

Complaint

IN THE MATTER OF

**PILOT CORPORATION, PROPELLER
CORPORATION, AND FLYING J INC.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket No. C-4293; File No. 091 0125

Complaint, June 29, 2010 — Decision, November 15, 2010

The consent order addresses allegations that the acquisition by Pilot Corporation (“Pilot”) of Flying J Inc.’s travel center businesses would result in higher diesel fuel prices for long-haul trucking fleets. The consent order requires Pilot to divest the travel centers to Love’s Travel Stops and Country Stores (“Love’s”) and to provide Love’s access to and use of a fuel purchase card system that Pilot acquired; to continue operating Wendy’s restaurants affiliated with certain divested travel centers for one year; to provide Love’s with business information related to the travel centers being divested; and to maintain the travel centers as viable businesses pending divestiture. The consent order further permits the Commission to appoint a trustee to oversee the divestiture, if necessary.

Participants

For the *Commission*: Karen Kazmerzak, Mary N. Lehner, Justin Stewart-Teitelbaum, Terry Thomas, Cathlin Tully, and Josie M. Williams.

For the *Respondents*: Marimichael O. Skubel, Kirkland and Ellis LLP; and Rebecca Farrington and George L. Paul, White and Case LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Respondents Pilot Corporation and Propeller Corp. (collectively, “Pilot”), and Flying J Inc. have entered into acquisition agreements which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and

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it appearing to the Federal Trade Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS AND JURISDICTION

1. Pilot Travel Centers LLC is the largest travel center operator in the United States. Pilot Travel Centers LLC is a privately held, for-profit limited liability company. It is organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 5508 Lonas Drive, Knoxville, Tennessee 37909. Pilot Travel Centers LLC operates in 39 U.S. states.

2. Respondent Pilot Corporation holds 52.5 percent of the non-corporate interests of Pilot Travel Centers LLC and a right to 50 percent representation on Pilot Travel Centers LLC's Board of Managers. Pilot Corporation and Respondent Propeller Corp. share control over Pilot Travel Centers LLC equally. Pilot Corporation is a privately held, for-profit corporation. It is organized, existing, and doing business under and by virtue of the laws of Tennessee, with its headquarters and principal place of business at 5508 Lonas Drive, Knoxville, Tennessee 37909.

3. Respondent Propeller Corp. holds 47.5 percent of the non-corporate interests of Pilot Travel Centers LLC and a right to 50 percent representation on Pilot Travel Centers LLC's Board of Managers. Pilot Corporation and Propeller Corp. share control over Pilot Travel Centers LLC equally. Propeller Corp. is a for-profit corporation, privately held in its entirety by five stockholders managed by CVC European Equity V Limited and three stockholders managed by CVC European Equity Tandem Fund Limited. Propeller Corp. is organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 712 5th Avenue, 43rd Floor, New York, New York 10019.

4. Pilot Corporation, Propeller Corp., and their relevant operating entities are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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5. Respondent Flying J Inc., a privately held, for-profit corporation, is a fully integrated oil company with operations throughout the United States and Canada. It is organized, existing, and doing business under and by virtue of the laws of Utah, with its headquarters and principal place of business at 1104 Country Hills Drive, Ogden, Utah 84403. Flying J Inc. owns and operates, among other things, travel center, trucking, fuel card, and related businesses, the interests and assets of which Pilot proposes to acquire (the assets, stock, and other interests to be acquired, collectively, “Flying J”). Flying J Inc. operates in more than 40 U.S. states. Flying J Inc., its wholly-owned subsidiary, and wholly-owned subsidiaries of ConocoPhillips jointly control the CFJ Entities.

6. The CFJ Entities own Flying J-branded travel centers operated by Flying J Inc. in 36 U.S. states. The CFJ Entities consist of: (1) CFJ Properties, a general partnership that is 50% owned by wholly-owned subsidiaries of ConocoPhillips and 50% owned by a wholly-owned subsidiary of Flying J Inc.; (2) CFJ I Management Inc., CFJ II Management Inc., and CFJ III Management Inc. (“CFJ Management Companies”), each of which is 50% owned by a wholly-owned subsidiary of ConocoPhillips and 50% owned by Flying J Inc.; and (3) CFJ Plaza Company I LLC, CFJ Plaza Company II LLC, and CFJ Plaza Company III LLC, each of which is 49.5% owned by a wholly-owned subsidiary of ConocoPhillips, 49.5% owned by Flying J Inc., and 1% owned by its corresponding CFJ Management Company.

7. Flying J Inc. and its relevant operating subsidiaries are, and at all relevant times have been, engaged in activities in or affecting “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

8. Pursuant to agreements dated December 18, 2009, Pilot intends to acquire the interests and assets of Flying J’s travel center and related businesses for approximately \$1.8 billion.

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III. THE RELEVANT MARKETS

9. The relevant product market in which to analyze the proposed acquisition is the over-the-road sale of diesel to long-haul fleets by national travel center operators.

10. Travel centers provide locations for long-haul trucks to fuel and serve as the long-haul driver's home away from home, offering amenities including parking for tractor-trailers, truck service centers, truck washes, certified automated truck scales, fast food restaurants, shower facilities, internet access, and financial services for drivers.

11. Today, four travel center operators – Pilot, Flying J, TravelCenters of America (“TA”), and Love’s Travel Stops and Country Stores (“Love’s”) (collectively, “national travel center operators”) – have the scale and scope to compete for any substantial portion of long-haul over-the-road diesel business. Pilot and Flying J are the first and second choices for a number of long-haul fleets.

12. The relevant geographic market in which to analyze the proposed transaction is the contiguous United States. National travel center operators can and do negotiate blanket minimum national discounts with long-haul fleets.

IV. ENTRY CONDITIONS

13. Post-acquisition, entry or expansion into the relevant market would not be timely, likely, and sufficient in scope to deter or negate the anticompetitive effects of the proposed acquisition.

V. ANTICOMPETITIVE EFFECTS

14. The acquisition may substantially lessen competition in the relevant market by, among other things: (a) eliminating actual, direct, and substantial competition between Pilot and Flying J; and (b) increasing the likelihood that Pilot will exercise market power unilaterally.

VI. VIOLATIONS CHARGED

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15. The agreements described in Paragraph 8 constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

16. The acquisition described in Paragraph 8, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of June, 2010, issues its Complaint against Respondents.

By the Commission, Commissioner Brill not participating.

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The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Pilot Corporation (“Pilot”) and Propeller Corp. (“Propeller”), of certain Flying J Inc. (“Flying J”) (collectively, “Respondents”) assets, stock, and other interests (collectively, “Flying J Assets”), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid

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draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, and having modified the Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Pilot is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its headquarters address at 5508 Lonas Drive, Knoxville, Tennessee 37909.
2. Respondent Propeller is a privately held corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 712 5th Avenue, 43rd Floor, New York, New York 10019.
3. Respondent Flying J is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its headquarters address at 1104 Country Hills Drive, Ogden, Utah 84403.
4. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

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ORDER**I.**

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. “Pilot” means Pilot Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pilot (including, but not limited to, Pilot Travel Centers LLC and CTP Holdings LLC), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Propeller” means Propeller Corp., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Propeller (including, but not limited to, Pilot Travel Centers LLC and CTP Holdings LLC), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- C. “Flying J” means Flying J Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Flying J (including, but not limited to, Travel Plaza LLC and TCH LLC), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- D. “Respondent(s)” means Pilot, Propeller, and Flying J, individually and collectively.
- E. “Commission” means the Federal Trade Commission.

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- F. “Acquirer(s)” means the following:
1. Love’s; or
 2. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- G. “Acquisition” means the acquisition of the Flying J Assets by Pilot and Propeller as contemplated by the Acquisition Agreements.
- H. “Acquisition Agreements” means:
1. Contribution Agreement by and among Pilot Travel Centers LLC, Flying J Inc., and Pacific Sunstone Inc., dated December 18, 2009, and all attachments, amendments, exhibits, and schedules related thereto; and
 2. Purchase Agreement by and among Pilot Travel Centers LLC, Douglas Oil Company of California, Kayo Oil Company, and ConocoPhillips Company, dated December 18, 2009, and all attachments, amendments, exhibits, and schedules related thereto.
- I. “Acquisition Date” means the date on which the Acquisition occurs pursuant to the Acquisition Agreements.
- J. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, development, manufacture, marketing, distribution, or sale of a diesel fuel. The term “Agency” includes, without limitation, the United States Environmental Protection Agency (“EPA”).

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- K. “Closing Date” means the date on which the Respondents (or a Divestiture Trustee) consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets or rights related to the Travel Center Businesses Assets to an Acquirer pursuant to this Order.
- L. “Confidential Business Information” means all information owned by, or in the possession or control of, a Respondent that is not in the public domain and that is directly related to the operation and management of a Travel Center Business including, but not limited to, information related to the cost, supply, sales, sales support, distribution and marketing of diesel fuel to long-haul fleets; *provided, however*, this provision shall not include information that subsequently falls within the public domain through no violation of this Order; *provided further, however*, this provision shall not include information related to pricing.
- M. “Dealer Agreement” means any agreement between Respondent(s) Pilot and/or Propeller and any Third Party travel center owner or operator whereby Respondent(s) Pilot and/or Propeller lease(s) diesel fuel dispensers and related equipment in exchange for a fee paid to the Third Party.
- N. “Diesel Agreement Information” means information related to a Dealer Agreement or a Travel Center Acquisition Agreement including, but not limited to, the site location, counter-party contact information (including contact name and telephone number), contract pricing, agreement term, a copy of the final executed Dealer Agreement or Travel Center Acquisition Agreement, and all other ancillary agreements related thereto.
- O. “Diesel Agreement Summary Report” means a listing of all Dealer Agreement(s) and Travel Center Acquisition Agreement(s) entered into between

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Respondent(s) Pilot and/or Propeller and a Third Party from the Acquisition Date (or the date the last Diesel Agreement Summary Report was filed) and all relevant Diesel Agreement Information.

- P. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service.
- Q. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- R. “Geographic Territory” means the contiguous United States of America.
- S. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order.
- T. “Love’s” means Love’s Travel Stops & Country Stores, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its headquarters address at 10601 N. Pennsylvania Ave, Oklahoma City, Oklahoma 73120.
- U. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders in this matter.
- V. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or government entity, and any subsidiaries, divisions, groups or affiliates thereof.
- W. “Remedial Agreement(s)” means:
 - 1. any agreement between Respondent(s) and an Acquirer that is specifically referenced and attached to this Order, including all amendments,

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exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final; and/or

2. any agreement between Respondent(s) and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order.
- X. "TCH Customer Confidential Business Information" means the confidential and/or proprietary information belonging to either (1) the Acquirer or (2) a Third Party that is gathered pursuant to a TCH Merchant Agreement (or any agreement whereby TCH grants a Third Party access to its TCH Fuel Card Payment System) including, but not limited to, the identity of merchant's customers, the location of customer purchases, products or services purchased or sold, prices of products or services, volumes of diesel, discounts, and other transaction terms; *provided, however*, this provision shall not include information already within the public domain or that subsequently falls within the public domain through no violation of this Order.
- Y. "TCH Executive Board" means those persons appointed to the TCH LLC board of directors or executive committee by either Respondents Pilot or Flying J.

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- Z. “TCH Firewall Protocol” means the firewall contemplated in Paragraph II.D of this Order.
- AA. “TCH Fuel Card System” means the Transportation Clearing House Fuel Card payment system.
- BB. “TCH Merchant Agreement” means:
1. the TCH Merchant Agreement between TCH LLC and Love’s, dated May 19, 2010, and any attachments, amendments, exhibits, and schedules related thereto. This TCH Merchant Agreement is attached to this Order and contained in non-public Appendix III; or
 2. any agreement that receives the prior approval of the Commission between Respondents (or a Divestiture Trustee) and an Acquirer for access and use of the TCH Fuel Card System for a period of three (3) years from the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto.
- CC. “Third Party(ies)” means any non-governmental Person other than Respondents or the Acquirer.
- DD. “Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Travel Centers Businesses Assets.
- EE. “Travel Center Acquisition Agreement” means any agreement between Respondent(s) Pilot and/or Propeller and any Third Party for the acquisition of any stock, share capital, equity, or other ownership interest in a travel center.
- FF. “Travel Center(s) Business(es)” means the business of operating a travel center at the locations identified in Appendix I of this Order, including, without limitation,

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the distribution, marketing, promotion and sale of all products and services offered at such locations.

GG. “Travel Center(s) Business(es) Assets” means all of Respondents’ rights, title and interest in and to, all assets used in the Travel Centers Business to the extent legally transferable including, without limitation:

1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. at the Acquirer’s option, all machinery, fuel equipment, tools, furniture, fixtures, office equipment, computer hardware, point-of-sale terminal systems, supplies, materials, billboards, and other items of tangible personal property (other than inventories) of every kind owned or leased by a Respondent, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto;
3. all consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any Agency or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
4. all Third Party agreements related to the operation or management of a business affiliated with a Travel Center Business; *provided, however*, this provision shall not include Third Party agreements that the Acquirer elects to decline;

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5. all inventories including, but not limited to, petroleum inventory;
 6. at the Acquirer's option, a license to all Respondents' Trademarks for transitional purposes of up to thirty (30) days from the Closing Date; and
 7. all of Respondents' books and records, customer files, customer lists and records, vendor files, vendor lists and records, cost files and records, credit information, distribution records, business records and plans, studies, surveys, and files related to the foregoing.
- HH. "Travel Centers Businesses Divestiture Agreement" means:
1. the Asset Purchase Agreement by and between Pilot Travel Centers LLC and Love's Travel Stops & Country Stores, Inc., dated June 10, 2010, and any attachments, amendments, exhibits, and schedules related thereto. This Asset Purchase Agreement is attached to this Order and contained in non-public Appendix II; or
 2. any agreement that receives the prior approval of the Commission between Respondents (or a Divestiture Trustee) and an Acquirer for the divestiture of the Travel Centers Businesses Assets entered into pursuant to Paragraph II.A (or Paragraph IV) of this Order, and any attachments, amendments, exhibits, and schedules related thereto.
- II. "Travel Center(s) Business(es) Employee(s)" means all employees of Respondent Pilot, including the Travel Centers Businesses Key Employees, who are currently working at a relevant Travel Center Business, or who have, within the twelve (12) months prior to the Closing Date, worked at a relevant Travel Center Business; *provided, however*, this provision

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does not include Respondent Pilot's employees affiliated with the Wendy's Restaurants.

JJ. "Travel Center(s) Business(es) Key Employee(s)" means employees of Respondent Pilot who are designated as a general manager or a restaurant general manager of a Travel Center Business; *provided, however*, this provision does not include Respondent Pilot's employees affiliated with the Wendy's Restaurants.

KK. "Wendy's Operating Agreement" means:

1. the Master Lease and Operating Agreement entered into by and between Pilot and Love's, dated June 10, 2010, and any attachments, amendments, exhibits, and schedules related thereto. This Wendy's Operating Agreement is attached to this Order and contained in non-public Appendix IV; or
2. any agreement that receives the prior approval of the Commission between Respondents (or a Divestiture Trustee) and an Acquirer for the management and operation of the Wendy's Restaurants affiliated with the Travel Centers Businesses.

LL. "Wendy's Restaurants" means the six (6) fast food service facilities affiliated with the Travel Centers Businesses operating under the Wendy's brand name.

II.

IT IS FURTHER ORDERED that:

A. Not later than one (1) day after the Acquisition Date, Respondents Pilot and Propeller shall divest the Travel Centers Businesses Assets, absolutely and in good faith, to Love's pursuant to, and in accordance with, the Travel Centers Businesses Divestiture Agreement

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(which agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Love's or to reduce any obligations of Respondents under such agreement), and such agreement, if it becomes a Remedial Agreement related to the Travel Centers Businesses Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents Pilot and Propeller have divested the Travel Centers Businesses Assets to Love's prior to the date the Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Love's is not an acceptable purchaser of the Travel Centers Businesses Assets, then Respondents shall immediately rescind the transaction with Love's, in whole or in part, as directed by the Commission, and shall divest the Travel Centers Businesses Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents Pilot and Propeller have divested the Travel Centers Businesses Assets to Love's prior to the date the Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Travel Centers Businesses Assets to Love's (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

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- B. Prior to divesting the Travel Centers Businesses Assets, Respondents Pilot and Propeller shall secure all consents and waivers from all Third Parties (including, without limitation, all landlords) that are necessary to permit Respondents to divest the Travel Centers Businesses Assets to the Acquirer, and/or to permit such Acquirer to continue the operations of the Travel Centers Businesses at those respective locations; *provided, however*, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.
- C. At the Acquirer's option and upon reasonable notice, Respondents shall provide the Acquirer non-discriminatory access and use of the TCH Fuel Card System for a period of up to three (3) years pursuant to a TCH Merchant Agreement.
- D. Respondents shall, within ten (10) days of the date this Order becomes final, develop and implement a TCH Firewall Protocol whereby:
 - 1. Respondents' employees affiliated with the TCH Fuel Card System are prohibited from providing TCH Customer Confidential Business Information to either the TCH Executive Board or to Respondents' employees not affiliated with the TCH Fuel Card System; and
 - 2. Respondent Pilot shall appoint an internal compliance officer who will be responsible for assuring that the TCH Firewall Protocols are complied with and who will report to the Commission pursuant to the reporting obligations pursuant to Paragraph VI.D or as requested by Commission staff.
- E. For a period of one (1) year, Respondent Pilot shall manage and operate the Wendy's Restaurants pursuant to a Wendy's Operating Agreement.

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- F. At the Acquirer's option, and upon reasonable notice and request, Respondent Pilot shall provide, for a period no longer than six (6) months after the Closing Date, at no greater than Direct Cost, assistance from knowledgeable employees of Respondent Pilot in the transfer of the Travel Centers Businesses from Respondents to the Acquirer in a timely and orderly manner.
- G. For a period of six (6) months after the Closing Date and within ten (10) days of request by an Acquirer, Respondent Pilot shall, to the extent permitted by law, provide to such Acquirer or proposed Acquirer, the following information regarding each Travel Center Business Employee whose duties relate to a Travel Center Business:
1. name, job title or position, date of hire, and effective service date;
 2. a specific description of the employee's responsibilities;
 3. the base salary or current wages;
 4. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, value of vested and unvested deferred compensation including when any unvested portions are due to vest, and current target or guaranteed bonus, if any;
 5. employment status (i.e., active or on leave or disability; full-time or part-time);
 6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

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7. at the option of the Acquirer, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- H. For a period of one (1) year from the Closing Date, Respondents Pilot and Propeller shall not interfere with the hiring or employing by the Acquirer of the related Travel Centers Businesses Employees, and shall remove any contractual impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondents that would affect the ability of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Travel Center Business Employee who receives a written offer of employment from such Acquirer; *provided, however*, this Paragraph shall not prohibit Respondents from continuing to employ any Travel Center Business Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.
- I. Respondent Pilot shall provide reasonable financial incentives to the Travel Centers Businesses Employees as needed to facilitate the employment of such employees by the Acquirer.
- J. For a period of six (6) months from the Closing Date, Respondents Pilot and Propeller shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Travel Center Business Employee(s) who have accepted offers of employment with an Acquirer, to terminate their employment relationship with the Acquirer; *provided, however*, a violation of this provision will not occur if: (1) the Travel Center Business Employee's employment has been terminated by an Acquirer; (2) Respondents advertise for

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employees in newspapers, trade publications, or other media not targeted specifically at such Travel Center Business Employee(s); or (3) a Travel Center Business Employee independently applies for employment with Respondents, so long as such employee was not solicited by Respondents in violation of this Paragraph.

K. Respondents Pilot and Propeller shall:

1. submit to the Acquirer, at Respondents' expense, all Confidential Business Information related to the Travel Centers Businesses Assets;
2. deliver such Confidential Business Information to such Acquirer:
 - a. in good faith;
 - b. in a timely manner, i.e., as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if one is appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Travel Centers Businesses Assets that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
4. not use, directly or indirectly, any such Confidential Business Information related to the operation or management of the Travel Centers

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Businesses other than as necessary to comply with the following:

- a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer under the terms of any Remedial Agreement related to the Travel Centers Businesses Assets; or
 - c. applicable law; and
5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the Acquirer or other Persons specifically authorized by such Acquirer to receive such information.
- L. Until Respondents Pilot and Propeller complete the divestiture required by Paragraph II.A,
1. Respondents shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the Travel Centers Businesses;
 - b. minimize any risk of loss of competitive potential for such business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Travel Centers Businesses;
 - d. ensure the assets required to be divested are transferred and delivered to the Acquirer in a manner without disruption, delay, or impairment of the Travel Centers Businesses; and
 2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested

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(other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Travel Centers Businesses.

- M. The purpose of the divestiture of the Travel Centers Businesses Assets and the related obligations imposed on the Respondents by this Order is:
1. to ensure the continued use of such assets in the distribution, sale, and marketing of over-the-road diesel fuels for long-haul fleets within the Geographic Territory; and
 2. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets (collectively, "Orders"), and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

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- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authority, and responsibilities of the Interim Monitor:
 - 1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with: the divestiture and asset maintenance obligations of the Orders; the restrictions on the use, conveyance, provision, or disclosure of the identified Confidential Business Information under the Orders; and, the related requirements of the Orders. The Interim Monitor shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
 - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - 3. The Interim Monitor shall serve until the date of completion by Respondent Pilot of the divestiture of all Travel Centers Businesses Assets in a manner that fully satisfies the requirements of the Orders; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

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4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with all reasonable requests of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

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7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by an Acquirer with respect to the performance of Respondents' obligations under the Orders or any Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.
 8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

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- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as: (1) an Interim Monitor pursuant to Paragraph III of the Order to Maintain Assets; or (2) a Divestiture Trustee pursuant to Paragraph IV of this Order.

IV.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Travel Centers Businesses Assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey such assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including

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the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, that the Commission may extend the divestiture period only two (2) times.

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3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, that if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of

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Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed

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pursuant to this Paragraph may be the same Person appointed as an Interim Monitor pursuant to Paragraph III of this Order or pursuant to Paragraph III of the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.**IT IS FURTHER ORDERED** that:

- A. Each Remedial Agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof. Further, nothing in any Remedial Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order

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shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of Respondents under a Remedial Agreement. Respondents shall comply with the terms of each Remedial Agreement, and a breach by Respondents of any term of a Remedial Agreement shall constitute a violation of this Order. To the extent that any term of a Remedial Agreement conflicts with a term of this Order such that Respondents cannot fully comply with both, Respondents shall comply with the term of this Order.

- B. Respondents shall include in each Remedial Agreement related to the Travel Centers Businesses Assets a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligations to the Acquirer pursuant to this Order.
- C. Between the date the Commission grants provisional approval of the Remedial Agreements and the Closing Date, Respondents shall not modify or amend any material term of any Remedial Agreement without the prior approval of the Commission. Further, any failure to meet any material condition precedent to closing (whether waived or not) shall constitute a violation of this Order.
- D. After the Closing Date and during the term of each Remedial Agreement, Respondents shall provide written notice to the Commission not more than five (5) days after any modification (material or otherwise) of the Remedial Agreement. Further, Respondents shall seek Commission approval of such modification (material or otherwise) within ten (10) days of filing such notification. If the Commission denies approval, the Commission will notify Respondents and Respondents shall expeditiously rescind the modification or make such other changes as are required by the Commission.

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VI.**IT IS FURTHER ORDERED** that:

- A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with its obligations under Paragraphs II.A through II.E of this Order, Respondents 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 this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Monitor(s). Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- C. For a period of three (3) years from the date this Order becomes final, Respondents Pilot and Propeller shall, on a quarterly basis, submit a Diesel Agreement Summary Report to the Commission. After the initial three (3) year period, Respondents Pilot and Propeller shall submit a Diesel Agreement Summary Report annually on the anniversary date of this Order for a period of seven (7) years, and such report may be submitted in accordance with Paragraph VI.D below. Respondents Pilot and Propeller shall also appoint a designated employee who, at the request of Commission staff, will compile and submit Diesel

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Agreement Information between quarterly or annual reports.

- D. One (1) year after the date this Order becomes final, annually for the next nine years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents 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 the Order.

VII.

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

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all

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other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and

- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on November 15, 2020.

By the Commission, Commissioner Brill not participating.

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APPENDIX I**TRAVEL CENTERS BUSINESSES TO BE DIVESTED**

The Travel Centers at the following locations:

1. Pilot Store No. 86, operating under the Pilot trade name, located at 1703 I-10, Baytown, Texas.
2. Pilot Store No. 451, operating under the Pilot trade name, located at 11332 Cedar Lake Road, Biloxi, Mississippi.
3. Pilot Store No. 170, operating under the Pilot trade name, located at 2 Industrial Park Drive, Binghamton, New York.
4. Pilot Store No. 382, operating under the Pilot trade name, located at 2008 State Highway 206 South, Bordentown, New Jersey.
5. Pilot Store No. 379, operating under the Pilot trade name, located at 2766 US Highway 17 South, Brunswick, Georgia.
6. Pilot Store No. 342, operating under the Pilot trade name, located at 1165 Harrisburg Pike, Carlisle, Pennsylvania.
7. Flying J Store No. 0500154, operating under the Flying J trade name, located at 2120 South Avenue, Corning, California.
8. Flying J Store No. 0500314, operating under the Flying J trade name, located at 11820 Hickman Road, Des Moines, Iowa.
9. Pilot Store No. 55, operating under the Pilot trade name, located at 3948 Hodges Chapel Road, Dunn, North Carolina.
10. Pilot Store No. 389, operating under the Pilot trade name, located at 1512 Highway 97, Ellensburg, Washington.
11. Pilot Store No. 395, operating under the Pilot trade name, located at I-64 and U.S. 41, Exit 25, Haubstadt, Indiana.

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12. Pilot Store No. 327, operating under the Pilot trade name, located at 7150 Okeechobee Road, Ft. Pierce, Florida.
13. Flying J Store No. 0500024, operating under the Flying J trade name, located at 3150 Grant Street, Gary, Indiana.
14. Pilot Store No. 364, operating under the Pilot trade name, located at 750 N. Carol Malone Boulevard, Grayson, KY.
15. Pilot Store No. 383, operating under the Pilot trade name, located at 210 Patton Street, Houston, Texas.
16. Pilot Store No. 450, operating under the Pilot trade name, located at 730 Highway 80 East, Jackson, Mississippi.
17. Pilot Store No. 292, operating under the Pilot trade name, located at 130 West Trinity Lane, Nashville, Tennessee.
18. Flying J Store No. 0500124, operating under the Flying J trade name, located at 9650 S. 20th Street, Oak Creek, Wisconsin.
19. Pilot Store No. 291, operating under the Pilot trade name, located at 23845 Rogers Clark Boulevard, Ruther Glen, Virginia.
20. Pilot Store No. 194, operating under the Pilot trade name, located at 25 N. Redwood Road, Salt Lake City, Utah.
21. Pilot Store No. 139, operating under the Pilot trade name, located at 29025 West Plaza Drive, Santa Nella, California.
22. Pilot Store No. 349, operating under the Pilot trade name, located at 5301 North Cliff Avenue, Sioux Falls, South Dakota.
23. Flying J Store No. 0500060, operating under the Flying J trade name, located at 1501 33rd Avenue East, Tacoma, Washington.
24. Flying J Store No. 0520019, operating under the Flying J trade name, located at 400 NW Frontage Road, Troutdale, Oregon.

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25. Pilot Store No. 272, operating under the Pilot trade name, located at 800 Martin Luther King Drive, West Memphis, Arkansas.

26. Pilot Store No. 397, operating under the Pilot trade name, located at 5115 North 300 East, Whiteland, Indiana.

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CONFIDENTIAL APPENDIX II

**TRAVEL CENTERS BUSINESSES DIVESTITURE
AGREEMENT**

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

Decision and Order

CONFIDENTIAL APPENDIX III

TCH MERCHANT AGREEMENT

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

Decision and Order

CONFIDENTIAL APPENDIX IV

WENDY'S OPERATING AGREEMENT

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

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Pilot Corporation (“Pilot”) and Propeller Corp. (“Propeller”), of certain Flying J Inc. (“Flying J”) (collectively, “Respondents”) assets, stock, and other interests (collectively, “Flying J Assets”), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Pilot is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its headquarters address at 5508 Lonas Drive, Knoxville, Tennessee 37909.

Order to Maintain Assets

2. Respondent Propeller is a privately held corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 712 5th Avenue, 43rd Floor, New York, New York 10019.
3. Respondent Flying J is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its headquarters address at 1104 Country Hills Drive, Ogden, Utah 84403.
4. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Pilot” means Pilot Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pilot (including, but not limited to, Pilot Travel Centers LLC and CTP Holdings LLC), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Propeller” means Propeller Corp., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Propeller (including, but not limited to, Pilot Travel Centers LLC and CTP Holdings LLC), and the respective directors, officers, employees,

Order to Maintain Assets

agents, representatives, predecessors, successors, and assigns of each.

- C. “Flying J” means Flying J Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Flying J (including, but not limited to, Travel Plaza LLC and TCH LLC), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- D. “Respondent(s)” means Pilot, Propeller, and Flying J individually and collectively.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer(s)” means the following:
 - 1. Love’s; or
 - 2. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- G. “Acquisition” means the acquisition of the Flying J Assets by Pilot and Propeller as contemplated by the Acquisition Agreements.
- H. “Acquisition Agreements” means:
 - 1. Contribution Agreement by and among Pilot Travel Centers LLC, Flying J Inc., and Pacific Sunstone Inc., dated December 18, 2009, and all attachments, amendments, exhibits, and schedules related thereto; and
 - 2. Purchase Agreement by and among Pilot Travel Centers LLC, Douglas Oil Company of California, Kayo Oil Company, and ConocoPhillips Company,

Order to Maintain Assets

dated December 18, 2009, and all attachments, amendments, exhibits, and schedules related thereto.

- I. “Acquisition Date” means the date on which the Acquisition occurs pursuant to the Acquisition Agreements.
- J. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, development, manufacture, marketing, distribution, or sale of a diesel fuel. The term “Agency” includes, without limitation, the United States Environmental Protection Agency (“EPA”).
- K. “Closing Date” means the date on which the Respondents (or a Divestiture Trustee) consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets or rights related to the Travel Center Businesses Assets to an Acquirer pursuant to this Order.
- L. “Confidential Business Information” means all information owned by, or in the possession or control of, a Respondent that is not in the public domain and that is directly related to the operation and management of a Travel Center Business including information related to the cost, supply, sales, sales support, distribution and marketing of diesel fuel to long-haul fleets; *provided, however*, this provision shall not include information that subsequently falls within the public domain through no violation of this Order; *provided further, however*, this provision shall not include information related to pricing.
- M. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service.

Order to Maintain Assets

- N. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV of the Decision and Order.
- O. “Geographic Territory” means the contiguous United States of America.
- P. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets.
- Q. “Love’s” means Love’s Travel Stops & Country Stores, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its headquarters address at 10601 N. Pennsylvania Ave, Oklahoma City, Oklahoma 73120.
- R. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders in this matter.
- S. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or government entity, and any subsidiaries, divisions, groups or affiliates thereof.
- T. “Remedial Agreement(s)” means:
 - 1. any agreement between Respondent(s) and an Acquirer that is specifically referenced and attached to the Decision and Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Decision and Order in connection with the Commission’s

Order to Maintain Assets

determination to make the Decision and Order final; and/or

2. any agreement between Respondent(s) and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of the Decision and Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Decision and Order.
- U. “TCH Customer Confidential Business Information” means the Acquirer’s confidential and/or proprietary information gathered pursuant to a TCH Merchant Agreement including, but not limited to, the identity of merchant’s customers, the location of customer purchases, products or services purchased or sold, prices of products or services, volumes, discounts, and other transaction terms; *provided, however*, this provision shall not include information already within the public domain or that subsequently falls within the public domain through no violation of this Order.
- V. “TCH Executive Board” means those persons appointed to the TCH LLC board of directors or executive committee by either Respondents Pilot or Flying J.
- W. “TCH Firewall Protocol” means the firewall contemplated in Paragraph II.D of the Decision and Order.
- X. “TCH Fuel Card System” means the Transportation Clearing House Fuel Card payment system.
- Y. “TCH Merchant Agreement” means:

Order to Maintain Assets

1. the TCH Merchant Agreement between TCH LLC and Love's, dated May 19, 2010, and any attachments, amendments, exhibits, and schedules related thereto. This TCH Merchant Agreement is attached to the Decision and Order and contained in non-public Appendix III; or
 2. any agreement that receives the prior approval of the Commission between Respondents (or a Divestiture Trustee) and an Acquirer for access and use of the TCH Fuel Card System for a period of three (3) years from the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto.
- Z. "Third Party(ies)" means any non-governmental Person other than Respondents or the Acquirer.
- AA. "Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Travel Centers Businesses Assets.
- BB. "Travel Center(s) Business(es)" means the business of operating a travel center at the locations identified in Appendix I of the Decision and Order, including, without limitation, the distribution, marketing, promotion and sale of all products and services offered at such locations.
- CC. "Travel Center(s) Business(es) Assets" means all of Respondents' rights, title and interest in and to, all assets used in the Travel Centers Business to the extent legally transferable including, without limitation:
1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other

Order to Maintain Assets

structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. at the Acquirer's option, all machinery, fuel equipment, tools, furniture, fixtures, office equipment, computer hardware, point-of-sale terminal systems, supplies, materials, billboards, and other items of tangible personal property (other than inventories) of every kind owned or leased by a Respondent, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto;
3. all consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any Agency or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
4. all Third Party agreements related to the operation or management of a business affiliated with a Travel Center Business; *provided, however*, this provision shall not include Third Party agreements that the Acquirer elects to decline;
5. all inventories including, but not limited to, petroleum inventory;
6. at the Acquirer's option, a license to all Respondents' Trademarks for transitional purposes of up to thirty (30) days from the Closing Date;
7. all of Respondents' books and records, customer files, customer lists and records, vendor files, vendor lists and records, cost files and records, credit information, distribution records, business records and plans, studies, surveys, and files related to the foregoing.

Order to Maintain Assets

DD. “Travel Centers Businesses Divestiture Agreement” means:

1. the Asset Purchase Agreement by and between Pilot Travel Centers LLC and Love’s Travel Stops & Country Stores, Inc., dated June 10, 2010, and any attachments, amendments, exhibits, and schedules related thereto. This Asset Purchase Agreement is attached to the Decision and Order and contained in non-public Appendix II; or
2. any agreement that receives the prior approval of the Commission between Respondents (or a Divestiture Trustee) and an Acquirer for the divestiture of the Travel Centers Businesses Assets entered into pursuant to Paragraph II.A (or Paragraph IV) of the Decision and Order, and any attachments, amendments, exhibits, and schedules related thereto.

EE. “Travel Center(s) Business(es) Employee(s)” means all employees of Respondent Pilot, including the Travel Centers Businesses Key Employees, who are currently working at a relevant Travel Center Business, or who have, within the twelve (12) months prior to the Closing Date, worked at a relevant Travel Center Business; *provided, however*, this provision does not include Respondent Pilot’s employees affiliated with the Wendy’s Restaurants.

FF. “Travel Center(s) Business(es) Key Employee(s)” means employees of Respondent Pilot who are designated as a general manager or a restaurant general manager of a Travel Center Business; *provided, however*, this provision does not include Respondent Pilot’s employees affiliated with the Wendy’s Restaurants.

GG. “Wendy’s Operating Agreement” means:

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1. the Master Lease and Operating Agreement entered into by and between Pilot and Love's, dated June 10, 2010, and any attachments, amendments, exhibits, and schedules related thereto. This Wendy's Operating Agreement is attached to this Order and contained in non-public Appendix IV; or
2. any agreement that receives the prior approval of the Commission between Respondents (or a Divestiture Trustee) and an Acquirer for the management and operation of the Wendy's Restaurants affiliated with the Travel Centers Businesses.

HH. "Wendy's Restaurants" means the six (6) fast food service facilities affiliated with the Travel Centers Businesses operating under the Wendy's brand name.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Respondents shall maintain the full economic viability, marketability and competitiveness of the Travel Centers Businesses Assets, and shall prevent the destruction, removal, wasting, deterioration, or impairment of the Travel Centers Businesses Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Travel Centers Businesses Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the businesses related to the Travel Centers Businesses Assets.
- B. Respondents shall maintain the operations of the Travel Centers Businesses Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such businesses) and shall use their

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best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; customers; Agencies; employees; and others having business relations with the Travel Centers Businesses Assets. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing the Travel Centers Businesses Assets with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Travel Centers Businesses Assets;
2. continuing, at least at their scheduled pace, any additional expenditures for the Travel Centers Businesses Assets, authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all marketing and sales expenditures;
3. providing such resources as may be necessary to respond to competition against the Travel Centers Businesses Assets and/or to prevent any diminution in sales of the over-the-road diesel fuel at the Travel Centers Businesses, prior to divestiture;
4. making available for use by the Travel Centers Businesses Assets funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of the Travel Centers Businesses Assets;
5. providing the Travel Centers Businesses Assets with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Travel Centers Businesses;

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6. providing such support services to the Travel Centers Businesses Assets as were being provided to such business by Respondent(s) as of the date the Consent Agreement was signed by Respondents; and
 7. maintaining a work force at least equivalent in size, training, and expertise to what has been associated with the Travel Centers Businesses Assets for each asset's last fiscal year.
- C. Pending divestiture of the Travel Centers Businesses Assets, Respondents shall:
1. not use, directly or indirectly, any Confidential Business Information related to Travel Centers Businesses other than as necessary to comply with the following: (1) the requirements of the Orders; (2) Respondents' obligations to an Acquirer under the terms of any Remedial Agreement related to the Travel Centers Businesses; or (3) applicable law; and
 2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the relevant Acquirer or Persons specifically authorized by the Acquirer or the Commission to receive such information.
- D. Respondents shall adhere to and abide by the Remedial Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- E. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Travel Centers Businesses Assets within the Geographic Territory through their

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full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Travel Centers Businesses Assets within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Travel Centers Businesses Assets except for ordinary wear and tear.

III.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order to Maintain Assets, the proposed Decision and Order (collectively, “Orders”), and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

Order to Maintain Assets

- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authority, and responsibilities of the Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with: the divestiture and asset maintenance obligations of the Orders; the restrictions on the use, conveyance, provision, or disclosure of the identified Confidential Business Information under the Orders; and, the related requirements of the Orders. The Interim Monitor shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Interim Monitor shall serve until the date of completion by Respondents Pilot and Propeller of the divestiture of all Travel Centers Businesses Assets in a manner that fully satisfies the requirements of the Orders; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
 4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with all reasonable requests of the Interim Monitor and shall take no

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action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by an Acquirer with respect to the performance of Respondents' obligations under the Orders or any Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning

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performance by Respondents of their obligations under the Orders.

8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- H. The Interim Monitor shall serve until termination of this Order to Maintain Assets pursuant to Paragraph VII.
- I. The Interim Monitor appointed pursuant to this Order may be the same person appointed as: (1) an Interim Monitor pursuant to Paragraph III of the proposed Decision and Order; or (2) a Divestiture Trustee pursuant to Paragraph IV of the proposed Decision and Order.

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IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every thirty (30) days thereafter until Respondents have fully complied with their obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by Paragraph II the related Decision and Order in this matter, Respondents 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 this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VI of the Decision and Order.

V.

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

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents made to their principal United States offices or headquarters'

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address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The later of:
 - 1. The day after the divestiture of all of the Travel Centers Businesses, as required by and described in the proposed Decision and Order, has been completed and the Interim Monitor (if one is appointed), in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or

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2. The day the related Decision and Order becomes final.

By the Commission, Commissioner Brill not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Pilot Corporation and Propeller Corp. (collectively, “Pilot”), and Flying J Inc. (Pilot and Flying J Inc., collectively, “Respondents”). Pursuant to agreements dated December 18, 2009, Pilot intends to acquire the interests and assets of Flying J Inc.’s travel center and related businesses for approximately \$1.8 billion (the “acquisition”). The Commission’s Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing actual, direct, and substantial competition between Pilot and Flying J and increasing the likelihood that Pilot will exercise market power unilaterally. The proposed Consent Agreement would resolve the competitive concerns from the acquisition by requiring the divestiture of 26 travel centers to Love’s Travel Stops and Country Stores. The divestiture will make Love’s a stronger competitor and replace competition weakened by the acquisition.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the proposed Consent Agreement again

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and the comments received, and decide whether it should withdraw from the Consent Agreement or make it final.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Decision and Order (“Order”), nor does the analysis modify their terms in any way.

I. Respondents and Other Relevant Entities**A. Pilot and Propeller**

Pilot Travel Centers LLC is the largest travel center operator in the United States. Pilot Travel Centers LLC is a privately held, for-profit limited liability company and is controlled equally by Pilot Corporation and Propeller Corp.

Respondent Pilot Corporation holds 52.5 percent of the non-corporate interests of Pilot Travel Centers LLC and a right to 50 percent representation on Pilot Travel Centers LLC’s Board of Managers. Pilot Corporation is a privately held, for-profit corporation.

Respondent Propeller Corp. holds 47.5 percent of the non-corporate interests of Pilot Travel Centers LLC and a right to 50 percent representation on Pilot Travel Centers LLC’s Board of Managers. Propeller Corp. is a for-profit corporation, privately held in its entirety by five stockholders managed by CVC European Equity V Limited and three stockholders managed by CVC European Equity Tandem Fund Limited.

B. Flying J

Respondent Flying J Inc., a privately held, for-profit corporation, is a fully integrated oil company with operations throughout the United States and Canada. Flying J Inc. owns and operates, among other things, travel center, trucking, fuel card, and related businesses. Flying J Inc., its wholly-owned subsidiary, and wholly-owned subsidiaries of ConocoPhillips jointly control the CFJ Entities.

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The CFJ Entities own Flying J-branded travel centers operated by Flying J Inc. in 36 U.S. states. It is jointly controlled by Flying J Inc., its wholly-owned subsidiary, and wholly-owned subsidiaries of ConocoPhillips. The CFJ Entities consist of: (1) CFJ Properties, a general partnership that is 50% owned by wholly-owned subsidiaries of ConocoPhillips and 50% owned by a wholly-owned subsidiary of Flying J Inc.; (2) CFJ I Management Inc., CFJ II Management Inc., and CFJ III Management Inc. (“CFJ Management Companies”), each of which is 50% owned by a wholly-owned subsidiary of ConocoPhillips and 50% owned by Flying J Inc.; and (3) CFJ Plaza Company I LLC, CFJ Plaza Company II LLC, and CFJ Plaza Company III LLC, each of which is 49.5% owned by a wholly-owned subsidiary of ConocoPhillips, 49.5% owned by Flying J Inc., and 1% owned by its corresponding CFJ Management Company.

II. The Proposed Complaint

Pilot’s acquisition of Flying J presents substantial antitrust concerns in the market for over-the-road sale of diesel to long-haul fleets by national travel center operators in the contiguous United States. Travel centers provide locations for long-haul trucks to fuel and serve as the long-haul driver’s home away from home, offering amenities including parking for tractor-trailers, truck service centers, truck washes, certified automated truck scales, fast food restaurants, shower facilities, internet access, and financial services for drivers. Four travel center operators – Pilot, Flying J, TravelCenters of America (“TA”), and Love’s (collectively, “national travel center operators”) – have the scale and scope to compete for any substantial portion of long-haul over-the-road diesel business although not all the major travel center operators are able to compete for all customers. Pilot and Flying J are the first and second choices for a number of long-haul fleets.

The acquisition may substantially lessen competition in the relevant market by, among other things: (a) eliminating actual, direct, and substantial competition between Pilot and Flying J; and (b) increasing the likelihood that Pilot will exercise market power unilaterally.

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De novo entry or fringe expansion into the relevant market is unlikely to deter or counteract the likely anticompetitive effects. Entry is difficult and time-consuming and potential entrants would face substantial barriers.

III. The Proposed Consent Agreement

The proposed Consent Agreement is intended to remedy the acquisition's alleged anticompetitive effects by, among other things, requiring the divestiture of travel center assets to Love's. Love's is a growing national travel center operator that is currently concentrated in the South. It is the smallest of the four national travel center operators and some long-haul fleets do not encounter Love's on the routes they travel, especially in the Midwest and the Eastern portion of the United States.

Respondents have reached an agreement to sell to Love's 26 specific travel center sites, the majority of which are located in the Midwest or the Eastern portion of the United States. These sites, along with Love's aggressive and independent expansion plan, will enhance Love's market position as a national travel center operator, allowing it to compete for more long-haul over-the-road diesel business. Love's possesses the existing infrastructure, resources, and capability to acquire the divested sites and operate them within Love's existing network. The divestiture will allow Love's to replace competition lost because of the acquisition of Flying J by Pilot. In particular, Love's will now be able to compete for those customers who viewed Pilot and Flying J as their first and second choices and who did not encounter Love's on their routes prior to the divestiture.

The Order contains provisions designed to ensure the successful implementation and remedial intent of the proposed Consent Agreement. Some of these provisions are highlighted below.

A. Access to and Use of the TCH Fuel Card System

The Order requires Respondents to provide access to and use of the TCH LLC ("TCH") Fuel Card System upon request from Love's. Paragraph II.C. of the Order provides that at Love's

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option, and upon reasonable notice, Respondents shall provide non-discriminatory access to and use of the TCH Fuel Card System for a period of up to three years pursuant to a TCH Merchant Agreement. If Love's elects to use the TCH Fuel Card System, Respondents shall institute a firewall protocol whereby: (a) Respondents' employees affiliated with the TCH Fuel Card System are prohibited from providing TCH Customer Confidential Business Information to either the TCH Executive Board or to a Respondent; and (b) Pilot shall appoint an internal compliance officer who will be responsible for assuring that the firewall protocols are met.

B. Continued Operation of Restaurants

The Order also provides for the continuity of operation at Wendy's restaurants affiliated with the sites acquired by Love's. Paragraph II.E. of the Order provides that, for a period of one year, Pilot shall manage and operate the Wendy's Restaurants affiliated with those sites.

To assure the efficient transfer and continuity of operation of the divested travel centers, the Order requires Respondents to provide assistance for, and information regarding, employees of those travel centers. Paragraphs II.F. and II.G. of the Order require Respondents to provide, for a period no longer than six months, assistance for, and employment and salary information regarding, knowledgeable employees of Respondents in the transfer of the travel centers from Respondents to Love's. Paragraphs II.H. and II.I. of the Order provide that, for a period of one year, Respondents shall not interfere with the hiring or employing of employees by Love's relating to the divested sites, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with Love's. Paragraph II.J. of the Order prohibits Respondents from directly or indirectly soliciting, inducing, or attempting to solicit or induce any employees of the divested travel centers who have accepted offers of employment with Love's to terminate that employment.

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C. Transfer of Confidential Businesses Information and Maintenance of Economic Viability

To further assure the efficient transfer and economic viability of the acquired travel centers, Paragraphs II.K. and II.L. of the Order require Respondents to provide all Confidential Business Information relating to the Travel Centers Businesses and to maintain the full economic viability and marketability of such assets until Respondents complete the divestiture required by the Order.

D. Compliance and Notification Requirements

Paragraph III. of the Order allows the Commission to appoint an Interim Monitor to assure that Respondents expeditiously comply with their obligations and perform all of their responsibilities as required by the Order.

To assure that Respondents fully comply with the obligations of the Order, Paragraph IV. of the Order allows the Commission to appoint a Divestiture Trustee to assign, grant, license, divest, transfer, deliver, or otherwise convey the travel centers.

Paragraph V. of the Order provides that each Remedial Agreement related to the divested sites shall be incorporated by reference into the Order and that Respondents shall not modify or amend the terms of any Remedial Agreement without prior approval of the Commission.

Paragraphs VI.A. and VI.B. of the Order require official notification of the date on which the acquisition occurs and subsequent periodic reports until the Commission is satisfied that the divestiture has been completed in a timely manner and in good faith. Paragraph VI.C. of the Order requires annual written reports of compliance, upon the Commission's request, until the Order terminates in ten years.

Paragraph VII. of the Order requires Respondents to give the Commission prior notice of certain events that might affect compliance obligations arising from the Order.

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E. Additional Provisions

Paragraph VIII. of the Order provides that the Commission shall, with proper notice, have access to documents and personnel at the offices of Respondents for the purpose of determining or securing compliance with the Order.

Paragraph IX. of the Order provides that the Order shall terminate after ten years.

IV. Order to Maintain Assets

The Commission also has issued an Order to Maintain Assets in this proceeding. The purpose of the Order to Maintain Assets is: (a) to maintain the full economic viability, marketability and competitiveness of the travel centers through their full transfer and delivery to Love's; (b) to minimize any risk of loss of competitive potential for the travel centers; (c) to prevent the destruction, removal, wasting, deterioration, or impairment of any of the travel centers, except for ordinary wear and tear; and (d) to prevent disclosure of any Confidential Business Information related to the travel centers to any person except Love's or persons specifically authorized by Love's to receive such information. The Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order to Maintain Assets.

Complaint

IN THE MATTER OF

**REVERB COMMUNICATIONS, INC. AND
TRACIE SNITKER**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4310; File No. 092 3199**Complaint, November 22, 2010 — Decision, November 22, 2010*

The consent order addresses allegations that Reverb Communications and its sole owner, Tracie Snitker, (collectively “Respondents”) engaged in deceptive advertising by having employees pose as ordinary consumers and post video game reviews on iTunes, while failing to disclose that Respondents were hired to provide the reviews or that they often received a percentage of the sales. The consent order requires Respondents to remove all reviews that misrepresent the authors as independent users or ordinary consumers, and that fail to disclose a connection between Respondents and the seller of a product or service. The consent order also prohibits Respondents from misrepresenting that the user or endorser is an independent, ordinary consumer, and from making any claims about a product or service unless they disclose any relevant connections that they have with the seller of the product or service.

Participants

For the *Commission*: Victor DeFrancis and Stacey Ferguson.

For the *Respondents*: Trevor J. Zink, Omni Law Group, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Reverb Communications Inc., a corporation, and Tracie Snitker, an officer and director of the corporation (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Reverb Communications, Inc. (“Reverb”) is a California corporation with its principal office or place of business at 18711 Tiffeni Drive, Twain Harte, CA 95383.