

52278

June 22, 2016

TO: Honorable Board of Acquisition and Contract

FROM: Jay T. Pisco, P.E.
Commissioner of Public Works and Transportation

Adam Rodriguez
Director of Real Estate

SUBJECT: Authority to execute all documents necessary to consent to the assignment of lease agreements with Panorama Flight Service, Inc. and Piedmont Hawthorne Aviation, LLC at Westchester County Airport. (Agreement No. WCA 16008)

Transmitted herewith is a proposed Resolution that will authorize the County of Westchester (the "County") to execute all documents necessary to: 1) consent to a stock transfer of the ownership of Panorama Flight Service, Inc. ("Panorama") from Landmark FBO, LLC ("Panorama Owner"), which was ultimately owned by LM U.S. Member, LLC and Landmark B Corp Holdings, Inc. (collectively, "Panorama Seller") to Signature Flight Support Holdings Co., LLC and Signature Flight Support Acquisition Co., LLC (collectively, "Panorama Purchaser"); 2) consent to a stock transfer of the ownership of Piedmont Hawthorne Aviation, LLC ("Piedmont") from Landmark U.S. Corp Acquisition, Inc. ("Piedmont Owner"), which was ultimately owned by LM U.S. Corp Holdings, Inc. (collectively, "Piedmont Seller") to Signature Flight Support Holdings Co., LLC and Signature Flight Support Acquisition Co., LLC (collectively, "Piedmont Purchaser"); 3) consent to the assignment of the Panorama lease agreement at Westchester County Airport (the "Airport") from Panorama to HPN NY Holdings, LLC ("HPN Holdings"); and 4) consent to the assignment of the Piedmont lease agreement from Piedmont to HPN Holdings.

The County's approval of the stock transfers and the lease assignments will be contingent upon: a) the execution by Piedmont of stipulations of discontinuance, with prejudice, in connection with the existing actions challenging the non-exempt tax status of its leasehold (Block 971, Lot 8.1 on the Town of Harrison Tax Map and 119.79-1-2 on the Town of Rye Tax Map) pursuant to the New York State Real Property Tax Law, in and for assessment years 2012 through 2015; b) HPN Holdings having at least \$500,000 of working capital at closing, in addition to the security deposits required under the Piedmont lease and at least \$3,000,000 having been committed for Hangar D improvements; and c) a guaranty of HPN Holdings' lease obligations to the County given by Ross Aviation Holdings, LLC for two years and subject to extension if certain conditions are not met by the lessee.

In 2005, the County entered into a lease agreement with Piedmont for the use of Hangar D for the storage and maintenance of aircraft for a term of ten years commencing January 1, 2006, with the tenant having the option to renew for two ten-year periods. Piedmont exercised its first renewal option in 2015. In 2008, the ownership of Piedmont was transferred to Landmark FBO, LLC. Under section 12.1.1 of the Piedmont lease, the Tenant is permitted to sell or transfer the fixed base assets without County approval, except where the transferee is already operating an FBO at the Airport at the time of the transfer. Since the transferee did not already have an FBO at the Airport in 2008, no County approval was required for this transfer.

Pursuant to a Resolution adopted by your Honorable Board on June 23, 1999, the County entered into a lease agreement with Panorama for a term of 30 years for the construction and operation of a light general aviation facility (Hangar T), providing services such as aircraft fueling, hangar space, aircraft tie-down and parking, maintenance, flight instruction, charters and rental. Pursuant to a Resolution approved on April 3, 2003, the County was authorized to amend the Panorama lease to provide for a rent abatement of \$20,000 per year for five years. Pursuant to a Resolution approved on October 31, 2013, the County was authorized to consent to a stock transfer from Panorama to LM U.S. Corp Acquisition, Inc. d/b/a Landmark Aviation ("Landmark") which permitted the transfer of ownership of the lease of Hangar T to Landmark. Landmark assumed all of Panorama's obligations under the lease and continues using the leased premises as a light general aviation facility. Unlike section 12.1.1 of the Piedmont lease which permitted such transfers of stock ownership without further approval of the County, Article VIII of the Panorama lease retained such approval rights for the County (See sec. 8.1(iii)). During the course of due diligence for this transaction, the County learned that Landmark is owned by another corporation - LM U.S. Corp Holdings, Inc., which together with Landmark are collectively referred to as the "Panorama Seller" in the stock transfer approval of the Panorama lease that is requested above.

On September 23, 2015, BBA Aviation PLC ("BBA"), a publicly-traded company on the London stock exchange and the parent company of Signature Flight Support Corporation ("Signature"), announced its intention to purchase Landmark, which operates 68 FBOs in North America and Europe which include the two FBOs at the Airport described above, from the Carlyle Group. The proposed acquisition was evaluated by the United States Department of Justice for compliance with federal anti-trust laws.

In February, 2016, BBA, through various U.S.-based subsidiaries, completed its acquisition of Landmark and various of its affiliated and subsidiary companies. This acquisition took place at several levels removed from the Landmark affiliates operating FBOs at the Airport (the legacy Panorama Flight Service and Piedmont Hawthorne Aviation facilities), but the key parts of the deal as they pertain to the Landmark facilities at the Airport are as follows: BBA US Holdings, Inc. ("BBA US"), an indirect subsidiary of BBA, indirectly acquired 100% of the shares of Panorama, which holds the lease with the County of Westchester dated July 30, 1999. Similarly, BBA US indirectly acquired 100% of the membership interests of Piedmont, which holds the lease with the County dated January 1, 2006. BBA US also indirectly owns 100% of the shares of Signature, which also operates FBOs at the Airport under various leases with the County.

On February 3, 2016, the Department of Justice announced that it would require BBA to divest FBO assets at six United States airports, including the two FBOs at Westchester County Airport that are leased by Landmark as part of a proposed settlement. Under section IV of the proposed Final Judgment, the proposed acquirer(s) of the FBO assets must be "acceptable to the United States, in its sole discretion."

In addition, on February 3, 2016, BBA, Landmark U.S. Corp. LLC, LM U.S. Member, LLC and the United States entered into a Hold Separate Stipulation filed in the United States District Court for the District of Columbia pursuant to which the parties agreed that the BBA entities and the Landmark entities would "preserve, maintain, and continue to operate [the Landmark facilities at White Plains] as independent, ongoing, economically viable competitive businesses with management, sales and operations of such assets held entirely separate, distinct, and apart from those of [the BBA affiliates]." To that end, the Landmark facilities at the County Airport continue to be operated by and managed by legacy Landmark personnel, with no involvement or influence by Signature, its personnel, or its parent companies or affiliates and those operations are completely distinct and separate from those of Signature at the Airport.

Under the aforementioned Article VIII of the Panorama Lease, the County needs to approve the sale by stock transfer of the Panorama lease assets as part of the BBA/Signature and Landmark merger that culminated in February. In addition, because Signature was operating FBOs at the time of the transfer, section 12.1.1 of the Piedmont lease also requires the County to approve the sale by stock transfer of the Piedmont lease assets as part of the aforementioned merger.

By letter dated April 8, 2016 from Signature and Rabbit Aviation LLC (“Rabbit”), the County was requested to consent to the assignment two leases: 1) a lease agreement dated December 8, 2005 between the County and Piedmont, as amended on May 6, 2015; and 2) a lease agreement dated July 30, 1999 between the County and Panorama, as amended on December 19, 2000 and June 11, 2003. The County was advised that Rabbit is a company owned by KSL Capital Partner IV, L.P., a Delaware limited partnership, with capital commitments in excess of \$2.67 billion, created by KSL Capital Partners, LLC, a private equity firm that specializes in the travel and leisure business. The County was also advised that Rabbit will be managed by Jeffrey Ross, the founder and former owner of Ross Aviation, who has over 22 years of experience in the FBO industry.

By letter dated May 10, 2016, the County was advised by Ross Aviation Holdings, LLC that the proposed tenant for both of the Landmark leases that are being divested will be HPN Holdings, but that they will be operated under the name “Ross Aviation Westchester.” By that same letter, the County was advised that Rabbit changed its name to Ross Aviation Holdings, LLC. The letter also explained the corporate organizational structure as follows: KSL Partners IV owns 100% of Ross Aviation Investments LLC, which owns 100% of Ross Aviation Holdings, LLC, which owns 100% of HPN Holdings, the proposed tenant for both leases. The May 10th letter further advised that Ross Aviation Holdings, LLC will be capitalized with \$200 million in equity from KSL Partners IV and will own not only HPN Holdings proposed for the County Airport, but also entities created to operate FBOs at five (5) other locations, including Scottsdale, Arizona and Washington Dulles International Airport. By separate email dated May 11, 2016, the County was advised that the operating entity at the Airport, HPN Holdings will have \$500,000 of working capital at closing. This is in addition to the security deposits required under the leases and at least \$3 million has been committed for Hangar D improvements. Such hangar improvements are outstanding obligations of the current lessee of the premises the costs for which are shared with the other tenants and partly by the County.

Since HPN Holdings is a special purpose vehicle for these leases and a new entity, the County requested a form of guaranty. The proposed guaranty of HPN Holdings’ lease obligations to the County would be given by Ross Aviation Holdings, LLC, the entity that will be capitalized with \$200 million in equity from KSL Partners IV. It is a two year guaranty that is extended if certain conditions are not met by the lessee.

The proposed Final Judgment is intended to cause “the prompt and certain divestiture of certain rights and assets by the Defendants to assure that competition is not substantially lessened.” The intended promptness of the Final Judgment is set forth in section IV of the Agreement which requires divestiture of the Divestiture Assets either “within (i) ninety (90) calendar days after the filing of the Complaint in this matter or (ii) five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later.” The County has been advised by Signature’s counsel and the County’s Airport counsel that the first time period expired on May 3, 2016. So the second time period is now in effect. As of the date of this letter, the Final Judgment has not been entered by the Court. In addition, the United States, at its discretion, may agree to one or more extensions not to exceed sixty (60) calendar days and “[i]f pending state or local regulatory approval is the only remaining matter precluding a divestiture during [this] period, the United States will not withhold its agreement to such an extension or extensions.”

While nothing in the Final Judgment requires the County to approve the proposed transaction, it should be noted that if the divestiture does not take place during this period, then a Divestiture Trustee is appointed by the Court to sell the Divestiture Assets. Thus, if your Honorable Board believes that the proposed assignment is in the best interests of the County, time is of the essence, otherwise the matter will be put into the hands of a Divestiture Trustee.

This action is in the best interest of the County as it will provide an important service to many Airport users and continued rental revenue for the Airport. The terms of the leases will be monitored by Airport staff.

We recommend approval of the annexed Resolution.

RESOLUTION

Upon a communication from the Commissioner of Public Works and Transportation and the Director of Real Estate, be it hereby

RESOLVED, that the County of Westchester (“County”) is hereby authorized to execute all documents necessary to consent to a stock transfer of the ownership of Panorama Flight Service, Inc. (“Panorama”) from Landmark FBO, LLC (“Panorama Owner”), which was ultimately owned by LM U.S. Member, LLC and Landmark B Corp Holdings, Inc. (collectively, “Panorama Seller”) to Signature Flight Support Holdings Co., LLC and Signature Flight Support Acquisition Co., LLC (collectively, “Panorama Purchaser”); and be it further

RESOLVED, that the County is hereby authorized to execute all documents necessary to consent to a stock transfer of the ownership of Piedmont Hawthorne Aviation, LLC (“Piedmont”) from Landmark U.S. Corp Acquisition, Inc. (“Piedmont Owner”), which was ultimately owned by LM U.S. Corp Holdings, Inc. (collectively, “Piedmont Seller”) to Signature Flight Support Holdings Co., LLC and Signature Flight Support Acquisition Co., LLC (collectively, “Piedmont Purchaser”); and be it further

RESOLVED, that the County is hereby authorized to execute all documents necessary to consent to the assignment of the Panorama lease agreement for Hangar T at Westchester County Airport from Panorama to HPN NY Holdings, LLC (“HPN Holdings”); and be it further

RESOLVED, that the County is hereby authorized to execute all documents necessary to consent to the assignment of the Piedmont lease agreement for Hangar D at Westchester County Airport from Piedmont to HPN Holdings; and be it further

RESOLVED, that the authorizations granted above are contingent upon all of the following: (a) the execution by Piedmont of stipulations of discontinuance, with prejudice, in connection with the existing actions challenging the non-exempt tax status of its leasehold (Block 971, Lot 8.1 on the Town of Harrison Tax Map and 119.79-1-2 on the Town of Rye Tax Map) pursuant to the New York State Real Property Tax Law, in and for assessment years 2012 through 2015; (b) HPN Holdings having at least \$500,000 of working capital at closing, in addition to the security deposit required under the Piedmont lease and at least \$3,000,000 having been committed for Hangar D improvements; and (c) a guaranty of HPN Holdings’ lease obligations to the County given by Ross Aviation Holdings, LLC (“RAH”) for two years and subject to extension if certain conditions are not met by the lessee, as set forth in Section 6, below; and be it further

RESOLUTION

RESOLVED, that the lease obligations of HPN Holdings to the County shall be guaranteed by RAH, the entity that will be capitalized with \$200 million in equity from KSL Partners IV. RAH will absolutely and unconditionally guarantee the punctual payment pursuant to the leases of all amounts of any kind now or hereafter due and payable by HPN Holdings under the leases from and after the Effective Date (as defined below), including payments of rent, additional rent and airport charges and fees, and the performance when due of all other obligations of HPN Holdings under the Leases (collectively, the "Obligations") if HPN Holdings defaults or breaches its obligations under either of the Leases. This Guaranty is effective upon the closing of the transaction pursuant to the Purchase Agreement by which HPN Holdings will acquire substantially all of the assets of Piedmont Hawthorne Aviation, LLC and of Panorama Flight Service, Inc. and assignment of the Leases to HPN Holdings (the "Effective Date"). The Guaranty will continue in full force for a period of two (2) years from the Effective Date and will terminate on such date provided that (a) there have been no material monetary defaults or breaches by HPN Holdings under the Lease during such period, including in the payment of rent or additional rent thereunder, and (b) the Airport Manager, in consultation with HPN Holdings and in the exercise of his reasonable discretion, determine that HPN Holdings has cash flow from operations after such period at levels consistent with historical amounts as sufficient to meet HPN Holdings' monthly rent and other financial obligations under the Leases. If either or both of the conditions set forth in subparagraphs (a) and (b) above are not satisfied as of the end of the initial two (2) year period following the Effective Date, then the Guaranty will continue for an additional year and for one (1) year terms thereafter until both conditions are satisfied as of the end of an applicable year. Notwithstanding the foregoing, this Guaranty will terminate automatically and without further action if HPN Holdings assigns its interest in the Leases in connection with the sale of all or substantially all of its assets or enters into a transaction, including by way of merger or consolidation, resulting in the transfer of more than fifty percent (50%) of its outstanding equity interest to an unaffiliated third party, in either case consented to by the County as required by the Leases, and be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized to execute all instruments necessary to implement this resolution.

Agreement No. WCA 16008

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
						N/A

Budget Funding Year(s): N/A Start Date: N/A End Date: N/A
 (must match resolution)

Funding Source: Tax Dollars N/A
 State Aid
 \$ N/A Federal Aid
 (must match resolution) Other