a majority of A&P's board of directors, including a majority of directors who were not designated for nomination by Tengelmann, will be required to approve:

transactions
between A&P (or
its subsidiaries)
and Tengelmann
(or its subsidiaries
or affiliates), other
than ordinary
course
compensation
arrangements;

actions that must
be approved by
A&P's
stockholders that
would reasonably
be expected to
adversely and
disproportionately
affect A&P's
stockholders other

than Tengelmann;
and

changes in A&P's
policies or
practices in a
manner that would
limit or adversely
affect the authority
of the directors on
A&P's board who
were not
designated for
nomination by
Tengelmann.

Warrants and Put Rights

For so long as Tengelmann's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmann's antidilution protection described below is at least 25%, upon exercise by the Yucaipa Investors, A&P may not settle the rollover warrants for stock without the approval of Tengelmann (in addition to any other board or stockholder approval required by law or A&P's charter or bylaws). In addition, for so long as Tengelmann's aggregate actual ownership percentage of A&P common stock is at least 10%, Tengelmann will have the right to cause A&P to settle all or a portion of any exercise by the Yucaipa Investors of rollover warrants with A&P common stock purchased by A&P from Tengelmann. Tengelmann's rights shall be subject to A&P's satisfaction of an objective liquidity test.

Antidilution Protection

To the extent that any decrease in Tengelmann's aggregate actual ownership percentage of A&P common stock is the result of issuances of equity securities by A&P, as opposed to dispositions of equity securities by Tengelmann, the decrease will not be taken into account when determining Tengelmann's aggregate ownership percentage of A&P common stock for purposes of determining the number of directors that Tengelmann is entitled to nominate or whether the approval rights or Tengelmann's rights with respect to the rollover warrants described above apply, unless such issuances were (i) in connection with a business combination or other acquisition by A&P that was approved by Tengelmann (other than the merger) or (ii) made on or about the closing date of the merger in connection with the merger, as merger consideration, but not in any event by any warrants or options issued in connection with the merger.

Registration Rights

Tengelmann will be entitled to demand registration rights (subject to a \$25.0 million minimum threshold) but may not exercise these rights more than twice in any twelve-month period or more than three times in any twenty-four-month period. Tengelmann will also be entitled to piggyback registration rights, subject to customary restrictions and limitations.

Preemptive Rights

For so long as Tengelmann's aggregate actual ownership percentage of A&P common stock is at least 10%, Tengelmann will be entitled to customary preemptive rights with respect to equity issuances by A&P, other than issuances under the rollover warrants or warrants issued under the 2000 Warrant Agreement, issuances under employee compensation plans or other benefit plans,

issuances for consideration other than cash, issuances to Tengelmänn, or issuances pursuant to rights or equity existing as of the closing date after giving effect to the merger.

Access to Information

Subject to customary confidentiality provisions, A&P will afford Tengelmänn reasonable access to its books and records (including financial records), including to enable Tengelmänn to prepare its financial statements and for its financial reporting generally.

Expense Reimbursement

Whether or not the merger is completed, A&P will reimburse Tengelmänn for all reasonable out-of-pocket expenses incurred in connection with (i) the merger and the related transactions (including financings) and the Tengelmänn Stockholder Agreement and (ii) subject to the authorization of Tengelmänn's activities by the A&P directors who are not Tengelmänn nominees, any purchase or sale of more than 15% of A&P's outstanding common stock, sale of A&P or all or substantially all of A&P's assets or other business combination, strategic transaction or capital transaction involving A&P.

TENGELMANN VOTING AGREEMENT

The following is a summary of the material provisions of the Stockholder Voting Agreement, dated March 4, 2007, between Pathmark and Tengelmänn (the *Tengelmänn Voting Agreement*). This summary is qualified in its entirety by reference to the Tengelmänn Voting Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex E. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

As an inducement to Pathmark to enter into the merger agreement and in connection with the execution and delivery of the merger agreement, Tengelmänn entered into the Tengelmänn Voting Agreement with Pathmark. As of the date of the Tengelmänn Voting Agreement, Tengelmänn owned 21,995,371 shares of A&P common stock, representing approximately 53% of the common stock outstanding on that date.

Pursuant to the terms of the Tengelmänn Voting Agreement, Tengelmänn has agreed to vote all of its A&P common stock (i) in favor of the issuance of A&P common stock in the merger, (ii) in favor of the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter, (iii) against any action that would reasonably be expected to result in a breach of the merger agreement and (iv) against any action that would compete with or impair the merger.

The Tengelmänn Voting Agreement will terminate upon the earliest to occur of (i) the closing of the merger, (ii) termination of the merger agreement or (iii) the one-year anniversary of the merger agreement.

YUCAIPA WARRANT AGREEMENT

The following is a summary of the material provisions of the Yucaipa Warrant Agreement. This summary is qualified in its entirety by reference to the Yucaipa Warrant Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex F. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

As of March 4, 2007, the Yucaipa Investors owned:

Pathmark
Series A
Warrants to
purchase
10,060,000
shares of
Pathmark
common
stock with
an exercise
price of
\$8.50 per
share; and

Pathmark
Series B
Warrants to
purchase
15,046,350
shares of
Pathmark
common
stock with
an exercise
price of
\$15.00 per
share.

Under the terms of the Yucaipa Warrant Agreement entered into in connection with the merger agreement, A&P has agreed to issue the Yucaipa Investors warrants, which we refer to as rollover warrants, to purchase A&P common stock in exchange for the cancellation of warrants to purchase Pathmark common stock. The warrants to acquire Pathmark common stock held by the Yucaipa Investors will be exchanged for rollover warrants to acquire a number of shares of A&P common stock as follows:

the
Pathmark
Series A
Warrants
will be
exchanged
for A&P
Series A
Warrants
to purchase
an
aggregate
of
4,657,378
shares of
A&P
common
stock at an
exercise
price of
\$18.36 per
share; and

the
Pathmark
Series B
Warrants
will be
exchanged
for A&P

Series B
Warrants
to purchase
an
aggregate
of
6,965,858
shares of
A&P
common
stock at an
exercise
price of
\$32.40 per
share.

The A&P Series A Warrants will expire on June 9, 2008 and the A&P Series B Warrants will expire on June 9, 2015.

The rollover warrants will contain the following provisions:

The Yucaipa
Investors are
required to
exercise the
warrants on a
cashless
basis, and, at
A&P's
discretion, the
warrants may
be settled by
payment of
the
in-the-money
amount of
exercised
warrants in
cash, stock or
a combination
thereof;

if the Yucaipa
Investors
exercise all of
their A&P
Series B
Warrants,
then A&P
must settle by
payment of
the

in-the-money amount of such warrants within twenty business days of exercise; *provided, however,* that if A&P gives notice within twenty business days that it intends to settle in cash, then it may defer payment of up to 50% of the cash payment until the first anniversary of the exercise date, which deferred portion will bear interest at the prime rate after such twenty business-day period; and

customary antidilution provisions.

The Yucaipa Warrant Agreement also provides that, until June 9, 2014, the Yucaipa Investors may not exercise A&P Series B Warrants in an aggregate amount in any twelve-month period that is greater than 50% of the amount of A&P Series B Warrants issued to them in connection with the merger, unless (i) such exercise is in connection with a change of control of A&P or (ii) an exercise of all of the Yucaipa Investors' A&P Series B Warrants then outstanding.

APPROVAL OF THE ADJOURNMENT OR POSTPONEMENT OF THE PATHMARK SPECIAL MEETING (PATHMARK PROPOSAL 2)

Pathmark stockholders are being asked to consider and vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies. The adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of the holders of a majority of the shares of common stock present or represented at the special meeting and entitled to vote thereon. Accordingly, an abstention on the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies will have the same effect as a vote **AGAINST** that proposal, but the failure to attend the meeting and vote in person, to submit a

proxy, or to provide voting instructions to your bank, brokerage firm or nominee will have no effect on the outcome of the proposal. The Pathmark board of directors unanimously recommends that Pathmark stockholders vote FOR the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

APPROVAL OF THE A&P SHARE ISSUANCE (A&P PROPOSAL 1)

In connection with the merger, A&P stockholders are being asked to consider and vote on a proposal to approve the issuance of A&P common stock pursuant to the merger agreement. Stockholder approval of the issuance of A&P common stock pursuant to the merger agreement is

required under the rules of the NYSE, which require the affirmative vote of the holders of a majority of shares of A&P common stock cast on such proposal, in person or by proxy, *provided* that the total votes cast on the proposal represent at least a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, the failure of an A&P stockholder to vote or a broker nonvote will not affect the outcome of the vote on the proposal, assuming more than a majority of the outstanding shares vote on the proposal. Because the NYSE treats abstentions as votes cast with respect to the stock issuance proposal, an abstention will have the same effect as a vote **AGAINST** this proposal. Abstentions and broker nonvotes will be counted for the purposes of determining whether a quorum exists at the A&P special meeting. See *The A&P Special Meeting*.

The A&P board of directors believes that the merger is in the best interests of A&P and its stockholders and has unanimously authorized, declared the advisability of and recommended the merger agreement and the transactions it contemplates. For the factors considered by the A&P board of directors in reaching its decision to approve the merger agreement and the transactions it contemplates, see *Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors*. The A&P board of directors unanimously recommends that A&P stockholders vote **FOR** the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement.

APPROVAL OF THE ADJOURNMENT OR POSTPONEMENT OF THE A&P SPECIAL MEETING (A&P PROPOSAL 2)

A&P stockholders are being asked to consider and vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies. The adoption of the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the votes cast by the holders of A&P common stock at the special meeting. Therefore, an A&P stockholder's failure to vote, a broker nonvote or an abstention will have no effect on the outcome of the vote on this proposal. The A&P board of directors unanimously recommends that A&P stockholders vote **FOR** the proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.

EXPERTS

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this document by reference to A&P's Annual Report on Form 10-K for the year ended February 24, 2007 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements and management's report on the effectiveness of internal control over financial reporting of Pathmark incorporated in this joint proxy statement/prospectus by reference from the Annual Report on Form 10-K, as amended, of Pathmark for the year ended and as of February 3, 2007 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports (which reports (i) express an unqualified opinion on the consolidated financial statements and include an explanatory paragraph relating to the Company's adoption of SFAS No. 123(R), *Share-Based Payment*, as revised, and SFAS No. 158, *Employers Accounting for Defined Benefit Pension and Other Postretirement Plans* an amendment of SFAS No. 87, 88, 106, and 132(R), (ii) express an unqualified opinion on management's assessment regarding the effectiveness of internal control over financial reporting, and (iii) express an unqualified opinion on the effectiveness of internal control over financial reporting), which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

LEGAL MATTERS

The legality of the A&P common stock offered hereby will be passed upon for A&P by McGuireWoods LLP, Maryland counsel to A&P.

STOCKHOLDER PROPOSALS

A&P plans to hold its annual meeting of stockholders on or around July 19, 2008. In order to be considered for inclusion in A&P's proxy statement for the annual meeting, stockholder proposals must be received at A&P's principal executive offices, at The Great Atlantic & Pacific Tea Company, Inc., Two Paragon Drive, Montvale, New Jersey 07645, Telephone: (201) 573-9700, Attention: Secretary, no later than January 26, 2008 and otherwise comply with the requirements of Rule 14a-8 under the Exchange Act.

In accordance with Pathmark's bylaws, Pathmark stockholders may not submit stockholder proposals to be considered at the Pathmark special meeting. Pathmark plans to hold its annual meeting of stockholders on or around June 14, 2008. In order to be considered for inclusion in Pathmark's proxy statement for the annual meeting, stockholder proposals must be received at Pathmark's principal executive offices, at Pathmark Stores, Inc., 200 Milik Street, Carteret, New Jersey 07008, Telephone: (732) 499-3000, Attention: Secretary, no later than January 16, 2008 and otherwise comply with the requirements of Rule 14a-8 under the Exchange Act.

WHERE YOU CAN FIND MORE INFORMATION

Pathmark and A&P file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information filed by A&P or Pathmark at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. You can also inspect reports, proxy statements and other information about A&P at the offices of the NYSE, 20 Broad Street, New York, New York 10005. You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates, or from commercial document retrieval services.

The SEC maintains a website that contains reports, proxy statements and other information, including those filed by A&P and Pathmark, at www.sec.gov. You may also access the SEC filings and obtain other information about A&P and Pathmark through the websites maintained by A&P and Pathmark, which are www.aptea.com and www.pathmark.com, respectively. The information contained in those websites is not incorporated by reference into this joint proxy statement/prospectus.

As allowed by SEC rules, this joint proxy statement/prospectus does not contain all the information you can find in the registration statement on Form S-4 filed by A&P to register the shares of stock to be issued in the merger and the exhibits to the registration statement. The SEC allows A&P and Pathmark to incorporate by reference information into this joint proxy statement/prospectus, which means that we can disclose important information to you by referring you to other documents filed separately with the SEC. The information incorporated by reference is deemed to be part of this joint proxy statement/prospectus, except for any information superseded by information in this joint proxy statement/prospectus. This joint proxy statement/prospectus incorporates by reference the documents set forth below that A&P (Commission file number 1-4141) and Pathmark (Commission file number 1-5287) have previously filed with the SEC. These documents contain important information about the companies and their financial condition.

A&P FILINGS WITH THE SEC	PERIOD AND/OR FILING DATE
Annual Report on Form 10-K (including information incorporated therein by reference to A&P's 2007 Annual Report to Stockholders)	Year ended February 24, 2007, as filed April 25, 2007
Quarterly Report on Form 10-Q	Quarter ended June 16, 2007, as filed July 25, 2007
Amended Quarterly Report on Form 10-Q	Quarter ended September 10, 2005, as filed June 25, 2007
Definitive Proxy Statement on Schedule 14A	Filed May 25, 2007
Current Reports on Form 8-K	Filed February 28, 2007, March 5, 2007, March 6, 2007, March 14, 2007, April 20, 2007, April 25, 2007, April 26, 2007, May 7, 2007, May 21, 2007, May 31, 2007, June 21, 2007, June 25, 2007, July 16, 2007, July 20, 2007, July 23, 2007, August 8, 2007, August 24, 2007, September 19, 2007 and September 20, 2007

PATHMARK FILINGS WITH THE SEC	PERIOD AND/OR FILING DATE
Annual Report on Form 10-K, excluding Item 5 as amended by filing of Form 10-K/A	Year ended February 3, 2007, as filed April 19, 2007
Amendment No. 1 to Annual Report on Form 10K	Filed May 11, 2007
Definitive Proxy Statement on Schedule 14A	Filed May 11, 2007
Definitive Proxy Soliciting Materials on Schedule 14A	Filed March 5, 2007 and March 21, 2007
Quarterly Reports on Form 10-Q	Quarter ended May 5, 2007, as filed June 13, 2007 and Quarter ended August 4, 2007, as filed September 12, 2007
Current Reports on Form 8-K	Filed February 27, 2007, March 5, 2007, April 19, 2007, May 22, 2007, June 13, 2007, June 27, 2007, July 16, 2007, August 8, 2007, August 17, 2007, September 12, 2007 and September 21, 2007

All documents filed by A&P and Pathmark pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, from the date of this joint proxy statement/prospectus to the date of the special meeting shall also be deemed to be incorporated herein by reference.

You may also obtain copies of any document incorporated in this joint proxy statement/prospectus, without charge, by requesting them in writing, by telephone or by e-mail from the appropriate company at the following addresses:

Pathmark Stores, Inc.
Investor Relations

The Great Atlantic & Pacific Tea Company, Inc.
Investor Relations

200 Milik Street
Carteret, New Jersey 07008
Telephone: (732) 499-3000

OR

Mellon Investor Services LLC
480 Washington Boulevard, 27th Floor
Jersey City, New Jersey 07310
Telephone: (800) 580-6412

Two Paragon Drive
Montvale, New Jersey 07645
Telephone: (201) 573-9700

OR

Mackenzie Partners, Inc.
105 Madison Avenue
New York, New York 10016
Telephone: (800) 322-2885

Neither A&P nor Pathmark have authorized anyone to give any information or make any representation about the merger that is different from, or in addition to, that contained in this joint proxy statement/prospectus or in any of the materials that are incorporated by reference into this joint proxy statement/prospectus. Therefore, if anyone does give you information of this sort, you should not rely on it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this joint proxy statement/prospectus are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this joint proxy statement/prospectus does not extend to you. The information contained in this joint proxy statement/prospectus speaks only as of the date of this document unless the information specifically indicates that another date applies.

**AGREEMENT AND PLAN OF MERGER
AND AMENDMENT NO. 1 TO THE
AGREEMENT AND PLAN OF MERGER**

AGREEMENT AND PLAN OF MERGER

by and among

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

and

SAND MERGER CORP.

and

PATHMARK STORES, INC.

Dated as of March 4, 2007

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made and entered into and effective as of March 4, 2007, by and among THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., a Maryland corporation (*Parent*), SAND MERGER CORP., a Delaware corporation and a wholly owned Subsidiary of Parent (*Merger Sub*), and PATHMARK STORES, INC., a Delaware corporation (the *Company*). Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to such terms in Article I.

RECITALS

WHEREAS, the Board of Directors of each of Parent, Merger Sub and the Company has approved and declared advisable this Agreement and the merger of Merger Sub with and into the Company (the *Merger*) upon the terms and subject to the conditions set forth in this Agreement, whereby, among other things, each issued and outstanding share of common stock, par value \$0.01 per share, of the Company (the *Company Common Stock*) not owned by Parent, Merger Sub or the Company will be converted into the right to receive the Per Share Merger Consideration;

WHEREAS, simultaneously with the execution and delivery of this Agreement, (i) Parent and Yucaipa are entering into the Yucaipa Voting Agreement, the Yucaipa Stockholder Agreement and the Yucaipa Warrant Agreement and (ii) the Company and Tengelmann are entering into the Tengelmann Voting Agreement; and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing, the representations, warranties, covenants and agreements set forth in this Agreement, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.1 *Definitions*. For purposes of this Agreement, the following terms, when used in this Agreement, shall have the meanings assigned to them in this Section 1.1:

13D Group means any group of Persons formed for the purpose of acquiring, holding, voting or disposing of Voting Stock of another Person that would be required under Section 13(d) of the Exchange Act (as in effect on, and based on legal interpretations thereof existing on, the date hereof), to file a statement on Schedule 13D with the SEC as a person within the meaning of Section 13(d)(3) of the Exchange Act if such group beneficially owned Voting Stock representing more than 5% of any class of Voting Stock of such other Person then outstanding.

2000 Warrant Agreement means the Warrant Agreement dated as of September 19, 2000 between the Company and ChaseMellon Shareholder Services, LLC.

2000 Warrants means the warrants issued by the Company pursuant to the 2000 Warrant Agreement.

2005 Warrant Agreement means the Warrant Agreement dated as of June 9, 2005 among the Company, Yucaipa and the other parties thereto.

2005 Warrants means the warrants issued by the Company pursuant to the 2005 Warrant Agreement.

Action means any action, cause of action, claim, prosecution, investigation, suit, litigation, grievance, arbitration or other proceeding, whether civil, criminal or administrative, at Law or in equity, by or before any Governmental Entity.

Affiliate means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to

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direct, or cause the direction of, the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

Agreement means this Agreement and Plan of Merger, as the same may be amended or supplemented.

Allocated Amount for each Facility specified in Section 1.1(a) of the Parent Disclosure Letter or Section 1.1(a) of the Company Disclosure Letter means the amount set forth next to such Facility in Section 1.1(a) of the Parent Disclosure Letter or Section 1.1(a) of the Company Disclosure Letter, as the case may be.

Ancillary Agreements means the Tengelmann Voting Agreement, the Yucaipa Stockholder Agreement, the Yucaipa Voting Agreement and the Yucaipa Warrant Agreement.

Antitrust Law means the Sherman Antitrust Act of 1890, as amended, the Clayton Antitrust Act of 1914, as amended, the HSR Act, the Federal Trade Commission Act of 1914, as amended, and all other applicable competition, merger control, antitrust, trade regulation or similar transnational, national, federal or state, domestic or foreign Laws, and other Laws and administrative and judicial doctrines that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

Antitrust Termination Determination means that the Board of Directors of Parent shall have determined in good faith, after consultation with its outside counsel, that it is reasonably likely that Parent, Merger Sub and/or the Company (in the aggregate) would be required to divest, sell, transfer and/or otherwise dispose of stores, businesses or other assets of Parent and/or the Company or of any of their Subsidiaries with aggregated Allocated Amounts in excess of the Threshold Amount in order to consummate the transactions contemplated by this Agreement.

Business Day means any day, other than a Saturday, Sunday or a day on which the banks or national securities exchanges located in New York, New York shall be authorized or required by Law to close.

Charter means the Parent's Amended and Restated Certificate of Incorporation, as amended.

Company Budgets means, collectively, the Pathmark Stores, Inc. 2007 Annual Operating Plan, the Pathmark Stores, Inc. 2007 Capital Plan and the Pathmark Stores, Inc. 2008 and 2009 Long Range Plan, in each case as set forth in Section 1.1 (b) of the Company Disclosure Letter.

Company Credit Agreement means the Credit Agreement dated as of October 1, 2004 among the Company, as borrower, Banc of America Securities LLC, as arranger, Fleet Retail Group, Inc., as administrative agent and collateral agent, GMAC Commercial Finance LLC and General Electric Capital Corporation, as co-documentation agents, the CIT Group/Business Credit, Inc., as syndication agent, and the other agents and lenders parties thereto (including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements or modifications thereto not prohibited by Section 6.1(d)).

Company Disclosure Letter means the disclosure letter of the Company referred to in Article IV.

Company Material Adverse Effect means any change, event or circumstance that, individually or in the aggregate with all other changes, events and circumstances, has a material adverse effect on the business, results of operations, condition (financial or otherwise), assets or liabilities of the Company and its Subsidiaries, taken as a whole, other than any change, event or circumstance arising out of: (i) general economic, legal, regulatory or political conditions in the United States of America or geographic regions in which the Company and its Subsidiaries operate, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (ii) conditions generally affecting the industries in which the Company and its Subsidiaries operate, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (iii) the announcement or pendency of the Merger or the entry

into this Agreement or the Ancillary Agreements; (iv) any decrease in the market price of the Company Common Stock in and of itself (but not any change, event or circumstance that may be underlying such decrease to the extent that such change, event or circumstance would otherwise constitute a Company Material Adverse Effect);

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(v) any changes in the securities markets generally, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (vi) the commencement or escalation of a war or armed hostilities or the occurrence of acts of terrorism or sabotage, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (vii) earthquakes, hurricanes or other natural disasters, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (viii) compliance with the requirements of changes in Law or GAAP or any interpretation thereof; (ix) (A) proposing, negotiating, committing to or effecting, by consent decree, hold separate order or otherwise, the sale, transfer, divestiture or disposition of stores, businesses or other assets arising from the parties' compliance with their obligations under Section 6.6, (B) otherwise taking or committing to take actions that limit or would limit Parent's, Merger Subsidiaries or its Subsidiaries (including, after the Effective Time, the Company's and its Subsidiaries as Subsidiaries of Parent) freedom of action with respect to, or their ability to retain, one or more of their respective stores, businesses, product lines or assets arising from the parties' compliance with their obligations under Section 6.6, or (C) the application of Antitrust Laws (including any Action or Judgment arising under Antitrust Laws) to the transactions contemplated by this Agreement or the Ancillary Agreements; or (x) (A) as a result of the Company's entry into, and as permitted by, this Agreement, the payment of any amounts due to, or the provision of any other benefits (including benefits relating to acceleration of stock options) to, any officers or employees under the employment contracts, non-competition agreements, employee benefit plans, severance arrangements or other arrangements set forth in Section 1.1(c) of the Company Disclosure Letter (except to the extent that payments under such contracts, agreements, plans or arrangements solely for retention exceed the estimated retention payments set forth in Section 1.1(c) of the Company Disclosure Letter) or (B) the incurrence by the Company of out-of-pocket fees and expenses (including legal, accounting, investment banking and other fees and expenses) in connection with the transactions contemplated by this Agreement (except to the extent that fees and expenses for legal, accounting and other exceed the estimated amount, or with respect to investment banking and financial advisory fees the specified amount, set forth in Section 1.1(d) of the Company Disclosure Letter).

Company Plans means all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA)) and all bonus, incentive, stock option, stock purchase, restricted stock, phantom stock or other stock-based compensation, deferred compensation, medical, life insurance, disability, fringe benefit, supplemental executive retirement, severance or other benefit plans, programs, policies, practices, trusts or arrangements, and all employment, termination, severance, change in control, compensation or other Contracts or agreements, to which the Company or any of its ERISA Affiliates is a party, or which are sponsored, maintained or contributed to by the Company or any of its ERISA Affiliates or as to which the Company or any of its ERISA Affiliates has any liability and any material Contracts, arrangements, agreements, policies, practices or understandings between the Company or any of its ERISA Affiliates and any current or former employee, director or consultant of the Company or of any of its Subsidiaries, including any Contracts, arrangements or understandings relating to a change in control of the Company; *provided, however*, that the term *Company Plans* shall exclude any plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

Company Proposal means any inquiry, proposal or offer from any Third Party or 13D Group relating to (i) any direct or indirect acquisition or purchase, in a single transaction or a series of transactions, of (A) 20% or more (based on the fair market value thereof, as determined by the Board of Directors of the Company) of the assets (including capital stock of the Subsidiaries of the Company) of the Company and its Subsidiaries, taken as a whole (other than sales of inventory in the ordinary course and other than inquiries, proposals and offers to acquire or purchase assets in connection with the parties' obligations under Section 6.6(e)), or (B) 20% or more of the outstanding shares of the Company Common Stock; (ii) any tender offer or exchange offer that, if consummated, would result in any Third Party or 13D Group owning, directly or indirectly, 20% or more of the outstanding shares of the Company Common Stock; or (iii) any merger, consolidation, business combination, recapitalization, liquidation, dissolution, binding share exchange or similar transaction involving the Company pursuant to which any Third Party (or the shareholders of any

Third Party) or 13D Group would own, directly or indirectly, 20% or more of any class of equity securities of the Company or of the surviving entity in a merger or the resulting direct or indirect parent of the Company or such surviving entity, other than, in each case, the transactions contemplated by this Agreement.

Company SEC Reports means the forms and reports filed by the Company with the SEC since January 31, 2004.

Company Stock Plans means the Amended and Restated 2000 Employee Equity Plan, the Amended and Restated 2000 Non-Employee Directors' Equity Plan, the Stock Option Award Agreements between the Company and John Standley and Kenneth Martindale, and the Restricted Stock Award Agreements between the Company and John Standley and Kenneth Martindale.

Confidentiality Agreement means the letter agreement between the Company and Parent dated December 20, 2006.

Contract means any contract, agreement, commitment, lease, purchase order, license, mortgage, indenture, note, bond, concession agreement, franchise agreement or other instrument, including all amendments thereto.

Copyrights means all rights in a work of authorship and all copyrights (including all registrations and applications to register the same).

Electronic Data Room means the DataSite electronic data room maintained by the Company in connection with the transactions contemplated by this Agreement and the Ancillary Agreements and to which Parent and Merger Sub have been given access, as such data room was constituted immediately prior to the execution of this Agreement.

Encumbrance means any lien, encumbrance, security interest, pledge, mortgage, hypothecation, charge, restriction on transfer of title, adverse claim, title retention agreement of any nature or kind, or other encumbrance, except for any restrictions arising under any applicable securities Laws.

Environment means ambient air, indoor air, surface water, groundwater and surface and subsurface strata and natural resources such as wetlands, flora and fauna.

Environmental Law means any Law and the common law relating to (i) pollution or the protection of the Environment, (ii) the protection of human health and safety as it pertains to Hazardous Materials, or (iii) the generation, handling, use, presence, treatment, transport, storage, disposal or Release of any Hazardous Materials.

ERISA Affiliate means any trade or business, whether or not incorporated, which together with the Company or Parent, as applicable, would be deemed a single employer within the meaning of Section 414(b), (c) or (m) of the Code or Section 4001(b)(1) of ERISA.

Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

Executive Officer means any individual who would be required to be identified as a named executive officer in any proxy statement filed by the Company with the SEC.

Existing Notes means the Company's 3 1/4% Senior Subordinated Notes due 2012 outstanding on the date hereof.

Existing Stockholders Agreement means the Amended and Restated Stockholders' Agreement dated as of November 30, 2005 among the Company and Yucaipa.

Facilities means any store, office, plant or warehouse owned or leased by Parent or any of its Subsidiaries and/or by the Company or any of its Subsidiaries.

GAAP means generally accepted accounting principles in the United States of America as in effect from time to time.

Governmental Entity means any domestic or foreign, transnational, national, federal, state, municipal or local government, or any other domestic or foreign governmental, regulatory or

administrative authority, or any agency, board, department, commission, court, tribunal or instrumentality thereof.

Hazardous Materials means any pollutant, contaminant, waste, chemical, compound, substance or material, including any petroleum or petroleum product or by-product, asbestos-containing material, urea formaldehyde foam insulation, or mold, regulated under any Environmental Law.

HSR Act means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

Indebtedness means, with respect to any Person, without duplication: (i) (A) indebtedness for borrowed money, (B) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (C) all obligations of such Person under interest rate or currency hedging transactions (valued at the termination value thereof), (D) all letters of credit issued for the account of such Person and (E) obligations of such Person to pay rent or other amounts under any lease of real property or personal property, which obligations are required to be classified as capital leases in accordance with GAAP; (ii) indebtedness for borrowed money of any other Person guaranteed, directly or indirectly, in any manner by such Person; and (iii) indebtedness of the type described in clause (i) above secured by any Encumbrance upon property owned by such Person, even though such Person has not in any manner become liable for the payment of such indebtedness; *provided, however*, that Indebtedness shall not be deemed to include (A) any accounts payable or trade payables incurred in the ordinary course of business of such Person, or (B) any intercompany indebtedness between any Person and any wholly owned Subsidiary of such Person or between any wholly owned Subsidiaries of such Person.

Initiation Date means the date the Joint Proxy Statement is first mailed to the Company's stockholders and Parent's stockholders.

Intellectual Property means all Trademarks, Patents, Copyrights, Trade Secrets, service marks, service mark rights, computer programs, moral rights and the benefits of any waivers of moral rights and any other proprietary intellectual property rights.

Judgment means any applicable judgment, order or decree of any Governmental Entity.

Labor Laws means any applicable Law relating to employment standards, employee rights, health and safety, labor relations, workplace safety and insurance and/or pay equity.

Law means any applicable statute, code, rule, regulation, ordinance, Judgment, or other pronouncement of any Governmental Entity having the effect of law.

Marketing Period means the first period of 20 consecutive calendar days after the Initiation Date (i) throughout and at the end of which (A) Parent and its financing sources shall have the Required Information and (B) nothing has occurred and no condition exists that would cause any of the conditions set forth in Sections 7.1(b), 7.1(d), 7.2(a) and 7.2(b) to fail to be satisfied assuming the Closing were to be scheduled for any time during such 20-consecutive-calendar-day period, and (ii) at the end of which the other conditions set forth in Sections 7.1 and 7.2 shall be satisfied (other than those conditions that by their terms are to be satisfied at the Closing); provided that (v) the Marketing Period shall end no earlier than five Business Days after the later to occur of (A) the date the Company Stockholder Approval is obtained and (B) the date the Parent Stockholder Approval is obtained; (w) the Marketing Period shall end on any earlier date that is the date on which the Financing is consummated; (x) for purposes of calculating such 20-consecutive-calendar-day period, the periods from and including August 17 through and including September 3, 2007 and from and including December 21, 2007 through and including January 1, 2008 shall not be counted or taken into account; (y) the Marketing Period shall not be deemed to have commenced if, prior to the completion of the Marketing Period, (A) the Company's independent registered accounting firm shall have withdrawn its audit opinion with respect to any financial statements contained in the Required Information, in which case the

Marketing Period will not be deemed to commence, at the earliest, unless and until a new unqualified audit opinion is issued with respect to the consolidated financial statements for the applicable periods by the Company's independent registered accounting firm or another independent registered accounting firm reasonably acceptable to Parent, (B) the Company shall have publicly announced any intention to restate any of its financial information, in

which case the Marketing Period will not be deemed to commence, at the earliest, unless and until such restatement has been completed and the Company SEC Reports have been amended or the Company has announced that it has concluded that no restatement shall be required in accordance with GAAP or (C) the Company shall have failed to file any Form 10-K or Form 10-Q with the SEC by the date required under the Exchange Act, in which case the Marketing Period will not be deemed to commence, at the earliest, unless and until all such reports have been filed; and (z) if the financial statements included in the Required Information that is available to Parent on the first day of any such 20-consecutive-calendar-day period would not be sufficiently current on any day during such 20-consecutive-calendar-day period to permit (i) if the Financing is being effected pursuant to a public offering, a registration statement using such financial statements to be declared effective by the SEC on the last day of the 20-consecutive-calendar-day period or (ii) the Company's independent registered accounting firm to issue a customary comfort letter to purchasers (in accordance with its normal practices and procedures) on the last day of the 20-consecutive-calendar-day period, then a new 20-consecutive-calendar-day period shall commence upon Parent receiving updated Required Information that would be sufficiently current to permit the actions described in (i) if applicable, and (ii) on the last day of such 20-consecutive-calendar-day period.

NYSE means the New York Stock Exchange.

Parent Common Stock means the common stock, par value \$1.00 per share, of Parent.

Parent Disclosure Letter means the disclosure letter of Parent and Merger Sub referred to in Article V.

Parent Material Adverse Effect means any change, event or circumstance that, individually or in the aggregate with all other changes, events and circumstances, has a material adverse effect on the business, results of operations, condition (financial or otherwise), assets or liabilities of Parent and its Subsidiaries, taken as a whole, other than any change, event or circumstance arising out of: (i) general economic, legal, regulatory or political conditions in the United States of America or geographic regions in which Parent and its Subsidiaries operate, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (ii) conditions generally affecting the industries in which Parent and its Subsidiaries operate, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (iii) the announcement or pendency of the Merger or the entry into this Agreement or the Ancillary Agreements; (iv) any decrease in the market price of the Parent Common Stock in and of itself (but not any change, event or circumstance that may be underlying such decrease to the extent that such change, event or circumstance would otherwise constitute a Parent Material Adverse Effect); (v) any changes in the securities markets generally, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (vi) the commencement or escalation of a war or armed hostilities or the occurrence of acts of terrorism or sabotage, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (vii) earthquakes, hurricanes or other natural disasters, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (viii) compliance with the requirements of changes in Law or GAAP or any interpretation thereof; (ix) sales of Facilities (or agreements or plans to sell Facilities) that arise from the parties' compliance with their obligations under Section 6.6; or (x) any Action brought by any Governmental Entity under any Antitrust Law relating to the transactions contemplated by this Agreement and the Ancillary Agreements.

Parent Plans means all employee benefit plans (as defined in Section 3(3) of ERISA) and all bonus, incentive, stock option, stock purchase, restricted stock, phantom stock or other stock-based compensation, deferred compensation, medical, life insurance, disability, fringe benefit, supplemental executive retirement, severance or other benefit plans, programs, policies, practices, trusts or arrangements, and all employment, termination, severance, change in control, compensation or other Contracts or agreements, to which Parent or any of its ERISA Affiliates is a party, or which are sponsored, maintained or contributed to by Parent or any of its ERISA Affiliates or as to which Parent or any of its ERISA Affiliates has any liability and any material Contracts, arrangements, agreements, policies, practices or understandings between Parent or any of its ERISA Affiliates and any current or former employee, director or consultant of Parent or of any of its Subsidiaries,

including any Contracts, arrangements or understandings relating to a change in control of Parent; provided, however, that the term *Parent Plans* shall exclude any plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

Parent SEC Reports means the forms, reports and documents (including all exhibits) filed by Parent with the SEC since February 28, 2004.

Patents means all patents, patent rights and patent applications, including divisions, continuations, continuations-in-part, reissues, re-examinations, and all extensions thereof.

Permits means, collectively, all applicable consents, approvals, permits, orders, authorizations, licenses and registrations from Governmental Entities.

Permitted Encumbrance means: (i) mechanics, carriers, workers, repairers, materialmen, warehousemen, construction and other Encumbrances arising or incurred in the ordinary course of business and not yet due and payable or being contested in good faith by appropriate proceedings; (ii) Encumbrances for Taxes, utilities and other governmental charges that, in each case, are not yet due or payable, are being contested in good faith by appropriate proceedings or may thereafter be paid without giving rise to any material penalty or material additional cost or liability; (iii) matters of record or registered Encumbrances affecting title to any owned or leased real property of a Person and its Subsidiaries; (iv) requirements and restrictions of zoning, building and other applicable Laws and municipal by-laws, and development, site plan, subdivision or other agreements with municipalities that do not individually or in the aggregate materially and adversely affect the use of the owned or leased Real Property of a Person and its Subsidiaries affected thereby as currently used in the business of such Person and its Subsidiaries; (v) statutory Encumbrances of landlords for amounts not yet due and payable; (vi) Encumbrances arising under conditional sales Contracts and equipment leases with third parties entered into in the ordinary course of business generally consistent with past practice; (vii) defects, irregularities or imperfections of title and other Encumbrances which, individually or in the aggregate, do not materially impair the continued use (in a manner generally consistent with current use in the business of the Person and its Subsidiaries) of the asset or property to which they relate; and (viii) (A) with respect to the Company and its Subsidiaries, Encumbrances arising under the Company Credit Agreement and (B) with respect to Parent and its Subsidiaries, Encumbrances arising under any credit agreement existing as of the date hereof.

Person means an association, a corporation, an individual, a partnership, a limited partnership, a limited liability company, an unlimited liability company, a trust or any other entity or organization, including a Governmental Entity.

Preemptive Rights Charter Amendment means an amendment to the preemptive right of stockholders of Parent set forth in Article 7 of Parent's Charter, which amendment specifically exempts the transactions contemplated by this Agreement and the Ancillary Agreements from the application of Article 7 but otherwise does not alter such preemptive rights; *provided* that no such amendment shall be necessary if Article 7 has been previously eliminated from Parent's Charter.

Registered Intellectual Property means all (i) registered trademarks and service marks and applications therefor, (ii) registered copyrights and applications therefor, (iii) issued patents and patent applications and (iv) domain names, in each case, that are owned by the Company or any of its Subsidiaries and are material to the conduct of the business of the Company and its Subsidiaries.

Release means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing of Hazardous Materials (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Materials) into or through the Environment or into or out of any real property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

Representatives means the directors, officers, employees, agents, investment bankers, financing sources (with respect to Parent and Merger Sub only), attorneys, accountants and advisors of either Parent and Merger Sub, on the one hand, or the Company, on the other hand, as the context requires. Yucaipa and its controlled and controlling Affiliates shall be deemed to be Representatives

of the Company, and Tengelmänn and its controlled and controlling Affiliates shall be deemed to be Representatives of Parent and Merger Sub.

SEC means the Securities and Exchange Commission.

Securities Act means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

SOX means the Sarbanes-Oxley Act of 2002.

Subsidiary of any Person means, on any date, any Person (i) the accounts of which would be consolidated with and into those of the applicable Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (ii) of which (A) securities or other ownership interests representing more than 50% of the equity or (B) more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests, as of such date, are owned, controlled or held by the applicable Person or one or more Subsidiaries of such Person.

Superior Proposal means any bona fide Company Proposal (provided that the applicable percentages in the definition of Company Proposal shall be 50% as opposed to 20%) which the Board of Directors of the Company determines in good faith (after consultation with its financial advisors and outside counsel) (i) is reasonably likely to be consummated taking into the account the Third Party or 13D Group making such Company Proposal and all financial, legal, regulatory and other aspects of such Company Proposal and (ii) would, if consummated, reasonably be expected to result in a transaction that is more favorable to the stockholders of the Company than the Merger, taking into account all financial, legal, regulatory and other aspects of such Company Proposal and of this Agreement.

Tax means any foreign, federal, state or local income, sales and use, excise, franchise, real and personal property, gross receipt, capital stock, production, business and occupation, disability, estimated, employment, payroll, severance or withholding tax or other tax, duty, fee, impost, levy, assessment or charge imposed by any taxing authority, and any interest or penalties and other additions to tax related thereto.

Tax Returns means any return, report, declaration, information return or other document required to be filed with any Tax authority with respect to Taxes, including any amendments thereof.

Tengelmänn means Tengelmänn Warenhandelsgesellschaft KG.

Tengelmänn Voting Agreement means the Stockholder Voting Agreement between the Company and Tengelmänn dated as of the date of this Agreement.

Third Party means any Person other than Parent, the Company or any of their respective Affiliates.

Threshold Amount means \$36.0 million.

Trade Secrets means all proprietary, confidential information, formulas, processes, data, know-how, devices or compilations of information used in a business that confer a competitive advantage over those in similar businesses who do not possess them or know how to use them.

Trademarks means all trademarks, trademark rights, trade names, trade name rights, brands, logos, trade dress, business names and Internet domain names, together with the goodwill associated with any of the foregoing, all registrations and applications for registration of the foregoing.

Trading Day means (i) for so long as Parent Common Stock is listed or admitted for trading on the NYSE or another national securities exchange, a day on which the NYSE or such other national securities exchange is open for business

and trading in Parent Common Stock is not suspended or restricted or (ii) if Parent Common Stock ceases to be so listed, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by Law or executive order to close.

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Transfer Taxes means any sales, use, stock transfer, real property transfer, real property gains, stamp, documentary or similar taxes together with any interest or other additions to tax related thereto.

Voting Stock of any Person means securities having the right to vote generally in any election of directors or comparable governing Persons of such Person or any securities convertible into or exchangeable for any securities having such right.

Yucaipa means, collectively, Yucaipa Corporate Initiatives Fund I, L.P., Yucaipa American Alliance Fund I, L.P. and Yucaipa American Alliance (Parallel) Fund I, L.P.

Yucaipa Stockholder Agreement means the Yucaipa Stockholder Agreement between Parent and Yucaipa dated as of the date of this Agreement and effective as of the Effective Time.

Yucaipa Voting Agreement means the Stockholder Voting Agreement between Parent and Yucaipa dated as of the date of this Agreement.

Yucaipa Warrant Agreement means the Amended and Restated Warrant Agreement between Parent and Yucaipa dated as of the date of this Agreement and effective as of the Effective Time.

SECTION 1.2 Additional Definitions. For purposes of this Agreement, the following terms, when used in this Agreement, shall have the meanings assigned to them in the identified Section:

Term	Section
Adverse Recommendation Change	6.3(c)
Aggregate Merger Consideration	3.1(c)
Antitrust Condition	8.1(b)(i)
Certificate of Merger	2.3
Closing	2.2
Closing Date	2.2
Code	3.2(g)
Collective Bargaining Agreement	4.9
Company	Preamble
Company Closing Price	3.3(a)(ii)
Company Common Stock	Recitals
Company Contracts	4.12(a)
Company Indemnitees	6.7(a)
Company Leases	4.4(b)
Company Multiemployer Plans	4.10(a)(ii)
Company Stockholder Approval	4.2(a)(ii)
Company Stockholders Meeting	6.4(a)
Company Tenant Lease	4.4(b)
Company Title IV Plan	4.10(d)
Consent Solicitation	6.11(a)
Continuing Employees	6.14(a)

Debt Tender Offer	6.11(a)
DGCL	2.1
Discharge	6.11(b)
Dissent Shares	3.1(d)
Dissenters Rights Statute	3.1(d)
Effective Time	2.3
ERISA	1.1
Exchange Agent	3.2(a)
Extension Termination Financing	6.5(a)
Financing Commitments	5.17
Form S-4	6.10(a)
Indenture	6.11(a)
IRS	4.10(a)(iii)
Joint Proxy Statement	6.10(a)
Merger	Recitals
Merger Sub	Preamble

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Term	Section
MGCL	4.20
Nine-Month Termination Fee	8.2(d)
Notice of Adverse Change	6.3(c)
One-Year Termination Fee	8.2(e)
Option Exchange Ratio	3.3(a)(iii)
Outside Date	8.1(b)(i)
Owned Real Property	4.4(a)
Parent	Preamble
Parent Multiemployer Plans	5.10(b)
Parent Stockholder Approval	5.2(a)
Parent Stockholders Meeting	6.4(b)
Parent Title IV Plan	5.10(c)
PBGC	4.10(d)
Per Share Cash Consideration	3.1(c)
Per Share Merger Consideration	3.1(c)
Per Share Stock Consideration	3.1(c)
Permanent Restraint	8.1(b)(iv)
Pre-Amendment Option	3.3(a)(iii)
Real Property	4.4(c)
Required Information	6.5(b)(v)
Restraints	7.1(c)
Share Issuance	5.2(a)
Stock Option	3.3(a)(i)
Surviving Corporation	2.1
Voting Debt	4.3(a)

ARTICLE II THE MERGER

SECTION 2.1 *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), Merger Sub shall be merged with and into the Company at the Effective Time. At the Effective Time, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation in the Merger (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of Merger Sub in accordance with the DGCL. The Merger otherwise shall have the effects set forth in Section 3.1 and in the DGCL.

SECTION 2.2 *The Closing.* The closing of the Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties which shall be no later than the second Business Day after satisfaction or, to the extent permitted by Law, waiver of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), at the offices of Cahill Gordon & Reindel llp, 80 Pine Street, New York, New York 10005, unless another date or place is agreed to in writing by the parties hereto; provided, however, that, if the Marketing Period has not ended at the time of the satisfaction or waiver of the conditions set forth in Article VII (excluding conditions that cannot be satisfied until the

Closing but subject to the satisfaction or waiver of such conditions at the Closing), the Closing shall occur on the earlier of (a) a date during the Marketing Period specified by Parent on no less than two Business Days notice to the Company and (b) the final day of the Marketing Period (subject in each case to the satisfaction or waiver of all the conditions set forth in Article VII as of the date determined pursuant to this proviso); provided, further, that this Agreement may be terminated pursuant to and in accordance with Section 8.1 hereof, regardless of whether the final day of the Marketing Period shall have occurred before such termination. The date upon which the Closing shall occur is referred to herein as the Closing Date.

SECTION 2.3 *Effective Time*. Subject to the provisions of this Agreement, on the Closing Date or as soon as practicable thereafter the Company, Parent and Merger Sub shall file the certificate of

merger (the *Certificate of Merger*) executed in accordance with the relevant provisions of the DGCL, and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of Delaware, if filed on the Closing Date or at such other time as Parent, Merger Sub and the Company shall agree and shall specify in the Certificate of Merger (the time the Merger becomes effective, being referred to herein as the *Effective Time*).

SECTION 2.4 *Certificate of Incorporation and By-Laws*. At the Effective Time,

(a) the Amended and Restated Certificate of Incorporation of the Company as in effect immediately prior to the Effective Time shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law; and

(b) the By-Laws of the Company as in effect immediately prior to the Effective Time shall be the By-Laws of the Surviving Corporation until thereafter changed or amended as provided by the Certificate of Incorporation of the Surviving Corporation, such By-Laws or applicable Law.

SECTION 2.5 *New Director of Parent*. At the Effective Time, the individual named in Section 2.5 of the Company Disclosure Letter shall be appointed to the Board of Directors of Parent (which Board shall, if necessary, be increased in size in connection with such appointment) to hold office, subject to the applicable provisions of the Charter and By-Laws of Parent, until such director's death, resignation or removal or until such director's successor is duly elected and qualified, as the case may be; *provided, however*, if such individual is employed by or a director of a competitor of Parent as of the Effective Time, then such individual shall not be appointed to the Board of Directors of Parent and instead one independent director serving on the Board of Directors of the Company as of the date of this Agreement, nominated by the Board of Directors of the Company (other than any Representative of Yucaipa or any nominee designated by Yucaipa or any of its Representatives) and determined by the independent directors of the Board of Directors of Parent to be independent within the meaning of Parent's Corporate Governance Guidelines (as located on the date of this Agreement at Parent's website), shall be appointed to the Board of Directors of Parent to hold office, subject to the applicable provisions of the Charter and By-Laws of Parent, until such director's death, resignation or removal or until such director's successor is duly elected and qualified, as the case may be.

SECTION 2.6 *Directors*. Immediately prior to the Effective Time, the Company shall cause the members of the Company's Board of Directors to resign from their positions as such. The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, each of such directors to hold office, subject to the applicable provisions of the Certificate of Incorporation and By-Laws of the Surviving Corporation, until such director's death, resignation or removal or until such director's successor is duly elected and qualified, as the case may be.

SECTION 2.7 *Officers*. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation, each of such officers to hold office, subject to the applicable provisions of the Certificate of Incorporation and By-Laws of the Surviving Corporation, until such officer's death, resignation or removal or until such officer's successor is duly elected and qualified, as the case may be.

ARTICLE III EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS

SECTION 3.1 *Effect on Capital Stock*. At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of Company Common Stock or any shares of capital stock of Merger Sub:

(a) *Common Stock of Merger Sub*. Each issued and outstanding share of common stock of Merger Sub shall be converted into and become one validly issued, fully paid and nonassessable

share of common stock, par value \$0.01 per share, of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

(b) *Cancellation of Treasury Stock.* Each share of Company Common Stock owned by the Company, any Subsidiary of the Company, Parent or any Subsidiary of Parent shall automatically be canceled and retired and shall cease to exist and no payment shall be made with respect thereto.

(c) *Conversion of Company Common Stock.* Except as otherwise provided in Sections 3.1(d) and 3.2(d) and other than shares to be canceled in accordance with Section 3.1(b), each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive without interest 0.12963 of a validly issued, fully paid and nonassessable share of Parent Common Stock (the *Per Share Stock Consideration*) and \$9.00 in cash (the *Per Share Cash Consideration* and, together with the Per Share Stock Consideration and any cash paid in lieu of fractional shares of Parent Common Stock as contemplated by Section 3.2(d), the *Per Share Merger Consideration* ; the aggregate Per Share Cash Consideration and the aggregate Per Share Stock Consideration into which all shares of Company Common Stock may be converted pursuant to this Section 3.1 is referred to herein as the *Aggregate Merger Consideration*). At the Effective Time, all shares of Company Common Stock converted into the Per Share Merger Consideration pursuant to this Article III shall automatically be canceled, cease to exist and no longer be outstanding, and each holder of a certificate that immediately prior to the Effective Time represented any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration upon the surrender of such certificate in accordance with Section 3.2(b) and in each case without interest.

(d) *Dissenters' Rights.* Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are outstanding immediately prior to the Effective Time and that are held by any Person who is entitled to demand and properly demands appraisal of such shares pursuant to Section 262 of the DGCL (the *Dissenters' Rights Statute*) who did not vote in favor of the Merger or consent thereto in writing and who complies in all other respects with the Dissenters' Rights Statute (such shares, *Dissent Shares*) shall not be converted into the right to receive the Per Share Merger Consideration as provided in Section 3.1(c), but the holders of Dissent Shares shall instead be entitled to receive payment of the fair value of such Dissent Shares in accordance with the Dissenters' Rights Statute; *provided, however,* that if any such holder shall fail to perfect or otherwise shall validly waive, withdraw or lose the right to receive payment of the fair value of such Dissent Shares under the Dissenters' Rights Statute, then the right of such holder to be paid the fair value of such holder's Dissent Shares shall cease and such Dissent Shares shall be deemed to have been converted at the Effective Time into, and to have become exchangeable solely for, the right to receive the Per Share Merger Consideration, without interest, as provided in Section 3.1(c). At the Effective Time, all Dissent Shares shall automatically be canceled, cease to exist and no longer be outstanding, and each holder of a certificate that immediately prior to the Effective Time represented any Dissent Shares shall cease to have any rights with respect thereto, except the right to receive either payment of the fair value of such Dissent Shares in accordance with the Dissenters' Rights Statute or the Per Share Merger Consideration, as the case may be, upon the surrender of such certificate in accordance with Section 3.2(b) (without interest). The Company shall give prompt notice to Parent of any written demands and any other instruments served pursuant to the Dissenters' Rights Statute received by the Company relating to rights of appraisal under the Dissenters' Rights Statute, and Parent shall have the right to control all negotiations and proceedings with respect to such demands. Except with the prior written consent of Parent, the Company shall not make any payment with respect to, or offer to settle or settle, any such demands or agree to do any of the foregoing. Each holder of Dissent Shares who becomes entitled to payment for such shares pursuant to the Dissenters' Rights Statute shall receive payment therefor from the Surviving Corporation in accordance with the Dissenters' Rights Statute.

SECTION 3.2 *Payment to Company Stockholders.*

(a) The Company shall appoint American Stock Transfer and Trust Company to be the Company's exchange agent (the *Exchange Agent*) for the purpose of exchanging the Per Share Merger Consideration for certificates formerly representing Company Common Stock. Immediately prior to the Effective Time, Parent shall deposit with the Exchange Agent cash and Parent Common Stock in an amount equal to the Aggregate Merger Consideration to be paid in respect of all shares of Company Common Stock outstanding immediately prior to the Merger and authorize the Exchange Agent to issue shares of Parent Common Stock upon the exchange of certificates formerly representing Company Common Stock therefor. Promptly after the Effective Time, Parent shall send, or shall cause the Exchange Agent to send, to each holder of Company Common Stock immediately prior to the Effective Time a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and risk of loss and title shall pass, only upon proper delivery of the certificates formerly representing Company Common Stock to the Exchange Agent) for use in such exchange.

(b) Each holder of shares of Company Common Stock that have been converted into the right to receive the Per Share Merger Consideration shall be entitled to receive, upon surrender to the Exchange Agent of a certificate formerly representing Company Common Stock, together with a properly completed letter of transmittal, the Per Share Merger Consideration, without interest, payable for each share of Company Common Stock formerly represented by such certificate. Until so surrendered or transferred, as the case may be, each such certificate shall represent after the Effective Time for all purposes only the right to receive such Per Share Merger Consideration.

(c) If any portion of the applicable Per Share Merger Consideration is to be paid to a Person other than the Person in whose name the surrendered certificate formerly representing Company Common Stock is registered, it shall be a condition to such payment that (i) either such certificate shall be properly endorsed or shall otherwise be in proper form for transfer and (ii) the Person requesting such payment shall pay to the Exchange Agent any Transfer Taxes or other Taxes required as a result of such payment to a Person other than the registered holder of such certificate or establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

(d) No fractional shares of Parent Common Stock shall be issued in the Merger, and fractional share interests of Parent Common Stock shall not entitle the owner thereof to vote or to any rights of a holder of Parent Common Stock. For purposes of this Section 3.2(d), the fractional shares of Parent Common Stock of a single record holder shall be determined after aggregating all certificates and shares of such holder and calculations shall be rounded to five decimal places. Each holder who would otherwise be entitled to receive fractional shares of Parent Common Stock but for this Section 3.2(d) shall be entitled to receive, in lieu thereof, an amount in cash equal to the product of (i) the number of such fractional shares of Parent Common Stock held by such holder and (ii) (A) the Per Share Cash Consideration plus (B) (x) the Per Share Stock Consideration multiplied by (y) the closing price of the Parent Common Stock on the NYSE (regular way) on the Trading Day immediately prior to the Effective Time.

(e) After the Effective Time, there shall be no further registration of transfers of shares of Company Common Stock or of certificates formerly representing shares of Company Common Stock. If, after the Effective Time, certificates formerly representing Company Common Stock are presented to the Surviving Corporation, they shall be canceled and exchanged for the Per Share Merger Consideration provided for, and in accordance with the procedures set forth, in this Article III.

(f) Any portion of the Aggregate Merger Consideration deposited with the Exchange Agent pursuant to Section 3.2(a) (and any interest or other income earned thereon) that remains unclaimed by the holders of Company Common Stock 180 days after the Effective Time shall be returned to Parent, upon demand, and any such holder who has not exchanged certificates formerly representing Company Common Stock for the Per Share Merger Consideration in accordance with this Section 3.2 prior to that time shall thereafter look only to Parent and the Surviving Corporation for payment of the Per Share Merger Consideration in respect of such certificates formerly representing Company Common Stock without any interest thereon, but such holders shall have no greater rights against Parent and the

Surviving Corporation with respect thereto than are accorded to general creditors of

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Parent and the Surviving Corporation under applicable Law. Notwithstanding the foregoing, Parent, the Surviving Corporation and the Exchange Agent shall not be liable to any holder of certificates formerly representing Company Common Stock for any amount paid to a public official pursuant to applicable abandoned property, escheat or similar Laws. If any certificates formerly representing Company Common Stock have not been surrendered prior to the date five years after the Effective Time (or immediately prior to such earlier date on which any Per Share Merger Consideration or any dividends or distributions with respect to Parent Common Stock as contemplated by Section 3.2(h) in respect of such certificate would otherwise escheat to or become the property of any Governmental Entity), any such shares, cash, dividends or distributions in respect of such certificate shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interests of any Person previously entitled thereto.

(g) Parent and/or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable to any holder of shares of Company Common Stock pursuant to this Agreement such amounts as may be required to be deducted and withheld with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the Code), and the rules and regulations promulgated thereunder, or under any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate taxing authority by Parent and/or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Company Common Stock in respect of which such deduction and withholding were made.

(h) No dividends or other distributions with respect to Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any certificate formerly representing Company Common Stock with respect to the shares of Parent Common Stock issuable upon surrender thereof until the surrender of such certificate in accordance with this Article III. Subject to applicable Law, following surrender of any such certificate, there shall be paid to the holder of the certificate representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender, and a payment date subsequent to such surrender, payable with respect to such whole shares of Parent Common Stock.

SECTION 3.3 *Treatment of Options, Restricted Stock, Other Equity Awards and Warrants.*

(a) The Board of Directors of the Company has adopted or will adopt prior to the Effective Time resolutions, and the Company has taken and/or shall take, as applicable, all actions, necessary prior to the Effective Time to effect the following:

(i) no less than 15 days prior to the Effective Time, each option to purchase Company Common Stock then outstanding under the Company Stock Plans or any other stock option or compensation plan, agreement or arrangement of the Company (each, a Stock Option) shall, with no further action on the part of the Company or the holder thereof, become fully vested and exercisable;

(ii) at the Effective Time, each Stock Option (other than any Stock Option to which Section 3.3(a)(iii) is applicable) shall be canceled, and the holder of such Stock Option shall become entitled to receive for such Stock Option a single lump sum cash payment equal to the product of (A) the number of shares of Company Common Stock such holder could have purchased had such holder exercised such Stock Option in full immediately prior to the Effective Time and (B) the excess, if any, of (I) the per share closing price of Company Common Stock, as such price is quoted on the day immediately prior to the Closing Date, as reported in the transactions index of the NASDAQ Global Market (as published in The Wall Street Journal, or, if no closing price was quoted in any such index for such date, then as of the next preceding date on which such a closing price is quoted) (the *Company Closing Price*) over (II) the exercise price per share of such Stock Option (for the avoidance of doubt, if with respect to any Stock Option (other any Stock

Option to which Section 3.3(a)(iii) is applicable)

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the amount determined under (II) is equal to or greater than the amount determined under (I), such Stock Option shall be canceled for no consideration);

(iii) notwithstanding the foregoing, with respect to Stock Options that were granted under the Company Stock Plans prior to June 9, 2005 (each such Stock Option, a *Pre-Amendment Option*), (A) the Company shall use its commercially reasonable efforts to obtain, and has obtained from the individuals named in Section 3.3(a)(iii)(A) of the Company Disclosure Letter, any consents that are required to effect the cancellation of any such Pre-Amendment Option that has an exercise price per share that is less than the Company Closing Price and the payment to the holder of such canceled Pre-Amendment Option of a single lump sum cash payment at the Effective Time, determined in accordance with the formula set forth in Section 3.3(a)(ii), and (B) any such Pre-Amendment Option that is not so canceled and cashed out (or, for the avoidance of doubt, that has an exercise price per share that is equal to or greater than the Company Closing Price) shall, at the Effective Time, cease to represent an option to purchase Company Common Stock and shall be converted into an option to purchase, on the same terms and conditions as were applicable under such Pre-Amendment Option (taking into account any vesting or other changes provided for in the applicable Company Stock Plan or in any award or other agreement governing the terms and conditions thereof, as a result of the transactions contemplated hereby (including Section 3.3(a)(i)) and by the Ancillary Agreements), (A) the number of shares of Parent Common Stock equal to the product of (I) the number of shares of Company Common Stock such holder could have purchased had such holder exercised such Pre-Amendment Option in full immediately prior to the Effective Time, and (II) the Option Exchange Ratio, provided that any fractional shares of Parent Common Stock resulting from such multiplication shall be rounded up or down to the nearest whole share, at (B) a price per share equal to (I) the exercise price per share of such Pre-Amendment Option, divided by (II) the Option Exchange Ratio, provided that such exercise price shall be rounded up or down to the nearest cent. The *Option Exchange Ratio* means the quotient of (x) the Company Closing Price, and (y) \$27.00;

(iv) at the Effective Time, each award of Company Common Stock subject to restrictions on transfer and/or forfeiture then outstanding under the Company Stock Plans or any other stock or compensation plan, agreement or arrangement of the Company shall, with no further action on the part of the Company or the holder thereof, become fully vested and converted into the right to receive a single lump sum cash payment equal to the product of (A) the number of shares of Company Common Stock subject to such award immediately prior to the Effective Time and (B) the Company Closing Price; and

(v) at the Effective Time, each award of restricted stock units relating to Company Common Stock then outstanding under the Company Stock Plans or any other stock or compensation plan, agreement or arrangement of the Company shall, with no further action on the part of the Company or the holder thereof, become fully vested and converted into the right to receive a single lump sum cash payment equal to the product of (A) the number of shares of Company Common Stock applicable to such award immediately prior to the Effective Time and (B) the Company Closing Price.

(b) At the Effective Time, with no further action on the part of the Company or any holder of Company Common Stock, Parent shall (i) issue the warrants provided for in the Yucaipa Warrant Agreement in exchange for the 2005 Warrants on the terms and subject to the conditions set forth therein, and (ii) assume the obligations of the Company under the 2000 Warrants, such that after such assumption the holders of such assumed warrants shall have the right to purchase Parent Common Stock on the terms and subject to the conditions set forth in the 2000 Warrants and the 2000 Warrant Agreement.

(c) Parent shall be entitled to (or cause the Company to) deduct and withhold from the consideration otherwise payable to any party pursuant to this Section 3.3 such amounts as may be required to be deducted and withheld with respect to such payment under the Code and the rules and regulations promulgated thereunder, or under any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate taxing authority by

Parent (or the Company), such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the party in respect of which such deduction and withholding was made.

SECTION 3.4 Adjustments.

(a) If, during the period between the date of this Agreement and the Effective Time, any change in the outstanding Company Common Stock shall occur (other than pursuant to the exercise of stock options or warrants or upon the vesting of restricted units, in each case, that are outstanding on the date hereof and pursuant to their terms in existence on the date hereof) by reason of any reclassification, recapitalization, stock split or reverse stock split of Company Common Stock, or stock dividend thereon with a record date during such period, the Per Share Merger Consideration shall be appropriately adjusted.

(b) If, during the period between the date of this Agreement and the Effective Time, any change in the outstanding Parent Common Stock shall occur (other than pursuant to the exercise of stock options or warrants or upon the vesting of restricted units, in each case, that are outstanding on the date hereof and pursuant to their terms in existence on the date hereof) by reason of any reclassification, recapitalization, stock split or reverse stock split of Parent Common Stock, or stock dividend thereon with a record date during such period, the Per Share Merger Consideration shall be appropriately adjusted.

SECTION 3.5 Lost Certificates. If any certificate formerly representing Company Common Stock shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a bond, in such reasonable amount as the Surviving Corporation may direct, as indemnity against any claim that may be made against it with respect to such certificate, the Exchange Agent shall pay, in exchange for such lost, stolen or destroyed certificate, the Per Share Merger Consideration to be paid in respect of Company Common Stock represented by such certificate, as contemplated by this Article III.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Prior to the execution and delivery of this Agreement, the Company has delivered to Parent and Merger Sub the Company Disclosure Letter, with numbering corresponding to the Sections or subsections of this Article IV. Any exception, qualification or limitation described in any provision, section or subsection of the Company Disclosure Letter with respect to a particular representation or warranty contained in this Article IV shall be deemed to be an exception, qualification or limitation with respect to any other representation or warranty contained in this Article IV to the extent that its relationship thereto is reasonably apparent on its face. Subject to the exceptions and qualifications set forth in the Company Disclosure Letter, the Company represents and warrants to Parent and Merger Sub as follows:

SECTION 4.1 Corporate Status. Each of the Company and its Subsidiaries is duly incorporated or otherwise organized, validly existing and in good standing under the Laws of its governing jurisdiction and each (a) has all requisite corporate or other power and authority to carry on its business as it is now being conducted and (b) is duly qualified to do business in each of the jurisdictions in which the ownership, operation or leasing of its assets or the conduct of its business requires it to be so qualified, except where the failure to be so qualified has not had and would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 4.2 Authorization; Noncontravention.

(a) *Authorization.* (i) The Company has all necessary power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The Board of Directors of the Company, at a meeting

duly called and held on the date hereof at which all directors of the Company were present, duly and unanimously adopted resolutions (A) adopting and declaring advisable this Agreement, the Ancillary Agreements to which the Company is a party and the Merger and other transactions contemplated hereby and thereby on

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the terms and subject to the conditions set forth herein and therein; (B) taking all actions necessary or advisable to ensure that this Agreement and the Merger and the other transactions contemplated hereby satisfy the requirements of the Existing Stockholders Agreement; (C) declaring that it is in the best interests of the stockholders of the Company that the Company enter into this Agreement and the Ancillary Agreements and consummate the Merger and the other transactions contemplated hereby and thereby on the terms and subject to the conditions set forth herein and therein; (D) directing that the adoption of this Agreement be submitted to a vote at a meeting of stockholders of the Company; (E) recommending that the stockholders of the Company adopt this Agreement; and (F) taking all actions necessary or advisable to ensure that this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby will not cause to be applicable to the Company or Parent any fair price, moratorium, control share acquisition or other similar anti-takeover statute or regulation enacted under state or federal Laws including to ensure that Section 203 of the DGCL does not apply to this Agreement, the Merger and the other transactions contemplated hereby.

(ii) The Company's execution, delivery and performance of this Agreement and the Ancillary Agreements to which it is a party and the consummation by the Company of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company or vote of holders of any class or series of capital stock of the Company is necessary to authorize this Agreement or the Ancillary Agreements to which it is a party or to consummate the transactions contemplated hereby and thereby, other than the adoption of this Agreement by an affirmative vote of a majority of the outstanding shares of Company Common Stock entitled to vote thereon at the Company Stockholders Meeting or any adjournment or postponement thereof (*Company Stockholder Approval*). This Agreement has been duly executed and delivered by the Company and (assuming due authorization, execution and delivery by Parent and Merger Sub) constitutes, and each Ancillary Agreement to which the Company is a party, when executed and delivered by the Company (assuming due authorization, execution and delivery by the other parties thereto), will constitute, a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

(b) *No Conflict*. The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements to which it is a party do not, and the consummation of the Merger and the other transactions contemplated hereby and thereby and compliance with the provisions of this Agreement and the Ancillary Agreements to which it is a party will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the amendment of any term or provision of or the creation of any Encumbrance upon any of the assets of the Company or any of its Subsidiaries under (other than any such Encumbrance created because of any action taken by Parent or Merger Sub), any provision of (i) the Amended and Restated Certificate of Incorporation of the Company, the Amended and Restated By-Laws of the Company or the comparable organizational documents of any of its Subsidiaries or (ii) subject to the filings and other matters referred to in the immediately following sentence, (A) any Contract to which the Company or any of its Subsidiaries is a party or by which any of its or their respective assets are bound or (B) any Law or Judgment, in each case applicable to the Company or any of its Subsidiaries or its or their respective assets, other than, in the case of this clause (ii), any such conflicts, violations, defaults, rights, losses, amendments or Encumbrances that (x) have not had and would not reasonably be expected to have a Company Material Adverse Effect or (y) would not materially impair the Company's ability to perform its obligations under this Agreement or the Ancillary Agreements to which it is a party or consummate the transactions contemplated hereby or thereby. No Permit, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity is required to be obtained or made by or with respect to the Company or any of its Subsidiaries in connection with the execution, delivery and

performance of this Agreement by the Company or any of the Ancillary Agreements to which it is a party or the consummation by the Company of the Merger or the other transactions contemplated by this Agreement or the Ancillary Agreements to which it is a party, except for (I) the filing of a premerger notification and report form by the Company and the termination or expiration of any waiting periods under the HSR Act, (II) the filing with the SEC of (x) the Joint Proxy Statement and (y) such reports or other applicable filings under the Exchange Act, the Securities Act, state securities Laws or blue sky laws as may be required in connection with this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby, (III) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and of appropriate documents with the relevant authorities of other jurisdictions in which the Company or any of its Subsidiaries is qualified to do business, (IV) any filings required under the rules and regulations of the NASDAQ Global Market, and (V) such Permits, orders or authorizations of or registrations, declarations or filings with and notices the failure of which to be obtained or made (x) has not and would not reasonably be expected to have a Company Material Adverse Effect or (y) would not materially impair the Company's ability to perform its obligations under this Agreement or the Ancillary Agreements or consummate the transactions contemplated hereby or thereby.

SECTION 4.3 *Capital Structure.*

(a) The authorized capital stock of the Company consists of 100,000,000 shares of Company Common Stock, of which 52,228,998 shares are issued and outstanding as of February 26, 2007 and of which 491,218 shares have been granted under the Company Stock Plans and are subject to transfer restrictions and/or forfeiture back to the Company, and 5,000,000 shares of preferred stock, par value \$0.01 per share, of which no shares are issued and outstanding as of the date hereof. As of February 26, 2007, there are 7,085,067 shares of Company Common Stock subject to outstanding options to acquire shares of Company Common Stock pursuant to the Company Stock Plans and 520,175 shares of Company Common Stock deliverable pursuant to outstanding restricted stock units under the Company Stock Plans. As of February 26, 2007, there are 5,294,118 shares of Company Common Stock reserved for issuance or delivery upon exercise of the 2000 Warrants and 25,106,350 shares of Company Common Stock reserved for issuance or delivery upon the exercise of the 2005 Warrants. Each outstanding share of Company Common Stock is duly authorized, validly issued, fully paid and nonassessable. There are no bonds, debentures, notes or other debt securities having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which holders of the Company Common Stock may vote (*Voting Debt*) of the Company. Except as set forth above or as expressly contemplated by this Agreement, the Ancillary Agreements and the Existing Stockholders' Agreement, as of February 26, 2007, there are no (i) outstanding obligations, options, warrants, convertible securities, exchangeable securities, securities or rights that are linked to the value of the Company Common Stock or other rights, agreements or commitments relating to the capital stock of the Company or obligating the Company to issue or sell or otherwise transfer shares of capital stock of the Company or any securities convertible into or exchangeable for any shares of capital stock of the Company or any Voting Debt of the Company, (ii) outstanding obligations of the Company to repurchase, redeem or otherwise acquire shares of capital stock of the Company or (iii) voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of shares of capital stock of the Company (but only to the Company's knowledge with respect to any such agreements to which the Company is not a party).

(b) Section 4.3(b) of the Company Disclosure Letter sets forth as of the date hereof a list of all Subsidiaries of the Company, including each such Subsidiary's name, its jurisdiction of incorporation or organization, where it is qualified to do business as a foreign corporation or organization and the percentage of its outstanding capital stock or equity interests owned by the Company or a Subsidiary of the Company (as applicable). The shares of outstanding capital stock or equity interests of the Subsidiaries of the Company are duly authorized, validly issued, fully paid and nonassessable, and are held of record and beneficially owned by the Company or a Subsidiary of the Company (as applicable), free and clear of any Encumbrances other than Permitted Encumbrances. There is no Voting Debt of any Subsidiary of the Company. There are no (i) outstanding obligations, options, warrants, convertible securities, exchangeable securities, securities or rights that are linked to the

value of the Company Common Stock, or other rights, agreements or commitments, in each case, relating to the capital stock of the Subsidiaries of the Company or obligating the Company or its Subsidiaries to issue or sell or otherwise transfer shares of the capital stock of the Subsidiaries of the Company or any securities convertible into or exchangeable for any shares of capital stock of the Subsidiaries of the Company or any Voting Debt of any Subsidiary of the Company, (ii) outstanding obligations of the Subsidiaries of the Company to repurchase, redeem or otherwise acquire shares of their respective capital stock or (iii) voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of shares of capital stock of the Subsidiaries of the Company (but only to the Company's knowledge with respect to any such agreements to which the Company is not a party).

(c) Other than the Subsidiaries of the Company, there are no Persons in which any of the Company or its Subsidiaries owns any equity, membership, partnership, joint venture or other similar interest.

SECTION 4.4 *Real Property.*

(a) Section 4.4(a) of the Company Disclosure Letter sets forth a list of all real property owned by the Company or any of its Subsidiaries as of the date hereof (collectively, the *Owned Real Property*). The Company or one of its Subsidiaries has good and marketable title in fee simple, free and clear of Encumbrances (other than Permitted Encumbrances), to the Owned Real Property. As of the date hereof, with respect to each such parcel of Owned Real Property: (i) other than Company Tenant Leases set forth in Section 4.4(b) of the Company Disclosure Letter, there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting any Person the right of use or occupancy of, or the right to consent to the use or occupancy of, any portion of such parcel; (ii) other than Company Tenant Leases set forth in Section 4.4(b) of the Company Disclosure Letter there are no outstanding rights of first refusal, rights of first offer or options to purchase such parcel or any interest therein; and (iii) neither the Company nor any of its Subsidiaries has received written notice of any pending condemnation proceedings.

(b) Section 4.4(b) of the Company Disclosure Letter sets forth a list as of the date hereof of (x) all leases or subleases (the *Company Leases*) pursuant to which the Company or any of its Subsidiaries holds a leasehold or subleasehold estate or other right to use or occupy any interest in real property and (y) existing leases, subleases, licenses or other occupancy agreements to which the Company or any of its Subsidiaries is a party as landlord or lessor thereunder or by which the Company or any of its Subsidiaries is bound as landlord or lessor thereunder, and all amendments, modifications, extensions and supplements thereto (each, a *Company Tenant Lease*). Each Company Lease and Company Tenant Lease (i) constitutes a valid and binding obligation of the Company or the Subsidiary of the Company party thereto; (ii) assuming such Company Lease is a legal, valid and binding obligation of, and enforceable against, the other parties thereto, is enforceable against the Company or the Subsidiary of the Company party thereto, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity); and (iii) to the Company's knowledge is a valid and binding obligation of the other parties thereto, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity), and except, with respect to clauses (i) through (iii) above, as has not had or would not reasonably be expected to have a Company Material Adverse Effect. Except as have not had or would not reasonably be expected to have a Company Material Adverse Effect, (i) none of the Company or its Subsidiaries is in breach or default under any Company Lease and (ii) to the Company's knowledge, none of the landlords or sublandlords under any Company Lease is in material breach or default of its obligations under such Company Lease. Except as has not had a Company Material Adverse Effect, the Company and its Subsidiaries enjoy peaceful and undisturbed possession under each Company Lease. Copies of all Company Leases and all Company Tenant Leases, together with any amendments thereto, have heretofore been made available to Parent in the Electronic Data Room.

(c) With respect to the Owned Real Property, the Company Leases and the Company Tenant Leases (collectively, the *Real Property*), the Real Property and the buildings and other improvements, fixtures, equipment and other property attached, situated or appurtenant thereto are in good operating condition and repair, subject to normal wear and tear and normal industry practice with respect to maintenance, except as has not or would not reasonably be expected to have a Company Material Adverse Effect. Except as have not had or would not reasonably be expected to have a Company Material Adverse Effect, (i) the present use of the Real Property does not violate any restrictive covenant, municipal by-law or other Law or agreement that in any way restricts, prevents or interferes in any material respect with the continued use of the Real Property for which it is used in the business of the Company and its Subsidiaries as of the date hereof, other than Permitted Encumbrances; (ii) no condemnation, eminent domain or similar proceeding exists or is pending or, to the Company's knowledge, threatened with respect to or that could affect any Real Property; and (iii) all Real Property is supplied with utilities and other services necessary for the operation thereof generally consistent with past practices and consistent with the contemplated operation thereof.

SECTION 4.5 *Intellectual Property.*

(a) Section 4.5(a) of the Company Disclosure Letter sets forth a list of all Registered Intellectual Property owned by the Company or any of its Subsidiaries as of the date hereof.

(b) The Company and its Subsidiaries own, or are validly licensed or otherwise have the right to use, all Intellectual Property that is necessary for the conduct of the business of the Company and its Subsidiaries taken as a whole, except as has not had or would not reasonably be expected to have a Company Material Adverse Effect. The Company and its Subsidiaries have not entered into any license agreement with any Third Party with respect to the Registered Intellectual Property set forth in Section 4.5(b) of the Company Disclosure Letter.

(c) (i) The business of the Company and its Subsidiaries as currently conducted (including the use of the Intellectual Property) does not infringe, misappropriate, conflict with or otherwise violate any Person's Intellectual Property and there is no such claim pending or, to the Company's knowledge, threatened against any of the Company or its Subsidiaries, except where such infringement, misappropriation, conflict, violation or claim has not had and would not reasonably be expected to have a Company Material Adverse Effect.

(ii) To the Company's knowledge, and except as has not had or would not reasonably be expected to have a Company Material Adverse Effect, no Person is infringing, misappropriating, conflicting with or otherwise violating any material Intellectual Property owned by any of the Company or its Subsidiaries, and no such claims are pending or threatened against any Person by any of the Company or its Subsidiaries.

(iii) All Intellectual Property owned by the Company or its Subsidiaries is owned free and clear of all Encumbrances (other than licenses to Persons entered into in the ordinary course of business generally consistent with past practice of the Company and its Subsidiaries), except for Permitted Encumbrances or where such Encumbrances have not had and would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 4.6 *Environmental Matters.*

(a) The Company and its Subsidiaries have obtained all Permits that are required under any Environmental Law for the operation of the business of the Company and its Subsidiaries as currently being conducted and their current use and operation of the Real Property, and all such Permits are in full force and effect, other than any failure to obtain or maintain such Permits in full force and effect which has not had and would not reasonably be expected to have a Company Material Adverse Effect.

(b) The Company and its Subsidiaries have operated and are operating the business of the Company and its Subsidiaries, and the Real Property and other assets of the Company and its Subsidiaries are in compliance with Environmental Laws, other than any non-compliance which in the aggregate has not had and would not reasonably be

expected to have a Company Material Adverse Effect.

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(c) The Company has made available to Parent copies of all material environmental assessments, audits and studies that are in the Company's possession or control showing the presence of any Hazardous Material at any Real Property or any property formerly owned, operated, leased or used by any of the Company and its Subsidiaries or their predecessors in interest, or relating to compliance by any of them with or liability of any of them under any Environmental Law.

(d) Except as has not had and would not reasonably be expected to have a Company Material Adverse Effect, (i) there has been no Release of any Hazardous Materials by the Company or any of its Subsidiaries at, on, under or from the Real Property or any other location, and (ii) neither the Company nor any of its Subsidiaries has disposed of, arranged for treatment or disposal of, or arranged for the transportation for treatment or disposal of, any Hazardous Materials at any Third Party location.

(e) (i) None of the Company or its Subsidiaries has received any written notice, demand letter, claim or order alleging a violation of, or liability under, any Environmental Law and (ii) none of the Company or its Subsidiaries is party to any pending Action, decree or injunction alleging liability under or violation of any Environmental Law, except in each case that, if adversely determined against the Company, would not have or would not reasonably be expected to have a Company Material Adverse Effect.

(f) Except for any matters disclosed in the materials referred to in Section 4.6(c), there has been no Release of Hazardous Materials at, on, under or from the Real Property, and the Real Property has not been used for the deposit of Hazardous Materials, except in each case as has not had and would not reasonably be expected to have a Company Material Adverse Effect.

(g) Except as has not had and would not reasonably be expected to have a Company Material Adverse Effect, there are no storage tanks, sumps or other similar vessels, asbestos-containing materials or polychlorinated biphenyls located on, at or under any Real Property or at, on or in any structures, Facilities or equipment at the Real Property.

SECTION 4.7 *Legal Proceedings.* There are no Actions pending or, to the Company's knowledge, threatened in writing (and, in either case, not withdrawn) against the Company or any of its Subsidiaries, which if adversely determined, would have or would reasonably be expected to have a Company Material Adverse Effect. There are no Actions pending, or to the Company's knowledge, threatened in writing (and, in either case, not withdrawn) against the Company or any of its Subsidiaries which would materially impair the Company's ability to perform its obligations under this Agreement or the Ancillary Agreements to which it is a party or challenge the validity or enforceability of this Agreement or any Ancillary Agreement or seek to enjoin or prohibit consummation of the transactions contemplated hereby or thereby. None of the Company or any of its Subsidiaries is subject to any Judgment which has had or would reasonably be expected to have a Company Material Adverse Effect or would materially impair the Company's ability to perform its obligations under this Agreement or the Ancillary Agreements to which it is a party or consummate the transactions contemplated hereby or thereby.

SECTION 4.8 *Taxes.*

(a) Except as has not had and would not reasonably be expected to have a Company Material Adverse Effect, (i) the Company and each of its Subsidiaries have timely filed with the appropriate taxing authority all material Tax Returns required to be filed, taking into account valid extensions; (ii) all such Tax Returns are complete and accurate in all material respects; (iii) all Taxes due and owing by the Company and each of its Subsidiaries (whether or not shown on any Tax Return) have been paid; and (iv) neither the Company nor any of its Subsidiaries has been informed in writing by a Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(b) The unpaid Taxes of the Company and its Subsidiaries did not, as of the dates of the financial statements contained in the most recent Company SEC Reports filed with the SEC prior to the date of this Agreement, exceed by a material

amount the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) included in the balance sheets contained in such financial statements. Since the date of the financial

statements contained in the most recent Company SEC Reports filed with the SEC prior to the date of this Agreement, neither the Company nor any of its Subsidiaries has incurred any material liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and past practice of the Company and its Subsidiaries in filing their Tax Returns.

(c) As of the date hereof, no deficiencies for Taxes against the Company or any of its Subsidiaries in excess of \$100,000 individually or \$1,000,000 in the aggregate have been claimed or assessed in writing by a Governmental Entity that have not been settled or resolved. There are no currently ongoing, pending or, to the Company's knowledge, threatened audits, assessments or other Actions for or relating to any liability in respect of Taxes of the Company or any of its Subsidiaries. The Company has made available to Parent or its representatives complete and accurate copies of all federal income and material state, local and foreign income, franchise and sales and use Tax Returns of each of the Company and its Subsidiaries and their predecessors for the years ended on or after February 2, 2002 and complete and accurate copies of all examination reports and statements of deficiencies assessed against or agreed to by the Company or any of its Subsidiaries or any predecessors since February 2, 2002 with respect to any material Tax. Other than any waivers or extensions granted in the ordinary course of business after the date of this Agreement and prior to the Effective Time, neither the Company, its Subsidiaries nor any of their respective predecessors has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency (other than as a result of a valid extension of time to file a Tax Return).

(d) There are no Encumbrances for Taxes on any assets of the Company or any of its Subsidiaries, other than Encumbrances in respect of property taxes not yet due and payable.

(e) Other than customary gross up, tax escalation or similar provisions in financing and commercial Contracts entered into in the ordinary course of business, there are no Tax sharing agreements or similar arrangements (including indemnity arrangements) with respect to or involving the Company or any of its Subsidiaries other than agreements solely between the Company and/or its Subsidiaries, and, after the Closing Date, neither the Company nor any of its Subsidiaries shall be bound by any such Tax sharing agreements or similar arrangements or have any liability thereunder.

(f) Since December 31, 2000, neither the Company nor any of its Subsidiaries has been a member of any affiliated group filing a consolidated federal income Tax Return other than a group the common parent of which is the Company. Except pursuant to customary gross up, tax escalation or similar provisions in financing and commercial Contracts entered into in the ordinary course of business, neither the Company nor any of its Subsidiaries has any actual or potential liability for the Taxes of any Person (other than Taxes of the Company and its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state or local Law), as a transferee or successor, by Contract, or otherwise.

(g) The Company and each of its Subsidiaries have timely withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other Third Party.

(h) Neither the Company nor any of its Subsidiaries has distributed the stock of any corporation in a transaction satisfying the requirements of Section 355 of the Code since December 31, 2003, and neither the stock of the Company nor the stock of any of its Subsidiaries has been distributed in a transaction satisfying the requirements of Section 355 of the Code since December 31, 2003.

(i) Neither the Company nor any of its Subsidiaries has entered into any transaction identified as a listed transaction for purposes of Treasury Regulations Section 1.6011-4(b)(2).

(j) Neither the Company nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period or portion thereof ending after the

Closing Date as a result of any (i) change in method of accounting for a taxable period beginning on or prior to the Closing Date under Section 481(c) of the Code (or any similar provision of state, local or foreign Law) or (ii) agreement with a taxing authority relating to Taxes.

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(k) Neither the Company nor any of its Subsidiaries has made an election under Section 341(f) of the Code (or any similar provision of state, local or foreign Law).

(l) None of the assets of the Company (a) is tax-exempt use property (as defined in Section 168(h)(1) of the Code), (b) may be treated as owned by any other Person pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954 (as in effect immediately prior to the enactment of the Tax Reform Act of 1986), (c) is property used predominantly outside the United States within the meaning of proposed Treasury Regulations Section 1.168-2(g)(5) or (d) is tax exempt and financed property within the meaning of Section 168(g)(5) of the Code.

(m) As of the date hereof, there is no outstanding power of attorney (other than powers of attorney authorizing employees of the Company to act on behalf of the Company for so long as they remain employees of the Company) with respect to any Tax matter of the Company or any of its Subsidiaries.

SECTION 4.9 Labor. Section 4.9 of the Company Disclosure Letter sets forth, as of the date hereof, all Collective Bargaining Agreements. Collective Bargaining Agreement means any collective bargaining agreement or any other labor-related agreement with any labor union or labor organization to which the Company or any of its Subsidiaries is a party. No Collective Bargaining Agreement currently is being negotiated except for Collective Bargaining Agreements that expire in 2007. None of the Company or its Subsidiaries has any obligation to inform and/or consult with any employees or their representatives in respect of the transactions contemplated hereby under the terms of any Collective Bargaining Agreement. None of the Company or its Subsidiaries is in breach of any Collective Bargaining Agreement other than any such breach that has not had and would not reasonably be expected to have a Company Material Adverse Effect. Except as has not had and would not reasonably be expected to have a Company Material Adverse Effect, since January 31, 2004, there has not been any work stoppage, slowdown, lockout, employee strike or, to the Company's knowledge, labor union organizing activity involving any of the Company or its Subsidiaries and, to the Company's knowledge, none of the foregoing or any labor dispute or Action that has had or would reasonably be expected to have a Company Material Adverse Effect, has been threatened. The Company and its Subsidiaries are operating the business of the Company and its Subsidiaries in compliance with all Labor Laws other than non-compliance which has not had and would not reasonably be expected to have a Company Material Adverse Effect. As of the date hereof, to the Company's knowledge, there are no ongoing union certification drives or pending proceedings for certifying a union with respect to employees of any of the Company or its Subsidiaries.

SECTION 4.10 Employee Benefit Plans.

(a) (i) Section 4.10(a)(i) of the Company Disclosure Letter lists the Company Plans.

(ii) Section 4.10(a)(ii) of the Company Disclosure Letter lists each multiemployer plan (as defined in Section 3(37) or 4001(a)(3) of ERISA) which is or has been contributed to by the Company or any of its ERISA Affiliates at any time during the six-year period ending on the date of this Agreement or as to which the Company or any of its ERISA Affiliates has any direct or indirect liability (the *Company Multiemployer Plans*).

(iii) All Company Plans are in writing and the Company has made available to Parent in the Electronic Data Room true, correct and complete copies of (A) such Company Plans and, to the extent in the Company's possession, each Company Multiemployer Plan, (B) the most recent annual report (Form 5500) filed with the Internal Revenue Service (the IRS), if any, with respect to each Company Plan and, to the extent in the Company's possession, each Company Multiemployer Plan, (C) the most recent summary plan description for each Company Plan and, to the extent in the Company's possession, each Company Multiemployer Plan for which a summary plan description is available or is required by applicable Law, (D) the most recent actuarial report or valuation, if any, relating to each Company Plan and, to the extent in the Company's possession, each Company Multiemployer Plan, and (E) the most recent determination letter, if any, issued by the IRS with respect to each Company Plan and, to the extent in the Company's possession, each Company Multiemployer Plan that is intended to qualify under Section 401(a) of the Code. With respect to

each Company Multiemployer Plan, the Company has made a reasonable effort to obtain the documents listed in clauses (A), (B), (C), (D) and (E) of the preceding sentence.

(b) Each Company Plan and, to the Company's knowledge, each Company Multiemployer Plan has been operated and administered in all material respects in accordance with its terms and the terms of all Collective Bargaining Agreements or any other labor-related agreements with any labor union or labor organization applicable to employees of Company or any of its Subsidiaries and the requirements of all applicable Laws, including ERISA and the Code. As of the date hereof, no Action is pending or, to the Company's knowledge, threatened with respect to any Company Plan (other than claims for benefits in the ordinary course) that would result in any material liability to the Company and, to the Company's knowledge, no fact or event exists that would give rise to any such Action. As of the date hereof, to the Company's knowledge, (i) no Action is pending or threatened with respect to any Company Multiemployer Plan (other than claims for benefits in the ordinary course) that would result in any material liability to the Company and (ii) no fact or event exists that would give rise to any such Action.

(c) Each Company Plan that is intended to be qualified under Section 401(a) of the Code has timely received a favorable determination letter from the IRS which has not been revoked (or in either case the Company has timely applied for same or will do so) and each trust established in connection with any Company Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a determination letter from the IRS which has not been revoked that it is so exempt, and, to the Company's knowledge, no fact or event has occurred since the date of such determination letter or letters from the IRS that would reasonably be expected to adversely affect the qualified status of any such Company Plan or the exempt status of any such trust. To the Company's knowledge, each Company Multiemployer Plan that is intended to be qualified under Section 401(a) of the Code is so qualified.

(d) With respect to any Company Plan which is subject to Part 3 of Subtitle B of Title I or to Title IV of ERISA (a *Company Title IV Plan*): (i) there is no lien under Section 412(n) of the Code by reason of an accumulated funding deficiency, whether or not waived, under Section 412 of the Code; (ii) no liability (other than liability for premiums) to the Pension Benefit Guaranty Corporation (*PBGC*) has been incurred and all premiums required to be paid to the PBGC have been paid by or on behalf of such Company Title IV Plan; (iii) the assets of each Company Title IV Plan equal or exceed the benefit liabilities of such Company Title IV Plan determined on a termination basis; and (iv) as of the date hereof, the Company has received no actual notice from the PBGC that an event or condition exists which (A) would constitute grounds for termination of such Company Title IV Plan by the PBGC or (B) has caused a partial termination of such Company Title IV Plan.

(e) No withdrawal liability has been incurred under Title IV of ERISA by the Company or any of its ERISA Affiliates with respect to any Company Multiemployer Plan, and no such liability would be incurred if the Company or any of its ERISA Affiliates were to withdraw from any Company Multiemployer Plan in a complete or partial withdrawal. The Company has not agreed with any Person to be responsible for any liability under Title IV of ERISA with respect to any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA.

(f) All contributions to the Company Plans and, to the Company's knowledge, the Company Multiemployer Plans required to be made by applicable Law or the terms of the applicable Company Plan have been timely made.

(g) Except as would not reasonably be expected to result in material liability, neither the Company nor any of its ERISA Affiliates, and to the Company's knowledge no other Person, has engaged in any transaction or acted or failed to act in any manner that would subject the Company or any of its ERISA Affiliates to any liability for breach of fiduciary duty under ERISA.

(h) Except as would not reasonably be expected to result in material liability, neither the Company nor any of its ERISA Affiliates and, to the Company's knowledge, no other Person has engaged in any transaction in violation of Section 406(a) or (b) of ERISA or Section 4975 of the Code for which no exemption exists under Section 408 of

ERISA or Section 4975(c) or (d) of the Code.

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(i) None of the Company Plans or Company Multiemployer Plans provides medical, health or life insurance or any other welfare-type benefits for current or future retired or terminated employees of the Company or its Subsidiaries or their spouses or dependents (other than in accordance with Part 6 of Title I of ERISA or Code Section 4980B).

(j) To the Company's knowledge, all of the Company Plans (including such Plans of its Subsidiaries) that are nonqualified deferred compensation plans subject to Section 409A of the Code have been operated in compliance with Section 409A of the Code or applicable transition relief.

(k) Except as listed in Section 4.10(k) of the Company Disclosure Letter, the transactions contemplated hereby and by the Ancillary Agreements (either alone or in conjunction with any other event) (including a termination of employment on or following the Effective Time) will not entitle any current or former employee, officer or director of or individual providing consulting services to the Company or any of its Subsidiaries to any amount of compensation or benefits (whether in cash or property) or increase the amount thereof or trigger or accelerate the time of payment, vesting or funding thereof.

(l) No amount, increase, trigger or acceleration referred to in Section 4.10(k) (whether or not disclosed in Section 4.10(k) of the Company Disclosure Letter) would (i) be characterized as an excess parachute payment (as defined in Section 280G(b)(1) of the Code) or (ii) not be deductible under Section 162(a)(1) or 404 of the Code.

(m) As of the date hereof, (i) all of the Stock Options were issued with an exercise price no less than the fair market value of the underlying stock at the actual date of grant or the Business Day immediately preceding the actual date of grant, and (ii) no shares of restricted Company Common Stock provide for a deferral opportunity beyond vesting.

(n) Section 4.10(n) of the Company Disclosure Letter sets forth each of the supplemental retirement and excess benefit plans and agreements (and all amendments thereto) to which the Company or any of its Subsidiaries is a party, listing all persons participating in each such plan or agreement and stating the benefits accrued under each such plan or agreement by each such person. The Company has provided to Parent a true, correct and complete copy of each such plan or agreement (and all amendments thereto).

SECTION 4.11 *Compliance with Laws.* Each of the Company and its Subsidiaries is operating its business in compliance with all applicable Laws (including any zoning or building ordinance, code or approval), except to the extent any non-compliance with such Laws has not had and would not reasonably be expected to have a Company Material Adverse Effect. All Permits required to conduct the business of the Company and its Subsidiaries as currently conducted have been obtained by one or more of the Company or its Subsidiaries and all such Permits are in full force and effect and the business of the Company and its Subsidiaries is being operated in compliance therewith, except for such Permits the failure of which to possess or be in full force and effect or to be complied with has not had and would not reasonably be expected to have a Company Material Adverse Effect (except that this sentence shall not apply to any Permits which are covered by Section 4.6 or 4.9).

SECTION 4.12 *Company Contracts.*

(a) Section 4.12(a) of the Company Disclosure Letter identifies Contracts in effect as of the date of this Agreement to which any of the Company or its Subsidiaries is a party or by which any of them is otherwise expressly bound, in the categories listed below (collectively, the *Company Contracts*):

(i) any partnership or joint venture Contract;

(ii) any employment, consulting or similar Contract requiring payment by the Company or any of its Subsidiaries of base annual fees or compensation in excess of \$350,000 to any individual;

(iii) any Contract containing a covenant not to compete or similar covenant that impairs in any material respect the ability of the Company or its Subsidiaries to freely conduct the business of the Company and its Subsidiaries in any geographic area or in any line of business

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which is not cancelable (without penalty or giving rise to any penalty or additional liability or cost) within 30 days (other than exclusivity arrangements, license agreements and radius-restriction agreements at the store level, and exclusive arrangements with suppliers or underwriters entered into in the ordinary course of business generally consistent with past practice);

(iv) any Contract evidencing Indebtedness (other than Indebtedness incurred under the Company Credit Agreement or of the type identified in clause (i)(E) of the definition of Indebtedness);

(v) any Contract providing for capital expenditures or the acquisition or construction of fixed assets which both (A) requires payments by any of the Company or its Subsidiaries in excess of \$3,000,000 in any year and (B) is not in respect of capital expenditures or the acquisition or construction of fixed assets contemplated by the Company Budgets;

(vi) any Contract for the sale or other transfer of Owned Real Property or other material tangible assets having a fair market value in excess of \$3,000,000 that has not yet been consummated, other than sales of inventory in the ordinary course of business generally consistent with past practice;

(vii) any distribution, supply, vendor, inventory purchase, sales agency or advertising Contract (other than purchase orders entered into in the ordinary course of business generally consistent with past practice) involving annual expenditures by any of the Company or its Subsidiaries in excess of \$5,000,000 which is not cancelable (without giving rise to any penalty or additional liability or cost) within one year;

(viii) any Contract with an Affiliate of the Company or any executive officer, director or control person of Yucaipa (other than Contracts described in clause (ii) above or disclosed in the Company SEC Reports);

(ix) (A) any other Contract (excluding Company Leases), not otherwise covered by clauses (i) through (viii) of this Section 4.12(a), that requires payments by the Company or its Subsidiaries in excess of \$5,000,000 during any one year and (B) is not cancelable on 90 days, or less notice; and

(x) any written commitment (including any letter of intent or memorandum of understanding) to enter into any agreement of the type described in clauses (i) through (ix) of this Section 4.12(a).

(b) Except as have not had or would not reasonably be expected to have a Company Material Adverse Effect, (i) each Company Contract, assuming such Company Contract is a legal, valid and binding obligation of and enforceable against the other parties thereto in accordance with its terms, constitutes a valid and binding obligation of the Company or the Subsidiary of the Company party thereto and is enforceable against the Company or such Subsidiary, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity), (ii) each Company Contract, to the Company's knowledge, is a valid, binding and enforceable obligation of the other parties thereto, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity) and (iii) none of the Company or its Subsidiaries and, to the Company's knowledge, no other party to a Company Contract is in breach or default under (nor does there exist any condition which upon the passage of time or the giving of notice would cause such a breach or default under) any Company Contract.

SECTION 4.13 *Company SEC Reports and Company Financial Statements.*

(a) The Company has timely filed all forms, reports and documents (including all exhibits) required to be filed by it with the SEC since January 31, 2004. The Company SEC Reports (i) were prepared in all material respects in accordance with the requirements of the Exchange Act or the Securities Act, as the case may be, and (ii) did not at the time they were filed (and, in the case of a registration statement, as of its effective date) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No Subsidiary of the Company is a registrant with the SEC.

(b) Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the Company SEC Reports complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, was prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and fairly presented in all material respects the consolidated financial position, results of operations and cash flows of the Company and its consolidated Subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to immaterial normal year-end adjustments).

(c) Except as set forth on or reserved against in the consolidated balance sheet of the Company and its consolidated Subsidiaries as of January 28, 2006 included in the Company's Form 10-K for the year ended January 28, 2006, including the notes thereto, none of the Company or any of its consolidated Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), except for liabilities or obligations (i) incurred since January 28, 2006 in the ordinary course of business generally consistent with past practice; (ii) that have not had and would not reasonably be expected to have a Company Material Adverse Effect; (iii) set forth on or reserved against in the consolidated balance sheet (including the notes thereto) of the Company and its Subsidiaries included in the Company's quarterly report on Form 10-Q for the quarter ended October 28, 2006, including the notes thereto or (iv) incurred to the extent permitted pursuant to Section 6.1(d).

(d) Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract or arrangement (including any Contract relating to any transaction or relationship between or among the Company and any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate of the Company or any of its Subsidiaries, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any off-balance sheet arrangements (as defined in Item 303(a) of Regulation S-K of the SEC)), where the result, purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company or any of its Subsidiaries in the Company's or such Subsidiary's audited financial statements or other Company SEC Reports.

(e) The audit committee of the Board of Directors of the Company has established whistleblower procedures that meet the requirements of Exchange Act Rule 10A-3, and has made available to Parent in the Electronic Data Room true, complete and correct copies of such procedures. Neither the Company nor any Subsidiary has received any complaints (within the meaning of Exchange Act Rule 10A-3) in respect of any accounting, internal accounting controls or auditing matters. To the Company's knowledge, no complaint seeking relief under Section 806 of SOX has been filed with the United States Secretary of Labor and no employee has threatened to file any such complaint.

(f) The Company has made all certifications and statements required by Sections 302 and 906 of SOX and the related rules and regulations promulgated thereunder with respect to the Company SEC Reports. The Company and its Subsidiaries maintain a system of disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) that is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the

Exchange Act is, in all material respects, recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. Since January 31, 2004, the Company and its Subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(g) The Company and its Subsidiaries maintain systems of internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that comply in all material respects with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or Persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Except as would not have a Company Material Adverse Effect, the Company and its Subsidiaries maintain internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

SECTION 4.14 *Absence of Certain Changes.* Since January 28, 2006 until the date hereof, there has not occurred any change, event or circumstance that has had or would be reasonably expected to have a Company Material Adverse Effect. Except as expressly contemplated by this Agreement, since October 28, 2006 until the date hereof, the Company and its Subsidiaries have conducted their business in the ordinary course generally consistent with past practice in all material respects, and none of the Company or its Subsidiaries has:

(a) amended its Amended and Restated Certificate of Incorporation, Amended and Restated By-Laws or other organizational documents;

(b) adopted a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization;

(c) (i) issued, sold, transferred, or otherwise disposed of any shares of its capital stock, Voting Debt of the Company or other voting securities or any securities convertible into or exchangeable for any of the foregoing, (ii) granted or issued any options, warrants, securities or rights that are linked to the value of the Company Common Stock, or other rights to purchase or obtain any shares of its capital stock or any of the foregoing or any phantom stock, phantom stock rights, stock appreciation rights or stock-based performance units, (iii) split, combined, subdivided or reclassified any shares of its capital stock, (iv) declared, set aside or paid any dividend or other distribution with respect to any shares of its capital stock or (v) redeemed, purchased or otherwise acquired any shares of its capital stock or any rights, warrants or options to acquire any such shares or effected any reduction in capital, except (with respect to clauses (i) through (v) above) for: (A) issuances of capital stock of the Company's Subsidiaries to the Company or a wholly owned Subsidiary of the Company, (B) issuances of shares of Company Common Stock upon exercise of employee stock options, upon vesting of restricted stock units or restricted stock or pursuant to the 2000 Warrants or the 2005 Warrants or redemptions, purchases or other acquisitions of capital stock in connection with net exercises or withholding with respect to the foregoing, (C) grants made pursuant to Company Plans and (D) dividends or distributions by any Subsidiary of the Company to the Company or a wholly owned Subsidiary of the Company;

(d) (i) issued any note, bond or other debt security or right to acquire any debt security, incurred or guaranteed any Indebtedness or entered into any keep well or other agreement to maintain the financial condition of another Person or other arrangement having the economic effect of any of the foregoing, other than (A) trade or standby letters of credit in the ordinary course of business, (B) in connection with new store openings or other actions in the ordinary

course of business, (C) pursuant to the Company Credit Agreement and other Contracts regarding Indebtedness listed in the Company Disclosure Letter, (D) issuances, incurrences or guarantees by the Company to any wholly owned Subsidiary of the Company or by a Subsidiary to the Company or any other wholly owned Subsidiary of the Company, (E) incurrences or guarantees of store leases, (F) other guarantees required under any agreements or commitments listed in the Company Disclosure Letter, (G) in connection with any equipment leases, (H) in connection with any insurance premium financing in the ordinary course of business generally consistent with past practice or (I) guarantees of any Indebtedness permitted by the foregoing clauses (A) through (H) or (ii) amended, refinanced or otherwise restructured the Company Credit Agreement in any manner to increase the amount of available borrowings thereunder;

(e) except as required under a Company Plan or Collective Bargaining Agreement identified in the Company Disclosure Letter or in the case of an employee who is not an Executive Officer, in the ordinary course of business generally consistent with past practice, (i) increased or accelerated the benefits under any Company Plan or Collective Bargaining Agreement, (ii) increased the compensation or benefits payable to any current or former director, officer, employee or consultant of the Company or its Subsidiaries, (iii) granted any rights to severance, change in control or termination pay to, or entered into any employment, severance or change in control agreement or arrangement with, any current or former director, officer, employee or consultant of the Company or its Subsidiaries, or (iv) taken any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any Company Plan;

(f) entered into or consummated any transaction involving the acquisition (including, without limitation, by merger, consolidation or acquisition of the business, stock or all or substantially all of the assets or other business combination) of any other Person for consideration to such Person in excess of \$1,000,000 (other than purchases of inventory or acquisitions of real property, fixtures and equipment for the opening of any Facility in the ordinary course of business generally consistent with past practice);

(g) sold, leased, licensed or otherwise disposed of any fixed assets or personal property for consideration in excess of \$2,000,000, (i) except pursuant to existing Contracts and (ii) for sales of inventory, goods, personal property and fixed assets in the ordinary course of business generally consistent with past practice, (iii) in connection with the termination or closure of any Facility or (iv) pursuant to any Company Tenant Leases;

(h) granted any security interest in any of its assets, except for such security interests as would constitute a Permitted Encumbrance;

(i) settled any Action or threatened Action involving a payment by the Company or any of its Subsidiaries in excess of \$1,000,000;

(j) changed any of its material accounting policies or practices, except as required as a result of a change in GAAP or the rules and regulations of the SEC;

(k) (i) made, changed or revoked any material election in respect of Taxes, (ii) adopted or changed any material accounting method in respect of Taxes, (iii) entered into any Tax allocation agreement, Tax-sharing agreement, Tax indemnity agreement or closing agreement, (iv) settled or compromised any material claim, notice, audit report or assessment in respect of Taxes, or (v) surrendered any right to claim a material refund of Taxes;

(l) (i) prepaid any long-term Indebtedness, or paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, contingent or otherwise), except in each case in the ordinary course of business generally consistent with past practice, (ii) accelerated or delayed collection of notes or accounts receivable in advance of or beyond their regular due dates, except in each case in the ordinary course of business generally consistent with past practice, (iii) delayed or accelerated payment of any account payable in advance of its due date, except in each case in the ordinary course of business generally consistent with past practice, or (iv) varied the Company's or any Subsidiary's

inventory practices in any material respect, except in the ordinary course of business generally consistent with past practice;

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(m) suffered any extraordinary casualty losses, damages or destructions in excess of \$500,000, whether or not covered by insurance; or

(n) agreed or committed by Contract or otherwise to do any of the foregoing.

SECTION 4.15 *Insurance.* Section 4.15 of the Company Disclosure Letter lists all of the Company's and its Subsidiaries' insurance policies in effect on the date hereof. The Company maintains, with reputable insurers or through self-insurance, insurance in such amounts, including deductible arrangements, and of such a character as is customary for companies engaged in the same or similar business. All policies of title, fire, liability, casualty, business interruption, workers' compensation and other forms of insurance including directors, and officers, insurance, held by the Company and its Subsidiaries as of the date hereof, are in full force and effect in accordance with their terms. Neither the Company nor any of its Subsidiaries is in default under any provisions of any such policy of insurance and neither the Company nor any of its Subsidiaries has received notice of cancellation of any such insurance except as has not had and would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 4.16 *Inventories.* Except as would not have a Company Material Effect, all items of inventory reflected on the latest balance sheet included in the Company SEC Reports (i) were acquired in the ordinary course of business generally consistent with past practice and (ii) as of the date thereof were usable and saleable in the ordinary course of business generally consistent with past practice, except for normal shrinkage, spoilage and obsolescence.

SECTION 4.17 *Bank Accounts.* Section 4.17 of the Company Disclosure Letter contains a true and complete listing of all bank deposit accounts or other depository accounts maintained by the Company or any of its Subsidiaries as of the date hereof, and the authorized signatories thereto.

SECTION 4.18 *Brokers' Fees.* Section 4.18 of the Company Disclosure Letter sets forth a list of all agreements with any broker, investment banker, financial advisor or other Person entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby based upon arrangements made by or on behalf of the Company or any of its Affiliates. The Company has provided to Parent and Merger Sub true and complete copies of all such agreements and all amendments thereto.

SECTION 4.19 *Opinion of Financial Advisor.* Prior to the date hereof, the Board of Directors of the Company has received the opinion of Citigroup Global Markets Inc., financial advisor to the Board of Directors of the Company, to the effect that, as of the date of such opinion, the Merger Consideration is fair, from a financial point of view, to the holders of the Company Common Stock (other than Yucaipa and its Affiliates).

SECTION 4.20 *Ownership of Parent Common Stock.* Immediately prior to the date hereof, (i) the Company does not own shares of Parent Common Stock and (ii) neither the Company nor any of its affiliates or associates within the last three years has owned 10% or more of the outstanding shares of Parent Common Stock in the aggregate (as such terms are defined in Section 3-601 of the Maryland General Corporate Law (the "MGCL")). The Company is not, and none of its affiliates or associates is, an interested stockholder of Parent (as such term is defined in Section 3-601 of the MGCL).

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Prior to the execution and delivery of this Agreement, Parent and Merger Sub have delivered to the Company the Parent Disclosure Letter, with numbering corresponding to the Sections or subsections of this Article V. Any exception, qualification or limitation described in any provision, section or subsection of the Parent Disclosure Letter with respect to a particular representation or warranty contained in this Article V shall be deemed to be an exception, qualification or limitation with respect to any other representation or warranty contained in this Article V to the extent

that its relationship thereto is reasonably apparent on its face. Subject to the exceptions and

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qualifications set forth in the Parent Disclosure Letter, Parent and Merger Sub jointly and severally represent and warrant to the Company as follows:

SECTION 5.1 *Corporate Status.* Each of Parent and Merger Sub is duly incorporated or otherwise organized, validly existing and in good standing under the Laws of its governing jurisdiction and each (a) has all requisite corporate or other power and authority to carry on its business as it is now being conducted and (b) is duly qualified to do business in each of the jurisdictions in which the ownership, operation or leasing of its assets or the conduct of its business requires it to be so qualified, except where the failure to be so qualified has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

SECTION 5.2 *Authorization; Noncontravention.*

(a) *Authorization.* Each of Parent and Merger Sub has all necessary power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The Board of Directors of Parent, at a meeting duly called and held on the date hereof at which all directors of Parent were present, duly and unanimously adopted resolutions (i) adopting and declaring this Agreement, the Merger, the issuance of Parent Common Stock in connection with the Merger (the Share Issuance) and the other transactions contemplated hereby on the terms and subject to the conditions set forth herein advisable and in the best interests of the stockholders of Parent, and (ii) directing that the approval of the Share Issuance and of the Preemptive Rights Charter Amendment be submitted to a vote at a meeting of the stockholders of Parent. The execution, delivery and performance of this Agreement and the Ancillary Agreements to which Parent and Merger Sub are parties and the consummation by each of Parent and Merger Sub of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of Parent or Merger Sub or vote of holders of any class or series of capital stock of Parent or Merger Sub are necessary to authorize this Agreement or the Ancillary Agreements to which Parent or Merger Sub is a party or to consummate the transactions contemplated hereby and thereby, other than (A) the approval of the Merger by Parent as the stockholder of Merger Sub and (B) the approval of the Share Issuance by the affirmative vote of the holders of a majority of the shares of Parent Common Stock present and voting at the Parent Stockholders Meeting or any adjournment or postponement thereof; *provided* that at least a majority of the outstanding shares of Parent Common Stock vote at such meeting and (C) the approval of the Preemptive Rights Charter Amendment by the affirmative vote of the holders of a two-thirds of Parent Common Stock outstanding (clauses (B) and (C) together, *Parent Stockholder Approval*). This Agreement has been duly executed and delivered by Parent and Merger Sub and (assuming due authorization, execution and delivery by the Company) constitutes, and each Ancillary Agreement to which Parent or Merger Sub is a party, when executed and delivered by Parent or Merger Sub (assuming due authorization, execution and delivery by the other parties thereto), will constitute, a valid and binding obligation of Parent or Merger Sub, enforceable against Parent or Merger Sub in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

(b) *No Conflict.* The execution, delivery and performance by Parent and Merger Sub of this Agreement and the Ancillary Agreements to which they are parties do not, and the consummation of the Merger and the other transactions contemplated hereby and thereby and compliance with the provisions of this Agreement and the Ancillary Agreements to which they are parties will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the amendment of any term or provision of or the creation of any Encumbrance upon any of the assets of Parent or Merger Sub under (other than any such Encumbrance created because of any action taken by the Company), any provision of (i) the Charter of Parent and the Certificate of Incorporation of Merger Sub, the By-Laws of Parent and Merger Sub or the comparable organizational documents of any of Parent's other Subsidiaries or (ii) subject to the filings and other matters referred to in the immediately following sentence, (A) any

Contract to which Parent or Merger Sub is a party or by which any of its respective assets are bound or (B) any Law or Judgment, in each case applicable to Parent or Merger Sub or its respective assets, other than, in the case of this clause (ii), any such conflicts, violations, defaults, rights, losses, amendments or Encumbrances that (x) have not had and would not reasonably be expected to have a Parent Material Adverse Effect, or (y) would not materially impair Parent's or Merger Sub's ability to perform its obligations under this Agreement or the Ancillary Agreements to which it is a party or consummate the transactions contemplated hereby or thereby. No Permit, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity is required to be obtained or made by or with respect to Parent or Merger Sub in connection with the execution, delivery and performance of this Agreement by Parent and Merger Sub or any of the Ancillary Agreements to which Parent or Merger Sub is a party or the consummation by Parent or Merger Sub of the Merger or the other transactions contemplated by this Agreement or the Ancillary Agreements to which Parent or Merger Sub is a party, except for (I) the filing of a premerger notification and report form by Parent and the termination or expiration of any waiting periods under the HSR Act, (II) the filing with the SEC of (x) the Joint Proxy Statement and (y) such reports or other applicable filings under the Exchange Act, the Securities Act, state securities Laws or blue sky laws as may be required in connection with this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby, (III) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and of appropriate documents with the relevant authorities of other jurisdictions in which Parent or Merger Sub is qualified to do business, (IV) any filings required under the rules and regulations of the NYSE, and (V) such Permits, orders or authorizations of or registrations, declarations or filings with and notices the failure of which to be obtained or made (x) has not and would not reasonably be expected to have a Parent Material Adverse Effect or (y) would not materially impair Parent's or Merger Sub's ability to perform its obligations under this Agreement or the Ancillary Agreements or consummate the transactions contemplated hereby or thereby.

SECTION 5.3 *Capital Structure.*

(a) The authorized capital stock of Parent consists of 80,000,000 shares of Parent Common Stock, of which 41,566,317 shares are issued and outstanding as of February 26, 2007, and 3,000,000 shares of preferred stock, no par value per share, of which no shares are issued and outstanding as of the date hereof. As of February 26, 2007, there are 3,159,138 shares of Parent Common Stock subject to outstanding options to acquire Parent Common Stock, 1,847,484 shares of Parent Common Stock deliverable pursuant to outstanding restricted stock units and no stock equivalent units linked to Parent Common Stock. Each share of Parent Common Stock is duly authorized, validly issued, fully paid and nonassessable. Parent has no Voting Debt. Except as set forth above or as expressly contemplated by this Agreement, as of February 26, 2007 there are no (i) outstanding obligations, options, warrants, convertible securities, exchangeable securities, securities or rights that are linked to the value of the Parent Common Stock or other rights, agreements or commitments relating to the capital stock of Parent or obligating Parent to issue or sell or otherwise transfer shares of capital stock of Parent or any securities convertible into or exchangeable for any shares of capital stock of Parent or any Voting Debt of Parent, (ii) outstanding obligations of Parent to repurchase, redeem or otherwise acquire shares of capital stock of Parent or (iii) voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of shares of capital stock of Parent (but only to Parent's knowledge with respect to any such agreements to which Parent is not a party).

(b) Section 5.3(b) of the Parent Disclosure Letter sets forth as of the date hereof a list of all Subsidiaries of Parent, including each such Subsidiary's name, its jurisdiction of incorporation or organization and the percentage of its outstanding capital stock or equity interests owned by Parent or a Subsidiary of Parent (as applicable). The shares of outstanding capital stock of the Subsidiaries of Parent are duly authorized, validly issued, fully paid and nonassessable, and are held of record and beneficially owned by Parent or a Subsidiary of Parent (as applicable), free and clear of any Encumbrances other than Permitted Encumbrances. There is no Voting Debt of any Subsidiary of Parent. There are no (i) outstanding obligations, options, warrants, convertible securities, exchangeable securities, securities or rights that are linked to the value of the Parent Common Stock

or other rights, agreements or commitments, in each case, relating to the capital stock of the Subsidiaries of Parent or obligating Parent or its Subsidiaries to issue or sell or otherwise transfer shares of the capital stock of the Subsidiaries of Parent or any securities convertible into or exchangeable for any shares of capital stock of the Subsidiaries of Parent or any Voting Debt of any Subsidiary of Parent, (ii) outstanding obligations of the Subsidiaries of Parent to repurchase, redeem or otherwise acquire shares of their respective capital stock or (iii) voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of shares of capital stock of the Subsidiaries of Parent (but only to Parent's knowledge with respect to any such agreements to which Parent is not a party).

(c) Other than the Subsidiaries of Parent, there are no Persons in which any of Parent or its Subsidiaries owns any equity, membership, partnership, joint venture or other similar interest.

SECTION 5.4 *Real Property.*

(a) Parent or one of its Subsidiaries has good and marketable title in fee simple, free and clear of Encumbrances (other than Permitted Encumbrances), to real property owned by Parent, except where such Encumbrances have not had and would not reasonably be expected to have a Parent Material Adverse Effect.

(b) Each lease for real property under which Parent or any Subsidiary of Parent is a tenant (i) constitutes a valid and binding obligation of Parent or the Subsidiary of Parent party thereto; (ii) assuming such lease is a legal, valid and binding obligation of, and enforceable against, the other parties thereto, is enforceable against Parent or the Subsidiary of Parent party thereto, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity); and (iii) to Parent's knowledge is a valid and binding obligation of the other parties thereto, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity), with respect to clauses (i) through (iii) above, as has not had or would not reasonably be expected to have a Parent Material Adverse Effect.

SECTION 5.5 *Intellectual Property.* Parent and its Subsidiaries own, or are validly licensed or otherwise have the right to use, all Intellectual Property that is necessary for the conduct of the business of Parent and its Subsidiaries taken as a whole, except as has not had or would not reasonably be expected to have a Parent Material Adverse Effect.

SECTION 5.6 *Environmental Matters.*

(a) Parent and its Subsidiaries have obtained all Permits that are required under any Environmental Law for the operation of the business of Parent and its Subsidiaries as currently being conducted and their current use and operation of the real property owned or leased by Parent or its Subsidiaries, and all such Permits are in full force and effect, other than any failure to obtain or maintain such Permits in full force and effect which has had and would not reasonably be expected to have a Parent Material Adverse Effect.

(b) Parent and its Subsidiaries have operated and are operating the business of Parent and its Subsidiaries, and the real property owned or leased by Parent or its Subsidiaries and other assets of Parent and its Subsidiaries are in compliance with Environmental Laws, other than any non-compliance which in the aggregate has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

(c) None of Parent or its Subsidiaries is party to any pending Action, decree or injunction alleging liability under or violation of any Environmental Law, except in each case that, if adversely determined against Parent, would not have or would not reasonably be expected to have a Parent Material Adverse Effect.

(d) There has been no Release of Hazardous Materials at, on, under or from the real property currently owned or leased by Parent or its Subsidiaries and such real property has not been used for

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the deposit of Hazardous Materials, except in each case as has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

SECTION 5.7 *Legal Proceedings.* There are no Actions pending or, to Parent's knowledge, threatened in writing (and, in either case, not withdrawn), against Parent or any of its Subsidiaries, which if adversely determined, would have or would reasonably be expected to have a Parent Material Adverse Effect. There are no Actions pending or, to Parent's knowledge, threatened in writing (and, in either case, not withdrawn) against Parent or any of its Subsidiaries which, if adversely determined, would materially impair Parent's or Merger Subsidiaries' ability to perform their obligations under this Agreement or the Ancillary Agreements to which it is a party or consummate the transactions contemplated hereby or thereby. None of Parent or any of its Subsidiaries is subject to any Judgment which has had or would reasonably be expected to have a Parent Material Adverse Effect or would materially impair Parent's or Merger Subsidiaries' ability to perform their obligations under this Agreement or the Ancillary Agreements to which it is a party or consummate the transactions contemplated hereby or thereby.

SECTION 5.8 *Taxes.*

(a) Except as has not had and would not reasonably be expected to have a Parent Material Adverse Effect, (i) Parent and each of its Subsidiaries have timely filed with the appropriate taxing authority all material Tax Returns required to be filed, taking into account valid extensions; (ii) all such Tax Returns are complete and accurate in all material respects; (iii) all Taxes due and owing by Parent and each of its Subsidiaries (whether or not shown on any Tax Return) have been paid; and (iv) neither Parent nor any of its Subsidiaries has been informed in writing by a Governmental Entity in a jurisdiction where Parent or any of its Subsidiaries does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(b) The unpaid Taxes of Parent and its Subsidiaries did not, as of the dates of the financial statements contained in the most recent Parent SEC Reports filed with the SEC prior to the date of this Agreement, exceed by a material amount the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) included in the balance sheets contained in such financial statements. Since the date of the financial statements contained in the most recent Parent SEC Reports filed with the SEC prior to the date of this Agreement, neither Parent nor any of its Subsidiaries has incurred any material liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and past practice of Parent and its Subsidiaries in filing their Tax Returns.

(c) As of the date hereof, no deficiencies for Taxes against Parent or any of its Subsidiaries in excess of \$100,000 individually or \$1,000,000 in the aggregate have been claimed or assessed in writing by a Governmental Entity that have not been settled or resolved. There are no currently ongoing, pending or, to Parent's knowledge, threatened audits, assessments or other Actions for or relating to any liability in respect of Taxes of Parent or any of its Subsidiaries. Parent has made available to the Company or its representatives complete and accurate copies of all federal income and material state, local and foreign income, franchise and sales and use Tax Returns of each of Parent and its Subsidiaries and their predecessors for the years ended on or after February 23, 2002 and complete and accurate copies of all examination reports and statements of deficiencies assessed against or agreed to by Parent or any of its Subsidiaries or any predecessors since February 23, 2002 with respect to any material Tax. Other than any waivers or extensions granted in the ordinary course of business after the date of this Agreement and prior to the Effective Time, neither Parent, its Subsidiaries nor any of their respective predecessors has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency (other than as a result of a valid extension of time to file a Tax Return).

(d) There are no Encumbrances for Taxes on any assets of Parent or any of its Subsidiaries, other than Encumbrances in respect of property taxes not yet due and payable.

(e) Other than customary gross up, tax escalation or similar provisions in financing and commercial Contracts entered into in the ordinary course of business, there are no Tax sharing agreements or similar arrangements (including indemnity arrangements) with respect to or involving Parent or any of its Subsidiaries other than agreements solely between Parent and/or its Subsidiaries,

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and, after the Closing Date, neither Parent nor any of its Subsidiaries shall be bound by any such Tax sharing agreements or similar arrangements or have any liability thereunder.

(f) Since December 31, 2000, neither Parent nor any of its Subsidiaries has been a member of any affiliated group filing a consolidated federal income Tax Return other than a group the common parent of which is Parent. Except pursuant to customary gross up, tax escalation or similar provisions in financing and commercial Contracts entered into in the ordinary course of business, neither Parent nor any of its Subsidiaries has any actual or potential liability for the Taxes of any Person (other than Taxes of Parent and its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state or local Law), as a transferee or successor, by Contract, or otherwise.

(g) Parent and each of its Subsidiaries have timely withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other Third Party.

(h) Neither Parent nor any of its Subsidiaries has distributed the stock of any corporation in a transaction satisfying the requirements of Section 355 of the Code since December 31, 2003, and neither the stock of Parent nor the stock of any of its Subsidiaries has been distributed in a transaction satisfying the requirements of Section 355 of the Code since December 31, 2003.

(i) Neither Parent nor any of its Subsidiaries has entered into any transaction identified as a listed transaction for purposes of Treasury Regulations Section 1.6011-4(b)(2).

(j) Neither Parent nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of any (i) change in method of accounting for a taxable period beginning on or prior to the Closing Date under Section 481(c) of the Code (or any similar provision of state, local or foreign Law) or (ii) agreement with a taxing authority relating to Taxes.

(k) Neither Parent nor any of its Subsidiaries has made an election under Section 341(f) of the Code (or any similar provision of state, local or foreign Law).

(l) None of the assets of Parent (a) is tax-exempt use property (as defined in Section 168(h)(1) of the Code), (b) may be treated as owned by any other Person pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954 (as in effect immediately prior to the enactment of the Tax Reform Act of 1986), (c) is property used predominantly outside the United States within the meaning of proposed Treasury Regulations Section 1.168-2(g)(5) or (d) is tax exempt and financed property within the meaning of Section 168(g)(5) of the Code.

SECTION 5.9 *Labor*. Since February 28, 2004, there has not been any work stoppage, slowdown, lockout, employee strike or, to Parent's knowledge, labor union organizing activity involving any of Parent or its Subsidiaries and, to Parent's knowledge, none of the foregoing or any labor dispute or Action that has had or would reasonably be expected to have a Parent Material Adverse Effect, has been threatened. Parent and its Subsidiaries are operating the business of Parent and its Subsidiaries in compliance with all Labor Laws other than non-compliance which has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

SECTION 5.10 *Employee Benefit Plans*.

(a) Each Parent Plan and, to Parent's knowledge, each Parent Multiemployer Plan has been operated and administered in all material respects in accordance with its terms and the terms of all Collective Bargaining Agreements or any other labor-related agreements with any labor union or labor organization applicable to employees of Parent or any of its Subsidiaries and the requirements of all applicable Laws, including ERISA and the Code. As of the date hereof, no Action is pending or, to Parent's knowledge, threatened with respect to any Parent Plan (other than claims for benefits

in the ordinary course) that would result in any material liability to Parent and, to Parent's knowledge, no fact or event exists that would give rise to any such Action. As of the date hereof, to Parent's knowledge, (i) no Action is pending or threatened with respect to any Parent Multiemployer Plan (other than claims for benefits in the ordinary course) that would result in any material liability to Parent and (ii) no fact or event exists that would give rise to any such Action.

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(b) No withdrawal liability has been incurred under Title IV of ERISA by Parent or any of its ERISA Affiliates with respect to any multiemployer plan (as defined in Section 3(37) or 4001(a)(3) of ERISA) which is or has been contributed to by Parent or any of its ERISA Affiliates at any time during the six-year period ending on the date of this Agreement or as to which Parent or any of its ERISA Affiliates has any liability (the *Parent Multiemployer Plans*), and no such liability would be incurred if Parent or any of its ERISA Affiliates were to withdraw from any Parent Multiemployer Plan in a complete or partial withdrawal. Parent has not agreed with any Person to be responsible for any liability under Title IV of ERISA with respect to any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA.

(c) With respect to any Parent Plan which is subject to Part 3 of Subtitle B of Title I or to Title IV of ERISA (a *Parent Title IV Plan*): (i) there is no lien under Section 412(n) of the Code by reason of an accumulated funding deficiency, whether or not waived, under Section 412 of the Code; (ii) no liability (other than liability for premiums) to the PBGC has been incurred and all premiums required to be paid to the PBGC have been paid by or on behalf of such Parent Title IV Plan; (iii) the assets of each Parent Title IV Plan equal or exceed the benefit liabilities of such Parent Title IV Plan determined on a termination basis; and (iv) as of the date hereof, Parent has received no actual notice from the PBGC that an event or condition exists which (A) would constitute grounds for termination of such Parent Title IV Plan by the PBGC or (B) has caused a partial termination of such Parent Title IV Plan.

(d) All contributions to Parent Plans and, to Parent's knowledge, the Parent Multiemployer Plans required to be made by applicable Law or the terms of the applicable Parent Plan have been timely made. Each Parent Plan that is intended to be qualified under Section 401(a) of the Code has timely received a favorable determination letter from the IRS which has not been revoked (or in either case Parent has timely applied for same or will do so) and each trust established in connection with any Parent Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a determination letter from the IRS which has not been revoked that it is so exempt, and, to Parent's knowledge, no fact or event has occurred since the date of such determination letter or letters from the IRS that would reasonably be expected to adversely affect the qualified status of any such Parent Plan or the exempt status of any such trust. To Parent's knowledge, each Parent Multiemployer Plan intended to be qualified under Section 401(a) of the Code is so qualified.

(e) Except as would not reasonably be expected to result in material liability, neither Parent nor any of its ERISA Affiliates, and to Parent's knowledge no other Person, has engaged in any transaction or acted or failed to act in any manner that would subject Parent or any of its ERISA Affiliates to any liability for breach of fiduciary duty under ERISA.

(f) Except as would not reasonably be expected to result in material liability, neither Parent nor any of its ERISA Affiliates and, to Parent's knowledge, no other Person has engaged in any transaction in violation of Section 406(a) or (b) of ERISA or Section 4975 of the Code for which no exemption exists under Section 408 of ERISA or Section 4975(c) or (d) of the Code.

(g) As of the date hereof, (i) all of the outstanding stock options issued by Parent were issued with an exercise price no less than the fair market value of the underlying stock at the actual date of grant or the Business Day immediately preceding the actual date of grant, and (ii) no shares of restricted Parent Common Stock provide for a deferral opportunity beyond vesting.

(h) Except as would not reasonably be expected to result in material liability, none of the Parent Plans or Parent Multiemployer Plans provides medical, health or life insurance or any other welfare-type benefits for current or future retired or terminated employees of Parent or its Subsidiaries or their spouses or dependents (other than in accordance with Part 6 of Title I of ERISA or Code Section 4980B).

(i) To Parent's knowledge, all of the Parent Plans (including such Plans of its Subsidiaries) that are nonqualified deferred compensation plans subject to Section 409A of the Code have been operated in compliance with Section

409A of the Code or applicable transition relief.

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SECTION 5.11 *Compliance with Laws*. Each of Parent and its Subsidiaries is operating its business in compliance with all applicable Laws (including any zoning or building ordinance, code or approval), except to the extent any non-compliance with such Laws has not had and would not reasonably be expected to have a Parent Material Adverse Effect. All Permits required to conduct the business of Parent and its Subsidiaries as currently conducted have been obtained by one or more of Parent or its Subsidiaries and all such Permits are in full force and effect and the business of Parent and its Subsidiaries is being operated in compliance therewith, except for such Permits the failure of which to possess or be in full force and effect or to be complied with has not had and would not reasonably be expected to have a Parent Material Adverse Effect (except that this sentence shall not apply to any Permits which are covered by Section 5.6).

SECTION 5.12 *Parent SEC Reports and Parent Financial Statements*.

(a) Parent has timely filed all forms, reports and documents (including all exhibits) required to be filed by it with the SEC since February 28, 2004. The Parent SEC Reports (i) were prepared in all material respects in accordance with the requirements of the Exchange Act or the Securities Act, as the case may be, and (ii) did not at the time they were filed (and, in the case of a registration statement, as of its effective date) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(b) Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the Parent SEC Reports complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, was prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and fairly presented in all material respects the consolidated financial position, results of operations and cash flows of Parent and its consolidated Subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to immaterial normal year-end adjustments).

(c) Except as set forth on or reserved against in the consolidated balance sheet of Parent and its consolidated Subsidiaries as of February 25, 2006 included in Parent's Form 10-K for the year ended February 25, 2006 including the notes thereto, none of Parent or any of its consolidated Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), except for liabilities or obligations (i) incurred since February 25, 2006 in the ordinary course of business generally consistent with past practice; (ii) that have not had and would not reasonably be expected to have a Parent Material Adverse Effect; (iii) set forth on or reserved against in the consolidated balance sheet (including the notes thereto) of Parent and its Subsidiaries included in Parent's quarterly report on Form 10-Q for the quarter ended October 28, 2006, including the notes thereto; or (iv) incurred to the extent permitted pursuant to Section 6.2(d).

(d) Neither Parent nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract or arrangement (including any Contract relating to any transaction or relationship between or among Parent and any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate of Parent or any of its Subsidiaries, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any off-balance sheet arrangements (as defined in Item 303(a) of Regulation S-K of the SEC)), where the result, purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, Parent or any of its Subsidiaries in Parent's or such Subsidiary's audited financial statements or other Parent SEC Reports.

(e) The audit committee of the Board of Directors of Parent has established whistleblower procedures that meet the requirements of Exchange Act Rule 10A-3. Neither Parent nor any Subsidiary has received any complaints (within the meaning of Exchange Act Rule 10A-3) in respect of any accounting, internal accounting controls or auditing matters. To Parent's knowledge, no complaint seeking relief under Section 806 of SOX has been filed with the United States

Secretary of Labor and no employee has threatened to file any such complaint.

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(f) Parent has made all certifications and statements required by Sections 302 and 906 of SOX and the related rules and regulations promulgated thereunder with respect to the Parent SEC Reports. Parent and its Subsidiaries maintain a system of disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) that is designed to ensure that information required to be disclosed by Parent in reports that it files or submits under the Exchange Act is, in all material respects, recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to Parent's management as appropriate to allow timely decisions regarding required disclosure. Since February 28, 2004, Parent and its Subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(g) Parent and its Subsidiaries maintain systems of internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that comply in all material respects with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or Persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Except as would not have a Parent Material Adverse Effect, Parent and its Subsidiaries maintain internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

SECTION 5.13 *Absence of Certain Changes*. Since February 25, 2006 until the date hereof, there has not occurred any change, event or circumstance that has had or would be reasonably expected to have a Parent Material Adverse Effect. Except as expressly contemplated by this Agreement, since December 2, 2006 until the date hereof, Parent and its Subsidiaries have conducted their business in the ordinary course generally consistent with past practice in all material respects, and none of Parent or its Subsidiaries has:

(a) amended its Charter, Amended and Restated By-Laws or other organizational documents;

(b) adopted a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization;

(c) (i) issued, sold, transferred or otherwise disposed of any shares of its capital stock, Voting Debt of Parent or other voting securities or any securities convertible into or exchangeable for any of the foregoing, (ii) granted or issued any options, warrants, securities or rights that are linked to the value of Parent Common Stock, or other rights to purchase or obtain any shares of its capital stock or any of the foregoing or any phantom stock, phantom stock rights, stock appreciation rights or stock-based performance units, (iii) split, combined, subdivided or reclassified any shares of its capital stock, (iv) declared, set aside or paid any dividend or other distribution with respect to any shares of its capital stock or (v) redeemed, purchased or otherwise acquired any shares of its capital stock or any rights, warrants or options to acquire any such shares or effected any reduction in capital, except (with respect to clauses (i) through (v) above) for: (A) issuances of capital stock of Parent's Subsidiaries to Parent or a wholly owned Subsidiary of Parent, (B) issuances of shares of Parent Common Stock upon exercise of employee stock options or upon vesting of restricted stock units or restricted stock or redemptions, purchases or other acquisitions of capital stock in connection with net exercises or withholding with respect to the foregoing, (C) grants made pursuant to Parent Plans and (D) dividends or distributions by any Subsidiary of Parent to Parent or a wholly owned Subsidiary of Parent;

(d) issued any note, bond or other debt security or right to acquire any debt security, incurred or guaranteed any Indebtedness or entered into any keep well or other agreement to

maintain the financial condition of another Person or other arrangement having the economic effect of any of the foregoing, other than (i) trade or standby letters of credit in the ordinary course of business; (ii) in connection with new store openings or other actions in the ordinary course of business; (iii) pursuant to any existing credit agreement and other existing Contracts regarding other Indebtedness; (iv) issuances, incurrences or guarantees by Parent to any wholly owned Subsidiary of Parent or by a Subsidiary to Parent or any other wholly owned Subsidiary of Parent; (v) incurrences or guarantees of store leases; (vi) other guarantees required under any agreements or commitments existing as of the date of this Agreement; (vii) in connection with any equipment leases; (viii) in connection with any insurance premium financing in the ordinary course of business generally consistent with past practice; or (ix) guarantees of any Indebtedness permitted by the foregoing clauses (i) through (viii); or

(e) entered into or consummated any transaction involving the acquisition (including, by merger, consolidation or acquisition of the business, stock or all or substantially all of the assets or other business combination) of any other Person for consideration to such Person in excess of \$20.0 million in the aggregate (other than purchases of inventory or acquisitions of real property, fixtures and equipment for the opening of any Facility in the ordinary course of business generally consistent with past practice).

SECTION 5.14 *Insurance*. Parent maintains, with reputable insurers or through self-insurance, insurance in such amounts, including deductible arrangements, and of such a character as is customary for companies engaged in the same or similar business. All policies of title, fire, liability, casualty, business interruption, workers' compensation and other forms of insurance including directors and officers insurance, held by Parent and its Subsidiaries as of the date hereof, are in full force and effect in accordance with their terms. Neither Parent nor any of its Subsidiaries is in default under any provisions of any such policy of insurance and neither Parent nor any of its Subsidiaries has received notice of cancellation of any such insurance except as has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

SECTION 5.15 *Ownership of Company Common Stock*. Immediately prior to the date hereof, (i) neither Parent nor Merger Sub owns shares of Company Common Stock and (ii) neither Parent nor Merger Sub nor any of their affiliates or associates within the last three years has owned 15% or more of the outstanding shares of Company Common Stock in the aggregate (as such terms are defined in Section 203 of the DGCL).

SECTION 5.16 *Solvency*. Immediately following the Effective Time and after giving effect to the Merger, Parent will not (a) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair market value of its assets or because the fair saleable value of its assets is less than the amount required to pay its probable liability on its existing debts as they mature); (b) have unreasonably small capital with which to engage in its business; or (c) have incurred debts beyond its ability to pay them as they become due.

SECTION 5.17 *Financing*. Parent presently has cash resources, marketable assets (consisting of no less than 7.1 million shares of Metro, Inc. common stock) and binding written commitments from responsible financial institutions (the Financing Commitments), or a combination thereof, and at the Effective Time will have cash resources and Financing Commitments adequate to permit Parent and Merger Sub to consummate the Merger and the other transactions contemplated hereby on a timely basis and to fund the working capital needs of the Surviving Corporation and its Subsidiaries after the Closing, including any repayment or refinancing of debt contemplated in this Agreement or the Financing Commitments and all fees and expenses related to the foregoing. Section 5.17 of the Parent Disclosure Letter sets forth true and complete copies of the Financing Commitments. Except for such amendments or modifications, true and complete copies of which have been provided to the Company, none of the Financing Commitments has been amended or modified prior to the date of this Agreement, and the respective commitments contained in the Financing Commitments have not been withdrawn or rescinded in any respect and are in full force and effect. There are no conditions precedent or other contingencies related to the funding of the full amount of the financing contemplated by the Financing Commitments, other than as set forth in the Financing Commitments. As of the date of this Agreement, Parent does not have any reason to believe any of the conditions

to the financing contemplated by the Financing Commitments will not be satisfied or that the financing contemplated by the Financing Commitments will not be available to Parent and Merger Sub on the Closing Date.

ARTICLE VI COVENANTS

SECTION 6.1 *Conduct of the Business by the Company.* From and after the date hereof to the Effective Time or the date on which this Agreement is terminated pursuant to Section 8.1, except as (i) contemplated by this Agreement (including clauses (a) through (u) below), the Ancillary Agreements or the Company Budgets, (ii) listed in Section 6.1 of the Company Disclosure Letter or (iii) consented to by Parent in writing (which consent shall not be unreasonably withheld or delayed), the Company shall and shall cause each of its Subsidiaries to use its commercially reasonable efforts to conduct its business in the ordinary course of business generally consistent with past practice and use its commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current officers and key employees and keep its relationships with key customers, suppliers, licensors, licensees, distributors and others having business dealings with it. Without limiting the generality of the foregoing, during the period specified in the preceding sentence, except as (A) otherwise contemplated by this Agreement, the Ancillary Agreements or the Company Budgets, (B) listed in Section 6.1 of the Company Disclosure Letter or (C) consented to by Parent in writing (which consent shall not be unreasonably withheld or delayed), the Company shall not, and shall cause each of its Subsidiaries not to, take any of the following actions:

- (a) amend its Amended and Restated Certificate of Incorporation, Amended and Restated By-Laws or other organizational documents other than as permitted by clause (b) below;
- (b) adopt a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization (other than a merger, consolidation or other reorganization solely between wholly owned Subsidiaries);
- (c) (i) issue, sell, transfer or otherwise dispose of any shares of its capital stock, Voting Debt of the Company or other voting securities or any securities convertible into or exchangeable for any of the foregoing, (ii) grant or issue any options, warrants, securities or rights that are linked to the value of the Company Common Stock, or other rights to purchase or obtain any shares of its capital stock or any of the foregoing or any phantom stock, phantom stock rights, stock appreciation rights or stock-based performance units, (iii) split, combine, subdivide or reclassify any shares of its capital stock, (iv) declare, set aside or pay any dividend or other distribution with respect to any shares of its capital stock or (v) redeem, purchase or otherwise acquire any shares of its capital stock or any rights, warrants or options to acquire any such shares or effect any reduction in capital, except (with respect to clauses (i) through (v) above) for: (A) issuances of capital stock of the Company's Subsidiaries to the Company or a wholly owned Subsidiary of the Company, (B) issuances of shares of Company Common Stock upon exercise of employee stock options, upon vesting of restricted stock units or restricted stock or pursuant to the 2000 Warrants or the 2005 Warrants or redemptions, purchases or other acquisitions of capital stock in connection with net exercises or withholding with respect to the foregoing, (C) grants made pursuant to Company Plans, (D) dividends or distributions by any Subsidiary of the Company to the Company or a wholly owned Subsidiary of the Company or (E) as contemplated by Section 3.3(a)(i);
- (d) (i) issue any note, bond or other debt security or right to acquire any debt security, incur or guarantee any Indebtedness or enter into any keep well or other agreement to maintain the financial condition of another Person or other arrangements having the economic effect of any of the foregoing, other than (A) trade or standby letters of credit in the ordinary course of business; (B) in connection with new store openings or other actions in the ordinary course of business generally consistent with past practice; (C) pursuant to the Company Credit Agreement and other Contracts regarding other Indebtedness listed in the Company Disclosure Letter (including the accordion feature of the Company Credit Agreement); (D) as an

alternative to the accordion feature of the Company Credit Agreement or to repay, prior to the Closing Date, amounts borrowed under the accordion feature of the Company Credit Agreement, mortgages not in excess of \$40.0 million principal amount encumbering the Real Property identified in Section 6.1(d)(i)(D) of the Company Disclosure Letter; (E) issuances, incurrences or guarantees by the Company to any wholly owned Subsidiary of the Company or by a Subsidiary to the Company or any other wholly owned Subsidiary of the Company; (F) incurrences or guarantees of store leases; (G) other guarantees required under any agreements or commitments existing as of the date of this Agreement listed in the Company Disclosure Letter; (H) in connection with any equipment leases entered into in the ordinary course of business generally consistent with past practice; (I) in connection with any insurance premium financing in the ordinary course of business generally consistent with past practice; or (J) guarantees of any Indebtedness permitted by the foregoing clauses (A) through (I); (ii) amend or otherwise restructure the Company Credit Agreement in any manner that increases the amount of the commitments thereunder (except as permitted under clause (C)) or adds prepayment penalties; or (iii) incur any additional principal Indebtedness under the Company's indenture dated as of January 29, 2002;

(e) (i) increase the benefits under any Company Plan or Collective Bargaining Agreement, (ii) increase the compensation or benefits payable to, or enter into any employment agreements with, any current or former director, officer, employee or consultant of the Company or its Subsidiaries, (iii) grant any rights to severance, change in control or termination pay to, or enter into any severance or change in control agreement or arrangement with, any current or former director, officer, employee or consultant of the Company or its Subsidiaries, or (iv) take any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any Company Plan or Collective Bargaining Agreement, except (with respect to clauses (i) through (iv) above): (A) as required by applicable Law or under the terms of this Agreement or any Company Plan or employment Contract, including under any existing severance agreements or arrangements, or Collective Bargaining Agreement in existence as of the date of this Agreement listed in the Company Disclosure Letter; (B) in connection with (1) the renegotiation or amendment of any Collective Bargaining Agreement that is scheduled to expire in 2007 or 2008 or (2) the negotiation or amendment of any other Collective Bargaining Agreement that would not materially adversely affect the Company and its Subsidiaries as a whole; (C) the entry into voluntary severance arrangements not announced prior to the date hereof with employees below the store-manager level in an amount in excess of \$2.0 million in the aggregate; (D) with respect to clauses (i) and (ii) above, in the ordinary course of business with respect to employees who are not Executive Officers (increases of any of the foregoing in connections with promotions being deemed ordinary course of business generally consistent with past practice); or (E) in connection with hiring of an individual to replace any existing Executive Officer the base salary of whom is not in excess of 150% of the base salary of the Executive Officer whom such individual replaces;

(f) enter into or consummate any transaction involving the acquisition (including by merger, consolidation or acquisition of the business, stock or all or substantially all of the assets or other business combination) of any other Person that would materially impair or delay the consummation of the transactions contemplated by this Agreement or for consideration to such Person in excess of \$10,000,000 in the aggregate (other than purchases of inventory, or acquisitions of real property, fixtures and equipment for the opening of any Facility in the ordinary course of business generally consistent with past practice);

(g) sell, lease, license or otherwise dispose of fixed assets or personal property for consideration in excess of \$3,000,000 in the aggregate, except (i) pursuant to existing Contracts, (ii) for sales of inventory, goods, personal property and fixed assets in the ordinary course of business generally consistent with past practice, (iii) in connection with the termination or closure of any Facility permitted by Section 6.1(n), or (iv) pursuant to any Company Tenant Leases whether now existing or entered into after the date hereof in the ordinary course of business generally consistent with past practice;

(h) encumber any assets or property that are material to the Company and its Subsidiaries taken as a whole, except for Encumbrances (i) that would constitute a Permitted Encumbrance; (ii) related to any Indebtedness that may be incurred pursuant to Section 6.1(d); (iii) pursuant to existing Contracts; or (iv) pursuant to any Company Tenant Leases whether now existing or entered into after the date hereof in the ordinary course of business generally consistent with past practice;

(i) make any capital expenditures in excess of \$5,000,000 in any year, except (i) for the total amount contemplated by the Company Budgets (*provided* that the Company may not make capital expenditures for Capital Expenditures System Initiatives Software in an amount greater than the amount allocated therefore in the Company Budgets), (ii) in connection with the opening of a Facility in the ordinary course of business generally consistent with past practice or (iii) any emergency repair of a Facility or reconstruction or repair due to casualty losses at a Facility;

(j) settle any Action or threatened Action involving a payment by the Company or any of its Subsidiaries which would reasonably be expected to have a Company Material Adverse Effect;

(k) change any of its material accounting policies or practices, except as may be required by GAAP or the rules and regulations of the SEC or by changes in GAAP or such SEC rules and regulations;

(l) (i) make, change or revoke any material election in respect of Taxes, (ii) adopt or change any material accounting method in respect of Taxes, (iii) enter into any Tax allocation agreement, Tax-sharing agreement, Tax indemnity agreement or closing agreement, (iv) settle or compromise any material claim, notice, audit report or assessment in respect of Taxes, or (v) surrender any right to claim a material refund of Taxes;

(m) effect any sale and leaseback transactions except in the ordinary course of business generally consistent with past practice;

(n) terminate or close any Facility or make any announcement of the intention to do so, except in the ordinary course of business generally consistent with past practice;

(o) enter into any consulting Contract requiring payments by the Company in excess of \$250,000 other than in the ordinary course of business generally consistent with past practice and other than those cancelable (without giving rise to any penalty or additional cost or liability (other than for services performed prior to such cancellation)) within 90 days;

(p) (i) delay payments of accounts payable and other obligations in a manner other than in the ordinary course of business generally consistent with past practice or (ii) accelerate the collection of receivables or modify the payment terms of any receivables other than in the ordinary course of business generally consistent with past practice;

(q) except as permitted in clause (e) above, enter into any new Contract or modify or amend any existing Contract with (i) an Executive Officer, director, or control persons of the Company or any of its Subsidiaries or (ii) Yucaipa or any of its Affiliates (other than the Company and its Subsidiaries) or an executive officer, director or control person of Yucaipa;

(r) incur out-of-pocket fees and expenses for investment banking, financial advisory services or due to Yucaipa and its Affiliates in connection with the transactions contemplated by this Agreement in excess of the amounts set forth in Section 6.1(r) of the Company Disclosure Letter;

(s) materially adversely modify or amend or extend prior to the expiration date thereof any Contract set forth in Section 6.1(s) of the Company Disclosure Letter;

(t) adopt, or propose to adopt, or maintain any shareholders rights plan, poison pill or other similar plan or agreement, unless Parent and Merger Sub are exempted from the provisions of such shareholders rights plan, poison pill, or other similar plan or agreement; or

(u) agree or commit by Contract or otherwise to do any of the foregoing.

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Nothing contained in this Section 6.1 or anywhere else in this Agreement shall give Parent or Merger Sub, directly or indirectly, the right to control or direct the Company's or the Company's Subsidiaries' operations prior to the Effective Time.

SECTION 6.2 *Conduct of the Business by Parent.* From and after the date hereof to the Effective Time or the date on which this Agreement is terminated pursuant to Section 8.1, except as (i) contemplated by this Agreement (including clauses (a) through (h) below) or the Ancillary Agreements, (ii) listed in Section 6.2 of the Parent Disclosure Letter or (iii) consented to by the Company in writing (which consent shall not be unreasonably withheld or delayed), Parent shall and shall cause each of its Subsidiaries to use its commercially reasonable efforts to conduct its business in the ordinary course of business generally consistent with past practice and use its commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current officers and key employees and keep its relationships with key customers, suppliers, licensors, licensees, distributors and others having business dealings with it. Without limiting the generality of the foregoing, during the period specified in the preceding sentence, except as (A) otherwise contemplated by this Agreement or the Ancillary Agreements, (B) listed in Section 6.2 of the Parent Disclosure Letter or (C) consented to by the Company in writing (which consent shall not be unreasonably withheld or delayed), Parent and Merger Sub shall not, and Parent shall cause each of its Subsidiaries not to, take any of the following actions:

(a) amend its Charter, Amended and Restated By-Laws or other organizational documents (other than (i) as permitted by clause (b) below, (ii) an amendment of Parent's Charter to effect the Preemptive Rights Charter Amendment, (iii) any amendment of Parent's Charter approved by Parent's stockholders at Parent's 2007 annual meeting of stockholders relating solely to the elimination of the preemptive rights contained in Article 7 of Parent's Charter or indemnification or exculpation rights of Parent's officers and directors, (iv) an amendment of Parent's Amended and Restated By-Laws as set forth in Section 6.2(a) of the Parent Disclosure Letter or (v) necessary to effect Parent's reorganization into a holding company structure (*provided* that no such reorganization shall require a vote of the stockholders of Parent or materially impair or delay the consummation of the transactions contemplated by this Agreement));

(b) adopt a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization (other than a merger, consolidation or other reorganization between wholly owned subsidiaries or in connection with the formation of one or more parent holding companies);

(c) (i) issue, sell, transfer or otherwise dispose of any shares of its capital stock, Voting Debt of Parent or other voting securities or any securities convertible into or exchangeable for any of the foregoing, (ii) grant or issue any options, warrants, securities or rights that are linked to the value of Parent Common Stock, or other rights to purchase or obtain any shares of its capital stock or any of the foregoing or any phantom stock, phantom stock rights, stock appreciation rights or stock-based performance units, (iii) split, combine, subdivide or reclassify any shares of its capital stock, (iv) declare, set aside or pay any dividend or other distribution with respect to any shares of its capital stock or (v) redeem, purchase or otherwise acquire any shares of its capital stock or any rights, warrants or options to acquire any such shares or effect any reduction in capital, except (with respect to clauses (i) through (v) above) for: (A) issuances of Parent Common Stock, Voting Debt or other capital stock of Parent not in excess of 33 1/3% of the outstanding shares of Parent Common Stock as of the date hereof, (B) issuances of capital stock of Parent's Subsidiaries to Parent or a wholly owned Subsidiary of Parent, (C) issuances of shares of Parent Common Stock upon exercise of employee stock options or upon vesting of restricted stock units or restricted stock or redemptions, purchases or other acquisitions of capital stock in connection with net exercises or withholding with respect to the foregoing, (D) grants made pursuant to Parent Plans, (E) dividends or distributions by any Subsidiary of Parent to Parent or a wholly owned Subsidiary of Parent or (F) issuances of Parent Common Stock in connection with the Merger or the other transactions contemplated by this Agreement;

(d) issue any note, bond or other debt security or right to acquire any debt security, incur or guarantee any Indebtedness or enter into any keep well or other agreement to maintain the financial condition of another Person or other arrangements having the economic effect of any of the foregoing, other than (i) trade or standby letters of credit in the ordinary course of business; (ii) in connection with new store openings or other actions in the ordinary course of business generally consistent with past practice; (iii) pursuant to any credit agreement existing as of the date of this Agreement and other Contracts regarding other Indebtedness existing as of the date of this Agreement; (iv) issuances, incurrences or guarantees by Parent to any wholly owned Subsidiary of Parent or by a Subsidiary to Parent or any other wholly owned Subsidiary of Parent; (v) incurrences or guarantees of store leases; (vi) other guarantees required under any agreements or commitments existing as of the date of this Agreement; (vii) in connection with any equipment leases or equipment financings entered into in the ordinary course of business generally consistent with past practice; (viii) in connection with any insurance premium financing in the ordinary course of business generally consistent with past practice; (ix) guarantees of any Indebtedness, permitted by the foregoing clauses (i) through (viii); (x) at the Effective Time, in connection with the Merger or the other transactions entered into in connection with this Agreement; and (xi) other Indebtedness not in excess of \$100.0 million in the aggregate;

(e) enter into or consummate any transaction involving the acquisition (including by merger, consolidation or acquisition of the business, stock or all or substantially all of the assets or other business combination) of any other Person that would materially impair or delay the consummation of the transactions contemplated by this Agreement or for consideration to such Person in excess of \$75.0 million in the aggregate (other than purchases of inventory or acquisitions of real property, fixtures and equipment for the opening of any Facility in the ordinary course of business generally consistent with past practice);

(f) sell, lease, license or otherwise dispose of assets or property in a transaction that would materially delay Parent's ability to consummate the Financing;

(g) (i) delay payments of accounts payable and other obligations in a manner other than in the ordinary course of business generally consistent with past practice or (ii) accelerate the collection of receivables or modify the payment terms of any receivables other than in the ordinary course of business generally consistent with past practice; or

(h) agree or commit by Contract or otherwise to do any of the foregoing.

Nothing contained in this Section 6.2 or anywhere else in this Agreement shall give the Company, directly or indirectly, the right to control or direct Parent's or Parent's Subsidiaries' operations.

SECTION 6.3 *No Solicitation; Other Offers.*

(a) Subject to Section 6.3(b), from and after the date hereof through the earlier of the Effective Time or the termination of this Agreement, neither the Company nor any of its Subsidiaries shall, nor shall the Company or any of its Subsidiaries authorize or permit any of their Representatives to, directly or indirectly, (i) solicit or knowingly encourage or facilitate the submission of any Company Proposal; (ii) enter into, initiate or participate in any discussions or negotiations with, furnish any non-public information relating to the Company or any of its Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to, otherwise cooperate in any way with, or assist or knowingly encourage any effort by any Third Party or 13D Group that is seeking to make, or has made, or may reasonably be expected to make, a Company Proposal; (iii) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of the Company or any of its Subsidiaries, other than a standstill provision contained in a confidentiality agreement entered into with such Person pursuant to Section 6.3(b)(ii); or (iv) enter into any agreement with respect to a Company Proposal other than a confidentiality agreement permitted by Section 6.3(b). The Company shall, shall cause its Subsidiaries to, and shall use its commercially reasonable efforts to cause the Representatives of the Company and any of its Subsidiaries to, cease immediately and cause to be terminated any and all existing activities, discussions and negotiations, if any, with any Third Party or 13D Group conducted prior to the date hereof with respect to any

Company Proposal and shall use its commercially reasonable efforts to cause any such Third Party or 13D Group (or its agents or advisors) in

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possession of confidential information about the Company that was furnished by or on behalf of the Company prior to the date hereof to return or destroy all such information. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in this Section 6.3(a) by any Representative of the Company or any of its Subsidiaries, whether or not such Person is purporting to act on behalf of the Company or any of its Subsidiaries or otherwise, shall be deemed to be a breach of this Section 6.3(a) by the Company.

(b) Notwithstanding the foregoing, if the Company receives a Company Proposal that was not solicited, or knowingly encouraged or facilitated, by the Company in violation of Section 6.3(a), and which either constitutes a Superior Proposal or which the Board of Directors of the Company determines in good faith, after consultation with its financial advisors and outside counsel, would reasonably be expected to result in a Superior Proposal, and the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel, that failing to take such action described in clause (i) or (ii) below would be inconsistent with its fiduciary duties under applicable Law, then, prior to the receipt of the Company Stockholder Approval, the Company, directly or indirectly through its Representatives, may (i) engage in negotiations or discussions (including the solicitation of a revised Company Proposal) with such Third Party or 13D Group and (ii) furnish to such Third Party or 13D Group and its attorneys, auditors, advisors and financing sources non-public information relating to, and afford such Third Party or 13D Group access to, the business, properties, assets, books and records of the Company or any of its Subsidiaries pursuant to a confidentiality agreement no less favorable to the Company than the Confidentiality Agreement. The Company shall provide as promptly as practicable, to Parent any material information provided to such Third Party or 13D Group that has not previously been provided to Parent. Nothing contained herein shall prevent the Board of Directors of the Company from complying with Rule 14e-2(a) and Rule 14d-9 under the Exchange Act with regard to a Company Proposal, or from making any other legally required disclosure to the stockholders of the Company with regard to the Company Proposal under federal securities Laws, the regulations of any national securities exchange on which the Company Common Stock is listed or as required under Delaware Law. For the avoidance of doubt, for all purposes under this Agreement, including Article VIII, any disclosure by the Board of Directors of the status of any Company Proposal (without comment on the merits thereof) or any stop-look-listen communication under Rule 14d-9(f) shall not, in and of itself, be considered an Adverse Recommendation Change or a violation of this Section 6.3.

(c) Neither the Board of Directors of the Company nor any committee thereof shall (i)(A) withdraw (or modify in a manner adverse to Parent), or propose to withdraw (or modify in a manner adverse to Parent), the recommendation or declaration of advisability by such Board of Directors or any such committee of this Agreement or the Merger or (B) publicly recommend the approval or adoption of, or propose to recommend, any Company Proposal or Superior Proposal (any action described in this clause (i) whether or not required by Law, being referred to as an *Adverse Recommendation Change*); or (ii) cause or permit the Company or any of its Subsidiaries to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement or other similar agreement related to any Company Proposal, other than any confidentiality agreement referred to in Section 6.3(b). Notwithstanding the foregoing or anything else in this Section 6.3 or otherwise in this Agreement to the contrary, at any time prior to receipt of Company Stockholder Approval, the Board of Directors of the Company may, if, after consultation with its outside counsel, it determines in good faith that failure to take such action would be inconsistent with its fiduciary duties under applicable Law, make an Adverse Recommendation Change; *provided, however*, that the Board of Directors of the Company shall not make an Adverse Recommendation Change until after the fifth Business Day following Parent's receipt of written notice (a *Notice of Adverse Change*) from the Company advising Parent that the Board of Directors of the Company intends to take such action and specifying the reasons therefor, including (if such change is due to a Superior Proposal) the material terms and conditions of any Superior Proposal (including a summary of the financial, legal, regulatory or other aspects that related to the Board of Directors of the Company's determination that such Company Proposal is a Superior Proposal) that is the basis of the proposed action by such Board of Directors (it being understood and agreed that, prior to taking any such action, the Company shall discuss with Parent

and consider in good faith any changes to the terms of this Agreement proposed by Parent in response to such Superior Proposal or otherwise).

(d) In addition to the obligations of the Company set forth in Sections 6.3(b) and (c), the Company shall as promptly as practicable advise Parent in writing of the receipt after the date of this Agreement of any Company Proposal or any inquiry that could reasonably be expected to lead to any Company Proposal or inquiry, the material terms and conditions of any such Company Proposal or inquiry and the identity of the Third Party or 13D Group making any such Company Proposal or inquiry. The Company shall keep Parent fully informed in all material respects of the status of (including any material developments with respect to) any such Company Proposal or inquiry (including any material changes thereto).

SECTION 6.4 *Stockholders Meetings.*

(a) *Company Stockholders Meeting.* The Company shall (i) as soon as practicable following the date of this Agreement, establish a record date (which shall be as soon as practicable following the date of this Agreement) for, duly call, give notice of, convene and hold a meeting of its stockholders (the *Company Stockholders Meeting*), which meeting shall be scheduled for not later than the 23rd Business Day following the mailing of the Joint Proxy Statement to the Company's stockholders (but which may be adjourned or postponed as required by the federal securities Laws, the regulations of any national securities exchange on which the Company Common Stock is listed or Delaware Law) and shall take place promptly and in any event not later than 60 days after the mailing of the Joint Proxy Statement to the Company's stockholders (or such later date as required by the federal securities Laws, the regulations of any national securities exchange on which the Company Common Stock is listed or Delaware Law) for the purpose of obtaining the Company Stockholder Approval, and hold a vote of the stockholders of the Company on the Merger and the Merger Agreement at the Company Stockholders Meeting, and (ii) subject to Section 6.3(c), through its Board of Directors, recommend to its stockholders the adoption of this Agreement. Without limiting the generality of the foregoing, the Company agrees that its obligations pursuant to Section 6.4(a)(i) shall not be affected by (A) the commencement, public proposal, public disclosure or communication to the Company of any Company Proposal or Superior Proposal or (B) any Adverse Recommendation Change (provided, however, that nothing in this sentence shall affect the Company's right to terminate this Agreement in accordance with Article VIII). The Company agrees that it shall not submit to the vote of the stockholders of the Company any Company Proposal (whether or not a Superior Proposal) prior to the vote of the Company's stockholders with respect to the Merger at the Company Stockholders Meeting.

(b) *Parent Stockholders Meeting.* Parent shall (i) as soon as practicable following the date of this Agreement, establish a record date (which shall be as soon as practicable following the date of this Agreement) for, duly call, give notice of, convene and hold a meeting of its stockholders (the *Parent Stockholders Meeting*), which meeting shall be scheduled for not later than the 23rd Business Day following the mailing of the Joint Proxy Statement to Parent's stockholders (but which may be adjourned or postponed as required by the federal securities Laws, the regulations of any national securities exchange on which the Parent Common Stock is listed or Maryland Law) and shall take place promptly and in any event not later than 60 days after the mailing of the Joint Proxy Statement to the Parent's stockholders (or such later date as required by the federal securities Laws, the regulations of any national securities exchange on which the Parent Common Stock is listed or Maryland Law) for the purpose of obtaining the Parent Stockholder Approval and hold a vote of the stockholders of Parent on the Share Issuance and the Preemptive Rights Charter Amendment at the Parent Stockholders Meeting, and (ii) through its Board of Directors, recommend to its stockholders the Share Issuance and the Preemptive Rights Charter Amendment. Parent agrees that it shall not submit to the vote of the stockholders of Parent at the Parent Stockholders Meeting any matters other than the approval of the Share Issuance and the Preemptive Rights Charter Amendment. The approval of the Share Issuance and the Preemptive Rights Charter Amendment shall be conditioned on each other, such that neither shall be deemed to be approved unless both are approved by the Parent stockholders.

SECTION 6.5 *Financing*.

(a) Each of Parent and Merger Sub shall use, and shall cause each of its Affiliates to use, its best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or advisable (including complying with its obligation under Section 6.5(b)) to arrange and obtain the full proceeds of the Financing Commitments (the *Financing*) on the terms and conditions described in the Financing Commitments, including using its best efforts to (i) maintain in effect the Financing Commitments, (ii) negotiate and enter into definitive agreements with respect thereto on the terms and conditions contained therein, (iii) to satisfy (or cause their Affiliates to satisfy) on a timely basis all conditions, and otherwise comply with all terms, applicable to Parent and Merger Sub (or their Affiliates) in such definitive agreements and (iv) consummate the Financing contemplated by the Financing Commitments at or prior to Closing. In the event that any portion of the Financing becomes unavailable on the terms and conditions contemplated in the Financing Commitments, Parent and Merger Sub shall promptly use its best efforts to arrange to obtain any such portion from alternative sources as promptly as practicable following the occurrence of such event but not later than the last day of the Marketing Period. Parent shall deliver to the Company true and complete copies of all agreements pursuant to which any such alternative source shall have committed to provide Parent and Merger Sub with any portion of the Financing. Parent shall give the Company prompt notice of any material breach by any party of the Financing Commitments or any termination of the Financing Commitments. Each of Parent and Merger Sub shall refrain (and shall use its best efforts to cause its Affiliates to refrain) from taking, directly or indirectly, any action that would reasonably be expected to result in a failure of any of the conditions contained in the Financing Commitments or in any definitive agreement related to the Financing. Parent shall keep the Company fully informed in all material respects of the status of Parent's and Merger Sub's efforts to arrange the Financing. Parent and Merger Sub shall not amend, supplement, modify or waive any provision or remedy under the Financing Commitments or the definitive agreements relating to the Financing, without the consent of the Company, which consent shall not be unreasonably withheld or delayed. For the avoidance of doubt, in the event (x) all or a portion of Financing Commitments structured as notes has not been consummated, (y) all conditions contained in Article VII have been satisfied or waived (other than those contained in Sections 7.2(c) and 7.3(c) and those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) and (z) the bridge facilities contemplated by the Financing Commitments (or alternative financing obtained in accordance with this Section 6.5(a)) are available, then Parent and Merger Sub shall use the proceeds of such bridge financing (or alternative financing) for the purpose of consummating the transactions contemplated by this Agreement.

(b) Parent shall, or shall cause its Subsidiaries, to sell or otherwise dispose of up to 7.1 million shares of Metro, Inc. common stock within 90 days of the date of this Agreement; *provided, however*, if the net cash proceeds to Parent of such disposition are less than \$190.0 million, then Parent shall issue and sell within such 90-day period shares of Parent Common Stock and/or its preferred stock sufficient to generate net cash proceeds in an amount equal to the difference between \$190.0 million and the net cash proceeds received from the sale or disposition of such Metro, Inc. common stock. The net cash proceeds of such sale or disposition, together with the net cash proceeds of any such issuance and sale of Parent Common Stock and/or Parent's preferred stock, shall be deposited into a blocked account at Bank of America on which Parent's lenders under its credit agreement existing as of the date of this Agreement have a first priority security interest and shall be held (without diminution) in such account through the Closing, free and clear of all other Encumbrances. The funds in the blocked account shall be used as part of the consideration for the transactions under the Agreement and, pending such use, may be used (without diminution) to support letters of credit under Parent's credit agreement existing as of the date of this Agreement.

(c) From the date hereof until the Closing Date or the earlier termination of this Agreement, the Company shall, and shall use its best efforts to cause (to the extent within its control) each of its officers, employees and other Representatives to, provide such cooperation as is reasonably requested by Parent in connection with the arrangement of the Financing, including (i) causing appropriate officers to be available, on a customary basis and on reasonable advance notice, to

attend due diligence sessions, sessions with ratings agencies, meetings, presentations, and, during the Marketing Period and road shows; (ii) assisting with the preparation of materials for rating agency presentations, information and offering memoranda, business projections and financial statements, to the extent relating to the Company; (iii) issuing customary representation letters to auditors and using its best efforts to cause its independent accountants to provide reasonable assistance to Parent, including requesting such accountants to provide consent to Parent to use their audit reports relating to the Company and to prepare and deliver any customary comfort letters; (iv) providing reasonable access to the Real Property during normal business hours to the extent required by the Financing Commitments; (v) as promptly as reasonably practicable, furnishing Parent and its debt financing sources financial statements, pro forma financial information, financial data, audit reports and other information relating to the Company of the type required by Regulation S-X and Regulation S-K under the Securities Act and the other accounting rules and regulations of the SEC as may reasonably be requested by Parent and of the type and form required to be included in a registered public offering on Form S-1 (all such information in this clause (v), the *Required Information*); (vi) cooperating in satisfying the conditions set forth in the Financing Commitments (to the extent the satisfaction of such condition requires the cooperation of the Company); (vii) promptly providing monthly financial statements (excluding footnotes) to the extent available and prepared by the Company in the ordinary course of business generally consistent with past practice; (viii) executing and delivering, as of the Effective Time, any pledge and security documents, other definitive financing documents, or other certificates or documents contemplated by the Financing Commitments as may be reasonably requested by Parent (including a customary representation letter of the chief financial officer of the Company or any Subsidiary of the Company with respect to consents of accountants for use of their reports in any materials relating to the debt financing contemplated by the Financing Commitments) and otherwise reasonably facilitating the pledging of collateral (including obtaining the insurance, surveys, releases, terminations, waivers, consents, estoppels and approvals as may be required in connection therewith) contemplated by the Financing Commitments; and (ix) as of the Effective Time, taking all corporate actions necessary to authorize the consummation of the financing contemplated by the Financing Commitments. The Company will periodically update any such Required Information to be included in an offering document to be used in connection with such financing so that such Required Information complies with clause (v) of the preceding sentence. The Company hereby consents to the use of its and its Subsidiaries' logos in connection with the financing contemplated by the Financing Commitments; *provided* that such logos are used solely in a manner that is not intended to or likely to harm or disparage the Company or its Subsidiaries. All material non-public information regarding the Company and its Subsidiaries provided to Parent, Merger Sub or their Representatives pursuant to this Section 6.5(b) shall be kept confidential by them in accordance with the Confidentiality Agreement except for disclosure to potential investors as required in connection with the Financing subject to customary confidentiality protections.

(d) Neither the Company nor any of its Subsidiaries shall be required to pay any commitment or other fee or incur any other liability in connection with the Financing prior to the Effective Time.

(e) If this Agreement is terminated by Parent or the Company pursuant to Section 8.1, then Parent shall promptly, upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket fees and expenses incurred by or on behalf of the Company solely as a result of its compliance with this Section 6.5.

(f) Nothing contained in this Section 6.5 or otherwise shall require the Company to be an issuer or other obligor with respect to the Financing prior to the Closing.

(g) If, prior to the Effective Time, the Company incurs debt under the accordion feature of the Company Credit Agreement, then the Company shall use its best efforts to facilitate the mortgaging of the owned Real Property identified in Section 6.1(d)(i)(D) of the Company Disclosure Letter (including obtaining surveys, releases, terminations, waivers, consents, estoppels and approvals as may be required in connection therewith) by Parent at the Effective Time.

SECTION 6.6 *Filings; Authorizations.*

(a) The Company, on the one hand, and Parent and Merger Sub, on the other hand, shall promptly provide or file or cause to be provided or filed all necessary filings with Governmental Entities and any additional information requested by any Governmental Entity in connection with the transactions contemplated by this Agreement.

(b) Each of the Company, on the one hand, and Parent and Merger Sub, on the other hand, shall promptly inform each other and provide each other with copies of any material communication or correspondence made to or received by, such party or its advisors from any Governmental Entity regarding any of the transactions contemplated by this Agreement and shall promptly cooperate and consult with respect to the preparation and submission of any filings, communication or correspondence with a Governmental Entity that may be required by Law or be considered by Parent, after consultation with the Company, to be desirable, as well as with respect to the preparation and submission of any information requested by a Governmental Entity, including, to the extent practicable and subject to the terms of the Confidentiality Agreement and any restrictions under the Antitrust Laws, by providing to Parent, in the case of the Company, or the Company, in the case of Parent, or its outside counsel information and assistance that may reasonably be requested for such purpose. Any such filings, materials or information marked or designated by the providing party as Highly Confidential shall be disclosed only to outside legal counsel and expert consultants to the recipient party and shall be redacted from any copies of filings or other materials that may be disclosed to the recipient party or other Representatives of the recipient party. Each of the Company, on the one hand, and Parent and Merger Sub, on the other hand, shall, to the extent practicable, permit the other to review any material communication, correspondence, submission or filing between it (or its advisors) and any Governmental Entity relating to this Agreement and shall, to the extent practicable, consult with the other in advance of any telephone calls, meetings or conferences with, any Governmental Entity and, to the extent practicable, give the other party the opportunity to attend and participate in such telephone calls, meetings and conferences.

(c) In addition to the agreements set forth in Section 6.6(a), the Company, on the one hand, and Parent and Merger Sub, on the other hand, shall (i) as promptly as practicable take all actions necessary to make the filings required under the HSR Act but in any event not later than ten Business Days following the date of this Agreement and (ii) use their respective best efforts to substantially comply at the earliest practicable date with any request for additional information or documentary material received by Parent, the Company or any of their respective Subsidiaries or Affiliates from the Federal Trade Commission or the Antitrust Division of the Department of Justice pursuant to the HSR Act or from any state attorney general unless Parent and the Company mutually determine that it is reasonable under the circumstances not to comply substantially with any requests for additional information and documentary material under the HSR Act.

(d) The Company, on the one hand, and Parent and Merger Sub, on the other hand, shall promptly cooperate with one another in determining whether any filing with a Governmental Entity, in addition to the HSR Act filings set forth in Section 6.6(c), is required or reasonably appropriate, in connection with the consummation of the transactions contemplated by this Agreement. Subject to the terms and conditions of this Agreement, in taking such actions or making any such filings, the parties shall furnish such information as may be required in connection therewith and timely seek to obtain any such actions, consents, approvals or waivers.

(e) Without limiting Section 6.6(a), each of the Company, Parent and Merger Sub shall, subject to the termination rights set forth in Sections 8.1(c)(iii) and (iv), use their respective best efforts to cause the expiration or termination of the applicable waiting period under the HSR Act as soon as practicable and to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by this Agreement under any Antitrust Law. In furtherance of the foregoing, Parent and Merger Sub shall use their best efforts to (i) seek to avoid the entry of, or seek to have vacated or terminated, any order, judgment, decree, injunction or ruling of a court or any other Governmental Entity that would restrain, prevent or delay the Closing, including by defending through litigation any Action asserted by any Person in any court or before any other Governmental Entity and by exhausting all avenues of appeal and (ii) take, or cause to be taken, all other actions

necessary to avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Closing to occur as soon as reasonably possible, including (A) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, transfer, divestiture or disposition of such stores, businesses or other assets of Parent or any of its Subsidiaries or, after the Effective Time, of the Company or of any of its Subsidiaries and (B) otherwise taking or committing to take actions that limit or would limit Parent's, Merger Subsidiaries or its Subsidiaries (including, after the Effective Time, the Company's and its Subsidiaries as Subsidiaries of Parent) freedom of action with respect to, or its ability to retain, one or more of their respective stores, businesses, product lines or assets, in each case as may be required in order to avoid the entry of, or to effect the dissolution of, any judgment, decree, ruling, injunction, temporary restraining order, or other order or judgment in any Action, which would otherwise have the effect of preventing or materially delaying the Closing; *provided, however*, that Parent may enter into agreements with a Governmental Entity to delay for reasonable periods of time the consummation of the Merger, except that (i) no such agreement shall delay the consummation of the Merger to a date later than December 4, 2007; (ii) if, at the time of entering into the agreement, it is reasonably likely that Parent, Merger Subsidiaries and/or the Company, in the aggregate, would not be required to divest, sell, transfer and/or otherwise dispose of, stores, businesses or other assets of Parent and/or the Company or of any of their Subsidiaries with aggregated Allocated Amounts in excess of the Threshold Amount in order to consummate the transactions contemplated by this Agreement, then no such agreement shall be entered without the consent of the Company (which consent shall not be unreasonably withheld or delayed); and (iii) prior to entering into any such agreement, Parent shall provide the Company with not fewer than five Business Days prior written notice of its intention to do so and during such period Parent shall discuss with the Company such agreement and shall consider in good faith any comments by the Company (which the Company shall promptly provide) regarding such agreement. Notwithstanding anything in this Agreement to the contrary, prior to December 5, 2007, Parent shall not be required to divest, sell, transfer and/or otherwise dispose of, stores, businesses or other assets of Parent and/or the Company or of any of their Subsidiaries with aggregated Allocated Amounts in excess of the Threshold Amount, or enter into any agreement to do any of the foregoing. In no event will Parent or Merger Subsidiaries be entitled to any adjustment to or diminution of the Aggregate Merger Consideration.

SECTION 6.7 Director and Officer Liability; Indemnification; Excess Benefit Plans.

(a) Parent and the Surviving Corporation agree that all rights to indemnification and all limitations on liability for acts or omissions occurring prior to the Effective Time existing in favor of any individual who, on or prior to the Effective Time, is or was a current or former officer or director of any of the Company or its Subsidiaries (collectively, the *Company Indemnitees*), as provided in (i) the organizational documents of any of the Company or its Subsidiaries in effect on the date of this Agreement or (ii) any agreement providing for indemnification by any of the Company or its Subsidiaries of any Company Indemnitee in effect on the date of this Agreement to which any of the Company or its Subsidiaries is a party or by which it is bound and which has been set forth in Section 6.7(a) of the Company Disclosure Letter, shall survive the consummation of the transactions contemplated hereby and continue in full force and effect and be honored by Parent and the Surviving Corporation and its Subsidiaries after the Effective Time. In addition, notwithstanding anything herein to the contrary, Parent shall pay, or cause to be paid, all of the benefits in respect of any employee to which the employee (or his or her beneficiaries) is entitled under the terms of the supplemental retirement and excess benefit plans and agreements set forth in Section 4.10(n) of the Company Disclosure Letter as in effect immediately prior to the Effective Time. Parent shall, and shall cause each of the Surviving Corporation and Parent's Subsidiaries to, take all actions required by, and otherwise comply with, the provisions of this Section 6.7(a). Prior to the Effective Time, the Company shall obtain, at Parent's expense, tail insurance policies with a claims period of at least six years from the Effective Time with respect to directors' and officers' liability insurance covering those directors and officers of the Company and its Subsidiaries who, immediately prior to the Effective Time, were covered by the Company's existing directors' and officers' liability insurance policies and in amount and scope at least as favorable to such directors

and officers as such existing policies for claims arising from facts or events that occurred on or prior to the Effective Time; *provided* that the aggregate premiums for such policies do not exceed an amount equal to 300% of the current annual premium of the Company's existing directors' and officers' liability insurance as in effect on the date of this Agreement.

(b) The Certificate of Incorporation and By-Laws of the Surviving Corporation shall contain provisions no less favorable with respect to exculpation and indemnification, except to the extent required by any applicable Law adopted, amended or reinterpreted after the date of this Agreement, than those set forth in the Certificate of Incorporation and the By-Laws of the Company, respectively, which provisions shall not be amended, repealed or otherwise modified for a period of six years from the Effective Time in any manner that would affect adversely the rights thereunder of individuals who, at or prior to the Effective Time, were directors, officers, employees, fiduciaries or agents of the Company or any of the Subsidiaries.

(c) In the event Parent or the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation shall succeed to the obligations set forth in this Section 6.7.

(d) The obligations and liability of Parent, the Surviving Corporation and its Subsidiaries under this Section 6.7 shall be joint and several.

(e) It is expressly agreed that the Company Indemnitees and each employee (and, if deceased, his or her heirs or beneficiaries) to whom this Section 6.7 applies shall be third party beneficiaries of the obligations to such persons set forth in this Section 6.7. The obligations of Parent, the Surviving Corporation and its Subsidiaries under this Section 6.7 shall not be terminated or modified in such a manner as to adversely affect the rights of any Company Indemnitee or employee (or, if deceased, his or her heirs or beneficiaries) to whom this Section 6.7 applies under this Section 6.7 without the consent of such affected Person.

SECTION 6.8 *Access to Information.*

(a) From the date hereof to the Closing Date or the earlier termination of this Agreement, the Company shall, to the extent consistent with applicable Law (including Antitrust Law), afford Parent and its Representatives reasonable access during normal business hours, upon reasonable notice, to the officers, employees, agents, properties, offices and other Facilities of the Company and its Subsidiaries and to their books and records, and shall furnish Parent with available monthly (or more frequently during the Marketing Period) financial, operating and other data and information with respect to the business and properties of the Company and its Subsidiaries as Parent may reasonably request (including daily working capital reports from the beginning of the Marketing Period until the Closing Date) (other than information concerning a Company Proposal or a Superior Proposal, each of which shall be governed by Section 6.3). In exercising its rights hereunder, Parent shall (and shall cause each of its Representatives to) conduct itself so as not to interfere in the conduct of the business of the Company and its Subsidiaries prior to Closing. Parent and Merger Sub acknowledge and agree that they and their Representatives shall not contact any officers, employees, landlords, tenants, licensees, franchisees, customers or agents of the Company and its Subsidiaries unless consented to by the Company (such consent not to be unreasonably withheld or delayed) and that any contact hereunder shall be arranged and supervised by Representatives of the Company, unless the Company otherwise expressly consents with respect to any specific contact. Notwithstanding anything to the contrary set forth in this Agreement, neither the Company nor any of its Affiliates shall be required to disclose to Parent or any agent or Representative thereof any information (i) if doing so could violate any Contract to which the Company or any of its Affiliates is a party or Law to which the Company or any of its Affiliates is subject or (ii) which the Company or any of its Affiliates believes in good faith could result in a loss of the ability to successfully assert a claim of privilege (including the attorney-client and work product privileges); provided that the Company shall seek to obtain any consent required under any such

Contract to permit such disclosure; provided, further, that if the Company or any of its

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Affiliates believes in good faith that any such disclosure may result in a loss of the ability to successfully assert a claim of privilege, the Company and Parent shall use commercially reasonable efforts to cooperate and explore in good faith whether a method could be used to permit disclosure by the Company or its Representatives without waiving such privilege.

(b) From the date hereof to the Effective Time or the earlier termination of this Agreement, Parent shall, to the extent consistent with applicable Law (including Antitrust Law), afford the Company and its Representatives reasonable access during normal business hours, upon reasonable notice, to the officers, employees, agents, properties, offices and other Facilities of Parent and its Subsidiaries and to their books and records. Notwiths