

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosb
Edith Ramirez
Julie Brill

In the Matter of)
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PILOT CORPORATION,
a corporation,

in each case controlled by Flying J (including, but not limited to, Travel Plaza C 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 Surstone 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").
- K. "Closing Date" means the date on which the Respondents (or 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 directed to the

operation and management of a Travel Center Business including information related to the cost, supply, sales, support, distribution and marketing of diesel fuel to longhaul 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 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
- N. "Divestiture Trustee" means any trustee appointed by the Commission pursuant to Paragraph M 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 Order 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 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 TCHLC board of directors or executive committee by either Respondents Pilot or Flying J.
- W. "TCH Firewall Protocol" means the firewall contemplated in Paragraph I.D of the Decision and Order.
- X. "TCH Fuel Card System" means the Transportation Clearinghouse Fuel Card payment system.
- Y. "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 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 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, tradenames, and brand names, and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Travel Centers Businesses Assets.
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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 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, lessors of any item or component part thereof and all maintenance records and other documents relating thereto;
3. all consents, license 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 therefor or renewals thereof to the extent assignable;
4. all Third Party agreements related to the operation

Decision and Order and any attachments

regular repair and maintenance of the assets of such businesses) and shall use their 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 Consent Agreement was signed by Respondents including but not limited to, all marketing and sales expenditures;
3. providing

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 part hereof.

E. The purpose of this Order to M(E)Tj 7.3200 0.0000 TD (.)Tj 10.0800 0.0R 0.0000 0.0000 cao

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 Business 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 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, including reasonable attorneys' fees, of up to \$10,000,000.

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 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 II of the proposed Decision and Order or (2) a Divestiture Trustee pursuant to Paragraph V of the proposed Decision and Order.

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

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 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 a legally recognized privilege and upon written request and upon five (5) days notice to Respondents made to the principal United States office or headquarters' 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 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 late of:

1. The day after the divestiture of all of the Tavel Centes 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 tr 26.400pE000 1.00000 0.0000 cons, transfer