

IN THE MATTER OF

COLUMBIA/HCA HEALTHCARE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3619. Complaint, Oct. 3, 1995--Decision, Oct. 3, 1995*

This consent order, among other things, permits Columbia/HCA and Healthtrust, Inc. to merge, provided that Columbia/HCA divests seven hospitals within twelve months (nine months for the divestiture of three hospitals in the Salt Lake City area), and requires the respondent to terminate its participation in a joint venture with the Orlando Regional Health System. In a modification of the consent agreement, this consent order replaces a prior-approval requirement with a prior-notice provision that requires the respondent, for ten years, to notify the Commission before acquiring another acute care hospital in any of the six market areas at issue, and before transferring an acute care hospital in any of the areas to another entity that already operates one in that area.

Appearances

For the Commission: *Oscar M. Voss.*

For the respondent: *Ky Ewing, Vinson & Elkins, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Columbia/HCA Healthcare Corporation ("Columbia/HCA"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Columbia/HCA will acquire Healthtrust, Inc. - The Hospital Company ("Healthtrust"); that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the

public interest, hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

(a) "*Acute care hospital*" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

(b) "*Acute care inpatient hospital services*" means 24-hour inpatient health care at an acute care hospital, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short term or episodic health problems or infirmities.

THE PARTIES

PAR. 2. Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee. Columbia/HCA, and/or its subsidiaries or affiliates, owns and/or operates the following acute care hospitals in the relevant sections of the country described in paragraph seven below:

- (a) Central Florida Regional Hospital, Sanford, Florida;
- (b) Columbia Park Medical Center, Orlando, Florida;
- (c) Osecola Regional Hospital, Kissimmee, Florida;
- (d) Winter Park Memorial Hospital, Winter Park, Florida;
- (e) West Florida Regional Medical Center, Pensacola, Florida;
- (f) Twin Cities Hospital, Niceville, Florida;

- (g) Fort Walton Beach Medical Center, Ft. Walton Beach, Florida;
- (h) Destin Community Hospital, Destin, Florida;
- (i) Denton Community Hospital, Denton, Texas;
- (k) Ville Platte Medical Center, Ville Platte, Louisiana;
- (j) Davis Hospital and Medical Center, Layton, Utah; and
- (l) St. Mark's Hospital, Salt Lake City, Utah.

PAR. 3. Healthtrust is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 4525 Harding Road, Nashville, Tennessee. Healthtrust, and/or its subsidiaries or affiliates, owns and/or operates the following acute care hospitals in the relevant sections of the country described in paragraph seven below:

(a) South Seminole Hospital, Longwood, Florida (South Seminole is owned and operated by a partnership of Healthtrust and Orlando Regional Healthcare System, Inc. ("ORHS"). ORHS operates four hospitals in the Orlando area in addition to its partnership interest in South Seminole Hospital);

- (b) Santa Rosa Medical Center, Milton, Florida;
- (c) North Okaloosa Medical Center, Crestview, Florida;
- (d) Savoy Medical Center, Savoy, Louisiana;
- (e) Doctors Hospital of Opelousas, Opelousas, Louisiana;
- (f) Denton Regional Medical Center, Denton, Texas;
- (g) Pioneer Valley Hospital, West Valley City, Utah;
- (h) Jordan Valley Hospital, West Jordan, Utah;
- (i) Lakeview Hospital, Bountiful, Utah; and
- (j) Odgen Regional Medical Center, Odgen, Utah.

JURISDICTION

PAR. 4. Columbia/HCA and Healthtrust are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12. The businesses of Columbia/HCA and Healthtrust are, and at all times relevant herein have been, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE PROPOSED ACQUISITION

PAR. 5. On or about October 4, 1994, Columbia/HCA and Healthtrust entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia/HCA. The total value of the Healthtrust stock to be acquired by Columbia/HCA is approximately \$3 billion.

NATURE OF TRADE AND COMMERCE

PAR. 6. For the purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care inpatient hospital services and/or any narrower group of services contained therein.

PAR. 7. For the purposes of this complaint, the relevant sections of the country are the following areas, and any narrower areas contained therein:

(a) The Salt Lake City - Ogden Metropolitan Statistical Area, encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County; and the following areas contained therein:

(i) The Salt Lake City area, encompassing Salt Lake County and southern Davis County in Utah;

(ii) The Ogden area, encompassing Weber County and northern Davis County in Utah;

(b) The Pensacola area, encompassing the Florida counties of Escambia and Santa Rosa;

(c) The Okaloosa area, encompassing the Florida county of Okaloosa;

(d) The Denton area, encompassing the Texas counties of Cooke and Denton (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas highway number 121);

(e) The Ville Platte-Mamou-Opelousas area, encompassing the Louisiana parishes of Evangeline and St. Landry; and

(f) The Orlando area, encompassing the Florida counties of Seminole, Orange, and Osceola.

MARKET STRUCTURE

PAR. 8. The relevant markets -- *i.e.*, the relevant line of commerce in the relevant sections of the country -- are highly concentrated, whether measured by Herfindahl-Hirschman Indices ("HHI") or by four-firm concentration ratios.

ENTRY CONDITIONS

PAR. 9. Entry into the relevant markets is difficult, due to state certificate of need regulation of entry into the Florida markets, substantial lead times required to establish a new acute care hospital in all of the relevant markets, and other factors.

COMPETITION

PAR. 10. In the relevant markets, Columbia/HCA and Healthtrust are actual and potential competitors.

EFFECTS

PAR. 11. The effects of the aforesaid acquisition may be substantially to lessen competition in each of the relevant markets (except the Orlando area) in the following ways, among others:

(a) It would eliminate actual and potential competition between Columbia/HCA's and Healthtrust's acute care hospitals;

(b) It would significantly increase the already high level of concentration;

(c) It would eliminate Healthtrust's acute care hospitals as substantial, independent competitive forces;

(d) It may increase the likelihood of collusion or interdependent coordination by the remaining firms; and

(e) It may deny patients, physicians, third-party payers, and other consumers of acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service.

PAR. 12. The effects of the aforesaid acquisition may be substantially to lessen competition in the Orlando area in the following ways, among others:

- (a) It may increase the likelihood of collusion or interdependent coordination by the remaining firms, because the South Seminole Hospital would be jointly owned by Columbia/HCA and ORHS; and
- (b) It may deny patients, physicians, third-party payers, and other consumers of acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service.

VIOLATIONS CHARGED

PAR. 13. The acquisition agreement described in paragraph five above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 14. The acquisition described in paragraph five, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation into the proposed acquisition by Columbia/HCA Healthcare Corporation of Healthtrust, Inc. - The Hospital Company, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Columbia/HCA Healthcare Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at One Park Plaza, Nashville, Tennessee.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Columbia/HCA*" or "*respondent*" means Columbia/HCA Healthcare Corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Columbia/HCA; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "*Healthtrust*" means Healthtrust, Inc. - The Hospital Company, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Healthtrust; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "*Commission*" means the Federal Trade Commission.

D. The "*Acquisition*" means the transaction contemplated by the October 4, 1994, agreement between Columbia/HCA and Healthtrust,

whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia/HCA.

E. "*Acute care hospital*" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

F. To "*operate*" an acute care hospital means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. To "*acquire*" an acute care hospital means, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. To acquire the whole or any part of the assets used or previously used within the last two years (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;

2. To acquire the whole or any part of the stock, share capital, equity, or other interest in any person engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;

3. To acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of an acute care hospital; or

4. To enter into any other arrangement to obtain direct or indirect ownership, management, or control of an acute care hospital or any part thereof, including, but not limited to, a lease of or management contract for an acute care hospital.

H. "*Affiliate*" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

I. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

J. "*Relevant area(s)*" means:

1. The Salt Lake City - Ogden Metropolitan Statistical Area, encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County;

2. The Pensacola area, encompassing the Florida counties of Escambia and Santa Rosa;

3. The Okaloosa area, encompassing the Florida county of Okaloosa;

4. The Denton area, encompassing the Texas counties of Cooke and Denton (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas highway number 121);

5. The Ville Platte-Mamou-Opelousas area, encompassing the Louisiana parishes of Evangeline and St. Landry; and

6. The Orlando area, encompassing the Florida counties of Seminole, Orange, and Osceola.

K. "*CLHS*" means Central Louisiana Healthcare System Limited Partnership, a Louisiana partnership *in commendam* in which Columbia/HCA currently holds a partnership interest, its partnerships, joint ventures, companies including the Ville Platte Medical Center, subsidiaries, divisions, and groups and affiliates controlled by CLHS; their directors, officers, employees, agents, and representatives; and their successors and assigns.

L. "*ORHS*" means Orlando Regional Healthcare System, Inc., a Florida corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by ORHS; their directors, officers, employees, agents, and representatives; and their successors and assigns.

M. The "*SSH Joint Venture*" means the Florida partnership, in which Healthtrust (through a wholly-owned subsidiary) and ORHS (through a wholly-owned subsidiary) hold partnership interests, which owns and operates the South Seminole Hospital in Longwood, Florida.

N. The "*SSH Joint Venture Interest*" means Healthtrust's interest in the SSH Joint Venture.

O. The "*Schedule A Assets*" means the assets listed on the attached Schedule A.

P. The "*Schedule B Assets*" means the assets listed on the attached Schedule B.

Q. The "*Utah Healthtrust Assets*" means the assets listed on the attached Schedule C.

R. "*Assets and Businesses*" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. All real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. All contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consigners, and consignees (collectively, the "Contracts");

3. All machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Columbia/HCA owns the assets) (collectively, the "Personal Property");

4. All research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. All books, records, and files, excluding, however, the corporate minute books and tax records of Columbia/HCA and its affiliates; and

6. All prepaid expenses.

II.

It is further ordered, That:

A. Respondent shall divest (or in the case of the Ville Platte Medical Center shall cause CLHS to divest), absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Schedule A Assets.

B. Respondent shall also divest absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Assets and Business of, including all improvements, additions, and enhancements made to such facilities prior to divestiture, either of the following:

1. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas, including the following (collectively "DRMC"):

- a. DRMC Office Building, 4401 North I-35, Denton, Texas;
- b. The medical office building and vacant land at 3353 I-35E South, Denton, Texas;
- c. The satellite offices operated at Denton Regional Medical Center, 1207A North Grand Avenue, Gainesville, Texas;
- d. Flow Rehabilitation Hospital, 1310 Scripture, Denton, Texas;
- e. Denton Regional Medical Center - Little Elm, 420 FM720 West, Suite 9, Little Elm, Texas;
- f. Professional Health Care Services, 621 Londonderry Lane, Denton, Texas; or

2. Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas, and the Medical Office Building at Scripture/Bonnie Brae (collectively "Denton Community Hospital").

C. Respondent shall also divest such additional Assets and Businesses ancillary to the Schedule A Assets and to either DRMC or Denton Community Hospital, and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Schedule A Assets, DRMC and Denton Community Hospital.

D. Respondent shall divest the Schedule A Assets, and either DRMC or Denton Community Hospital, only to an acquirer or

acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. If respondent proposes to divest Denton Community Hospital, it must provide the Commission with the written consent of the landlord of such facilities to the proposed assignment and divestiture at the time that Commission approval of the divestiture is sought. The purpose of the divestitures of the Schedule A Assets and of either DRMC or Denton Community Hospital, is to ensure the continuation of the Schedule A Assets and of either DRMC or Denton Community Hospital, as ongoing, viable acute care hospitals and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

E. With respect to the Schedule A Assets and DRMC, respondent shall comply with all terms of the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Hold Separate provides.

F. Pending divestiture of the Schedule A Assets and DRMC or Denton Community Hospital, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Schedule A Assets, DRMC, and Denton Community Hospital, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A Assets, DRMC, and Denton Community Hospital, except for ordinary wear and tear.

G. A condition of approval by the Commission of each divestiture shall be a written agreement by the acquirer(s) of the Schedule A Assets and of either DRMC or Denton Community Hospital, that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by paragraph VI of this order, any Schedule A Asset, DRMC, or Denton Community Hospital to any person who operates, or will operate immediately following the sale, any other acute care hospital in the same relevant area where the divested acute care hospital is located. Provided, however, that the acquirer is not required to provide prior notification to the Commission for the sale of any of the assets identified in any Part II of Schedule A.

III.

It is further ordered, That:

A. Within six (6) months of the date this order becomes final, respondent shall terminate, absolutely and in good faith, the SSH Joint Venture, by either acquiring ORHS's interest in the SSH Joint Venture or by divesting the SSH Joint Venture Interest. The purpose of the termination of the SSH Joint Venture is to ensure the continuation of the South Seminole Hospital as an ongoing, viable acute care hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

B. If respondent terminates the SSH Joint Venture by acquiring ORHS's interest in the SSH Joint Venture, such acquisition shall occur only in such a manner that receives the prior approval of the Commission. If respondent terminates the Joint Venture by divesting the SSH Joint Venture Interest, such divestiture shall be made only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. With respect to the SSH Joint Venture Interest, respondent shall comply with all terms of the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Hold Separate provides.

D. Pending the divestiture of the SSH Joint Venture Interest, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the South Seminole Hospital, and to prevent the destruction, removal, wasting, deterioration, or impairment of the South Seminole Hospital, except for ordinary wear and tear.

E. A condition of approval by the Commission of the divestiture of the SSH Joint Venture Interest, to any acquirer except ORHS, shall be a written agreement by the acquirer of the SSH Joint Venture Interest that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the

Commission in the manner prescribed by paragraph VI of this order, any interest in South Seminole Hospital to any person who operates, or will operate immediately following the sale, any other acute care hospital in the Orlando area.

IV.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date the Commission approves the Acquisition pursuant to paragraph IV.E. of the order in Docket No. C-3538, the Schedule B Assets.

B. Respondent shall also divest such additional Assets and Businesses ancillary to the Schedule B Assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Schedule B Assets.

C. Respondent shall divest the Schedule B Assets only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestitures of the Schedule B Assets is to ensure the continuation of the Schedule B Assets as ongoing, viable acute care hospitals and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint and as described in the Commission's letter approving the Acquisition.

D. Respondent shall comply with all terms of the Agreement to Hold Separate regarding the Utah Healthtrust Assets listed on Schedule C, and as described in Appendix II which is attached hereto and made a part hereof ("Utah Hold Separate"). Said Utah Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of paragraph IV of this order, or until such other time as the Utah Hold Separate provides.

E. Pending divestiture of the Schedule B Assets, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Schedule B Assets and of the Utah Healthtrust Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule B Assets and any of the Utah Healthtrust Assets, except for ordinary wear and tear.

F. A condition of approval by the Commission of each divestiture shall be a written agreement by the acquirer(s) of each Schedule B Asset that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by paragraph VI of this order, any Schedule B Asset to any person who operates, or will operate immediately following the sale, any other acute care hospital in the same relevant area where the divested acute care hospital is located. Provided, however, that the acquirer is not required to provide prior notification to the Commission for the sale of any of the assets identified in any Part II of Schedule B.

V.

It is further ordered, That:

A. If the respondent has not divested (or in the case of the Ville Platte Medical Center has not caused CLHS to divest), absolutely and in good faith and with the Commission's prior approval, each Schedule A Asset and either DRMC or Denton Community Hospital, in accordance with this order, within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the undivested Schedule A Assets and either DRMC or Denton Community Hospital.

B. If the respondent has not terminated absolutely and in good faith and with the Commission's prior approval, the SSH Joint Venture, in accordance with this order, within six (6) months of the date this order becomes final, the Commission may appoint a trustee to divest the SSH Joint Venture Interest.

C. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, each Schedule B Asset, in accordance with this order, within nine (9) months of the date the Commission approves the Acquisition pursuant to the order in Docket No. C-3538, the Commission may appoint a trustee to divest the Utah Healthtrust Assets.

D. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to Section 5(1) of the

Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under paragraph V.A, V.B, or V.C shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order, or the order in Docket No. C-3538.

E. If a trustee is appointed by the Commission or a court pursuant to paragraph V.A, V.B, or V.C of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any undivested Schedule A Asset, DRMC or Denton Community Hospital, the SSH Joint Venture Interest, or Utah Healthtrust Asset.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph V.E.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the

case of a court-appointed trustee, by the court; provided however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Schedule A Assets, DRMC, Denton Community Hospital, the SSH Joint Venture Interest, the Schedule B Assets, the Utah Healthtrust Assets, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to an acquirer(s) as set forth in paragraph II for the Schedule A Assets and DRMC or Denton Community Hospital; paragraph III for the SSH Joint Venture Interest; and paragraph IV and paragraph V.C for the Utah Healthtrust Assets; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity for any one facility or asset, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for

his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the undivested Schedule A Assets, either DRMC or Denton Community Hospital, the SSH Joint Venture Interest, or the Utah Healthtrust Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.A, V.B, or V.C of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Schedule A Assets, DRMC, Denton Community Hospital, the SSH Joint Venture Interest, or the Utah Healthtrust Assets.

12. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person presently engaged in, or within the two years preceding

such acquisition engaged in, operating an acute care hospital in any relevant area;

B. Acquire any assets used, or previously used, in any relevant area (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in any relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in any relevant area, including but not limited to, a lease of or management contract for any such acute care hospital;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital in any relevant area;

E. Permit any acute care hospital it operates in any relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the same relevant area.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 CFR 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and

provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Provided, however, that such prior notification pursuant to this paragraph VI, or pursuant to paragraphs II.G, III.E, or IV.F of this order, shall not be required for:

1. The establishment by respondent of a new acute care hospital facility in a relevant area: (a) that is a replacement for an existing acute care hospital facility operated by respondent, and not required to be divested by respondent pursuant to this order, in the same relevant area; or (b) that is not a replacement for any acute care hospital facility in any relevant area;

2. Any transaction otherwise subject to this paragraph VI of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000);

3. The acquisition of products or services in the ordinary course of business; or

4. Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any acute care hospital it operates in any relevant area to be acquired by any other person (except pursuant to the divestitures required by paragraphs II, III, and IV of this order), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VIII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully

complied with paragraphs II, III, and IV of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II, III, and IV of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, and IV of the order, including a description of all substantive contacts or negotiations for the divestitures or the termination of the SSH joint venture, and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it is complying with this order.

IX.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

X.

It is further ordered, That, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or

under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

SCHEDULE A

The assets to be divested pursuant to paragraph II ("Schedule A Assets") shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of the following:

A. The Pensacola area Schedule A Assets are:

PART I

1. Medical Center of Santa Rosa, Inc.
d.b.a. Santa Rosa Medical Center
1450 Berryhill Road
Milton, Florida

PART II

2. MRI (Magnetic Resonance Imaging) - free-standing modular building attached to hospital by walkway, leased 60 months - originated in 1993.
3. EMS (Emergency Medical Services)
4930 Glover Lane
Milton, Florida
4. Berryhill Medical Park - including undeveloped land Milton, Florida
Master Leased 10 years:
Building 1 - 1540 Berryhill Medical Park
(7,612 sq. ft.)
Building 2 - 1550 Berryhill Medical Park
(5,943 sq. ft.)
Building 3 - 1560 Berryhill Medical Park
(4,427 sq. ft.)

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5. Santa Rosa Primary Care Center
Leased Building at 4928 Highway 90
Pace, Florida
6. Office Space Leases (as Tenant):
3,250 sq. ft. from Pace Medical Center Partnership
2874 Highway 90, Building A
Pace, Florida

1,360 sq. ft. from Pace Medical Center Partnership
2874 Highway 90, Building B
Pace, Florida
25,200 sq. ft. from Dave Gilbert
5950 Berryhill Road, Building 1.3
Santa Rosa, Florida

B. The Okaloosa area Schedule A Assets are:

PART I

1. North Okaloosa Medical Center - Hospital
151 Redstone Avenue
Crestview, Florida
(with approximately 34 acres of land)

PART II

2. Crestview Professional Condominium Association
Professional Office Buildings
131 Redstone Avenue
Crestview, Florida
(Suites 101, 103, 104, 105, 107, 108, 109)
3. Lease of North Okaloosa Medical Office Building
131 Redstone Avenue
Crestview, Florida
(Suites 125, 127 and 129)
4. Lease of Medical Office Building
127 Redstone Avenue
Crestview, Florida

5. Rural Health Clinic
LaGrange Medical Clinic Building
Rt. 3, Box 16
Highway 331 North
Freeport, Florida
6. Bluewater Bay Clinic
Market Place Professional Center
1507 Merchants Way
Niceville, Florida
7. Rural Health Clinic
Lease of Access Medical Clinic Building
130 Redstone Avenue
Crestview, Florida

C. The Ville Platte-Mamou-Opelousas area Schedule A Assets are:

PART I

1. Ville Platte Medical Center
800 East Main Street
Ville Platte, Louisiana

PART II

2. Lease (expires October 1995) of the Ardwin Physicians
Office Building, Ville Platte, Louisiana

SCHEDULE B

The assets to be divested pursuant to paragraph IV ("Schedule B Assets") shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of the following:

A. The Pioneer Valley Assets are:

PART I

1. Pioneer Valley Hospital
3460 South Pioneer Park
West Valley City, Utah

PART II

2. Three (3) Medical Office Buildings (on hospital campus)
3. Lease of 69,382 sq. ft. (on hospital campus)
4. Land (empty lot)
40th West Street
West Jordan, Utah
5. Lease of 11,750 sq. ft.
(corner of 90th South Street and 27th West Street)
West Jordan, Utah
6. Lease of 7,134 sq. ft.
150 Wright Bros. Drive
Suite 540
Salt Lake City, Utah
7. Salt Lake Industrial Clinic
441 S. Redwood Road
Salt Lake City, Utah

B. The Jordan Valley Assets are:

PART I

1. Jordan Valley Hospital
3580 West 9000 South
West Jordan, Utah

PART II

2. Three (3) leases of office space
(on hospital campus)
(12,000 sq. ft.; 3,374 sq. ft; and 4,620 sq. ft)
3. 12% limited liability partnership in South Ridge
Professional Plaza (on campus)
4. Lease of Medical Office Building (Perry Realty)
South Valley Medical Plaza
3590 West 9000 South
West Jordan, Utah

C. The Davis Hospital Assets are:

PART I

1. Davis Hospital and Medical Center
1600 West Antelope Drive
Layton, Utah

PART II

2. Medical Office Building
1660 West Antelope Drive
Layton, Utah
3. Medical Office Building
2132 North 1700 West
Layton, Utah

SCHEDULE C

UTAH HEALTHTRUST ASSETS

The Utah Healthtrust Assets shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of Healthtrust in the State of Utah at the time of the Acquisition, including, without limitation, the following:

1. The following facilities:

- a. Pioneer Valley Hospital, 3460 South Pioneer Park, West Valley City, Utah; three (3) medical office buildings on the campus of the hospital; the lease of 69,382 sq. feet on the hospital campus; land (empty lot) at 40th West Street, West Jordan, Utah; lease of 11,750 sq. ft. (corner of 90th South Street and 27th West Street), West Jordan, Utah 84088; and lease of 7,134 sq. ft., 150 Wright Bros. Drive, Suite 540, Salt Lake City, Utah;

- b. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah; three (3) leases of office space on the campus of the hospital (12,000 sq. ft., 3,374 sq. ft., and 4,620 sq. ft.); a 12 percent limited liability partnership in South Ridge Professional Plaza, and the lease of Medical Office Building (Perry Realty), South Valley Medical Plaza; 3590 West 9000 South, West Jordan, Utah;

- c. Lakeview Hospital, 630 East Medical Drive, Bountiful, Utah;

- d. Brigham City Community Hospital, 950 South 500 West, Brigham City, Utah;
- e. Ogden Regional Medical Center, 5475 South 500 East, Ogden, Utah;
- f. Castleview Hospital, 300 North Hospital Drive, Price, Utah;
- g. Springville Medical Center, 730 East 300 South, Springville, Utah; and
- h. Ashley Valley Medical Center, 151 West 200 North, Vernal, Utah; and

2. HTI of Utah, Inc., its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by HTI of Utah or Healthtrust in Utah; their directors, officers, employees, agents, and representatives; and their successors and assigns; and the following corporations and their successors and assigns:

- a. Brigham City Community Hospital, Inc.;
- b. Castleview Hospital, Inc.;
- c. HTI HomeMed of Utah, Inc.;
- d. HTI-Managed Care of Utah, Inc.;
- e. HTI Physician Services of Utah, Inc.;
- f. HTI Utah Data Corporation;
- g. Hospital Corporation of Utah;
- h. Intergroup Healthcare Corporation of Utah;
- i. Medical Services of Salt Lake City, Inc.;
- j. MHHE Corporation;
- k. Mountain View Hospital, Inc.;
- l. Ogden Medical Center, Inc.;
- m. Pioneer Valley Hospital, Inc.; and
- n. West Jordan Hospital Corporation.

APPENDIX I

AGREEMENT TO HOLD SEPARATE REGARDING THE
FLORIDA, TEXAS, AND LOUISIANA ASSETS

This Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, on October 4, 1994, Columbia/HCA and Healthtrust Inc. - The Hospital Company ("Healthtrust") entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia (the "Acquisition"); and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza, Nashville, Tennessee, owns and operates, among other things, acute care hospitals; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("consent order"), which would require the divestiture of certain assets listed in paragraph II of the consent order ("Schedule A Assets and DRMC or Denton Community Hospital") and termination of certain interests described in paragraph III of the consent order ("SSI Joint Venture"), the Commission must place the consent order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Schedule A Assets, DRMC and the SSI Joint Venture Interest (collectively the

"Hold Separate Assets"), during the period prior to the final acceptance and issuance of the consent order by the Commission (after the 60-day public comment period), divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the Schedule A Assets, DRMC or Denton Community Hospital, and the SSI Joint Venture Interest, and the Commission's right to have the Hold Separate Assets continue as viable acute care hospitals independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the consent order are to:

(i) Preserve the Hold Separate Assets as viable, competitive, and ongoing acute care hospitals, independent of Columbia/HCA, pending the divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture as required under the terms of the consent order;

(ii) Prevent interim harm to competition from the operation of the Hold Separate Assets pending the divestitures as required under the terms of the consent order;

(iii) Remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the consent order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all

rights to enforce this Agreement and the consent order to which it is annexed and made a part thereof, and in the event the required divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture are not accomplished, to appoint a trustee to seek divestitures of said assets pursuant to the consent order, to seek civil penalties, to seek a court appointed trustee, and/or to seek other equitable relief, as follows:

1. Respondent agrees to execute the agreement containing consent order and be bound by the consent order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph three of this Agreement:

- a. Three (3) business days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

- b. The day after the last of the divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture, as required by the consent order, is completed.

3. To ensure the complete independence and viability of the Hold Separate Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Hold Separate Assets, respondent shall hold the Schedule A Assets, DRMC and the SSI Joint Venture Interest, as they are presently constituted, separate and apart on the following terms and conditions:

- a. The Hold Separate Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Hold Separate Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the consent order, and except as otherwise provided in this Agreement.

- b. Prior to, or simultaneously with the Acquisition, respondent shall organize a distinct and separate legal entity, either a

corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the consent order. Respondent shall transfer (or in the case of the Ville Platte Medical Center, cause the Central Louisiana Healthcare System Limited Partnership ("CLHS") to transfer) all ownership and control of all Hold Separate Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the governing body of the entity ("New Board"), shall have three members. Respondent shall elect the members of the New Board. The New Board shall consist of the following three persons: Winfield C. Dunn, Samuel H. Howard, and David C. Colby, provided they agree, or comparable, knowledgeable persons. The Chairman of the New Board shall be: Winfield C. Dunn (provided he agrees), or a comparable, knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Hold Separate Assets and the South Seminole Hospital in Longwood, Florida. The New Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be David C. Colby, provided he agrees, or a comparable knowledgeable person ("the respondent's New Board member"). The New Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the New Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or South Seminole Hospital, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the consent order, or with all applicable laws. In addition, as to the SSH Joint Venture and South Seminole Hospital, only the following individuals within Columbia/HCA and Healthtrust shall have access to or involvement with termination of the SSI Joint Venture or efforts to divest the SSI Joint Venture Interest: Richard L. Scott, Stephen T.

Braun, Donald P. Fay, Ashby Q. Burks, Joseph D. Moore, Phillip D. Wheeler, and George M. Garrett.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Hold Separate Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Hold Separate Assets.

f. Except for the respondent's New Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's New Board Member, respondent shall not change the composition of the New Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the New Board for cause and to require respondent to appoint replacement members to the New Board as provided in paragraph 3.c. Respondent shall not change the composition of the management of the New Company except that the New Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the consent order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the New Company or the activities of the hospitals operated by the New Board. Access to Material Confidential Information relating to South Seminole Hospital or the SSH Joint Venture, for these limited, stated purposes shall be restricted within Columbia/HCA and

Healthtrust to those individuals named in paragraph 3.d, above. Nor shall the New Company or the New Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Board member shall not, in his or her capacity as a New Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's New Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's New Board member shall participate in matters that come before the New Board only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the consent order. Except as permitted by this Agreement, the respondent's New Board member shall not participate in any matter, or attempt to influence the votes of the other members of the New Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Board; provided that the New Company shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide the New Company with sufficient working capital to operate the Hold Separate Assets at their respective current rates of operation, to meet any capital calls anticipated in respect of the SSH Joint Venture, and to carry out any capital improvement plans for the Schedule A Assets, DRMC and the South Seminole Hospital that have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Hold Separate Assets as are being provided to such assets by Columbia/HCA or Healthtrust as of the date this Agreement is signed. Columbia/HCA may charge the Hold Separate Assets the same fees, if any, charged by Columbia/HCA or Healthtrust for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all Material Confidential Information of the Hold Separate Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Hold Separate Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the consent order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacements of, the Hold Separate Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of acute care hospitals in any of the relevant areas defined in the consent order in this matter, a notice of this Hold Separate and consent order in the form attached as Attachment A.

q. The New Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the New Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such

losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the New Board directors.

r. The New Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Hold Separate Asset.

s. Within thirty days (30) after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the New Board shall report in writing to the Commission concerning the New Board's efforts to accomplish the purposes of this Hold Separate. In addition, within thirty days (30) after the date this Agreement is accepted by the Commission and every thirty (30) thereafter until this Agreement terminates, respondent shall file with the Commission a verified written report, setting forth, among other things that may be required from time to time, a detailed memorialization of all communications, both intra-company and with third parties, relating to the termination of the SSH Joint Venture.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Hold Separate Assets, as provided in the consent order, or to seek any other injunctive or equitable relief for any failure to comply with the consent order or this Agreement, or in any way relating to the Acquisition, as defined in the draft of complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the consent order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or consent order.

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

7. This Agreement shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Columbia/HCA Healthcare Corporation and Healthtrust Inc. - The Hospital Company have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain Healthtrust and Columbia/HCA acute care hospitals and the termination of a joint venture agreement ("Assets"). The hospitals to be divested include:

1. Santa Rosa Medical Center, 1450 Berryhill Road, Milton, Florida.
2. North Okaloosa Medical Center, 151 Redstone Avenue Southeast, Crestview, Florida.
3. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas or the Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas.
4. Ville Platte Medical Center, 800 East Main Street, Ville Platte, Louisiana.
5. Davis Hospital and Medical Center, 1600 West Antelope Drive, Layton, Utah.
6. Pioneer Valley Hospital, 3460 South Pioneer Parkway, West Valley City, Utah, including the Salt Lake Industrial Clinic, 441 S. Redwood Road, Salt Lake City, Utah.
7. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah.

The joint venture agreement that must be terminated involves a joint venture that owns South Seminole Hospital in Longwood, Florida. Columbia/HCA and Healthtrust must terminate the joint venture either by selling Healthtrust's interest in the joint venture or by acquiring the other joint venture partner's interest.

Until after the FTC's order becomes final and the Assets are divested, the Assets must be managed and maintained as separate, ongoing businesses, independent of all other Columbia/HCA businesses. All competitive information relating to the Assets must be retained and maintained by the persons involved in the operation of the Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Assets.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

APPENDIX II

AGREEMENT TO HOLD SEPARATE REGARDING
THE UTAH HEALTHTRUST ASSETS

This Agreement to Hold Separate Regarding the Utah Healthtrust Assets ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, on October 4, 1994, Columbia/HCA and Healthtrust Inc. - The Hospital Company ("Healthtrust") entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia (the "Acquisition"); and

Whereas, on October 20, 1994, the Commission, with the consent of Healthtrust, issued its complaint and made final its order to settle charges that the acquisition by Healthtrust of certain assets of Holy Cross Health System Corporation violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 (In the Matter of Healthtrust, Inc. - The Hospital Company, Docket No. C-3538); and

Whereas, the order in Docket No. C-3538 provides that for a period of ten (10) years, Healthtrust shall not permit any acute care hospital it operates in the Three-County Area of Utah, as defined in paragraph I.G. of the order in Docket No. C-3538, to be acquired, without the prior approval of the Commission, by any person that operates any other acute care hospital in the Three-County Area; and

Whereas, on February 15, 1995, Healthtrust petitioned the Commission to approve the sale of four Healthtrust acute care hospitals (the "Utah Healthtrust Hospitals") to Columbia/HCA; and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza, Nashville, Tennessee, owns and operates, among

other things, acute care hospitals in the Three-County Area of Utah, and elsewhere; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission and whether the Commission should approve the Acquisition pursuant to the order In the Matter of Healthtrust, Inc. - The Hospital Company, Docket No. C-3538); and

Whereas, the Commission has determined to grant Healthtrust the prior approval required for its sale of the Utah Healthtrust Hospitals to Columbia/HCA, conditioned, however, upon Columbia/HCA divesting, as required by the agreement containing consent order ("consent agreement" or "consent order"), to which this Hold Separate is attached and made a part thereof as Appendix II, three Utah hospitals and related assets (the "Schedule B Assets" as defined in paragraph I of the consent order); and

Whereas, if the Commission accepts the consent order, which would require the divestiture of the Schedule B Assets pursuant to paragraph IV of the consent order, the Commission must place the consent order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Utah Healthtrust Assets, as identified in Schedule C to the consent order, during the period prior to the final acceptance and issuance of the consent order by the Commission (after the 60-day public comment period), divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, if the Commission accepts the consent order, and Columbia/HCA has not divested with the Commission's prior approval, each Schedule B Asset, in accordance with the consent order, within nine (9) months of the date the Commission conditionally approves the Acquisition pursuant to the order in Docket No. C-3538, the Commission may appoint a trustee to divest the Utah Healthtrust Assets, as identified in Schedule C to the consent order; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the Utah Healthtrust Assets and

the Commission's right to have the Utah Healthtrust Assets continue as viable acute care hospitals independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the consent order are to:

(i) Preserve the Utah Healthtrust Assets as viable, competitive, and ongoing acute care hospitals, independent of Columbia/HCA, pending the divestitures of the Schedule B Assets or the Utah Healthtrust Assets as required under the terms of the consent order;

(ii) Prevent interim harm to competition from the operation of the Utah Healthtrust Assets pending divestitures of the Schedule B Assets or the Utah Healthtrust Assets as required under the terms of the consent order; and

(iii) Remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's conditional approval of the Acquisition and its agreement that, at the time it accepts the consent order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the consent order to which it is annexed and made a part thereof, and the order in Docket No. C-3538, and in the event the required divestitures of the Schedule B Assets are not accomplished, to appoint a trustee to seek divestitures of the Utah Healthtrust Assets pursuant to the consent order, to seek civil penalties, to seek a court appointed trustee, and/or to seek other equitable relief, as follows:

1. Respondent agrees to execute the agreement containing consent order and be bound by the attached consent order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph three of this Agreement:

a. Three (3) business days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the last of the divestitures of the Schedule B Assets or the Utah Healthtrust Assets, as required by the consent order, is completed.

3. To ensure the complete independence and viability of the Utah Healthtrust Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Utah Healthtrust Assets, respondent shall hold the Utah Healthtrust Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Utah Healthtrust Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Utah Healthtrust Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the consent order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall transfer all ownership and control of all Utah Healthtrust Assets to HTI of Utah, Inc.

c. The board of directors of HTI of Utah, Inc. ("HTI Board"), shall have three members. Respondent shall elect the members of the HTI Board. The HTI Board shall consist of the following three persons: (i) Kent H. Wallace; (ii) Kenneth W. Perry; and (iii) David C. Colby, provided they agree, or comparable, knowledgeable persons. The Chairman of the HTI Board shall be Kent H. Wallace, provided he agrees, or a comparable, knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Healthtrust Utah Assets. The HTI Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be

David C. Colby, provided he agrees, or a comparable, knowledgeable person ("the respondent's HTI Board member"). The HTI Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the HTI Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Utah Healthtrust Assets, the independent Chairman of the Board of the HTI of Utah Inc., HTI of Utah Inc., or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over HTI of Utah Inc. as is necessary to assure compliance with this Agreement or the consent order, or with all applicable laws.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Utah Healthtrust Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Assets.

f. Except for the respondent's HTI Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of HTI of Utah Inc.

g. HTI of Utah Inc. shall be staffed with sufficient employees to maintain the viability and competitiveness of the Utah Healthtrust Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's HTI Board Member, respondent shall not change the composition of the HTI Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the HTI Board for cause and to require respondent to appoint replacement members to the New Board as provided in paragraph 3.c. Respondent shall not change the composition of the management of HTI of Utah Inc., except that the HTI Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the consent order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about HTI of Utah Inc., or the activities of or the hospitals operated by the HTI Board. Nor shall HTI of Utah Inc. or the HTI Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to HTI of Utah Inc. necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's HTI Board member shall not, in his or her capacity as an HTI Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's HTI Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's HTI Board member shall participate in matters that come before the HTI Board only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the consent order. Except as permitted by this Agreement, the respondent's HTI Board member shall not participate in any matter, or attempt to influence the votes of the other members of the HTI Board with respect to matters, that would involve a

conflict of interest if respondent and HTI of Utah Inc. were separate and independent entities.

l. Any material transaction of HTI of Utah Inc. that is out of the ordinary course of business must be approved by a majority vote of the HTI Board; provided that HTI of Utah Inc. shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide HTI of Utah Inc. with sufficient working capital to operate the Utah Healthtrust Assets at their respective current rates of operation and to carry out any capital improvement plans for the Utah Healthtrust Assets that have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Utah Healthtrust Assets, as are being provided to such Assets by Healthtrust as of the date this Agreement is signed. Columbia/HCA may charge the HTI of Utah Inc. the same fees, if any, charged by Healthtrust for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all material confidential information of the Utah Healthtrust Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Utah Healthtrust Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the consent order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by HTI of Utah Inc. funds sufficient to perform all necessary routine maintenance to, and replacements of, the Utah Healthtrust Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide HTI of Utah Inc. with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of acute care hospitals in any of the relevant areas defined in the consent order in this matter, a notice of

this Hold Separate and consent order in the form attached as Attachment A.

q. The HTI Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the HTI Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the HTI Board directors.

r. The HTI Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Schedule B Assets or the Utah Healthtrust Assets.

s. Within thirty (30) days after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the HTI Board shall report in writing to the Commission concerning the HTI Board's efforts to accomplish the purposes of this Hold Separate.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Schedule B Assets or the Utah Healthtrust Assets, as provided in the consent order, or to seek any other injunctive or equitable relief for any failure to comply with the consent order or this Agreement, or in any way relating to the Acquisition, as defined in the draft of complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the consent order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or consent order.

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

7. This Agreement shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Columbia/HCA Healthcare Corporation and Healthtrust Inc. - The Hospital Company have entered into a consent agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain Healthtrust and Columbia/HCA acute care hospitals and the termination of a joint venture agreement ("Assets"). The hospitals to be divested include:

1. Santa Rosa Medical Center, 1450 Berryhill Road, Milton, Florida.
2. North Okaloosa Medical Center, 151 Redstone Avenue Southeast, Crestview, Florida.
3. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas or the Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas.
4. Ville Platte Medical Center, 800 East Main Street, Ville Platte, Louisiana.
5. Davis Hospital and Medical Center, 1600 West Antelope Drive, Layton, Utah.
6. Pioneer Valley Hospital, 3460 South Pioneer Parkway, West Valley City, Utah, including the Salt Lake Industrial Clinic, 441 S. Redwood Road, Salt Lake City, Utah.
7. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah.

The joint venture agreement that must be terminated involves a joint venture that owns South Seminole Hospital in Longwood, Florida. Columbia/HCA and Healthtrust must terminate the joint venture either by selling Healthtrust's interest in the joint venture or by acquiring the other joint venture partner's interest.

Until after the FTC's order becomes final and the Assets are divested, the Assets must be managed and maintained as separate, ongoing businesses, independent of all other Columbia/HCA businesses. All competitive information relating to the Assets must be retained and maintained by the persons involved in the operation of the Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Assets.

Any violation of the consent agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

Set Aside Order

120 F.T.C.

IN THE MATTER OF

WEST POINT-PEPPERELL, INC.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3244. Consent Order, Dec. 14, 1988--Set Aside Order, Oct. 4, 1995*

This order reopens a 1988 consent order--which required West Point to divest certain towel and sheet manufacturing facilities and prohibited West Point, for 10 years, from making certain acquisitions in the sheet and towel industries without prior Commission approval--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement, under which the Commission presumes that the public interest requires setting aside the prior approval requirements in outstanding merger orders and making them consistent with the policy.

ORDER SETTING ASIDE ORDER

On June 28, 1995, WestPoint Stevens, Inc. ("WestPoint"), the successor to West Point-Pepperell, Inc., filed its Petition To Reopen and Vacate or Modify Consent Order ("Petition") in this matter. WestPoint asks that the Commission reopen and modify the 1988 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement").¹ WestPoint in its Petition requests that the Commission reopen and set aside the order in Docket No. C-3244 or, in the alternative, reopen and modify the order by deleting the requirement in paragraph IX that WestPoint seek prior Commission approval for certain acquisition. The Petition was on the public record for thirty days; no comments were received.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act,

¹ 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 21, 1995).