transactions entered into in the ordinary course of business.

V

It is further ordered That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until BAT and B&W have fully complied with the provisions of Paragraphs II and III of this order, BAT and B&W shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this order. BAT and B&W shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. BAT and B&W shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

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

VI

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

VII

It is further ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, BAT and B&W shall permit any duly authorized representative of the Commission:

A. Upon written notice to counsel, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other

records and documents in the possession or under the control of BAT and B&W relating to any matters contained in this order; and

B. Upon five days' written notice to counsel and without restraint or interference from BAT and B&W, to interview officers, directors, or employees of BAT and B&W, who may have counsel present.

## Appendix I

## **Preservation Agreement**

This Preservation Agreement is by and between B.A.T. Industries p.l.c., a public limited company incorporated under the laws of England, with its headquarters and principal place of business located at Windsor House, 50 Victoria Street, London, England, SW1H ONL ("BAT"), Brown & Williamson Tobacco Corporation, a corporation incorporated under the laws of the State of Delaware with its headquarters and principal place of business located at 1500 Brown & Williamson Tower, PO Box 35090, Louisville, Kentucky ("B&W"), and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq.

## **Premises for Agreement**

Whereas, BAT pursuant to an agreement dated April 26, 1994, agreed to purchase substantially all of the outstanding stock of the American Tobacco Company ("ATC"), a whole owned subsidiary of American Brands, Inc.; and

Whereas, the Commission has reason to believe that the agreement would violate section 5 of the Federal Trade Commission Act, and that, if consummated, would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, statutes enforced by the Commission, and the Commission has issued its administrative complaint challenging the agreement; and

Whereas, if the parties accept the attached Agreement Containing Consent Order ("Consent Agreement"), the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of § 3.25(f) of the Commission's rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the Reidsville Assets and the ATC Brands Assets during the period prior to final acceptance of the Order by the

Commission (after the 60-day comment period), any divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the continued viability and marketability of the Reidsville Assets and the ATC Brands Assets, as defined in the Consent Agreement; and

Whereas, the purpose of this Preservation Agreement and of the Consent Agreement is to preserve the Reidsville Assets and the ATC Brands Assets until the date this Order becomes final, in order to remedy any anticompetitive effects of the acquisition; and

Whereas, BAT's and B&W's entering into this Preservation Agreement shall in no way be construed as an admission by BAT and B&W that the acquisition is anticompetitive or illegal; and

Whereas, BAT and B&W understand that no act or transaction contemplated by this Preservation Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Preservation Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Agreement, it will not seek further relief from the parties with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Preservation Agreement, and the Consent Agreement to which this Preservation Agreement, is annexed and made a part thereof, and the final order in this proceeding, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek the divestiture of the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets as provided in the Consent Agreement, the parties agree as follows:

## **Terms of Agreement**

1. BAT and B&W agree to execute, and upon its issuance, to be bound by the attached Consent Agreement.

2. BAT will be free to close the acquisition with American Brands immediately after the Commission's approval of the Consent Agreement for placement on the public record for comment.

3. BAT and B&W agree that from the date this Preservation Agreement is signed by BAT and B&W until the earliest of the dates listed in subparagraphs 3.a and 3.b they will