

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
FLYING J INC., <u>et al.</u> , ¹)	Case No. 08-13384 (MFW)
)	
Debtors.)	Jointly Administered
)	
)	Hearing Date: February 24, 2009 at 2:00 p.m. (ET)
)	Objection Deadline: February 23, 2009 at 12:00 p.m. (ET)

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING,
(B) GRANTING LIENS AND SUPERPRIORITY CLAIMS, AND (C) SCHEDULING A
FINAL HEARING**

Flying J Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as Exhibit A, and a final order (a) authorizing Flying J Inc. (“Flying J”) and Longhorn Pipeline Inc. (“LPI”) (collectively, the “LPI DIP Debtors”) to obtain postpetition financing on a superpriority administrative claim and first priority lien basis, (b) prescribing the form and manner of notice and setting the time for the final hearing on this Motion, and (c) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Flying J Inc. (3458); Big West of California, LLC (1608), Big West Oil, LLC (6982); Big West Transportation, LLC (6984); Longhorn Partners Pipeline, L.P. (0554); Longhorn Pipeline Holdings, LLC (0226), Longhorn Pipeline Inc. (0654). The location of the debtors’ corporate headquarters and the service address for all debtors is: 1104 Country Hills Drive, Ogden, UT 84403.

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105, 361, 362, 363 and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States District Court for the District of Delaware (the “Local Bankruptcy Rules”).

Relief Requested

4. Debtor LPI and its debtor subsidiaries own and operate a pipeline with a throughput capacity of over 70,000 barrels of petroleum product per day. The pipeline stretches from the Gulf Coast to the Southwestern United States. Currently, the pipeline is filled with over 900,000 barrels of refined products (diesel and gasoline) that include “winter mix” product, which, under state and federal environmental regulations, cannot be sold outside of the winter season that ends in early April. However, since the Chapter 11 filing, the pipeline has operated at significantly reduced levels due to current liquidity constraints. Without access to additional financing, the Debtors are unable to ensure the flow of the winter mix product through the pipeline for sale before the end of the winter season. If the Debtors are unable to push the winter product through the pipeline before the end of the winter season, they will lose the ability to sell such product since winter mix product can only be sold during the winter season. On the other hand, pushing the winter mix product through the pipeline and selling it before the end of the winter season will preserve the value of the pipeline and winter mix product, generate profits and

enhance the Debtors' flexibility in maximizing the enterprise value of the pipeline and associated businesses of the Debtors—all to the benefit of the Debtors' estates and stakeholders.

5. By this Motion, the Debtors request entry of interim and final orders granting the following relief:

- (a) authorizing the LPI DIP Debtors to obtain up to \$10,000,000 of secured postpetition loans from Merrill Lynch (“ML”);
- (b) authorizing the LPI DIP Debtors to execute and deliver any documents necessary to the implement terms of the term sheet attached hereto as **Exhibit B** (the “DIP Term Sheet”) and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- (c) granting a superpriority administrative claim in favor of ML pursuant to section 364(c)(1) of the Bankruptcy Code in respect of the DIP Obligations (as defined below);
- (d) as security for the DIP Obligations, the granting in favor of ML of perfected, valid, enforceable and non-avoidable first priority liens upon and security interests in certain unencumbered assets of the LPI DIP Debtors and the granting in favor of ML of perfected, valid, enforceable and non-avoidable second priority liens upon and security interests in all existing collateral of LPI's prepetition secured lender;
- (e) scheduling a final hearing on the Motion to consider entry of a final order authorizing and granting the relief requested in the motion; and
- (f) granting such other and further relief as this Court deems just and proper.

Background

6. On December 22, 2008 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of title 11 of the Bankruptcy Code. On January 5, 2009, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the “Creditors' Committee”).

7. The Debtors and their wholly owned non-debtor subsidiaries (collectively, the “Flying J Group”) are a fully integrated oil company with operations in the field of exploration, production, refining, transportation, wholesaling and retailing of petroleum products. Debtor Flying J Inc. is one of the 20 largest privately held companies in America with 2007 consolidated sales in excess of \$16.2 billion and is the direct or indirect parent corporation of each of the other members of the Flying J Group.

8. The Flying J Group operates over 240 retail locations, including state-of-the-art travel plazas, convenience stores, restaurants, motels and truck service centers in 41 states and six Canadian provinces. In addition to usual rest stop services (food, fuel, shower facilities), the Flying J Group offers banking, bulk-fuel programs, communications (wireless Internet connections), fuel cost analysis, insurance and truck fleet sales. Furthermore, the Flying J Group explores for, refines and transports petroleum products and is likely the largest retail distributor of diesel fuel in North America. Other operations of the Flying J Group include online banking, card processing, truck and trailer leasing, and payroll services. In these widespread operations, the Flying J Group currently employs approximately 15,000 people.

9. Each of the Debtors in these chapter 11 cases is involved in or associated with the Flying J Group’s core businesses of petroleum refining, supply and distribution. In particular, Debtor LPI and its debtor subsidiaries own and operate a 700-mile common carrier pipeline with installed capacity of over 70,000 barrels per day from the Gulf Coast near Houston to El Paso, Texas.

The Debtors’ Necessity for Postpetition Financing

10. As discussed above, Debtor LPI and its debtor subsidiaries own and operate a 700-mile common carrier pipeline with through-put capacity of over 70,000 barrels per day from the Gulf Coast to the Southwestern United States. Currently, LPI has over 900,000 barrels of

refined products (gasoline and diesel) in the pipeline that include winter mix product. Environmental regulations provide that winter mix product can only be sold "as is" during certain months each year designated as the "winter season," i.e., winter mix cannot be sold after early April 2009 until the next winter season. Generally speaking, the Debtors are not able to retrieve or sell the winter mix product from the pipeline unless they either put new product into the pipeline or shut down the pipeline, taking it out of operation entirely, and fill it with nitrogen to push out the winter mix product, which is both costly, infeasible given the time constraints faced and damaging to the value of the pipeline.² Gaining immediate access to the DIP Facility (as defined below) to assist in the purchase of new product to push out and sell the winter mix product before the end of the winter season will greatly benefit the Debtors' estates.³

11. First, by pushing out the winter mix product now, the Debtors will be able to capture the value of the winter mix product. The winter mix product is immediately salable and the Debtors expect to find buyers for this gasoline and diesel, which can be delivered and sold to customers at retail. Failure to push out and sell the winter mix product by the end of the current winter season would result in a loss in the value of the winter mix product because it is not salable during the summer months. In addition to this loss, the Debtors would have to either bear costs related to carrying the winter mix product until it can be sold in the next winter season, or blend the winter mix product to enable off season sale, thereby providing the Debtors with a Hobson's choice of either increasing costs to the estates or reducing the profit that would be

² In the alternative, the Debtors could blend the winter mix product with blending product as each barrel of winter mix product comes out of the pipeline to create fuel that is salable during the summer season. However, this would require the Debtors to push over one million incremental barrels of blending product through the pipeline, which is far in excess of the shipments necessary to get the winter mix product out of the pipeline before the end of the winter season.

³ In addition to the following benefits, it is important to note that the DIP Term Sheet provides LPI with continued consensual use of ML's cash collateral on the terms set forth in the DIP Term Sheet, thereby providing another source of much needed liquidity on a consensual basis.

achieved if the winter mix product were sold during the winter season. Moreover, carrying the winter mix product in the pipeline until the next winter season would restrict the ability of shippers to ship summer mix product through the pipeline going forward, because the new summer mix product would simply push out the winter mix product, which the Debtors may not be able to sell and do not have sufficient storage capacity to store while continuing to service future shipments.

12. Second, pushing out the winter mix product will generate profits for Flying J. Several customers have indicated to the LPI DIP Debtors that they will purchase the winter mix product as it comes out of the pipeline because the price at which they can purchase it from the LPI DIP Debtors is lower than the prevailing market price they would have to pay to another provider in the same market region. The sale of the winter mix product will generate profit for Flying J and LPI as a result of the price differential between product purchased in the Gulf Coast and that sold in the Southwestern United States.

13. By way of example, as of the filing of this Motion, the average price per barrel in the Gulf Coast is approximately \$58. These barrels can be sold in the Southwestern United States (the delivery point for the pipeline) for approximately \$68 per barrel. Therefore, although profit margins are not guaranteed, at current prices the sale of 900,000 barrels could generate approximately \$9 million of profit for Flying J. Moreover, even though the market value of product changes daily, several customers have indicated that they will bear the risk of market fluctuations by agreeing to pay a fixed amount above the Gulf Coast price for the product regardless of the market price of the product in the Southwestern United States at the time of purchase. Sales of this type would *guarantee* Flying J cost recovery and a marginal profit. Furthermore, the LPI DIP Debtors are not obligated to seek any advances under the DIP Facility

that would entail undue risk for the LPI DIP Debtors. Indeed, the Debtors will only draw on the DIP Facility to the extent they reasonably believe they have buyers for the winter mix product and that Flying J will not incur any unnecessary risk.

14. Third, keeping product flowing through the pipeline by purchasing new product to push out the winter mix product enhances the Debtors' flexibility in maximizing the enterprise value of the pipeline business. The Debtors are evaluating their options with respect to the pipeline, including starting a sale process.⁴ The Debtors have been advised that an operational and operating pipeline - as opposed to one that is shut down and filled with products that are not immediately salable - is generally more attractive to a wider pool of potential buyers and can fetch a more attractive price. Moreover, if the Debtors determine that retaining rather than selling the pipeline is in their best interests, a revenue and profit generating asset is certainly easier to refinance.

15. Fourth, flushing the winter mix product out of the pipeline with new product will avoid potentially significant reductions in the pipeline's value. Indeed, the purchase of new product not only enhances short term value by pushing out salable winter mix product, but also preserves the ongoing value of the pipeline. A continuous flow of product through the pipeline is necessary to attract and maintain customers, who will require comfort that the Debtors will be able to fulfill the customers' supply demands (it is industry standard to enter into year-long purchase contracts). Priming the pipeline with summer mix product increases the attractiveness of the pipeline for use by such third party shippers, and, thereby, will help generate additional revenue through tariffs charged on the product shipped through the pipeline.

⁴ Indeed, within one week of sending out "teasers" of a potential sale of the pipeline, over a dozen parties have expressed interest in purchasing the pipeline.

16. In addition, some customers have been heavily dependant on the pipeline's supply delivery service up to now. With the Debtors' reduced shipment activity, and the associated pending incompatibility of the winter mix product, such customers are reluctant to use the pipeline as a source for their supply needs and have indicated that they are seeking supply contracts from competing sources for ratable supply going forward unless the Debtors can assure them of continued supply. Further, if the Debtors were to use nitrogen to push the winter mix product out of the pipeline - which is a process that could take months for approval and that would be expected to cost more than \$5 million - the pipeline would be rendered inoperable for an extended period of time until it was able to provide a legally compliant service going forward.

Summary of Principal Terms of Postpetition Financing

17. The Debtors have negotiated and reached an agreement on a short term senior secured revolving credit facility of \$10 million (the "DIP Facility")—a minimal amount compared to the significant actual and potential benefits to the Debtors' estates.⁵ The LPI DIP Debtors' obligations under the DIP Facility (the "DIP Obligations") are secured by (a) a first priority lien on (i) Pushed Product (as defined below), (ii) receivables generated from the sale of such Pushed Product, including a lien on the relevant supply contract(s), (iii) Purchased Product until title passes to LPI when the new Pushed Product is pushed through the pipeline, and (iv) all sales contracts for Pushed Products and proceeds thereof; and (b) a second lien on all existing collateral of LPI's prepetition secured lender.

18. Upon receiving interim approval of the DIP Facility, the LPI DIP Debtors intend to use the proceeds from the DIP Facility to purchase newer product that will flush the pipeline of the winter mix product in order to sell the winter mix product before the end of the winter

⁵ The term of the DIP Facility coincides with the time frame for sale of the winter mix product.

season. The mechanics of the DIP Facility provide for Flying J to purchase summer mix product to put into the pipeline by borrowing up to 50% of the cost of such product from ML under the DIP Facility and paying for the remaining cost of such product itself. The purchased summer mix product will be put through the pipeline, and Flying J will receive winter mix product of equal value from the pipeline. Flying J will sell the winter mix product and will keep any remaining proceeds after repayment of the advances under the DIP Facility, including any profits (except to the extent that such profits are used to pay fees under the DIP Facility); profits, as previously discussed, that the Debtors believe to be substantial.

19. The significant terms of the proposed DIP Credit Agreement are summarized as follows (in the event that the terms described herein differ from the DIP Term Sheet, the DIP Term Sheet shall control):

Facility Size	\$10 million
Borrower	Flying J Inc. ("FJI")
Guarantor	Longhorn Pipeline Inc. ("LPI")
Structure	Senior Secured Revolving Credit Facility. Borrowings that are repaid may be reborrowed through April 15, 2009 ("Maturity"), subject to extension with the written consent of ML in its sole discretion; provided: (1) no more borrowing under the DIP Facility shall be allowed upon the occurrence of a Stop Event (as defined below); (2) no additional borrowings under the DIP Facility will be permitted once the existing 1,070,000 bbls flow (max) thru pipeline; (3) no borrowing shall be in an amount less than needed in connection with a purchase of 25,000 or more bbls of product; and (4) FJI shall pay (a) L+6.5%, with L floor of 3%; and (b) pay when due all of ML's reasonable out of pocket expenses, including reasonable professional fees related to this Facility.
Priority	Super-priority administrative claim against FJI, subordinated to any super-priority administrative claims that might be issued in the future to other FJI DIP facilities. Super-priority administrative expense claim against LPI,

	subordinate only to super-priority administrative claim issued to Merrill Lynch Capital Corporation and Merrill Lynch Bank USA (together, the "LPI Pre-Petition Secured Lender") as of the date hereof.
Lender	Merrill Lynch Commodities, Inc. ("ML")
Collateral	<p>First lien on (1) Pushed Product (as defined below), (2) receivables generated from the sale of such Pushed Product, including a lien on the supply contract, (3) Purchased Product until title thereon passes to LPI and the LPI Pre-Petition Lien/Replacement Lien attaches to such Purchased Product, (4), all sales contracts for Pushed Product and proceeds thereof. No other person shall have a lien in any of the foregoing, subject only to certain customary permitted mechanics, warehousemen and similar liens.</p> <p>In addition, LPI will grant to ML a second lien on all existing collateral of the LPI Pre-Petition Secured Lender.</p> <p>For the avoidance of doubt, all product owned by FJI or LPI while in the Pipeline shall constitute Linefill (and be subject to the lien of the LPI Pre-Petition Secured Lender).</p>
Advance Rate	Borrowings under the facility are limited to 50% of the invoice value (exclusive of tariff) of the Purchased Product at Galena Park (the "Maximum Borrowing")
Mechanism	<ol style="list-style-type: none"> 1) FJI will arrange the purchase of product in Galena Park (the "Purchased Product"). 2) FJI's vendor will provide a 3rd party certificate of analysis designating product location, volume and quality, delivery schedule details, and an invoice for the product to be supplied to the pipeline to be received under the FJI shipper code. 3) FJI will forward the invoice and supporting documentation to Merrill Lynch. 4) Merrill Lynch will advance FJI the funds necessary to complete that purchase up to the Maximum Borrowing, with FJI providing the balance. FJI will then wire full payment to its supply vendor for the product. 5) Upon delivery completion into the pipeline, (a) a simultaneous product title swap will be entered into between FJI and LPI whereby title of the Purchased

Product entering the pipeline in Galena Park is transferred to LPI from FJI, with the LPI Pre-Petition Lien/Replacement Liens attaching to all such Purchased Product once title passes from FJI to LPI; and (b) ownership of an equal value (using Gulf Coast prices) of product coming out of the pipeline in El Paso and/or Crane (the "Pushed Product") is transferred to FJI from LPI. Notwithstanding anything else to the contrary herein or in any other agreement, FJI will have title to the product resulting from the above-described swap transactions that goes into the Tanks (as defined in the Credit Agreement) and ML will have a DIP lien in the same product.

- 6) LPI and FJI will settle product value differences using publicized product prices in the Gulf Coast, where applicable, and will use "blend value" derivatives of Gulf Coast pricing where a specific Gulf Coast match does not exist (see Product Re-grade Schedule). Sufficient quantities of Product shall be maintained in El Paso in order to allow all transactions to be settled on an equal value basis and such that no amounts will be owed between FJI and LPI.
- 7) Upon sales of the product and collection of the accounts receivable related thereto but without limiting recourse to FJI, FJI repays ML per the advance amount associated with the product sold (regardless of market price fluctuation).
- 8) Special Considerations: (A) FJI will not own product in the pipeline under this facility. To accomplish this, pre-petition inventories must exist in El Paso to the extent that if 3rd party bbls fall out in El Paso, FJI's Galena Park Delivery can be "swapped" with LPI El Paso tank bbls. (B) Without FJI and ML consent, FJI will not swap for product coming off of the pipeline that is not compliant with legal requirements for sale for up to 12 days after El Paso arrival. In such a case, FJI will put forth commercially reasonable efforts to provide a product blend plan or other alternate liquidation plan to LPI and ML, which if mutually accepted by the same will result in FJI being paid for any reasonable pre-disclosed expenses incurred in the execution of such plan.

Sale of Product	FJI shall use its reasonable commercial efforts to sell inventory out of the El Paso tanks in a manner consistent with the objective to liquidate the portion of received product non-compatible with forward period specification requirements and to clear the pipeline in an orderly manner of all winter mix product prior to April 3, 2009. In the event that (i) Pushed Product is not sold within 12 days of arrival in the Tanks or (ii) Pushed Product is not subject to a sales contract providing for physical delivery of such Pushed Product by April 1, 2009 or (iii) as of March 15, 2009 Pushed Product or other product that is winter mix is in the Tanks and FJI has not delivered to ML a plan to sell such Pushed Product or other product (which plan may include the proposed blending of such Pushed Product and additional Pushed Product to facilitate sales) that is acceptable to ML (the occurrence of any of the events described in clauses (i), (ii) or (iii) shall be deemed a "Stop Event"), ML will have the right to direct the sale of such Pushed Product or such other product upon 2 days notice to FJI and FJI will have the first right of refusal to buy such product from ML outright within 2 days of receipt of such notice at the amount of ML's advance rate. In that case, any proceeds relating to the sale of such Products will be applied first to the any DIP Loan balance and the remainder shall be retained by FJI.
Repayment	Upon collection of receivables, proceeds shall be applied, on a lot by lot basis, to repay the ML advance amounts using a FIFO inventory assumption.
Maturity	At Maturity, the DIP Loans shall be repaid in full, together with accrued interest.
Additional Conditions Applicable to the Pre-Petition Loan	LPI and ML expressly agree to the following provisions applicable to the Pre-Petition Loans: Without any further bankruptcy court order, the automatic stay shall be deemed lifted to permit ML to take the necessary steps with LPI's cooperation and assistance (provided that LPI shall not be required to advance any funds; provided further that any amounts advanced by ML shall constitute part of the LPI Pre-Petition Lender's claim) to flush the product in the Pipeline using engineered approved methods upon the earlier of (a) September 1, 2009, if an Appropriate Sale Agreement (as defined below) for the sale of the Pipeline has not been executed prior to that date; (b) the last day of a period of 10 consecutive days after August 1, 2009, when product flows in the Pipeline at an average daily rate of less than 10,000 barrels per day (the "Minimal Volume Trigger"); and (c) the last day

of a period of 5 consecutive business days during which the market value, measured at the OPIS unbranded low rack price, of the Linefill Inventory and Excess Linefill (as defined in the credit agreement) subject to the first priority security interest securing the LPI pre-petition loan from the LPI Pre-Petition Lender (the aggregate market value for each business day during such 5 day period shall be reduced by the amount of Accrued Interest (as defined below)) is at or below \$55,000,000 (the "Cure Period"); provided that, solely with respect to (c), on or prior to the expiration of the Cure Period LPI may cure the market value shortfall below \$55,000,000 through additional cash payments to the LPI Pre-Petition Lender that equal the market value shortfall or through other methods agreed to in writing by the LPI Pre-Petition Lender in its sole discretion; provided further that ML will not exercise its rights to flush the product under (c) above until 30 days after the expiration of the Cure Period.

If ML exercises such option under (a), (b), or (c) above, LPP shall provide to ML the necessary storage to store such Pushed Product on customary terms and customary charges (which shall be added to the pre-petition claim) to ML for a period of up to 70 days. ML will use reasonable commercial efforts to sell the Product promptly. If Product remains in the storage facilities after 70 days, LPI shall have the right to sell such Product on ML's behalf.

An Appropriate Sale Agreement shall be a final agreement for the sale of the Pipeline not subject to any financing condition, and (1) providing for a purchase price in cash sufficient to pay, in cash, and that shall be used to pay all of the LPI Pre-Petition Lender's claims, or (2) assume liability for payment of such claims (in which case the buyer shall be at least rated investment grade, have total assets over \$5 billion, or revenues over \$3 billion or otherwise satisfactory to ML) (1 and 2, the "Economic Conditions"), and which closes within a maximum of 60 days upon its execution.

Without further bankruptcy court order, the automatic stay shall be deemed immediately lifted upon the earlier of (i) 61 days after execution of an Appropriate Sale Agreement if it has not closed within 60 days of its execution and (ii) one (1) day after the Economic Conditions satisfied to meet the definition of Appropriate Sale Agreement at execution no longer exist prior to closing, to permit ML to take the necessary steps with LPI's cooperation and assistance (provided that LPI shall not

	<p>be required to advance any funds; provided further that any amounts advanced by ML shall constitute part of the LPI Pre-Petition Lender's claim) to flush the product in the Pipeline using engineered approved methods.</p>
<p>Success Fee</p>	<p>\$50,000 payable within 1 day of the entry of an order by the bankruptcy court authorizing entry into Senior Secured Revolving Credit Facility plus 20% of FJI's profit in excess of \$300,000 from the swap transactions described herein, payable as an increased claim on the Maturity Date. FJI's profit from the swap transactions shall be equal to FJI's revenue from the swap transactions less the cost of the product, applicable tariffs, transmix allocations, and normal course professional fees. In no event shall the Success Fee exceed \$200,000. FJI shall provide ML with weekly reports concerning FJI's profit from swap transactions, and the ability to review FJI's books and records regarding same.</p>
<p>Cash Collateral Motion</p>	<p>ML agrees to continued use of cash collateral by LPI consistent with the current cash collateral order, including without limitation the reborrowing ability provided for in the Repayment of Loans section of the cash collateral order, until the deemed lifting of the automatic stay as provided under Additional Conditions Applicable to the Pre-Petition Loan.</p> <p>The continuation of the use of cash collateral by LPI is also subject to the following conditions: (a) all outstanding reasonable fees and expenses of the LPI Pre-Petition Lender have been paid within fifteen days of submitting an invoice to FJI but in any event paid in full through Maturity (provided that the Debtors shall have at least 15 days to pay any invoice issued less than 15 days prior to the Maturity) and thereafter such reasonable fees and expenses shall be paid within fifteen days of submitting an invoice to LPI from the revenues generated by the collateral of the LPI Pre-Petition Lender and to the extent such payment does not impair LPI's ability, as reasonably determined by LPI, to meet its then projected cash operating requirements (provided that any such unpaid reasonable fees and expenses shall constitute part of the LPI Pre-Petition Lender's claim); (b) after Maturity, all post petition interest shall be paid when due from the revenues generated by the collateral of the LPI Pre-Petition Lender and to the extent such payment does not impair LPI's ability (it being agreed that the payment of fees and expenses for professionals retained in the Debtors' cases shall not be considered in determining impairment and the payment of any such fees and expenses from LPI's estate shall be suspended so</p>

long as there is Accrued Interest), as reasonably determined by LPI in consultation with ML and consistent with the Budget approved by ML, to meet its then projected cash operating requirements; provided that any such unpaid interest shall constitute part of the LPI Pre-Petition Lender's claim (such unpaid interest, the "Accrued Interest"); provided further that the use of cash collateral shall be suspended during any period of time that there is unpaid Accrued Interest until such Accrued Interest is paid in full, in cash, except that during such period of time (i) LPI may use cash solely to pay ordinary LPI employee expenses and (ii) LPI may continue to swap barrels; (c) there shall be in effect a budget for LPI mutually agreed upon by LPI and ML ("Budget"); and (d) except to the extent otherwise expressly set forth herein, LPI shall continue to keep in force and comply with the terms and conditions of the third interim order approving the cash collateral motion.

Upon the deemed lifting of the automatic stay as provided under Additional Conditions Applicable to the Pre-Petition Loan, the use of cash collateral shall terminate except that LPI may continue to swap barrels absent further order of the Court or ML's consent; provided that such swap activity shall cease and terminate upon receipt by LPI from ML of a notice, effective 3 days after receipt by LPI, that such activity materially interferes with or delays efforts to flush the Pipeline or the actual commencement of the work necessary to flush the Pipeline.

Basis for Relief

I. The Debtors Should Be Permitted To Obtain Postpetition Financing Pursuant To Section 364(c) Of The Bankruptcy Code.

20. As set forth above, the Debtors' ability to capture the value of the winter mix product in the pipeline, generate profits for Flying J, enhance flexibility in maximizing the enterprise value of the pipeline and avoid significant detractors in the value of the pipeline hinges upon the LPI DIP Debtors being able to access postpetition financing. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit outside the ordinary course of business and (c) obtaining credit with specialized priority or on a secured basis. For the reasons discussed below, the LPI

DIP Debtors must be able to access postpetition financing on a secured basis pursuant to sections 364(c) of the Bankruptcy Code.

21. Pursuant to section 364(c), if a debtor cannot obtain postpetition credit on an unsecured basis, a court may authorize such debtor to obtain credit or incur debt that is entitled to superpriority administrative expense status, secured by a senior lien on unencumbered property, or secured by a junior lien on encumbered property. See 11 U.S.C. § 364(c). A debtor seeking financing under section 364(c) of the Bankruptcy Code must make a reasonable effort to seek other sources of unsecured credit, but is granted deference in acting in accordance with its business judgment and, indeed, is not required to seek credit from every possible source. See, e.g., In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); see also Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (“[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”).

22. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); see also In re Garland Corp., 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); In re Stanley Hotel, Inc., 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy

court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); Ames, 115 B.R. at 37-39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

23. The LPI DIP Debtors and their advisors have had discussions with various parties, including several large investment banks that have historically provided financing of petroleum products, regarding potential debtor in possession financing. None were willing to provide unsecured financing given the time constraints, and ML was the only party willing to provide debtor in possession financing on such short lead time. ML is intimately familiar with the Debtors' situation and is almost certainly the only party willing to provide the LPI DIP Debtors with financing on an emergency basis. ML is willing to provide the DIP Facility only on the terms discussed herein. The LPI DIP Debtors believe that the terms of the DIP Facility are fair and reasonable, especially given that the collateral the LPI DIP Debtors are providing ML does not affect the rights of any existing secured creditor. The potential benefits here are substantial and access to the DIP Facility will enable the Debtors to maximize their estates for the benefit of all the parties in interest.

24. Accordingly, the LPI DIP Debtors respectfully submit that their efforts to obtain postpetition financing satisfies the standard required under section 364(c) of the Bankruptcy Code and that they should be granted authority to enter into the DIP Credit Agreement and obtain funds on the secured and administrative superpriority basis described herein.

II. The Debtors Should be Authorized to Pay the Success Fee Pursuant to Section 363 of the Bankruptcy Code.

25. Courts also routinely authorize debtors to pay fees related to debtor in possession financing facilities where the financing is beneficial to the estate in the Debtors' business judgment. See In re Dura Automotive Systems, Inc., Case No. 06-11202 (Bankr. D. Del. Jan. 28,

2008) (authorizing debtors to pay 1.5% in fees related to refinancing and extending a debtor in possession financing facility); In re DJK Residential, Case No. 08-10375 (Bankr. S.D.N.Y. February 29, 2008) (order authorizing debtors to enter into debtor in possession financing and pay a 3.0% fee); In re Delphi Corporation, et al., Case No. 05-44481 (Bankr. S.D.N.Y. Nov. 16, 2007) (authorizing debtor to pay fees in order to extend a debtor in possession facility) ; In re Tower Automotive, Inc., et al., Case No. 05-10578 (Bankr. S.D.N.Y. Jan. 31, 2007) (same).

26. Pursuant to section 363(b) of the Bankruptcy Code, bankruptcy courts have generally approved the use, sale or lease of estate property out of the ordinary course of business where there exists a sound business justification for the proposed transaction. See, e.g., In re Martin, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under section 363(b) of the Bankruptcy Code when there is a legitimate business justification); In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983) (acknowledging the use of the "articulated business justification" for the use of property under section 363 of the Bankruptcy Code).

27. A debtor has the burden of establishing that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. See In re Lionel Corp., 722 F.2d at 1071. Once a debtor articulates a valid business justification, however, it is presumed that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). The business judgment rule therefore shields a debtor's management from judicial second guessing. A court should approve a debtor's business decision unless that decision is a product of bad faith or gross abuse of discretion. See id.; see

also Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).

28. Here, the Success Fee involves an up front payment of \$50,000. Additionally, the Success Fee allows the DIP Lenders to receive 20% of Flying J's profits above \$300,000. However, the Success Fee is capped at a total of \$200,000. Thus, the Success Fee ranges between 0.5% to 2.0% of the DIP Facility, depending on how much profit Flying J obtains using the DIP Facility, thereby making this truly a *success* fee. This, as discussed above, is well within the range of comparable fees approved by bankruptcy courts in this district and others. Further, the LPI DIP Debtors will only incur interest expense and fees (other than the \$50,000 up front fee) if the DIP Facility is actually drawn down. The LPI DIP Debtors will only draw down on the DIP Facility if they determine, in their business judgment, that a substantial likelihood of profit exists. As a result, the decision to enter into the DIP Facility and pay the Success Fee is well within the LPI DIP Debtors' reasonable business judgment. See In re Lionel Corp., 722 F.2d at 1071.

III. Provisions To Be Highlighted Pursuant to Local Rule 4001-2.

29. The DIP Facility and the interim and final orders requested herein do not contain any of the provisions that must be highlighted pursuant to Local Bankruptcy Rule 4001-2.

IV. Modification of the Automatic Stay is Warranted.

30. The proposed interim and final orders provide that the automatic stay provisions of section 362 of the Bankruptcy Code would be vacated and modified to the extent necessary to permit ML to exercise, upon the occurrence and during the continuation of any event of default, all rights and remedies provided for under the DIP Facility, and to take various actions without further order of or application to the Court. Any potential trigger that would enable ML to exercise its rights and remedies under the DIP Facility will either be known to the parties well in

advance or require ML to provide advance notice. In addition, the DIP Facility provides the LPI DIP Debtors the ability to cure certain defaults.

31. Stay modification provisions of this sort are ordinary and usual features of DIP financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. See, e.g., In re Hines Horticulture, Inc., Case No. 08-11922 (Bankr. D. Del. Sept. 10, 2008); In re ACG Holdings, Inc., Case No. 08-11467 (Bankr. D. Del. Aug. 18, 2009). Accordingly, the Court should modify the automatic stay to the extent contemplated by the DIP Facility and the proposed interim and final orders.

V. Interim Approval of \$10 Million in the Aggregate Should be Approved.

32. As discussed above, it is essential that the LPI DIP Debtors immediately begin purchasing new product in order to push the winter mix product through the pipeline before the winter mix product is no longer salable. Time is of the essence, and if the Debtors are not able to begin pushing the winter mix product through the pipeline in the next few weeks, they will incur substantial harm.

33. The LPI DIP Debtors need access the full \$10 million of the DIP Facility in order to maximize the return to the estates. Importantly, the LPI DIP Debtors will only draw on the DIP Facility if they have a high degree of confidence based on discussions with their customers that the LPI DIP Debtors can quickly sell the winter mix product, repay the DIP Facility advance used to purchase the new product that pushes the winter mix product through the pipeline, and generate profit for the benefit of all stakeholders. In order to maximize this ability to generate profits and reduce risk and to minimize the risk that the LPI DIP Debtors will be left with unusable or uneconomic winter mix product, the LPI DIP Debtors require the full amount of the DIP Facility to be available immediately.

34. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

35. In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. See, e.g., Ames Dep't Stores, 115 B.R. at 36; Simasko, 47 B.R. at 449. Under this standard, the Debtors' request for entry of the DIP Orders, in the time periods and for the financing amounts requested herein, is appropriate. Moreover, courts in this jurisdiction have granted similar relief in other chapter 11 cases. See e.g., In re ACG Holdings, Inc., Case No. 08-11467 (Bankr. D. Del. July 16, 2008) (allowing interim access to the full \$135 million of the debtors' DIP Facility); In re Tropicana Entm't, LLC, Case No. 08-10856 (Bankr. D. Del. May 7, 2008) (allowing interim access to \$20 million of the debtors total DIP facility); In re Sharper Image Corp., Case No. 08-10322 (Bankr. D. Del. Feb. 20, 2008) (allowing interim access to \$35 million of the debtors' \$60 million DIP facility); In re American LaFrance LLC, Case No. 08-10178 (Bankr. D. Del. Jan. 30, 2008) (allowing interim access to \$30 million of a \$285 DIP facility that was approved on a final basis); In re Pope & Talbot, Inc., Case No. 07-11738 (Bankr. D. Del. Nov. 21, 2007) (allowing interim access to \$68 million of the debtors' aggregate DIP facility of \$89 million).

Request for Final Hearing

36. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a final hearing for March 4, 2009 at 3:00 p.m. ET, and set February 25, 2009 at 4:00 p.m. ET as the deadline for parties to file objections to the Motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

37. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

38. The Debtors have provided notice of this Motion via electronic mail (when possible) and overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Creditors' Committee; (c) counsel for the agents for the Debtors' prepetition secured and unsecured lenders; and (d) any persons who have filed a request for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

39. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an interim order, substantially in the forms attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as the Court deems appropriate.

Dated: February 18, 2009
Wilmington, Delaware

**YOUNG CONAWAY
STARGATT & TAYLOR, LLP**



Pauline K. Morgan (Bar No. 3650)
Edmon L. Morton (Bar No. 3865)
Donald J. Bowman, Jr. (Bar No. 4383)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6637
Facsimile: (302) 576-3320

- and -

KIRKLAND & ELLIS LLP

David L. Eaton (admitted *pro hac vice*)
Adam C. Paul (admitted *pro hac vice*)
Jeffrey W. Gettleman (admitted *pro hac vice*)
Aon Center
200 East Randolph Drive
Chicago, Illinois 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

- and -

KIRKLAND & ELLIS LLP

Craig A. Bruens (admitted *pro hac vice*)
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Counsel for the Debtors and Debtors in Possession