## UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the Matter of

PILOT CORPORATION, a coporation,

PROPELL ER CORP., a coporation,

and

FLYING J IN C., a coporation.

File No. 091 0125

## AGREEMENT CONTAINING C ONSENT ORDERS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Pilot Corporation ("Pilot") and Propeller Corp. ("Propeller"), of certain assets, stock, and otherests owned by Flying J hc. ("Flying J"), heeinafter "Proposed Respondents," and it now appearing that Proposed Respondents are willing to enter into this Agreement Containing Consent Orde ("Consent Agreement") to divest catain assets and providing for other relief:

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

- 1. Proposed Respondent Pilotaiscoporation organized, exiting and doing business under and byvirtue of the laws of the State of Tennessee, with its headquarts address ta5508 Lonas Road, Knoxvitl, Tennesse 27909.
- 2. Proposed Respondent Propelsea privatelyheld coporation organized, exiting and doing business undernal by virtue of the laws of the State of Delaware, with its headquarte address at 712 S Avenue, 43d Floor, New York, New York 10019.
- Proposed Respondenty Fing J is a corportion organized, exiting and doing business under and byvirtue of the laws of the State of Utah, with its headquiters address to 1104 Country Hills Drive, Ogden, Utah 84403.
- 4. Proposed Respondents admit all the jurisdiction at fact forth in the dfaof Complaint hereattachel.

- Proposed Respondentsiwer
  - a. any further procedural steps,
  - b. the requirement that the Commission's Decision and Order and Order to Maintain Assets, both of whichre attached heeto and made apart heeof, contain a stament of findings of fact and onclusions of law;
  - c. all rights to seek judicial weew or otherwise to challenge or contest the validity of the Decision and Ordeor the Oder to Maintain Asse enterel pursuant to this Consent Agreement; and
  - d. any daim under the Equal Access to Justice Act.
- 6. Because theremay be interim completive harm, the Commissin may issue its Complaint and the Order to Maintain Asses in this matter at may time afterit accepts the Consent Agreement for public comment.
- 7. Not later that thirty (30) days afterthe date this Consent Agement is signed by Proposed Respondents, each Proposed Respondent shall submit an initial compliance report, pursuant to Section 2.33 of the Commission's est unit 6 C.F.R. § 2.33. Eac Proposed Respondent shall also submit subsequent compliance reports every thirty (30) days thereafter until the Orderto Maintain Assets becons than the requirement to submit an initial report pursuant to this Consent Agreement) shall control. Such proposed signed by each Proposed Respondent and fisch in detail the mannion which such Proposed Respondent has mplied and will complywith the Orderto Maintain Assets and the Decision and Order Such repose will not become part of the public record unless and until the Consent Agreement and Decision and Order accepted by the Commission for public comment.
- 8. In each of the reports described in Paragaph 7, ach Propose Respondent shall provide sufficient information and documetation to enable the Commission to determine independently whether the Proposed Respondent is in compliant this Consent Agreement and each of the Orders. All reports shall be verified by a notalized signature or sworn statement of the Chief Executive Officer or otherofficer or director of the Proposed Respondent specially authorized to peofrm this function, or self vietied in the mannes set forth in 28 U.S.C. §1746. Section 2.41(ather Commission's Rules of Practice requires that an original and two copies of all compliance eports be filed with the Commission. Each Proposed Respontational file an original report and one copy with the Secretary of the Commission, and shall send at least copy directly to the Bueau of Competition's Compliance Division.

- 9. This Consent Agreement shall not become part of the public record of the proceeding unless and until it isaccepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draff Compaint contemplated threby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission therefater may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate or issue or manend its Compalint (in such form as the circumstances many equire) and issue its Descion and Orderin disposition of the proceeding.
- 10. This Consent Agreement is for settlement purposes onalized does not constitute an admission by Proposed Respondents that the hans bere violated as larged in the drawn Complaint here attanced, or that he facts as alleged in the drawn Complaint, other than jurisdictional facts, are true.
- 11. This Consent Agrement contemplates that, if it is accepted by the Commission, the Commission may(a) issue and see its Complaint corresponding form and substance with the draft Complaint hereattachel, (b) issue and serveits Order to Maintain Asse, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may without further notice Proposed Respondents, issue the attached Decision and Ordecontaining an order to divest and providing for other relief in disposition of the proceeding.
- 12. When final, the Decision and Order and the Order to Maintain Assets shall have the same force and effect and maybe alteed, modified or steaside in the same impaer and within the same time provided by statute for other orders. The Decision and Order and the Order to Maintain Assets shall be one final upon serice. Delivery of the Complaint, the Decision and Order, and the Ordeto Maintain Assets to Proposed Respondents Pilot and Propeller by anymeans provide in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a)—including but not limited to, delivery to an office within the United States of George L. Paul, Esq.; of White and Case LP; or of anyother lawyer or law firm listed as Counsel for roposed Respondents Pilot or Propeller, on this Consent Agreement —shall constitute service as to Proposed Respondents Pilot and Propeller of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondering J by anymeans provided in Commissin Rule 4.4(a)16 C.F.R. § 4.4(a)—including, but not limited to, deliveryto an office with the decision and Order and office vital and propeller of the Complaint, but not limited to, deliveryto an office vital and propeller of the Complaint of the order of the Order

## PILO T CORPORATION FEDERAL TRADE COMMISSION By: Mary N. Lehner Esq. By: \_\_\_\_\_ James A. Haslam III Attorney **CEO** and President Bureau of Competition Pilot Corporation Date:\_\_\_ APPROVED: PROPELLER CORP. By: \_\_\_\_\_ Phillip L. Broyles, Esq. By: \_\_\_\_\_ Gero Wittemann **Assistant Director** President and Sectary Bureau of Competition Propeller Corp. Date:\_\_\_\_\_ Richard A. Feinstein, Esq. Director George L Paul, Esq. Bureau ofCompetition Rebeca H Farington, Esq. Date: White and Case LLP Counsel for Pilot Orporation Counsel for PropelleCorp. Norman Armstrong Jr., Esq. DeputyDirector Bureau ofCompetition FLYING J IN C. Date:\_\_\_\_\_

By: Crystal Maggelet

Flying J hc.

**CEO** and President

Date:

Marimichae O. Skubel, Esq.

Kirkland and Ellis LLP Counsel for Fying J hc.