

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

LM U.S. CORP ACQUISITION INC.,

and

ROSS AVIATION, LLC,

*Defendants.*

**HOLD SEPARATE STIPULATION AND ORDER**

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

**I.**

**DEFINITIONS**

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means Signature Flight Support Corporation, or another entity to whom Defendants divest the Divestiture Assets.

B. “Landmark” means Defendant LM U.S. Corp Acquisition Inc., a Delaware corporation with its headquarters in Houston, Texas, CP V Landmark L.P., CP V Landmark II, L.P., any party that acquires all or substantially all of the assets by which any of the foregoing (in the aggregate, with their subsidiaries taken as a whole) performs FBO Services, Carlyle Partners

V, L.P., and their subsidiaries, divisions, groups, partnerships, joint ventures, directors, officers, managers, and employees.

C. “Ross” means Defendant Ross Aviation, LLC, a Delaware corporation with its headquarters in Denver, Colorado, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. One of Ross’s wholly owned subsidiaries, Ross Scottsdale LLC, a Delaware limited liability corporation headquartered in Scottsdale, Arizona, operates the Divestiture Assets.

D. “Signature” means Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, FL, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “SDL Airport” means Scottsdale Municipal Airport, located in Scottsdale, Arizona.

F. “FBO Services” means any or all services relating to providing fixed based operator services, including, but not limited to, selling fuel; leasing hanger, ramp, and office space; providing flight support services; performing maintenance; providing access to terminal facilities; and arranging for ancillary services such as limousines, rental cars, or hotels.

G. “FBO Facilities” means any and all tangible and intangible assets that comprise the business of providing FBO Services, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet aviation fuel and aviation gas, and related fueling and maintenance equipment, and other tangible property and all assets used exclusively in connection with the business of providing FBO Services; all licenses, permits, and authorizations issued by any

governmental organization relating to the business of providing FBO Services subject to licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the business of providing FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the business of providing FBO Services; all intangible assets used in the development, production, servicing, and sale of FBO Services, including, but not limited to, all licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials and substances.

H. "Divestiture Assets" means Ross Scottsdale LLC, a Delaware limited liability company, including all rights, titles and interests, including all fee, leasehold and real property rights, in Ross's FBO Facilities at SDL Airport.

I. "Proposed Transaction" means Landmark's proposed acquisition of certain assets from Ross pursuant to the Transaction Agreement by and among Ross Aviation Holdco, LLC, Ross Aviation, LLC, and LM U.S. Corp Acquisition Inc., dated April 19, 2014.

## II.

### **OBJECTIVES**

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the fixed base operator business at SDL Airport in order to remedy the effects that the United States alleges would otherwise result from Landmark's acquisition of Ross. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets remain independent,

economically viable, and ongoing business concerns will remain independent and uninfluenced by Landmark, and that competition is maintained during the pendency of the ordered divestiture.

**III.**

**JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

**IV.**

**COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT**

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and

(2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section IX, as though the same were in full force and effect as the Final order of the Court.

D. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

E. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or

difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

**HOLD SEPARATE PROVISIONS**

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, economically viable competitive business, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Landmark's other operations. Landmark shall not coordinate its marketing or terms of sale of any products or services with those sold under the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the fixed base operator business; (2) management of the Divestiture Assets will not be influenced by Landmark; and (3) the books, records, customer lists, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by or under any of the Divestiture Assets will be kept separate and apart from Landmark's other operations. Defendants shall ensure that Landmark employees will not have access to any information specifically identifying customers or suppliers of the Divestiture Assets, including names and contact information.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold under Divestiture Assets, and shall maintain at 2014 or previously approved levels for 2015, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V (A) and (B).

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than its current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendants' employees with primary responsibility for the operation of the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting

policy. Defendant shall provide the United States with ten (10) calendar days notice of such transfer.

J. Defendants, subject to the approval of the United States, shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any Divestiture Trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States

## VI.

### **DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.



Dated: *July 30, 2014*

Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA

FOR DEFENDANTS  
LM U.S. CORP ACQUISITION INC.

*Michelle Pionkowski*

MICHELLE A. PIONKOWSKI  
Trial Attorney, Antitrust Division  
U.S. Department of Justice  
450 Fifth Street, N.W., Suite 8000  
Washington, D.C. 20530  
Telephone: (202) 598-2954  
Facsimile: (202) 307-2784  
E-mail: michelle.pionkowski@usdoj.gov

*E. Marcellus Williamson*

E. MARCELLUS WILLIAMSON  
(D.C. BAR # 465919)  
Latham & Watkins LLP  
555 Eleventh St. NW, Suite 1000  
Washington, DC 20004  
Telephone: (202) 637-2200  
Facsimile: (202) 637-2201  
E-mail: marc.williamson@lw.com

ROSS AVIATION, LLC

*Paul T. Denis*

PAUL T. DENIS  
(D.C. BAR # 437040)  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006  
Telephone: (202) 261-3430  
Facsimile: (202) 261-3333  
Email: paul.denis@dechert.com

O R D E R

IT IS SO ORDERED by the Court, this \_\_\_\_ day of .

United States District Judge