IN THE MATTER OF **SETTLEMENT AGREEMENT**

M and J Food Stores Inc.
d/b/a M & J Food Mart Inc.,
Oakley Quick Stop, M & J #3
and M & J #3 Oakley

This Settlement Agreement (hereinafter "Agreement") is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter "Attorney General"), and M and J Food Stores Inc. d/b/a M & J Food Mart Inc., Oakley Quick Stop, M & J #3 and M & J #3 Oakley (hereinafter "M & J").

I. FACTUAL BACKGROUND

1. M & J is a corporation formed and existing under the laws of the State of North Carolina.
2. M & J operates a BP brand retail gasoline outlet located at 615 Swannanoa River Road in Asheville, North Carolina.
3. On September 12, 2008, Governor Michael F. Easley declared the existence of an "abnormal market disruption" pursuant to G.S. § 75-38 (hereinafter the "Declaration"). Such a Declaration is intended to prevent sellers of goods and services from charging "unreasonably excessive" prices for those goods or services under the conditions outlined in the statute.
4. The Attorney General received numerous allegations of unreasonably excessive pricing following the Declaration and undertook an investigation. At the request of the Attorney General, M & J provided information concerning its costs, pricing and sales volume for the period prior to and following the Declaration.

5. In the retail gasoline industry, "laid-in cost" means the rack (or terminal) price charged to the retail outlet. The laid–in cost includes the wholesale price of the gasoline, all taxes and fees, and the cost of freight or delivery.

REGULAR GASOLINE

6. On September 10, 2008, M & J received a shipment of regular gasoline with a laid-in cost of $3.4216 per gallon. On September 10 and 11, 2008, M & J charged $3.699 per gallon for its regular gasoline. The gross margin on regular gasoline on September 10 and 11, 2008 was $0.28 per gallon, an 8% mark up.

7. On September 12, 2008, M & J charged $3.779 per gallon for its regular gasoline. The gross margin on regular gasoline on September 10 and 11, 2008 was $0.36 per gallon, a 10% mark up.

8. On September 13, 2008 the regular gasoline purchased for $3.4216 per gallon was sold for $4.999 per gallon. The margin on regular on September 13, 2008 was $1.58 per gallon, a 46% mark up. M & J sold 996.26 gallons of regular gasoline on September 13, 2008.

9. On September 14, 2008 on or about 10:30 a.m. M & J received a shipment of regular unleaded gasoline at a laid-in cost of $3.8651 per gallon.

10. During the first shift on September 14, 2008 the regular gasoline that M & J purchased at a weighted average price of $3.750 per gallon was sold for $4.999 per gallon. The margin on regular on September 14, 2008 was $1.249 per gallon, a 33% mark-up. M & J sold 814.19 gallons of regular gasoline during the first shift on September 14, 2008.

11. During at least part of the second shift on September 14, 2008 the regular gasoline that purchased that day at a price of $3.8651 per gallon was sold for $4.999 per gallon. The margin on regular on September 14, 2008 was $1.1339 per gallon, a 29% mark-up. M & J sold 1,219.548 gallons of regular gasoline during the second shift on September 14, 2008.

MID-GRADE GASOLINE

12. The mid-grade gasoline sold at M & J is a blend of regular and premium gasoline. The blended laid-in cost for the mid-grade gasoline from September 10 through September 13, 2008 was $3.494 per gallon. On September 10 and 11, 2008 the mid-grade gasoline purchased for $3.494 per gallon was sold for $3.799 per gallon. The margin on mid-grade gasoline on September 9, 2008 was $0.305 per gallon, a 9% mark-up. On September 12, 2008 the mid-grade gasoline purchased for $3.494 per gallon was sold for $3.879 per gallon. The margin on mid-grade gasoline on September 12, 2008 was $0.385 per gallon, an 11% mark-up.

13. On September 13, 2008 the mid-grade gasoline that M & J purchased for $3.494 per gallon was sold for $4.999 per gallon. The margin on mid-grade gasoline on September 13, 2008 was $1.505 per gallon, a 43% mark-up. M & J sold 173.38 gallons of mid-grade gasoline on September 13, 2008.

PREMIUM GASOLINE

14. On September 10, 2008, M & J received a shipment of premium gasoline with a laid-in cost of $3.6296 per gallon. On September 10 through 12, 2008, M & J's margin on the

premium gasoline it received on September 11, 2008 was $0.3694 per gallon, for a mark-up of 10%.

15. On September 13, 2008, the premium gasoline purchased for $3.6296 per gallon was sold for $4.999 per gallon. The margin on premium gasoline on September 12, 2008 was $1.3694 per gallon, a 38% mark-up. M & J sold 1,136.27 gallons of premium on September 13, 2008.

ON-ROAD DIESEL

16. On August 27, 2008, M & J received a shipment of on-road diesel fuel with a laid-in cost of $3.9671 per gallon. From September 10 through 12, 2008, M & J sold the on-road diesel fuel it received on August 27, 2008 for $4.299 per gallon, for a margin of $0.3319 and a mark-up of 8%.

17. On September 13 through 15, 2008, the on-road diesel fuel purchased for $3.9671 per gallon was sold for $4.699 per gallon. The margin for on-road diesel fuel on September 13, 2008 was $0.6345 per gallon, a 18% mark-up. M & J sold 115.66 gallons of on-road diesel fuel on September 13 through 15, 2008.

****

18. The Attorney General contends that the prices charged for all gasoline by M & J after the Declaration constituted unreasonably excessive prices for the time period of:

(A) September 13 and 14, 2008 for regular gasoline;

(B) September 13 for mid-grade and premium gasoline; and

(B) September 13 through 15, 1008 for on-road diesel fuel.

These periods of time for each type of product are hereinafter referred to as "the relevant time period."

19. The Attorney General contends that M & J overcharged consumers during the relevant time period to the extent that the margin charged per gallon of product was:

(A) more than $0.36 per gallon for regular gasoline;

(B) more than $0.385 per gallon for mid-grade gasoline;

(C) more than $0.3694 per gallon for premium gasoline; and

(D) more than $0.3319 per gallon for on-road diesel fuel.

20. During the relevant time period, the Attorney General contends that M & J overcharged consumers:

(A) $2,887.26 for regular gasoline;

(B) $194.19 for mid-grade gasoline;

(C) $1,136.27 for premium gasoline; and

(D) $35.00 for on-road diesel fuel.

The total overcharges alleged by the Attorney General for the relevant time periods for all types of petroleum products sold are $4,252.72.

II. SETTLEMENT PROVISIONS

21. M & J shall make restitution to consumers in the sum of $4,252.72, which represents the number of gallons of each type of petroleum product sold during relevant time period times the amount per gallon that the Attorney General contends was the unreasonably excessive overcharge for each grade. Said restitution will be distributed in the following manner:

a. By no later than December 31, 2008, M & J shall identify all credit and debit card customers who purchased gasoline during the relevant time period and credit a refund to their credit or debit cards for the appropriate amount of the overcharge. The per gallon overcharge to consumers is the amount per gallon paid by the consumer minus the allowed margin for each petroleum product as listed in paragraph 18. M & J shall refund the same amounts per gallon to every consumer who presents, within thirty (30) days of the execution of this Agreement, a cash receipt or other proof of purchase demonstrating a purchase within the relevant time frame.

b. In instances when the fact of a consumer's purchase of an affected motor fuel during the relevant time has been established, but the grade and/or price of the motor fuel cannot be determined, M & J shall provide the refund based on the weighted average of affected motor fuel prices, as follows:

i. On September 13: $1.10;

ii. On September 14, a.m.: $.89;

iii. On September 14, p.m.: $.76.

c. Within sixty (60) days of the execution of this Agreement, M & J shall provide the Attorney General with a sworn accounting of all refunds made pursuant to paragraph 20(a). The accounting shall include a copy of the data provided by M & J's merchant bank showing the amount of refund to each consumer. Contemporaneously with the accounting, M & J shall pay to the Attorney General the difference between $4,252.72 and the amount the accounting shows was distributed to consumers. This payment shall be made to the Attorney General via a certified check made payable to the "North Carolina Department of Justice." The Attorney General shall provide this amount to the Low Income Heat and Energy Assistance Program (LIHEAP) to be used for energy assistance in the county where the overcharges occurred.

22. M & J shall pay to the Attorney General $5,000.00 as a civil penalty pursuant to N.C. Gen. Stat. § 75-15.2, and $425.27 for the Department of Justice's investigative costs, in installments, as follows:

    a. $1,808.42 by January 30, 2009;

    b. $1,808.42 by February 27, 2009; and

    b. $1,808.42 by March 31, 2009.

    These payments shall be made to the Attorney General via certified checks made payable to the "North Carolina Department of Justice."

23. M & J acknowledges that it is fully aware of the terms of N.C. Gen. Stat. § 75-38, a copy of which is attached hereto as "Attachment A," and agrees to abide by the statute in all future business transactions.

24. By executing this Agreement, and in consideration of M & J's undertakings set forth herein, the Attorney General agrees not to institute any suit or enforcement proceeding against M & J with respect to alleged unreasonably excessive pricing during the relevant time period at the facility identified in paragraph 2. M & J, however, acknowledges that this Agreement is based upon information that it has provided to the Attorney General. If any of the information provided to the Attorney General by M & J is shown to be false or

incomplete, the Attorney General shall retain the right to pursue legal action concerning overcharges at M & J based on additional information. The Attorney General further retains the right to pursue legal action concerning overcharges at any other location owned or operated by M & J.

25. Should M & J fail to comply with any of the provisions of this Agreement, it agrees to pay a stipulated penalty of $5,000.00 per violation.

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS MATTER, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING SETTLEMENT AGREEMENT.

Signed this _____ of 11-26-, **2008.**

M and J Food Stores Inc.

By: Medhat Salameh
Medhat Salameh
Owner/President

ROY COOPER
Attorney General

By:
K. D. Sturgis
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Tel. 919.716.6011
Kstargis@ncdoj.gov

Attachment A

§ 75-38. Prohibit excessive pricing during states of disaster, states of emergency, or abnormal market disruptions

(a) Upon a triggering event, it is prohibited and shall be a violation of *G.S. 75-1.1* for any person to sell or rent or offer to sell or rent any goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the triggering event.

(2) The price charged by the seller exceeds the seller's average price in the preceding 60 days before the triggering event. If the seller did not sell or rent or offer to sell or rent the goods or service in question prior to the time of the triggering event, the price at which the goods or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(3) The price charged by the seller is attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section.

(c) For the purposes of this section, the end of a triggering event is the earlier of 45 days after the triggering event occurs or the expiration or termination of the triggering event unless the prohibition is specifically extended by the Governor.

(d) A "triggering event" means the declaration of a state of emergency pursuant to *G.S. 166A-8* or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to *G.S. 166A-6*, or a finding of abnormal market disruption pursuant to *G.S. 75-38(e)*.

(e) An "abnormal market disruption" means a significant disruption, whether actual or imminent, to the production, distribution, or sale of goods and services in North Carolina, which are consumed or used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being of a person or his or her property. A significant disruption may result from a natural disaster, weather, acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency, or other extraordinary adverse circumstances. A significant market disruption can be found only if a declaration of a state of emergency, state of disaster, or similar declaration is made by the President of the United States or an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory System is made by the Department of Homeland Security, whether or not such declaration or issuance applies to North Carolina.

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period.