

statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or

C. "Respondents" means A&P and Pathmark, individually and collectively.

Market 683, 2660 Hylan Boulevard, Staten Island, NY, and all assets, leases, properties, government permits (to the extent transferable), businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at these locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trademarks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.

- L. "Shirley, New York Assets" means A&P's Waldbaum's Super Market 604, 999 Montauk Highway, Shirley, NY, and all assets, leases, properties, government permits (to the extent transferable), businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trademarks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.
- M. "Supermarket" means any store that offers a Wide Selection and Deep Inventory of Food and Grocery Products, enabling consumers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit.
- N. "Wide Selection and Deep Inventory of Food and Grocery Products" means substantial offerings in each of the following product categories: bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.
- O. "Third Party Consents" means all consents from any person other than the Respondents, including all landlords, that are necessary to effect the complete transfer to the Commission-approved Acquirer(s) of the Assets To Be Divested.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest, by January 10, 2008, absolutely and in good faith, the Staten Island, New York Assets and the Shirley, New York Assets, as ongoing businesses to Purchasers pursuant to and in accordance with the Purchaser Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such

agreements, if approved by the Commission, are incorporated by reference into this Order and made part hereof as non-public Appendix I. Any failure by Respondents to comply with all terms of any Divestiture Agreements related to the Staten Island, New York Assets or Shirley, New York Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Staten Island, New York Assets, or Shirley, New York Assets to Purchasers pursuant to the Purchaser Agreements prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Purchasers is not an acceptable Purchasers of the Staten Island, New York Assets, or Shirley, New York Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Purchasers and shall divest the Staten Island, New York Assets and Shirley, New York Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.

- B. Respondents shall obtain all required Third Party Consents prior to the closing of the Divestiture Agreements pursuant to which the Assets To Be Divested are divested to a Commission-approved Acquirer.
- C. Any Divestiture Agreements between Respondents (or a trustee appointed pursuant to Paragraph III. of this Order) and Commission-approved Acquirers of the Assets To Be Divested that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreements shall constitute a failure to comply with this Order.
- D. The purpose of the divestitures is to ensure the continuation of the Staten Island, New York Assets and the Shirley, New York Assets as ongoing viable enterprises engaged in the Supermarket business and to remedy the lessening of competition resulting from the Acquisition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested all of the Assets To Be Divested as required by Paragraph II. of this Order, the Commission may appoint a trustee ("Divestiture Trustee") to divest the remaining Assets To Be Divested in a manner that satisfies the requirements of Paragraphs II. and III. In the event that the Commission or the Attorney General brings an action pursuant to § 5() of the Federal Trade Coements(1 brTw{and in the{a 5(y1-)47D.00C.edh9T

divested, delivered, or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph III. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; _____, _____, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; _____, _____, that Respondents shall select such Person within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Respondents or the acquisition or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Respondents' offer to purchase or lease such facility.

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, 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 shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the notification to the

efforts being made to comply with Paragraphs II. and III. of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all non-privileged written communications to and from such parties, all non-privileged internal memoranda, and all non-privileged reports and recommendations concerning completing the obligations; and

- 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, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondents;
- B. Any proposed acquisition, merger or consolidation of Respondents; or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

NONPUBLIC APPENDIX I

[Redacted From the Public Record Version But Incorporated By Reference]