

No. 9504873

COPY

THE STATE OF TEXAS,

Plaintiff,

VS.

COLUMBIA/HCA HEALTHCARE
CORPORATION,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY

345th JUDICIAL DISTRICT

FINAL CONSENT JUDGMENT

WHEREAS, Plaintiff, the State of Texas ("the State"), having filed its Original Petition herein on April 21, 1995, and the State and Columbia/HCA Healthcare Corporation ("Columbia") having consented to the entry of this Final Consent Judgment before any testimony has been taken, without trial or adjudication of any issue of fact or law, and without this Final Consent Judgment constituting any evidence against or admission by either party with respect to any issue of law or fact;

AND WHEREAS, Columbia has agreed to be bound by the provisions of this Final Consent Judgment pending its approval by the Court;

AND WHEREAS, to assure that competition is not substantially lessened, the parties intend to require Columbia to divest, as a viable business operation, either Denton Regional Medical Center ("DRMC"), or Denton Community Hospital ("DCH") in the City of Denton, Texas;

AND WHEREAS, to assure that competition is not substantially lessened, the parties intend to require Columbia to adhere to certain terms and conditions regarding acute care inpatient hospital services in the Corpus Christi area;

AND WHEREAS, Columbia has represented to Plaintiff the State that the divestiture and adherence to certain terms and conditions required below can and will be made, and that Columbia will

later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions or provisions regarding terms and conditions contained below;

NOW, THEREFORE, without trial or final adjudication of any issue of law or fact, before the taking of any testimony at trial, and upon the agreement of the parties;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.
JURISDICTION

This Court has jurisdiction over the subject matter of this action and the parties hereto. The Petition states claims upon which relief may be granted against Columbia under Sections 15.05(b) and (d) of the Texas Free Enterprise and Antitrust Act of 1983, TEX. BUS. & COM. CODE § 15.01 et seq. ("the Texas Antitrust Act"). Jurisdiction lies in this Court pursuant to Sections 15.20(b) and 15.26 of the Texas Antitrust Act.

II.
DEFINITIONS

As used in this Final Consent Judgment:

- A. "Columbia" means Columbia/HCA Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203, as well as its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Columbia; their directors, officers, employees, agents, and representatives; and their successors and assigns.
- B. "Healthtrust" means Healthtrust, Inc.--The Hospital Company, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 4525 Harding Road, Nashville, Tennessee 37205, as well as its partnerships, joint

ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Healthtrust; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "Acquisition" means the transaction contemplated by the October 4, 1994, agreement between Columbia and Healthtrust, whereby Columbia will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia.

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

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

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

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

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

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

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

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

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

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

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

2. all contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal

property lessors, personal property lessees, licensors, licensees, consigners, and consignees (collectively, the "Contracts");

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

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

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

6. all prepaid expenses.

J. "Alice" means Alice Physicians & Surgeons Hospital, the general acute care hospital currently owned and operated by Healthtrust at 300 East Third Street, Alice, Jim Wells County, Texas 78332.

K. "Coastal Bend" means Coastal Bend Hospital, the general acute care hospital currently owned and operated by Healthtrust at 1711 West Wheeler Street, Aransas Pass, San Patricio County, Texas 78336.

L. "Corpus Christi area" means the combined area consisting of the Texas counties of Nueces, San Patricio, Jim Wells, and Kleberg.

M. "Denton area" means the combined area consisting of the Texas counties of Denton and Cooke (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas State Highway 121).

N. "DCH" means Denton Community Hospital, the general acute care hospital currently owned and operated by Columbia at 207 North Bonnie Brae, Denton, Texas 76201, all of its Assets and Businesses, and all other related Columbia Assets and Businesses in the Denton area, of whatever nature, tangible and intangible, including without limitation the Medical Office Building at Scripture/Bonnie Brae.

O. "DRMC" means Denton Regional Medical Center, the general acute care hospital currently owned and operated by Healthtrust at 4405 North Interstate 35, Denton, Texas 76207, all of its Assets and Businesses, and all other related Healthtrust Assets and Businesses in the Denton area, of whatever nature, tangible and intangible, including without limitation: DRMC Office Building, 4401 North I-35, Denton, Texas 76207; the medical office building and vacant land at 3353 I-35E South, Denton, Texas 76107; the satellite offices operated at Denton Regional Medical Center, 1207A North Grand Avenue, Gainesville, Texas 76240; Flow Rehabilitation Hospital, 1310 Scripture, Denton, Texas 76201; Denton Regional Medical Center -- Little Elm, 420 FM720 West, Suite 9, Little Elm, Texas 75068; and Professional Health Care Services, 621 Londonderry Lane, Denton, Texas 76205.

P. "FTC Consent Order" means a valid and final consent agreement made by and between Columbia and the Federal Trade Commission ("FTC") addressing the proposed acquisition of Healthtrust by Columbia.

Q. "Settlement Agreement" means the settlement agreement between the State of Texas and Columbia, a copy of which is attached as Exhibit "A".

R. "Payor" means any third-party payor including any health maintenance organization, preferred provider arrangement or organization, managed health care network, plan, or organization of any kind, self-insured employer, Medicare, Medicaid, CHAMPUS, or other private or governmental payor, or insurance of any kind.

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

T. "Riverside" means Riverside Hospital, the general acute care hospital currently owned and operated by Healthtrust at 13725 Farm Road 624, Corpus Christi, Texas 78410.

III. APPLICABILITY

This Final Consent Judgment shall apply to Columbia and its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, employees, agents, representatives, and all other persons in active concert or participation with any of them who receive actual notice of this Final Consent Judgment by personal service or otherwise.

Nothing contained in this Final Consent Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. DIVESTITURE OF ASSETS

A. In this Final Consent Judgment the State hereby asserts its right to require the divestiture of either Denton Regional Medical Center ("DRMC") or Denton Community Hospital ("DCH") in the City of Denton, Texas, and its right to remedy any anticompetitive effects of the Acquisition in the Denton area. Should an Agreement Containing Consent Order ("FTC Consent Order"), made by and between Columbia and the Federal Trade Commission ("FTC"), in a form which requires divestiture of

either DRMC or DCH, become final within six (6) months of the date this Final Consent Judgment is approved by the Court, the State shall accept compliance by Columbia with such FTC Consent Order as substantial compliance with the terms and conditions of divestiture required in this Final Consent Judgment, and not seek further relief from Columbia with respect to the divestiture.

B. If an FTC Consent Order, in a form which requires divestiture of either DRMC or DCH, does not become final for any reason within six (6) months of the date this Final Consent Judgment is approved by the Court, Columbia is hereby ordered and directed to divest, absolutely and in good faith, within eighteen (18) months after the date this Final Consent Judgment becomes final, the Assets and Business of, including all improvements, additions, and enhancements made to such facilities prior to divestiture, either of DRMC or DCH.

C. Columbia shall also divest such additional Assets and Businesses ancillary to either DRMC or DCH, and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of DRMC and DCH.

D. Columbia shall divest either DRMC or DCH only to an acquirer or acquirers that receive the prior approval of the State, and only in a manner that receives the prior approval of the State. If Columbia proposes to divest DCH, it must provide the State with the written consent of the landlord of such facilities to the proposed assignment and divestiture at the time that State approval of the divestiture is sought. The purpose of the divestiture of either DRMC or DCH is to ensure the continuation of either DRMC or DCH, or their successors or assigns, as an ongoing, viable acute care hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the State's Original Petition.

E. Columbia shall comply with all terms of the Agreement to Hold Separate ("the Hold Separate") attached hereto and made a part hereof as Appendix A. The Hold Separate shall continue in effect until such time as Columbia has fulfilled the divestiture requirements by divesting either DRMC or DCH, or until such other time as the Hold Separate provides.

F. Pending divestiture of DRMC or DCH, Columbia shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of DRMC and DCH, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of DRMC and DCH, except for ordinary wear and tear.

G. A condition of approval by the State of the divestiture shall be a written agreement by the party or parties acquiring either DRMC or DCH that it will not sell for a period of ten (10) years from the date of the divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the State, DRMC or DCH to any person who operates, or will operate immediately following such sale, any other acute care hospital in the Denton area.

V.
APPOINTMENT OF TRUSTEE

A. If Columbia is ordered and directed to divest either DRMC or DCH pursuant to Section IV.B. of this Final Consent Judgment, and Columbia has not divested, absolutely and in good faith and with the prior approval of the State, either DRMC or DCH within eighteen (18) months after the date this Final Consent Judgment becomes final, the State may appoint a trustee to divest either DRMC or DCH.

B. In the event that the State brings an action for any failure to comply with this Final Consent Judgment, Columbia 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 Section V.A. shall preclude the

State from seeking civil penalties or any other relief available to it for any failure by Columbia to comply with this Final Consent Judgment.

C. If a trustee is appointed by the State or a court pursuant to Section V.A. of this Final Consent Judgment, Columbia shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

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

2. Subject to the prior approval of the State, and also subject to Section V.C.13 herein, the trustee shall have the power and authority to divest either DRMC or DCH.

3. Within ten (10) days after appointment of the trustee, Columbia shall execute a trust agreement that, subject to the prior approval of the State 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 Final Consent Judgment.

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

the State, or by the court for a court-appointed trustee; provided, however, the State may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to DRMC and DCH, or to any other relevant information as the trustee may request. Columbia shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Columbia shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Columbia shall extend the time for divestiture under this Section V. in an amount equal to the delay, as determined by the State or the court for a court-appointed trustee.

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 State, subject to Columbia's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer as set forth in Section IV. of the Final Consent Judgment; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity for any one facility or asset, and if the State determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Columbia from among those approved by the State.

7. The trustee shall serve, without bond or other security, at the cost and expense of Columbia, on such reasonable and customary terms and conditions as the State or a court may set. The trustee shall have authority to employ, at the cost and expense of Columbia, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other

representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the State 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 Columbia 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 either DRMC or DCH.

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

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Section V. A. of this Final Consent Judgment.

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

11. The trustee shall have no obligation or authority to operate or maintain DRMC or DCH.

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

13. In the event the FTC appoints a trustee under the FTC Consent Order after a trustee is appointed hereunder, the trustee appointed hereunder, if different from the trustee appointed by the FTC, shall promptly execute such documents as are necessary to vest in the FTC's trustee title to DCH and DRMC, and shall deliver to the FTC's trustee all information supplied hereunder and thereafter the trustee appointed hereunder shall have no further duties or responsibilities (except to account to the State and Columbia for any actions taken or omitted to be taken during the term of his or her appointment) and his or her appointment hereunder shall cease and terminate.

VI.

PRIOR APPROVAL OF FUTURE ACQUISITIONS IN DENTON

For a period of ten (10) years from the date this Final Consent Judgment becomes final, Columbia shall not, without the prior approval of the State, directly or indirectly, through subsidiaries, partnerships, or otherwise:

- A. Acquire any stock, share capital, equity, or other interest in any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in the Denton area;
- B. Acquire any assets used, or previously used, in the Denton area (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in the Denton area;
- C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in the Denton area, including but not limited to, a lease of or management contract for any such acute care hospital;

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

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

Provided, however, that such prior approval shall not be required for:

1. the establishment by Columbia of a new acute care hospital facility in the Denton area: (a) that is a replacement for an existing acute care hospital facility operated by Columbia, and not required to be divested by Columbia pursuant to this Final Consent Judgment, in the Denton area; or (b) that is not a replacement for any acute care hospital facility in the Denton area;
2. any transaction otherwise subject to this Section VI of this Final Consent Judgment if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000); or
3. the acquisition of products or services in the ordinary course of business.

VII.

NOTIFICATION OF JOINT VENTURES AND OTHER ARRANGEMENTS WITH OTHER DENTON AREA HOSPITALS

For a period of ten (10) years from the date this Final Consent Judgment becomes final, Columbia shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the State, consummate any joint venture or other arrangement with any other acute care hospital in the Denton area for the joint establishment or

operation of any new acute care hospital, or any hospital, medical, surgical, diagnostic, or treatment service or facility, or part thereof in the Denton area. Such advance notification shall be filed immediately upon Columbia's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

Said notification required by this Section VII of this Final Consent Judgment is required only of Columbia and not of any other party to the transaction.

Columbia shall comply with reasonable requests by the State for additional information concerning any transaction subject to this Section VII of this Final Consent Judgment, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Section VII of this Final Consent Judgment if:

1. the fair market value of the assets to be contributed to the joint venture or other arrangement by acute care hospitals not operated by Columbia does not exceed one million dollars (\$1,000,000);
2. the service, facility, or part thereof to be established or operated in a transaction subject to this Final Consent Judgment is to engage in no activities other than the provision of the following services: laundry, data processing, purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or
3. prior approval by the State is required, and has been requested, pursuant to Section VI of this Final Consent Judgment.

VIII.
AGREEMENT TO BE BOUND BY JUDGMENT

For a period of ten (10) years from the date this Final Consent Judgment becomes final, Columbia shall not permit all, or any substantial part of, any acute care hospital it operates in the Denton area to be acquired by any other person (except pursuant to the divestiture required by Section IV. of this Final Consent Judgment), unless the acquiring person files with the State, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this Final Consent Judgment applicable to the Denton area, which agreement Columbia shall require as a condition precedent to the acquisition.

IX.
ADHERENCE TO CERTAIN TERMS AND CONDITIONS
REGARDING CORPUS CHRISTI ASSETS AND BUSINESSES

For a period of two (2) years following the date this Final Consent Judgment becomes final, Columbia and its employees, agents, and representatives, are hereby ordered and directed, as to Alice, Coastal Bend, and Riverside hospitals, as follows:

1. Columbia shall not condition any agreement, understanding, contract, or other arrangement for acute care inpatient hospital services at Alice, Coastal Bend, or Riverside on any requirement that a payor also agree to or contract for services at one or more additional Columbia hospitals in the Corpus Christi area.
2. Columbia shall not, with respect to acute care inpatient hospital services provided in the Corpus Christi area, enter into any exclusive provider agreement, understanding, contract, or other arrangement with any payor in which Columbia requires the payor to receive, render, or provide services only at an acute care hospital or hospitals owned or operated by Columbia in the Corpus Christi area, and shall not prohibit such

payor from affiliating with, by agreement, understanding, contract, or other arrangement, any other acute care hospital or hospitals.

3. As to Alice, Coastal Bend, or Riverside, Columbia shall not refuse to deal in good faith and on commercially reasonable terms and conditions with any payor solely because such payor contracts for or otherwise arranges for acute care inpatient hospital services at any acute care hospital or hospitals not owned or operated by Columbia. This provision, however, shall not be construed to require Columbia to enter into a provider agreement, understanding, contract, or other arrangement with any particular payor.

X.

STATE'S ACCESS TO RECORDS, DOCUMENTS, AND PEOPLE

For the purpose of determining or securing compliance with this Final Consent Judgment, and subject to any legally recognized privilege, Columbia shall permit any duly authorized representative of the State:

1. 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 Columbia's possession or control relating to any matters contained in this Final Consent Judgment; and
2. Upon five days' notice to Columbia and without restraint or interference from it, to interview officers, directors, or employees of Columbia, who may have counsel present regarding such matters.

XI.

COMPLIANCE REPORTS

Columbia is further ordered and directed that:

1. Within sixty (60) days after the date this Final Consent Judgment becomes final and every sixty (60) days thereafter until Columbia has fully complied with the obligations of this Final Consent Judgment regarding divestiture, Columbia shall submit to the State a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the Final Consent Judgment relating to the divestiture.
2. Columbia shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the divestiture requirements of this Final Consent Judgment, including a description of all substantive contacts or negotiations for the divestiture, and the identity of all parties contacted. Columbia shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, and all reports and recommendations concerning the required divestiture.

XII.

NOTIFICATION OF CORPORATE CHANGES

Columbia is further ordered and directed to notify the State at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in Columbia that may affect compliance obligations arising out of this Final Consent Judgment.

XIII.

STATUTORY LIEN

The statutory lien pursuant to Article 1302-5.08 of the Texas Revised Civil Statutes on all property of Columbia is dissolved.

XIV.
AGREED DISMISSAL

A. Plaintiff State of Texas' claims in this lawsuit against Columbia are dismissed with prejudice to the refiling of same. All costs, fees and expenses shall be charged to the party incurring same. Columbia acknowledges that it remains fully bound by the terms of the Settlement Agreement, a copy of which is attached as Exhibit "A".

B. Columbia's claims arising out of this lawsuit, if any, against Plaintiff State of Texas are dismissed with prejudice to the refiling of same, with each party bearing its own costs and expenses.

XV.
TERM

This Final Consent Judgment shall expire ten (10) years from the date of entry.

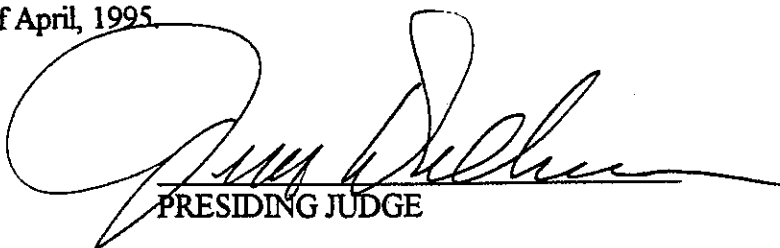
XVI.
JURISDICTION RETAINED

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the enforcement of this Final Consent Judgment and the enforcement of any of the provisions contained herein.

This Court shall have the authority to specifically enforce the provisions of this Final Consent Judgment.

All orders and relief not expressly granted herein are denied.

SIGNED this 21 day of April, 1995.


PRESIDING JUDGE

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

**ATTORNEYS FOR PLAINTIFF
THE STATE OF TEXAS**

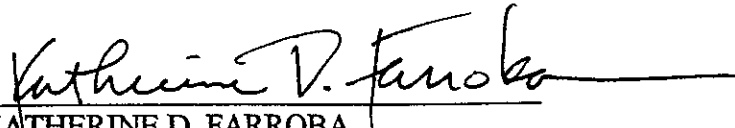
DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA HAMILTON
Deputy Attorney General for Litigation

THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

MARK TOBEY
Assistant Attorney General
Deputy Chief for Antitrust

By: 
KATHERINE D. FARROBA
Assistant Attorney General
Antitrust Division
State Bar No. 06847300

Office of the Attorney General
Consumer Protection Division
Antitrust Section
P. O. Box 12548
Austin, Texas 78711-2548
512/463-2185
512/320-0975 (Facsimile)

**ATTORNEY FOR DEFENDANT
COLUMBIA/HCA HEALTHCARE
CORPORATION**

By: _____
Donald P. Fay
Vice President -- Legal
State Bar No. 06868600
STEPHEN T. BRAUN
Senior Vice President
& General Counsel
Columbia/HCA Healthcare Corporation
One Park Plaza
Nashville, Tennessee 37203

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:**ATTORNEYS FOR PLAINTIFF
THE STATE OF TEXAS**

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA HAMILTON
Deputy Attorney General for Litigation

THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

MARK TOBBY
Assistant Attorney General
Deputy Chief for Antitrust

By: _____

KATHERINE D. FARROBA
Assistant Attorney General
Antitrust Division
State Bar No. 06847300

Office of the Attorney General
Consumer Protection Division
Antitrust Section
P. O. Box 12548
Austin, Texas 78711-2548
512/463-2185
512/320-0975 (Facsimile)

**ATTORNEY FOR DEFENDANT
COLUMBIA/HCA HEALTHCARE
CORPORATION**

By: _____

Donald P. Fay
Vice President - Legal
State Bar No. 06868600
STEPHEN T. BRAUN
Senior Vice President
& General Counsel
Columbia/HCA Healthcare Corporation
One Park Plaza
Nashville, Tennessee 37203

Appendix A

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia"), a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203; and the State of Texas, by and through its Attorney General Dan Morales (the "State") (collectively, the "Parties").

PREMISES

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

WHEREAS, Columbia, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203, owns and operates, among other things, acute care hospitals within the State of Texas; and

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

WHEREAS, the State consents to entry of the attached Final Consent Judgment ("State Consent Judgment"), which would require divestiture of either Denton Regional Medical Center ("DRMC") or Denton Community Hospital ("DCH") in Denton, Texas in the event that an Agreement Containing Consent Order ("FTC Consent Order"), made by and between Columbia and the Federal

Trade Commission ("FTC"), which would require divestiture of either DRMC or DCH, does not become final for any reason within six (6) months of the date the State Consent Judgment is final; and

WHEREAS, the State is concerned that if an understanding is not reached, preserving the status quo ante of the assets and businesses of DRMC during the six-month period until and unless the FTC issues a final FTC Consent Order requiring divestiture of either DRMC or DCH or the State Consent Judgment requires divestiture, divestiture resulting from any proceeding by the State challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

WHEREAS, the State is concerned that if the Acquisition is consummated, it will be necessary to preserve the State's ability to require the divestiture of DRMC or DCH as described in Section IV. of the State Consent Judgment, and the State's right to have DRMC continue as a viable acute care hospital independent of Columbia; and

WHEREAS, the purposes of this Agreement and the State Consent Judgment are to:

- (1) preserve DRMC as a viable, competitive, and ongoing acute care hospital, independent of Columbia, pending the divestiture of either DRMC or DCH as required under the terms of the State Consent Judgment;
- (2) prevent interim harm to competition from the operation of DRMC pending the divestiture as required under the terms of the State Consent Judgment; and
- (3) remedy any anticompetitive effects of the Acquisition;

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

WHEREAS, Columbia understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the state and federal antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

NOW, THEREFORE, the Parties agree, and in consideration of the State's agreement that it will not seek further relief from Columbia with respect to the Acquisition, except that the State may exercise any and all rights to enforce this Agreement and the State Consent Judgment to which it is annexed and made a part thereof, and in the event the required divestiture of either DRMC or DCH is not accomplished, to appoint a trustee to seek divestiture of either DRMC or DCH pursuant to the State Consent Judgment, and/or to seek a court-appointed trustee, as follows:

1. Columbia agrees to execute and be bound by the attached State Consent Judgment.
2. Columbia agrees that from the date this Agreement is accepted until the day after the divestiture of either DRMC or DCH required pursuant to the State Consent Judgment or an FTC Consent Order has been completed, it will comply with the provisions of paragraph 3 of this Agreement:
3. To ensure the complete independence and viability of DRMC, and to assure that no competitive information is exchanged between Columbia and the managers of DRMC, Columbia shall hold DRMC, as it is presently constituted, separate and apart on the following terms and conditions:
 - a. DRMC, as it is presently constituted, shall be held separate and apart and shall be managed and operated independently of Columbia (meaning here and hereinafter, Columbia excluding DRMC), except to the extent that Columbia must exercise

direction and control over DRMC to assure compliance with this Agreement or the State Consent Judgment, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, Columbia shall organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the State Consent Judgment. Columbia shall transfer all ownership and control of DRMC to the New Company.

c. The board of directors of the New Company, or, in the event Columbia organizes an entity other than a corporation, the governing body of the entity ("New Board"), shall have three members. Columbia shall elect the members of the New Board. The Chairman of the New Board shall remain independent of Columbia and competent to assure the continued viability and competitiveness of DRMC. The New Board shall include no more than one member who is a director, officer, employee, or agent of Columbia (Columbia's New Board Member). Meetings of the New Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Columbia shall not exercise direction or control over, or influence directly or indirectly, DRMC, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that Columbia may exercise only such direction and control over the New

Company as is necessary to assure compliance with this Agreement or the State Consent Judgment, or with all applicable laws.

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

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

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

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

- i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraph 3.c. of this Agreement.
- j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the State Consent Judgment, Columbia shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the New Company or the activities of DRMC while operated by the New Board. Nor shall the New Company or the New Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Columbia and relating to Columbia's acute care hospitals. Columbia may receive, on a regular basis, aggregate financial information relating to the New Company necessary and essential to allow Columbia to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

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

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

m. If necessary, Columbia shall provide the New Company with sufficient working capital to operate DRMC at its current rate of operation, and to carry out any capital improvement plans for DRMC that have already been approved.

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

o. During the period commencing on the date this Agreement is effective and terminating on the date contemplated by subparagraph 2. (the "Initial Divestiture Period"), Columbia shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacement of, DRMC assets ("normal repair and placement"). Provided, however, that in any event, Columbia shall provide the New Company with such funds as are necessary to maintain the viability, competitiveness, and marketability of DRMC.

p. Columbia shall circulate, to its management employees responsible for the operation of acute care hospitals in the Denton area, a notice of this Hold Separate and State Consent Judgment in the form attached as Attachment A.

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

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

4. To the extent that this Agreement requires Columbia to take, or prohibits Columbia from taking, certain actions that otherwise may be required or prohibited by contract (other than the FTC Consent Order), Columbia shall abide by the terms of this Agreement or the State Consent Judgment and shall not assert as a defense such contract requirements in a civil penalty action brought by the State to enforce the terms of this Agreement or the State Consent Judgment.

5. For the purpose of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to Columbia made to its principal office, Columbia shall permit any duly authorized representative or representatives of the State:

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

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

Dated: April 21, 1995.

ATTORNEYS FOR
THE STATE OF TEXAS

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA HAMILTON
Deputy Attorney General for Litigation

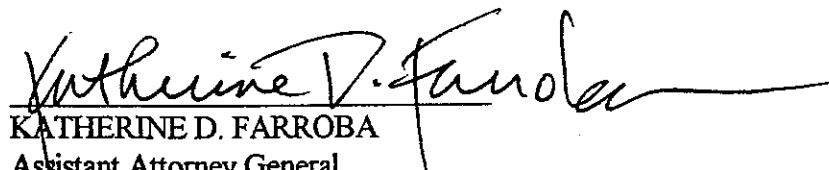
THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

MARK TOBEY
Assistant Attorney General
Deputy Chief for Antitrust

ATTORNEY FOR COLUMBIA/HCA
HEALTHCARE CORPORATION

By: _____
DONALD P. FAY
Vice President -- Legal
State Bar No. 06868600
STEPHEN T. BRAUN
Senior Vice President & General Counsel
Columbia/HCA Healthcare Corporation
One Park Plaza
Nashville, TN 37203

By:


KATHERINE D. FARROBA
Assistant Attorney General
Antitrust Division
State Bar No. 06847300

Office of the Attorney General
Consumer Protection Division
Antitrust Section
P. O. Box 12548
Austin, Texas 78711-2548
512/463-2185
512/320-0975 (Facsimile)

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

Dated: April _____, 1995.

**ATTORNEYS FOR
THE STATE OF TEXAS**

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA HAMILTON
Deputy Attorney General for Litigation

THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

MARK TOBEY
Assistant Attorney General
Deputy Chief for Antitrust

**ATTORNEY FOR COLUMBIA/HCA
HEALTHCARE CORPORATION**

By:



DONALD P. FAY
Vice President - Legal
State Bar No. 06868600
STEPHEN T. BRAUN
Senior Vice President & General Counsel
Columbia/HCA Healthcare Corporation
One Park Plaza
Nashville, TN 37203

By:

KATHERINE D. FARROBA
Assistant Attorney General
Antitrust Division
State Bar No. 00847300

Office of the Attorney General
Consumer Protection Division
Antitrust Section
P. O. Box 12548
Austin, Texas 78711-2548
512/463-2185
512/320-0975 (Facsimile)

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Columbia/HCA Healthcare Corporation has entered into a Settlement Agreement and a Final Consent Judgment and Agreement to Hold Separate with the State of Texas relating to the divestiture of certain Healthtrust and Columbia/HCA acute care hospitals or interests therein ("Assets") in Texas. The Assets which may be divested include Denton Regional Medical Center located at 4405 North Interstate 35, Denton, Texas 76207.

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

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

RELEASE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of April, 1995, by and between Plaintiff, The State of Texas (the "State"), and Defendant Columbia/HCA Healthcare Corporation ("Columbia").

WHEREAS, The State of Texas, through its Attorney General Dan Morales and his duly authorized representatives, filed its Original Petition herein against this defendant on April __, 1995, alleging violations of Section 15.05 of the Texas Free Enterprise and Antitrust Act of 1983 relating to the proposed acquisition by Columbia of all the stock of Healthtrust, Inc.--The Hospital Company; and

WHEREAS, Columbia has denied and continues to deny the allegations set forth in the State's Original Petition, as well as any liability or wrongdoing for the claims made in the lawsuit; and

WHEREAS, Columbia and the State have consented to the entry of a Final Consent Judgment herein without trial or adjudication of any issue of fact or law, and without an admission by any party in respect of any such issue; and

WHEREAS, the State and Columbia have concluded that entering into this Settlement Agreement ("Settlement") is in each party's interest, and completely resolves all disputes and differences between them relating in any way to the lawsuit or the claims asserted therein; and

WHEREAS, the settlement of this lawsuit will assure that competition is not substantially lessened in the Denton area and Corpus Christi area markets for acute care inpatient hospital services;

NOW, THEREFORE, WITNESSETH:

I. DEFINITIONS

A. "Columbia" means Columbia/HCA Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203, as well as its partnerships, joint ventures, companies,

subsidiaries, divisions, and groups and affiliates controlled by Columbia; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "Healthtrust" means Healthtrust, Inc.--The Hospital Company, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 4525 Harding Road, Nashville, Tennessee 37205, as well as its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Healthtrust; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "Acquisition" means the transaction contemplated by the October 4, 1994, agreement between Columbia and Healthtrust, whereby Columbia will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. all prepaid expenses.

I. "Alice" means Alice Physicians & Surgeons Hospital, the general acute care hospital currently owned and operated by Healthtrust at 300 East Third Street, Alice, Jim Wells County, Texas 78332.

J. "Coastal Bend" means Coastal Bend Hospital, the general acute care hospital currently owned and operated by Healthtrust at 1711 West Wheeler Street, Aransas Pass, San Patricio County, Texas 78336.

K. "Corpus Christi area" means the combined area consisting of the Texas counties of Nueces, San Patricio, Jim Wells, and Kleberg.

L. "Denton area" means the combined area consisting of the Texas counties of Denton and Cooke (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas State Highway 121).

M. "DCH" means Denton Community Hospital, the general acute care hospital currently owned and operated by Columbia at 207 North Bonnie Brae, Denton, Texas 76201, all of its Assets and Businesses, and all other related Columbia Assets and Businesses in the Denton area, of whatever nature, tangible and intangible, including without limitation the Medical Office Building at Scripture/Bonnie Brae.

N. "DRMC" means Denton Regional Medical Center, the general acute care hospital currently owned and operated by Healthtrust at 4405 North Interstate 35, Denton, Texas 76207, all of its Assets and Businesses, and all other related Healthtrust Assets and Businesses in the Denton area, of whatever nature, tangible and intangible, including without limitation: DRMC Office Building, 4401 North I-35, Denton, Texas 76207; the medical office building and vacant land at 3353 I-35E South, Denton, Texas 76107; the satellite offices operated at Denton Regional Medical Center, 1207A North Grand Avenue, Gainesville, Texas 76240; Flow Rehabilitation Hospital, 1310 Scripture, Denton, Texas 76201; Denton Regional Medical Center – Little Elm, 420 FM720 West, Suite 9, Little Elm, Texas 75068; and Professional Health Care Services, 621 Londonderry Lane, Denton, Texas 76205.

O. "Final Judgment" means a Final Consent Judgment entered by the Court after final approval by the Court of this Settlement. The Final Judgment shall be in a form substantially similar to that attached hereto as Exhibit B. The Final Judgment shall become final after entry is made and the time to appeal has expired or, if appealed, entry has been affirmed by the Court of last resort to which such an appeal has been taken and such affirmance is no longer subject to further appeal or review.

P. "FTC Consent Order" means a valid and final consent agreement made by and between Columbia and the Federal Trade Commission ("FTC") addressing the proposed acquisition of Healthtrust by Columbia.

Q. "Payor" means any third-party payor including any health maintenance organization, preferred provider arrangement or organization, managed health care network, plan, or organization of any kind, self-insured employer, Medicare, Medicaid, CHAMPUS, or other private or governmental payor, or insurance of any kind.

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

S. "Riverside" means Riverside Hospital, the general acute care hospital currently owned and operated by Healthtrust at 13725 Farm Road 624, Corpus Christi, Texas 78410.

II. SETTLEMENT

Subject to the approval of the Court, the State and Columbia agree to settle their lawsuit on the terms and conditions described in this Settlement. The State and Columbia agree to use best efforts to secure the orders and other actions contemplated in this Settlement.

III. AGREEMENT

A. Divestiture of Assets

1. Should an Agreement Containing Consent Order ("FTC Consent Order"), made by and between Columbia and the Federal Trade Commission ("FTC"), in a form which requires divestiture of either DRMC or DCH, become final within six (6) months of the date the Final Judgment is approved by the Court, the State agrees to accept compliance by Columbia with such FTC Consent Order as

substantial compliance with the terms and conditions of divestiture required in the Final Judgment, and not seek further relief from Columbia with respect to the divestiture.

2. If an FTC Consent Order, in a form which requires divestiture of either DRMC or DCH, does not become final for any reason within six (6) months of the date the Final Judgment is approved by the Court, Columbia agrees to divest, absolutely and in good faith, within eighteen (18) months after the date the Final Judgment by and between the State and Columbia in this suit becomes final, the Assets and Business of, including all improvements, additions, and enhancements made to such facilities prior to divestiture, either DRMC or DCH.

3. Columbia also agrees to divest such additional Assets and Businesses ancillary to either DRMC or DCH, and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of DRMC and DCH.

4. Columbia agrees to divest either DRMC or DCH only to an acquirer or acquirers that receive the prior approval of the State, and only in a manner that receives the prior approval of the State. If Columbia proposes to divest DCH, it agrees to provide the State with the written consent of the landlord of such facilities to the proposed assignment and divestiture at the time that State approval of the divestiture is sought. The purpose of the divestiture of either DRMC or DCH is to ensure the continuation of either DRMC or DCH, or their successors or assigns, as an ongoing, viable acute care hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the State's Original Petition.

5. Columbia further agrees to comply with all terms of the Agreement to Hold Separate ("the Hold Separate"), attached to the Final Judgment and made a part thereof as Appendix A. The Hold

Separate shall continue in effect until such time as Columbia has fulfilled the divestiture requirements by divesting either DRMC or DCH, or until such other time as the Hold Separate provides.

6. Pending divestiture of DRMC or DCH, Columbia agrees to take such actions as are necessary to maintain the present marketability, viability, and competitiveness of DRMC and DCH, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of DRMC or DCH, except for ordinary wear and tear.

7. A condition of approval by the State of the divestiture shall be a written agreement by the party or parties acquiring either DRMC or DCH that it will not sell for a period of ten (10) years from the date of the divestiture, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the State, DRMC or DCH to any other person who operates, or will operate immediately following such sale, any other acute care hospital in the Denton area.

B. Appointment of Trustee

1. Columbia agrees that, if Columbia is ordered and directed to divest either DRMC or DCH pursuant to Section IV.B. of the Final Judgment, and Columbia has not divested, absolutely and in good faith and with the prior approval of the State, either DRMC or DCH within eighteen (18) months after the date the Final Judgment becomes final, the State may appoint a trustee to divest either DRMC or DCH.

2. In the event the State brings an action for any failure to comply with the Final Judgment, Columbia agrees that it will consent to the appointment of a trustee in such action. Columbia further agrees that neither the appointment of a trustee nor a decision not to appoint a trustee under this Settlement and the Final Judgment shall preclude the State from seeking civil penalties or any other relief available to it for any failure by Columbia to comply with this Settlement and the Final Judgment.

3. If a trustee is appointed by the State or a court pursuant to this Settlement and Section V.A. of the Final Judgment, Columbia agrees to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

- a. Columbia agrees that the State shall select the trustee, subject to the consent of Columbia, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Columbia has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the State to Columbia of the identity of any proposed trustee, Columbia shall be deemed to have consented to the selection of the proposed trustee.
- b. Columbia agrees that the trustee shall have the exclusive power and authority, subject to the prior approval of the State, and also subject to Section B.3.m of this Settlement and Section V.C.13 of the Final Judgment, to divest either DRMC or DCH.
- c. Columbia agrees it will, within ten (10) days after appointment of the trustee, execute a trust agreement that, subject to the prior approval of the State, 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 Settlement and the Final Judgment.
- d. Columbia agrees that the trustee shall have twelve (12) months from the date of approval of the trust agreement described in this Settlement and Section V.B.3 of the Final Judgment to accomplish the divestiture, which shall be subject to the prior approval of the State. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the

divestiture period may be extended by the State, or by the court for a court-appointed trustee; provided, however, the State may extend this period only two (2) times.

e. Columbia agrees to provide the trustee with full and complete access to the personnel, books, records and facilities related to DRMC and DCH, or any other relevant information as the trustee may reasonably request. Columbia agrees it will develop such financial or other information as such trustee may reasonably request and agrees it will cooperate with the trustee. Columbia further agrees that it will take no action to interfere with or impede the trustee's accomplishment of the divestiture. Columbia agrees that any delays in divestiture caused by it shall extend the time for the divestiture under this Settlement and Section V. of the Final Judgment in an amount equal to the delay, as determined by the State or the court for a court-appointed trustee.

f. Subject to Columbia's absolute and unconditional obligation to divest at no minimum price, Columbia agrees that 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 State for the divestiture of either DRMC or DCH. Columbia agrees that the divestiture shall be made in the manner and to an acquirer as set forth in this Settlement and Section IV. of the Final Judgment; provided, however, that if the trustee receives *bona fide* offers from more than one acquiring entity for any one facility or asset, and if the State determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Columbia from among those approved by the State.

g. Columbia agrees that the trustee shall serve, without bond or other security, at the cost and expense of Columbia, on such reasonable and customary terms and conditions as the State

or a court may set. The trustee shall have authority to employ, at the cost and expense of Columbia, 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. Further, the trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the State 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 Columbia 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 either DRMC or DCH.

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

i. Columbia agrees that if the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Settlement and Section V. A. of the Final Judgment.

j. Columbia agrees that the State or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or

directions as may be necessary or appropriate to accomplish the divestiture required by this Settlement and the Final Judgment.

k. Columbia agrees that the trustee shall have no obligation or authority to operate or maintain DRMC or DCH.

l. Columbia agrees that the trustee shall report in writing to Columbia and to the State every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

m. In the event the FTC appoints a trustee under the FTC Consent Order after a trustee is appointed hereunder or under the Final Judgment, Columbia agrees that the trustee appointed hereunder, if different from the trustee appointed by the FTC, shall promptly execute such documents as are necessary to vest in the FTC's trustee title to DCH and DRMC, and shall deliver to the FTC's trustee all information supplied hereunder and thereafter the trustee appointed hereunder shall have no further duties or responsibilities (except to account to the State and Columbia for any actions taken or omitted to be taken during the term of his or her appointment) and his or her appointment hereunder shall cease and terminate.

C. Prior Approval of Future Acquisitions in Denton

For a period of ten (10) years from the date the Final Judgment becomes final, Columbia agrees it will not, without the prior approval of the State, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. Acquire any stock, share capital, equity, or other interest in any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in the Denton area;

2. Acquire any assets used, or previously used, in the Denton area (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in the Denton area;
3. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in the Denton area, including but not limited to, a lease of or management contract for any such acute care hospital;
4. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital in the Denton area;
5. Permit any acute care hospital it operates in the Denton area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the Denton area.

Provided, however, that such prior approval shall not be required for:

- (a) the establishment by Columbia of a new acute care hospital facility in the Denton area: (a) that is a replacement for an existing acute care hospital facility operated by Columbia, and not required to be divested by Columbia pursuant to this Settlement and the Final Judgment, in the Denton area; or (b) that is not a replacement for any acute care hospital facility in the Denton area;
- (b) any transaction otherwise subject to this Settlement and Section VI of the Final Judgment if the fair market value of (or, in case of an asset acquisition, the consideration

to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000); or

(c) the acquisition of products or services in the ordinary course of business.

D. Notification of Joint Ventures and Other Arrangements with Other Denton Area Hospitals

For a period of ten (10) years from the date the Final Judgment becomes final, Columbia agrees it will not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the State, consummate any joint venture or other arrangement with any other acute care hospital in the Denton area for the joint establishment or operation of any new acute care hospital, or any hospital, medical, surgical, diagnostic, or treatment service or facility, or part thereof in the Denton area. Columbia agrees that such advance notification shall be filed immediately upon Columbia's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

Said notification required by this Settlement and Section VII of the Final Judgment is required only of Columbia and not of any other party to the transaction.

Columbia agrees to comply with reasonable requests by the State for additional information concerning any transaction subject to this Settlement and Section VII of the Final Judgment, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Settlement and Section VII of the Final Judgment if:

1. the fair market value of the assets to be contributed to the joint venture or other arrangement by acute care hospitals not operated by Columbia does not exceed one million dollars (\$1,000,000);

2. the service, facility, or part thereof to be established or operated in a transaction subject to this Settlement and the Final Judgment is to engage in no activities other than the provision of the following services: laundry, data processing, purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or

3. prior approval by the State is required, and has been requested, pursuant to this Settlement and Section VI of the Final Judgment.

E. Agreement to Be Bound by Judgment

For a period of ten (10) years from the date the Final Judgment becomes final, Columbia agrees to require, as a condition precedent to the acquisition of all, or any substantial part of, any acute care hospital it operates in the Denton area, that the acquiring person (except a person acquiring pursuant to the divestiture required by this Settlement and Section IV. of the Final Judgment) files with the State, prior to the closing of such acquisition, a written agreement to be bound by the provisions of the Final Judgment applicable to the Denton area.

F. Adherence to Certain Terms and Conditions Regarding Corpus Christi Assets and Businesses

For a period of two (2) years following the date the Final Judgment becomes final, Columbia and its employees, agents, and representatives, agree to adhere to the following terms and conditions as to Alice, Coastal Bend, and Riverside hospitals:

1. Columbia agrees that it will not condition any agreement, understanding, contract, or other arrangement for acute care inpatient hospital services at Alice, Coastal Bend, or

Riverside on any requirement that a payor also agree to or contract for services at one or more additional Columbia hospitals in the Corpus Christi area.

2. Columbia agrees that it will not, with respect to acute care inpatient hospital services provided in the Corpus Christi area, enter into any exclusive provider agreement, understanding, contract, or other arrangement with any payor in which Columbia requires the payor to receive, render, or provide services only at an acute care hospital or hospitals owned or operated by Columbia in the Corpus Christi area, and that it will not prohibit such payor from affiliating with, by agreement, understanding, contract, or other arrangement, any other acute care hospital or hospitals.

3. As to Alice, Coastal Bend, or Riverside, Columbia agrees that it will not refuse to deal in good faith and on commercially reasonable terms and conditions with any payor solely because such payor contracts for or otherwise arranges for acute care inpatient hospital services at any acute care hospital or hospitals not owned or operated by Columbia. This provision, however, shall not be construed to require Columbia to enter into a provider agreement, understanding, contract, or other arrangement with any particular payor.

G. Notification of Corporate Changes

Columbia agrees to notify the State at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in Columbia that may affect compliance obligations arising out of this Settlement and the Final Judgment.

IV. RELEASE AND DISCHARGE

The State, in consideration of Columbia's release, as specified below, does hereby forever release, discharge and covenant not to further sue or prosecute Columbia for any antitrust claims, actions, and causes of action against Columbia arising out of the proposed acquisition of Healthtrust by Columbia specified in the claims in the State's Original Petition.

Columbia, in consideration of the State's release, does hereby forever release, discharge, and covenant not to sue or prosecute the State, its officials, employees, agents, or attorneys for any cause of action arising out of or relating in any way to the State's Original Petition, or the State's related investigation.

V. COURT APPROVAL, IMPLEMENTATION, INTERPRETATION, AND MODIFICATION OF SETTLEMENT AGREEMENT AND FINAL CONSENT JUDGMENT

A. The parties shall apply to the Court for approval of this Settlement and a Final Judgment in the form attached hereto as Exhibit B as soon as practicable after the execution of this Settlement. The parties to this settlement agreement shall have the obligation to defend vigorously this settlement against any and all objections or challenges.

B. The parties agree to cooperate fully to implement the terms and conditions of this Settlement.

C. The parties agree that a final judgment substantially in the form attached to this Settlement as Exhibit B may be entered by the Court.

D. The parties agree that this Settlement and the attached Exhibit B contain their entire agreement and understanding. There are no additional promises or terms of the agreement other than those so described herein. This Settlement shall not be modified except in writing signed by each of the parties hereto or by their authorized representatives. This Settlement may be executed in multiple original counterparts.

04/21/95

09:55

TX ANTITRUST DIV FAX 512-4435582

1002

H. This Settlement shall become effective when executed by all of the parties.

IN WITNESS WHEREOF, the parties have duly executed this settlement agreement on this

____ day of April, 1995.

THE STATE OF TEXAS

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA HAMILTON
Deputy Attorney General for Litigation

THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

MARK TOBEY
Assistant Attorney General
Deputy Chief for Antitrust

By: _____

KATHERINE D. FARROBA
Assistant Attorney General
Antitrust Division
State Bar No. 06847300

Office of the Attorney General
Consumer Protection Division
Antitrust Section
P. O. Box 12548
Austin, Texas 78711-2548
512/463-2185
512/320-0975 (Facsimile)

COLUMBIA/HCA HEALTHCARE CORPORATION

By: _____

Donald P. Fay
Vice President - Legal
State Bar No. 06868600
STEPHEN T. BRAUN
Senior Vice President
& General Counsel
Columbia/HCA Healthcare Corporation
One Park Plaza
Nashville, Tennessee 37203

E. This Settlement shall become effective when executed by all of the parties.

IN WITNESS WHEREOF, the parties have duly executed this settlement agreement on this
_____ day of April, 1995.

THE STATE OF TEXAS

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA HAMILTON
Deputy Attorney General for Litigation

THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

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By: _____

KATHERINE D. FARROBA
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State Bar No. 06847300

Office of the Attorney General
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**COLUMBIA/HCA HEALTHCARE
CORPORATION**

By: _____

Donald P. Fay
Vice President -- Legal
State Bar No. 06868600
STEPHEN T. BRAUN
Senior Vice President
& General Counsel
Columbia/HCA Healthcare Corporation
One Park Plaza
Nashville, Tennessee 37203