

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of)	
)	
J.C. PENNEY COMPANY, INC. ,)	
a corporation; and)	Docket Nos. C-3721
)	C-3722
THRIFT DRUG, INC. ,)	DECISION AND
a corporation.)	ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Eckerd Corporation ("Eckerd") and of certain assets of Rite Aid Corporation ("Rite Aid") by J.C. Penney Company, Inc. ("J.C. Penney") and Thrift Drug, Inc. ("Thrift Drug"), and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the 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 respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 respondents have violated the said Acts, and that a 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, now in further conformity with the procedure described in § 2,34

of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent J.C. Penney Company, Inc. 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 located at 6501 Legacy Drive, Plano, Texas 75024-3698.

2. Respondent Thrift Drug, Inc., 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 located at 615 Alpha Drive, Pittsburgh, Pennsylvania 15238.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, 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. "J.C. Penney" means J.C. Penney Company, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by J.C. Penney Company, Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "Thrift Drug" means Thrift Drug, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries (including Kerr Drug, Inc.), divisions, groups, and affiliates controlled, directly or indirectly, by Thrift Drug, Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "Rite Aid" means Rite Aid Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by Rite Aid Corporation and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

D. "Respondents" means J.C. Penney and Thrift Drug.

E. "Commission" means the Federal Trade Commission.

F. "Acquisitions" means the acquisitions of Eckerd by Omega Acquisition Corporation, a wholly-owned subsidiary of J.C. Penney, and of certain assets of Rite Aid by Thrift Drug, an indirect, wholly-owned subsidiary of J.C. Penney, pursuant to an agreement dated November 2, 1996 and an agreement dated October 11, 1996, respectively.

G. "Retail drug store" means a full-line retail store that carries a wide variety of prescription and nonprescription medicines and miscellaneous items, including, but not limited to, drugs, pharmaceuticals, patent medicines, sundries, tobacco products, and other merchandise.

H. "MSA" means Metropolitan Statistical Area as defined by the United States Department of Commerce, Bureau of the Census.

I. "Rite Aid Retail Business" means Rite Aid's retail drug store business located in the states of North Carolina and South Carolina.

J. "Rite Aid Retail Assets" means all assets constituting the Rite Aid Retail Business, excluding those assets pertaining to the Rite Aid trade name, trade dress, trade marks and service marks, and including, but not limited to:

1. leases and properties;
2. zoning approvals and registrations, at the Acquirer's option;
3. books, records, reports, dockets and lists relating to the Rite Aid Retail Business;
4. retail drug store inventory and storage capacity;
5. lists of stock keeping units ("SKUs"), e.g., all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales;
6. lists of all customers, including, but not limited to, third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;
7. all pharmacy files, documents, instruments, papers, books, computer files and records and all other records in any media relating to the Rite Aid Retail Business;

8. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and all names of prescription drug manufacturers and distributors under contract with Rite Aid;

9. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property; and

10. goodwill, tangible and intangible, utilized in retail drug stores.

Provided, however, that Rite Aid Retail Assets shall include only such assets as are being acquired in the Acquisitions.

K. "Rite Aid North Carolina/Charleston Retail Assets" means Rite Aid's Retail Assets located in the state of North Carolina and in the Charleston-North Charleston, South Carolina MSA.

L. "Thrift Retail Business" means Thrift Drug's retail drug store business located in the Charlotte-Gastonia-Rock Hill, North Carolina MSA, and Thrift Drug's retail drug store business identified in Schedule A of this Agreement.

M. "Thrift Retail Assets" means all assets constituting the Thrift Retail Business, excluding those assets pertaining to the Thrift Drug or Kerr trade name, trade dress, trade marks and service marks, and including, but not limited to:

1. leases and properties;
2. zoning approvals and registrations, at the Acquirer's option;
3. books, records, reports, dockets and lists relating to the Thrift Retail Business;
4. retail drug store inventory and storage capacity;
5. lists of stock keeping units ("SKUs"), e.g., all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales;
6. lists of all customers, including, but not limited to, third party insurers, including all files of names, addresses, and telephone numbers of the individual customer

contacts, and the unit and dollar amounts of sales, by product, to each customer;

7. all pharmacy files, documents, instruments, papers, books, computer files and records and all other records in any media relating to the Thrift Retail Business;

8. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and all names of prescription drug manufacturers and distributors under contract with Thrift Drug;

9. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property; and

10. goodwill, tangible and intangible, utilized in retail drug stores.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest, absolutely and in good faith, the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission, within four (4) months of the date the Agreement Containing Consent Order in this matter was signed by Respondents; provided, however, that Respondents shall not acquire any of the Rite Aid North Carolina/Charleston Retail Assets until Respondents have entered into an agreement that has received the prior approval of the Commission to divest the Rite Aid North Carolina/Charleston Retail Assets.

B. If Respondents do not divest the Thrift Retail Assets pursuant to Paragraph II.A., Respondents shall divest the Thrift Retail Assets to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission, within five (5) months of the date the Agreement Containing Consent Order in this matter was signed by the Respondents.

C. The purpose of the divestiture of the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets is to ensure the continuation of the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets as ongoing viable enterprises engaged in the retail drug store

business providing retail pharmacy services to third-party payors and to remedy any lessening of competition resulting from the Acquisitions as alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested absolutely and in good faith the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets pursuant to Paragraph II.A. of this Order, the Commission may appoint a trustee to divest the Rite Aid Retail Assets and the Thrift Retail Assets; or if the Respondents have not divested absolutely and in good faith the Thrift Retail Assets pursuant to Paragraph II.B. of this Order, the Commission may appoint a trustee to divest the Thrift Retail Assets. In the event that the Commission brings an action pursuant to § 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, Respondents 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 this Paragraph shall preclude the Commission from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to § 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents 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 Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents 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 serve as an agent of the Commission and shall have the exclusive power and authority to divest the Rite Aid Retail Assets and the Thrift Retail Assets.

3. Within ten (10) days after appointment of the trustee, Respondents 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 required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) 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 for up to twelve (12) months each time.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Rite Aid Retail Assets and the Thrift Retail Assets or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents 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 trustee's fiduciary duty to the Commission and to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that the trustee receives bona fide offers from more than one acquiring entity, the trustee shall submit all such bids to the Commission, and if the Commission determines to approve more than one such acquiring entity for the Rite Aid Retail Assets and the Thrift Retail Assets, the trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission.

7. The 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 trustee shall have the authority to employ, at the cost and expense of Respondents,

and at reasonable fees, 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 divestiture 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 Respondents, 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 Rite Aid Retail Assets and the Thrift Retail Assets.

8. Respondents 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, 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 III.A. 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 reasonably necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Rite Aid Retail Assets and the Thrift Retail Assets.

12. The trustee shall have no obligation or authority to operate or maintain the Rite Aid Retail Assets and the Thrift Retail Assets.

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

IV.

IT IS FURTHER ORDERED that:

A. Pending divestiture of the Rite Aid Retail Assets and the Thrift Retail Assets, Respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Rite Aid Retail Assets and the Thrift Retail Assets consistent with Paragraphs II. and III. of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the Rite Aid Retail Assets and the Thrift Retail Assets except in the ordinary course of business and except for ordinary wear and tear.

B. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as Respondents have complied with the divestiture requirements of the Order.

V.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II. and III. of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. Respondents shall include in their 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. and III. of the Order, including a description of proposals for divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties concerning divestiture.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation to Respondents, or the creation or dissolution of subsidiaries or any other change in Respondents that may affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to Respondents, 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 Respondents relating to any matters contained in this Order; and

B. Upon five days' written notice to Respondents and without restraint or interference from Respondents, to interview Respondents or officers, directors, or employees of Respondents in the presence of counsel.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: February 28, 1997

SCHEDULE A

Kerr Store Number 8549
Lakewood Shopping Center
2000 Chapel Hill Road
Durham, NC 27704

Kerr Store Number 8556
Erwin Square
737 Ninth Street
Durham, NC 27705

Kerr Store Number 8566
University Mall
201-10 Estes Drive
Chapel Hill, NC 27514

Kerr Store Number 8550
North Duke Mall
3600 North Duke Street
Durham, NC 27704

Kerr Store Number 8541
Longview Shopping Center
2116 East New Bern Avenue
Raleigh, NC 27610

Kerr Store Number 8537
Eastgate Shopping Center
4025 Old Wake Forest Road
Raleigh, NC 27609

Kerr Store Number 8553
Loehman's Plaza
1821 Hilandale Road
Durham, NC 27705

Kerr Store Number 8929
Crabtree Valley Mall
4325 Glenwood Avenue
Raleigh, NC 27612

Kerr Store Number 8935
Cary Village Mall
1105 Walnut Street
Cary, NC 27511

Kerr Store Number 8933
South Square Shopping Center
4001 Chapel Hill Boulevard
Durham, NC 27707

Kerr Store Number 8531
Northridge Shopping Center
8140 Falls of the Neuse Road
Raleigh, NC 27689

Kerr Store Number 8943
Harvest Plaza
9650 Strickland Road
Raleigh, NC 27615

Kerr Store Number 8602
Triangle East Centre
134 Wakelon Street
Zebulon, NC 27597

Kerr Store Number 8530
Towne North Plaza
8385 Creedmoor Road
Raleigh, NC 27612

Kerr Store Number 8904
Preston Corners Shopping
Center
920 High House Road
Cary, NC 27513

Kerr Store Number 8547
The Village Shopping Center
613 Wellons Village
Durham, NC 27703

Kerr Store Number 8538
South Hills Mall
1255 Buck Jones Road
Raleigh, NC 27606

Kerr Store Number 8595
North Hills Mall
Six Forks Road
Raleigh, NC 27609

Kerr Store Number 8539
Mission Valley Shopping Center
2233-113 Avant Ferry Road
Raleigh, NC 27605

Kerr Store Number 8534
Tower Shopping Center
Newbern Avenue
Raleigh, NC 27610

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APPENDIX I

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)
)
)
J.C. PENNEY COMPANY, INC. ,)
a corporation; and) **Docket Nos. C-3721**
) **C-3722**
THRIFT DRUG, INC. ,)
a corporation.)

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between J.C. Penney Company, Inc. ("J.C. Penney"), 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 located at 6501 Legacy Drive, Plano, Texas 75024-3698; Thrift Drug, Inc. ("Thrift Drug"), 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 located at 615 Alpha Drive, Pittsburgh, Pennsylvania 15238; 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. (collectively "the Parties").

PREMISES

WHEREAS, J.C. Penney (through a wholly-owned subsidiary, Omega Acquisition Corporation) agreed to acquire Eckerd Corporation ("the Eckerd Acquisition"), pursuant to an agreement dated November 2, 1996, and J.C. Penney (through a wholly-owned subsidiary, Thrift Drug, Inc.) agreed to acquire certain assets of the Rite Aid Corporation ("the Rite Aid Acquisition"), pursuant to an agreement dated October 11, 1996, respectively (collectively "the Acquisitions"); and

WHEREAS, the Commission is now investigating the Acquisitions to determine if they would violate any of the statutes enforced by the Commission; and

WHEREAS, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment 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 agreement is not reached preserving the status quo ante of the Rite Aid Retail Assets and the Thrift Retail Assets as described in the attached

Agreement Containing Consent Order ("Assets") during the period prior to their divestiture, any divestiture resulting from any administrative proceeding challenging the legality of the Acquisitions might not be possible, or might produce a less than effective remedy; and

WHEREAS, if the Commission accepts the Consent Order or a modified consent order, and J.C. Penney and Thrift Drug have not divested the Assets or such other assets as are specified in the Consent Order or in a modified consent order, in accordance with the Consent Order or modified order respectively, the Commission may appoint a trustee to divest the Assets and such additional assets as are identified in the Consent Order or in a modified consent order; and

WHEREAS, the Commission is concerned that prior to divestiture to an acquirer approved by the Commission, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

WHEREAS, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to an acquirer approved by the Commission under the terms of the Order, in order to remedy any anticompetitive effects of the

Acquisitions; and

WHEREAS, J.C. Penney and Thrift Drug entering into this Agreement shall in no way be construed as an admission by J.C. Penney or Thrift Drug that the Acquisitions are illegal; and

WHEREAS, J.C. Penney and Thrift Drug understand 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, 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 periods, the Parties agree as follows:

TERMS OF AGREEMENT

1. J.C. Penney and Thrift Drug agree to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Rite Aid Acquisition or the proposed Eckerd Acquisition pursuant to Section 13(b) of the Federal Trade

Commission Act, 15. U.S.C. § 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Rite Aid Acquisition or the proposed Eckerd Acquisition, J.C. Penney and Thrift Drug will be free to close the Rite Aid Acquisition after December 8, 1996, subject to the terms of the Order, and the Eckerd Acquisition after December 6, 1996.

3. J.C. Penney and Thrift Drug agree that from the date this Agreement is signed until the earlier of the dates listed in subparagraphs 3.a - 3.b, they will comply with the provisions of this Agreement:

a. three 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. on the day the divestitures set out in the Consent Order have been completed.

4. J.C. Penney and Thrift Drug shall maintain the competitiveness of the Assets. This includes, but is not limited to, the maintaining of promotions and discount policies as well as the continuation of specific store services (i.e., hours of operation and operation of specific departments).

5. Until J.C. Penney and Thrift Drug have divested the

Assets or other assets pursuant to Paragraphs II. and III. of the Consent Order or such assets as are specified pursuant to a modified consent order, J.C. Penney and Thrift Drug shall continue to offer those Thrift Drug customers who receive third-party pharmacy services at Thrift Drug the same type of pharmacy service at any retail drug store that constitutes a part of the Thrift Retail Assets.

6. Should the Commission seek in any proceeding to compel J.C. Penney and Thrift Drug to divest themselves of the Assets or such other assets as specified in the Consent Order or in a modified consent order or to seek any other injunctive or equitable relief, J.C. Penney and Thrift Drug 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 not sought to enjoin the Acquisitions. J.C. Penney and Thrift Drug also waive all rights to contest the validity of this Agreement.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with five (5) days' notice to J.C. Penney or Thrift Drug and to their principal offices, J.C. Penney

and Thrift Drug shall permit any duly authorized representative or representatives of the Commission:

a. access during the office hours of J.C. Penney or Thrift Drug, 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 J.C. Penney or Thrift Drug relating to compliance with this Agreement; and

b. to interview officers or employees of J.C. Penney or Thrift Drug, who may have counsel present, regarding any such matters.

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

Signed this 6th day of December, 1996.

J.C. PENNEY COMPANY, INC., A CORPORATION

By: _____
Charles R. Lotter
Executive Vice President
Secretary and General Counsel
J.C. Penney Company, Inc.

Peter D. Standish, Esq.
Weil, Gotshal & Manges LLP
Counsel for Respondents

FEDERAL TRADE COMMISSION

By: _____
Stephen C. Calkins
General Counsel