

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

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In the Matter of )  
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 )  
 PILOT CORPORATION, )  
 a corporation, )  
 )  
 PROPELLER CORP., )  
 a corporation, )  
 )  
 and )  
 )  
 FLYING J INC., )  
 a corporation. )  
\_\_\_\_\_)

Docket No. C-4293

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.
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 5<sup>th</sup> Avenue, 43<sup>rd</sup> 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, 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, 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.
- 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 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:
  - 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 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.

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:

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 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;
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 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.
- 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 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 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.

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

By the Commission, Commissioner Brill not participating.

Donald S. Clark  
Secretary

SEAL  
ISSUED: June 29, 2010