1610207

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of **Alimentation Couche-Tard Inc.,** **a corporation;** **and** **CST Brands, Inc.,** **a corporation.**	**Docket No. C-**

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Alimentation Couche-Tard Inc. ("ACT"), through its wholly-owned subsidiary, Circle K Stores Inc., of Respondent CST Brands, Inc. ("CST"), collectively "Respondents," and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present 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 Consent Orders ("Consent Agreement"), containing an admission of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a 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 that the facts 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 has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent

Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent ACT is a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its headquarters and principal place of business located at 4204 Industriel Blvd., Laval, Quebec H7L 0E3, Canada, and its United States address for service of process and of the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretary, Circle K Stores Inc., 1130 W. Warner Road, Tempe, Arizona 85284.

2. Respondent CST is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 19500 Bulverde Road, San Antonio, Texas 78259.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over 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. "ACT" means Alimentation Couche-Tard Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Alimentation Couche-Tard Inc., including Circle K Stores and Ultra, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, ACT shall include CST.

B. "Circle K Stores" means Circle K Stores Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, and its directors, officers, employees, agents, representatives, successors, and assigns. Circle K Stores is a wholly-owned subsidiary of ACT.

C. "Ultra" means Ultra Acquisition Corp., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its directors, officers, employees, agents, representatives, successors, and assigns. Ultra is an indirect wholly-owned subsidiary of Circle K Stores.

D. "CST" means CST Brands, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates (including, but not limited to, CrossAmerica Partners, LP), in each case controlled by CST Brands, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

E. "Respondents" means ACT and CST, individually and collectively.

F. "Acquirer" means Empire or any other Person approved by the Commission to acquire the Assets To Be Divested pursuant to this Order.

G. "Acquisition" means the proposed acquisition of CST by Circle K Stores and Ultra pursuant to the Acquisition Agreement.

H. "Acquisition Agreement" means the Agreement and Plan of Merger by and among Circle K Stores Inc., Ultra Acquisition Corp., and CST Brands, Inc., dated as of August 21, 2016, that was submitted by ACT and CST to the Commission in this matter.

I. "ACT Outlet" means a Retail Fuel Outlet that was owned or operated by ACT at the time the Consent Agreement was signed by Respondents.

J. "Actual Fuel Products Costs" means costs not to exceed the actual costs charged to Respondents by (1) Valero Marketing and Supply Company ("Valero") for Fuel Products pursuant to the Master Agreement effective May 1, 2013, between Valero and CST Marketing and Supply Company, LLC, (together with the Branded Distributor Marketing Agreement referred to therein and all other related agreements and documents, as amended) less any reductions resulting from any applicable Valero temporary voluntary allowances, and (2) any common carriers transporting such Fuel Products from terminals to Retail Fuel Outlets To Be Divested, but excluding any Retail Fuel Outlets not currently supplied by Valero. Actual Fuel Products Costs shall not include any mark-ups, profit, overhead, minimum volume penalties, or other price adjustments by Respondents.

K. "Assets To Be Divested" means the Retail Fuel Outlets To Be Divested and all of Respondents' rights, title, and interests in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Retail Fuel Outlet Business operated at each of those locations, including, but not limited to:

1. All real property interests (including fee simple interests and real property leases and leasehold interests), including all easements and rights-of-way, together with all buildings and other structures, facilities, appurtenances, and improvements located thereon or affixed thereto (including all attached machinery, fixtures, and heating, plumbing, electrical, lighting, ventilating and air-conditioning equipment), whether owned, leased, or otherwise held;

2. All Equipment;

3. All Inventories;

4. All Contracts and all outstanding offers or solicitations to enter into any Contract (and all rights thereunder and related thereto), to the extent transferable, and at the Acquirer's option;

5. All Governmental Permits, and all pending applications thereof or renewals thereof (to the extent transferable);

6. Goodwill;

7. Telephone and fax numbers; and

8. Books and Records;

Provided, however, that in cases in which Books and Records included in the Assets To Be Divested contain information: (a) that relates both to the Assets To Be Divested and to other retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Assets To Be Divested, or (b) where Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies of the materials containing such information with appropriate redactions to the Acquirer. In instances where such copies are provided to an Acquirer, the Respondents shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes;

9. *Provided, however*, that the Assets To Be Divested shall not include:

(a) Any of the CST Outlets listed on Schedule B for which the corresponding Substitute Retail Fuel Outlets are instead divested;

(b) Respondents' Brands, except with respect to any purchased Inventory (including private label inventory); *provided further, however,* that, at the Acquirer's option, Respondents shall grant a worldwide, royalty-free, fully paid-up license to the Acquirer to use any of Respondents' Brands as are applicable to the Assets To Be Divested as part of any Transition Services Agreement that Respondents may enter into with the Acquirer, or as may otherwise be allowed pursuant to any Remedial Agreement(s);

(c) Assets used in the distribution of Inventories that are not located at the Retail Fuel Outlets identified on Schedule A of this Order;

(d) All cash or cash equivalents (except change funds or cash on hand), rebates and accounts receivable relating to the operation of the Retail Fuel Outlets immediately prior to the actual date and time that possession of the respective Retail Fuel Outlets are conveyed to the Acquirer; or

(e) If Empire is the Acquirer, Books and Records, Contracts, and Equipment that will not be conveyed to Empire pursuant to the Empire Divestiture Agreement.

L. "Books and Records" means all originals and all copies of any operating, financial, environmental, governmental compliance, regulatory, or other information, documents, data, databases, printouts, computer files (including files stored on a computer's hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, relating to the Assets To Be Divested, including, but not limited to, real estate files; environmental reports; environmental liability claims and reimbursement data, information, and materials; underground storage tank (UST) System registrations and reports; registrations, licenses, and permits (to the extent transferable); regulatory compliance records, data, and files; applications, filings, submissions, communications, and correspondence with Governmental Entities; inventory data, records, and information; purchase order information and records; supplier, vendor, and procurement files, lists, and related data and information; credit records and information; account information; marketing analyses and research data; service and warranty records; warranties and guarantees; equipment logs, operating guides and manuals; employee lists and contracts, salary and benefits information, and personnel files and records (to the extent permitted by law); financial statements and records; accounting records and documents; telephone numbers and fax numbers; and all other documents, information, and files of any kind that are necessary for the Acquirer to operate the Assets To Be Divested in a manner consistent with the purposes of this Order.

M. "Closing Date" means the closing date for the Acquisition as defined in Section 1.2 of the Acquisition Agreement.

N. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondents that is not in the public domain and to the extent that it is related to or used in connection with the Assets To Be Divested or the conduct of the Retail Fuel Outlet Business at the Retail Fuel Outlets To Be Divested. The term "Confidential Business Information" excludes the following:

1. Information that is contained in documents, books, or records of Respondents that is provided to an Acquirer that is unrelated to the Assets To Be Divested or that is exclusively related to the Respondents' retained businesses; and

2. Information that: (a) is or becomes generally available to the public other than as a result of disclosure in breach of the prohibitions of this Order; (b) is or was developed independently of, and without reference to, any Confidential Business Information; (c) is necessary to be included in Respondents' mandatory regulatory filings; (d) is information the disclosure of which is consented to by the Acquirer; (e) is necessary to be exchanged in the course of consummating the Acquisition or transactions pursuant to the Divestiture Agreement or any Remedial Agreement; (f) is disclosed in complying with the Order; (g) is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Governmental Entities; or (h) is disclosed in obtaining legal advice.

O. "Contract(s)" means all agreements, contracts, licenses, leases (including, but not limited to, ground leases and subleases), consensual obligations, binding commitments, promises and undertakings (whether written or oral and whether express or implied), whether or not legally binding.

P. "CST Outlet" means a Retail Fuel Outlet that was owned or operated by CST at the time the Consent Agreement was signed by Respondents.

Q. "Direct Costs" means costs not to exceed the actual cost of labor, goods and material, travel, third party vendors, and other expenditures that are directly incurred to provide and fulfill the Transition Services provided pursuant to the Transition Services Agreement.

R. "Divestiture Agreement" means any agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested that have been proposed for approval by the Commission to accomplish the requirements of this Order.

S. "Divestiture Date" means the date on which Respondents (or a Divestiture Trustee) close on the divestiture of the Assets To Be Divested as required by Paragraph II. (or Paragraph IV.) of this Order.

T. "Divestiture Trustee" means any Person appointed by the Commission to serve as a Divestiture Trustee pursuant to Paragraph IV. of this Order.

U. "Empire" means Empire Petroleum Partners, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of Delaware, with its offices and principal place of business located at 8350 North Central Expressway, Suite M2185, Dallas, Texas 75206; its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Empire Petroleum Partners, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

V. "Empire Divestiture Agreement" means the Asset Purchase Agreement among Empire Petroleum Partners, LLC, Circle K Stores, Inc., and CST Brands, Inc., dated as of June 3, 2017; the Transition Services Agreement among Empire Petroleum Partners, LLC, Circle K Stores, Inc., and CST Brands, Inc., dated as of June 3, 2017; and all amendments, exhibits, attachments, agreements, and schedules submitted to the Commission with the foregoing to accomplish the divestiture of the Assets To Be Divested. The Empire Divestiture Agreement is attached to this Order as Non-Public Appendix E.

W. "Equipment" means all tangible personal property (other than Inventory(ies)) of every kind owned or leased by Respondents in connection with the operation of the Retail Fuel Outlets To Be Divested, including, but not limited to all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems, registers, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock, shelving, display racks, walk-in boxes, furnishings,

signage, canopies, fuel dispensing equipment, UST Systems (including all fuel storage tanks, fill holes and fill hole covers and tops, pipelines, vapor lines, pumps, hoses, Stage I and Stage II vapor recovery equipment, containment devices, monitoring equipment, cathodic protection systems, and other elements associated with any of the foregoing), parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of and located at the Retail Fuel Outlets To Be Divested, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof, to the extent such warranty is transferrable, and all maintenance records and other documents relating thereto.

X. "Fuel Products" means refined petroleum gasoline and diesel products.

Y. "Governmental Entity" means any federal, state, local, or non-U.S. government, or any court, legislature, governmental agency or commission, or any judicial or regulatory authority of any government.

Z. "Governmental Permit(s)" means all licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any Governmental Entity(ies) necessary to effect the complete transfer and divestiture of the Assets To Be Divested to the Acquirer and for the Acquirer to operate any aspect of a Retail Fuel Outlet Business.

AA. "Inventory(ies)" means all inventories of every kind and nature for retail sale located at the Retail Fuel Outlets To Be Divested, including: (1) all gasoline, diesel fuel, kerosene, and other petroleum-based motor fuels stored in bulk and held for sale to the public ("Fuel Inventory"); and (2) all usable, non-damaged and non-out of date products and items held for sale to the public, including, without limitation, all food-related items requiring further processing, packaging, or preparation and ingredients from which prepared foods are made to be sold ("Merchandise Inventory").

BB. "Monitor" means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph IV. of the Order to Maintain Assets.

CC. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.

DD. "Person" means any individual, or any partnership, firm, corporation, limited liability company, limited liability partnership, association, trust, unincorporated organization, or other business entity.

EE. "Proposed Acquirer" means any proposed acquirer of the Assets To Be Divested that Respondents or the Divestiture Trustee intend to submit or have submitted to the Commission for its approval under this Order. "Proposed Acquirer" includes Empire.

FF. "Relevant Notice Outlets" means the Retail Fuel Outlets To Be Divested and the Retail Fuel Outlets identified on Non-Public Schedule D of this Order.

GG. "Remedial Agreement" means the Empire Divestiture Agreement if approved by the Commission, or

1. Any other Divestiture Agreement that is approved by the Commission; and

2. Any other agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer), including any Transition Services Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested, that have been approved by the Commission to accomplish the requirements of this Order.

HH. "Respondents' Brands" means all of Respondents' trademarks, trade dress, logos, service marks, trade names, brand names, and all associated intellectual property rights, including rights to the names "Circle K," "Corner Store," and "Flash Foods."

II. "Retail Fuel Outlet" means: (1) any existing retail facility engaged in the activities of a Retail Fuel Outlet Business; and (2) any property site where construction of a retail facility to be engaged in the activities of a Retail Fuel Outlet Business is planned or underway.

JJ. "Retail Fuel Outlet Business" means all business activities relating to: (1) the retail sale, promotion, marketing, and provision of motor fuels, including gasoline, diesel fuel, and other fuels, automotive products, and related services; and (2) the operation of associated convenience stores and related businesses and services, including but not limited to the retail sale, promotion, marketing and provision of food and grocery products (including dairy and bakery items, snacks, gum, and candy), foodservice and quick-serve restaurant items, beverages (including alcoholic beverages), tobacco products, general merchandise, ATM services, gaming and lottery tickets and services, money order services, car wash services, and all other businesses and services associated with the business operated or to be operated at each Retail Fuel Outlets To Be Divested.

KK. "Retail Fuel Outlets To Be Divested" means: (1) the Retail Fuel Outlets identified on Schedule A of this Order, (2) any Substitute Retail Fuel Outlet if substituted for the corresponding CST Outlet identified on Schedule B of this Order, provided, however, that Retail Outlets To Be Divested shall not include any CST Outlet identified in Schedule B of this Order for which the corresponding Substitute Retail Fuel Outlet is divested, and (3) the Schedule C Site if included at the Acquirer's option.

LL. "Schedule C Site" means the property site identified on Schedule C of this Order, which shall be included as part of the Assets To Be Divested only at the Acquirer's sole option.

MM. "Substitute Retail Fuel Outlet" means each of the ACT Outlets that is identified in Schedule B, corresponding to an identified CST Outlet.

NN. "Third Party(ies)" means any Person other than the Respondents or the Acquirer.

OO. "Third Party Consents" means all consents, approvals, permissions, waivers, ratifications, or other authorizations from any Third Party(ies) that are necessary to effect the complete transfer and divestiture of the Assets To Be Divested to the Acquirer and for the Acquirer to operate any aspect of a Retail Fuel Outlet Business.

PP. "Transition Services" means technical services, personnel, assistance, training, product supply, and other logistical, administrative, and transitional support as required by the Acquirer and approved by the Commission to facilitate the transfer of the Assets To Be Divested from the Respondents to the Acquirer, including, but not limited to, services, training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, information technology and systems, maintenance and repair of facilities and equipment, Fuel Products supply, purchasing, quality control, R&D support, technology transfer, use of Respondents' Brands for transitional purposes, operating permits and licenses, regulatory compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics.

QQ. "Transition Services Agreement" means an agreement that receives the prior approval of the Commission between Respondents and the Acquirer to provide, at the option of the Acquirer, Transition Services (or training for an Acquirer to provide services for itself) necessary to transfer the Assets To Be Divested to the Acquirer and to operate the Assets To Be Divested in a manner consistent with the purposes of this Order.

II.

IT IS FURTHER ORDERED that:

A. No later than (i) seventy five (75) days after the Closing Date, or (ii) fourteen (14) days after the date this Order is issued as final, whichever is later, Respondents shall divest the Assets To Be Divested, absolutely and in good faith, as ongoing Retail Fuel Outlet Businesses, to Empire pursuant to and in accordance with the Empire Divestiture Agreement.

B. *Provided, however,* that if Respondents have divested the Assets To Be Divested to Empire pursuant to Paragraph II.A. of this Order prior to the date this Order becomes final, and at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. Empire is not an acceptable Acquirer, then Respondents shall, within five (5) days of notification by the Commission, rescind such transaction with Empire and shall divest the Assets To Be Divested as ongoing Retail Fuel Outlet Businesses, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, within ninety (90) days of the date the Commission notifies Respondents that Empire is not an acceptable Acquirer; or

2. The manner in which the divestiture identified in Paragraph II.A. was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee pursuant to Paragraph IV. of this Order, to effect such modifications to the manner of divesting the Assets To Be Divested to Empire (including, but not limited to, entering into additional agreements or arrangements, or modifying the relevant Remedial Agreements) as may be necessary to satisfy the requirements of this Order.

C. Respondents shall:

1. Prior to the Divestiture Date, obtain, at their sole expense, all required Third Party Consents relating to the divestiture of all Assets To Be Divested;

Provided, however, that:

(a) for each of the CST Outlets identified in Schedule B that require landlord consent in order to effectuate the required divestiture, in the event that Respondents are unable to obtain the necessary landlord consent for divestiture of any one or more of such CST Outlets, Respondents may, in consultation with the Monitor and Commission staff, substitute the corresponding Substitute Retail Fuel Outlet subject to the proviso that the divestiture of any Substitute Retail Fuel Outlet(s) shall not include Respondents' Brands except, at the Acquirer's option, pursuant to a worldwide, royalty-free, fully paid-up license granted by the Respondents to the Acquirer to use any of Respondents' Brands as applicable to the Substitute Retail Fuel Outlet(s) as part of any Transition Services Agreement that Respondents may enter into with the Acquirer, or as may otherwise be allowed pursuant to any Remedial Agreement(s); *provided further* that Respondents shall divest such Substitute Retail Fuel Outlet(s) to the Acquirer no later than fifteen (15) days after receipt of written notification from the Commission or its staff directing such divestiture if it has not already occurred; and

(b) Respondents may satisfy this requirement by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party(ies) or has otherwise obtained all necessary consents and waivers; and

2. With respect to any Governmental Permits relating to the Assets To Be Divested that are not transferable, allow the Acquirer to operate the Assets To Be Divested under Respondents' Governmental Permits pending the Acquirer's receipt of its own Governmental Permits, and provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Permits.

D. If the Acquirer declines to acquire the Schedule C Site, it shall not become part of the Assets To Be Divested; *provided, however,* that if Respondents subsequently sell, transfer, or otherwise convey the Schedule C Site in whole or in part (including any real property interest or leasehold interest) to a Third Party, then Respondents shall: (1) neither enter into nor enforce any agreement (including, but not limited to, any deed restriction) that restricts in any way the ability of such Third Party to operate or use the Schedule C Site as a Retail Fuel

Outlet, and (2) include a copy of any transaction documents regarding such sale, transfer, or conveyance in their compliance report(s) pursuant to Paragraph VII. of this Order.

E. At the option of the Acquirer, and subject to the prior approval of the Commission, Respondents shall provide Transition Services to the Acquirer pursuant to a Transition Services Agreement for one (1) year following the Divestiture Date, with an opportunity to extend for up to one (1) year at the option of the Acquirer; *provided, however,* that any transitional supply of Fuel Products from Respondent to the Acquirer pursuant to a Transition Services Agreement shall terminate on or before 270 days following the Divestiture Date. Such Transition Services Agreement shall provide that: (1) the Acquirer may terminate the Transition Services Agreement at any time upon commercially reasonable notice to the Respondents, and without cost or penalty to the Acquirer; and (2) at the Acquirer's request, Respondents shall agree to extend the term of any Transition Service(s), except for any transitional supply of Fuel Products, for an additional period of up to one (1) year (*i.e.,* in addition to the initial term plus any extension), and shall file with the Commission any request for prior approval to extend the term of the Transition Services Agreement for such Transition Service(s). The Transition Services provided pursuant to the Transition Services Agreement shall be provided at no more than Respondents' Direct Costs, except that any transitional supply of Fuel Products shall be provided at no more than Respondents' Actual Fuel Products Costs, and shall enable the Acquirer to operate Retail Fuel Outlets at least at the same level of quality and service as they were operated prior to the divestiture.

F. Respondents shall:

1. Keep confidential (including as to Respondents' employees) and not use for any purpose any Confidential Business Information received or maintained by Respondents relating to the Assets To Be Divested or the Retail Fuel Outlets identified on Schedule A of this Order; *provided, however,* that Respondents may disclose or use such Confidential Business Information in the course of: (a) performing their Order obligations or as otherwise permitted under this Order, the Order to Maintain Assets, or any Remedial Agreement; or (b) complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Assets To Be Divested, or as required by law; and

2. Enforce the terms of Paragraph II.F.1 of this Order as to its employees or any other Person, and take such actions as are necessary to cause each of its employees and any other Person to comply with the terms of Paragraph II.F.1, including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own confidential and proprietary information.

G. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person pursuant to Paragraph II.F. of this Order, Respondents shall limit such disclosure or use (1) only to the extent such information is required, (2) only to those employees or Persons who require such information for the purposes permitted under

Paragraph II.F., and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

H. The purpose of the divestiture is to ensure the continuation of the Assets To Be Divested as ongoing, viable enterprises engaged in the Retail Fuel Outlet Business and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall:

A. No later than ten (10) days after a request from the Proposed Acquirer, or from Commission staff, provide the Proposed Acquirer with the following information for each employee of the Assets To Be Divested, as requested by the Proposed Acquirer, and to the extent permitted by law:

1. Name, job title or position, date of hire, and effective service date;

2. Specific description of the employee's responsibilities;

3. The base salary or current wages;

4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;

5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

7. At the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

B. Within a reasonable time after a request from a Proposed Acquirer, provide to the Proposed Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one, or all, of the employees of the Assets To Be Divested, and to make offers of employment to any one, or more, of the employees of the Assets To Be Divested.

C. Not interfere, directly or indirectly, with the hiring or employing by the Proposed Acquirer of any employee of the Assets To Be Divested, not offer any incentive to such employees to decline employment with the Proposed Acquirer, and not otherwise interfere with the recruitment or employment of any employee by the Proposed Acquirer.

D. Remove any impediments within the control of Respondents that may deter employees of the Assets To Be Divested from accepting employment with the Proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment, or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Proposed Acquirer, and not make any counteroffer to an employee who has an outstanding offer of employment from the Proposed Acquirer or has accepted an offer of employment from the Proposed Acquirer.

E. Provide all employees with reasonable financial incentives to continue in their positions until the Divestiture Date. Such incentives shall include, but are not limited to, a continuation, until the Divestiture Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting as of the Divestiture Date of any unvested qualified 401(k) plan account balances (to the extent permitted by law, and for those employees covered by a 401(k) plan), offered by Respondents.

F. Not, for a period of one (1) year following the Divestiture Date, directly or indirectly, solicit, or otherwise attempt to induce any of the employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at employees of the Assets To Be Divested; or

2. Hire employees of the Assets To Be Divested who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to, or employing, any such employees if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested the Assets To Be Divested in the time and manner required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Assets To Be Divested in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IV. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-

appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, contract, deliver, or otherwise convey the relevant assets or rights that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order.

3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestitures or transfers required by the Order.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.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 Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order or 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(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under this

Paragraph IV. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

6. 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' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for any of the relevant Assets To Be Divested, and if the Commission determines to approve more than one such acquiring entity for such assets, the Divestiture Trustee shall divest such assets to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. 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(s) 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 his or her 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 required to be divested by this Order.

8. 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.

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 Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.

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

12. The Divestiture Trustee shall report in writing to the Commission and Respondents every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).

13. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

14. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

V.

IT IS FURTHER ORDERED that:

A. For a period of ten (10) years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission in the manner described in this paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any Relevant Notice Outlets.

B. With respect to the notification:

1. The prior notification required by this Paragraph V. 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 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 the Respondents and not of any other party to the transaction.

2. Respondents shall provide the Notification to the Commission at least thirty (30) 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 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material.

3. Early termination of the waiting periods in this Paragraph V. may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph for a 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.

VI.

IT IS FURTHER ORDERED that:

A. The Remedial Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreements.

B. Each Remedial Agreement shall be incorporated by reference into this Order and made a part hereof.

C. Respondents shall comply with all terms of each Remedial Agreement, and any failure by Respondents to comply with the terms of any Remedial Agreement shall constitute a violation of this Order. If any term of any Remedial Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order.

D. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VII.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after the date this Order is issued 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 and the Monitor verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order; and

B. One (1) year from the date this Order is issued, annually for the next nine (9) years on the anniversary of the date this Order is issued, 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.

VIII.

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

A. Any proposed dissolution of 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 this Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, for which copying services shall be provided by such Respondents at the request of the authorized representative(s) of the Commission and at the expense of Respondents; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

X.

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

ISSUED:
SEAL:

SCHEDULE A

Divested Outlet	Address	City	State	Zip Code
CAPL - OH0072	7510 Broadview Rd	Cleveland	Ohio	44134
CST - 1105	7799 E Arapahoe Rd	Englewood	Colorado	80112
CST - 1117	15303 E Quincy Ave	Aurora	Colorado	80115
CST - 1133	1004 Us Highway 287	Broomfield	Colorado	80020
CST - 1142	1765 Briargate Blvd	Colorado Springs	Colorado	80920
CST - 1148	7396 W 92Nd Ave	Broomfield	Colorado	80021
CST - 1160	715 Cheyenne Meadows Rd	Colorado Springs	Colorado	80906
CST - 1170	205 W Rockrimmon Blvd	Colorado Springs	Colorado	80919
CST - 1216	5600 Edith Blvd Ne	Albuquerque	New Mexico	87107
CST - 1219	2721 Coors Blvd Nw	Albuquerque	New Mexico	87120
CST - 1240	12521 Menaul Blvd Ne	Albuquerque	New Mexico	87112
CST - 1242	4221 Osuna Rd Ne	Albuquerque	New Mexico	87109
CST - 1248	2695 W Picacho Ave	Las Cruces	New Mexico	88007
CST - 1258	230 S Americas Ave	El Paso	Texas	79907
CST - 1273	11680 Montwood Dr	El Paso	Texas	79936
CST - 1276	1500 N Zaragoza Rd	El Paso	Texas	79936
CST - 1277	850 E Redd Rd	El Paso	Texas	79912
CST - 1354	201 S Americas Ave	El Paso	Texas	79907
CST - 1355	840 N Zaragoza Rd	El Paso	Texas	79907
CST - 1357	6920 Delta Dr	El Paso	Texas	79905

CST - 1363	**629 S Yarbrough Dr**	**El Paso**	**Texas**	**79915**
CST - 1369	**3815 Pershing Dr**	**El Paso**	**Texas**	**79903**
CST - 1445	**110 Slaughter Ln W**	**Austin**	**Texas**	**78748**
CST - 1500	**102 S Sunset Strip St**	**Kenedy**	**Texas**	**78119**
CST - 1503	**5646 Kostoryz Rd**	**Corpus Christi**	**Texas**	**78415**
CST - 1597	**2300 N Zaragoza Rd**	**El Paso**	**Texas**	**79938**
CST - 1602	**7542 E Southern Ave**	**Mesa**	**Arizona**	**85208**
CST - 1606	**7060 E Baseline Rd**	**Mesa**	**Arizona**	**85209**
CST - 1611	**20205 N Cave Creek Rd**	**Phoenix**	**Arizona**	**85204**
CST - 1613	**2160 W Drexel Rd**	**Tucson**	**Arizona**	**85746**
CST - 1617	**1810 W Prince Rd**	**Tucson**	**Arizona**	**85705**
CST - 1618	**2409 W Union Hills Dr**	**Phoenix**	**Arizona**	**85207**
CST - 1625	**6701 W Olive Ave**	**Peoria**	**Arizona**	**85345**
CST - 1627	**1895 E Valencia Rd**	**Tucson**	**Arizona**	**85706**
CST - 1636	**5005 N La Canada Dr**	**Tucson**	**Arizona**	**85704**
CST - 1638	**5905 W Cactus Rd**	**Glendale**	**Arizona**	**85304**
CST - 1640	**9520 E 22Nd St**	**Tucson**	**Arizona**	**85748**
CST - 1645	**2367 S Val Vista Dr**	**Gilbert**	**Arizona**	**85295**
CST - 1651	**719 E Thunderbird Rd**	**Phoenix**	**Arizona**	**85022**
CST - 1654	**4305 E Ray Rd**	**Phoenix**	**Arizona**	**85044**
CST - 1658	**15240 N Oracle Rd**	**Tucson**	**Arizona**	**85739**
CST - 1659	**9151 E Guadalupe Rd**	**Mesa**	**Arizona**	**85212**

CST - 1670	**3999 E Fry Blvd**	**Sierra Vista**	**Arizona**	**85635**
CST - 1672	**3171 E Pecos Rd**	**Gilbert**	**Arizona**	**85295**
CST - 1674	**1520 N Verrado Way**	**Buckeye**	**Arizona**	**85396**
CST - 1677	**1636 S Higley Rd**	**Gilbert**	**Arizona**	**85295**
CST - 1678	**39657 N Gantzel Rd**	**Queen Creek**	**Arizona**	**85140**
CST - 1679	**21198 E Ocotillo Rd**	**Queen Creek**	**Arizona**	**85142**
CST - 1681	**Gilbert, Queen Creek Rd & Val Vista Dr, Sec**	**Gilbert**	**Arizona**	**85296**
CST - 1701	**4020 W Ray Rd**	**Chandler**	**Arizona**	**85226**
CST - 1704	**8424 S Power Rd**	**Gilbert**	**Arizona**	**85297**
CST - 1746	**3100 N Mesa Sy**	**El Paso**	**Texas**	**79902**
CST - 1828	**Nec Staples St & Wooldridge**	**Corpus Christi**	**Texas**	**78411**
CST - 238	**2001 Highway 71 E**	**Del Valle**	**Texas**	**78617**
CST - 380	**4910 Barksdale Blvd**	**Bossier City**	**Louisiana**	**71112**
CST - 384	**5454 W 70Th St**	**Shreveport**	**Louisiana**	**71129**
CST - 4065	**8105 N Academy Blvd**	**Colorado Springs**	**Colorado**	**80920**
CST - 4136	**1310 W Baptist Rd**	**Colorado Springs**	**Colorado**	**80921**
CST - 4146	**505 W 120Th Ave**	**Denver**	**Colorado**	**80234**
CST - 428	**3958 Saratoga Blvd**	**Corpus Christi**	**Texas**	**78415**
CST - 43	**701 S State Highway 359**	**Mathis**	**Texas**	**78368**
CST - 865	**3001 N Yarbrough Dr**	**El Paso**	**Texas**	**79925**
CST-5044 (FF – 115)	**4409 Timuquana Rd**	**Jacksonville**	**Florida**	**32210**
CST-5190 (FF – 128)	**850850 Us Hwy 17**	**Yulee**	**Florida**	**32097**

CST-5060 (FF – 140)	**1145 Airport Rd**	**Jacksonville**	**Florida**	**32218**
CST-5062 (FF – 142)	**201 N Kings Rd**	**Hilliard**	**Florida**	**32046**
CST-5066 (FF – 146)	**7308 Ga Highway 21**	**Savannah**	**Georgia**	**31407**
CST-5081 (FF – 171)	**1412 Gerbing Rd**	**Fernandina Beach**	**Florida**	**32034**
CST-5082 (FF – 172)	**1884 S Kings Rd**	**Callahan**	**Florida**	**32011**
CST-5140 (FF – 267)	**1417 Sam Nunn Blvd**	**Perry**	**Georgia**	**31069**

Schedule B

If landlord consent to assignment of the lease for any of the CST Outlets listed below cannot be obtained, for each and every CST Outlet for which assignment has not been obtained, Respondents shall substitute the corresponding ACT Outlet listed below, in consultation with the Monitor and staff of the Commission.

CST Outlet	Address	Corresponding ACT Outlet to be divested	Address
CST - 1170	**205 W Rockrimmon Blvd Colorado Springs, Colorado 80919**	**ACT - 2709840**	**7055 Commerce Center Dr Colorado Springs, Colorado 80919**
CST - 1369	**3815 Pershing Dr El Paso, Texas 79903**	**ACT - 2701418**	**3910 A Dyer St El Paso, Texas 79930**
CST - 1500	**102 S Sunset Strip St Kenedy, Texas 78119**	**ACT - 2704059**	**101 S Sunset Strip St Kenedy, Texas 78119**
CST - 1651	**719 E Thunderbird Rd Phoenix, Arizona 85022**	**ACT - 2701855**	**15400 N 7th St Phoenix, Arizona 85022**

Schedule C

Site	Address	City	State	Zip Code
ACT - 2723891	**1541 S Mock Rd**	**Albany**	**Georgia**	**31705**

NON-PUBLIC SCHEDULE D:

RELEVANT NOTICE RETAIL FUEL OUTLETS

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

NON-PUBLIC APPENDIX E:

EMPIRE DIVESTITURE AGREEMENT

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