RESOLUTION NO. 25424

BE IT RESOLVED that the Board of Airport Commissioners approved the First Amendment to Lease No. VNA-8597 with Pacific Aviation Development, LLC; a Consent to Assignment of Membership Interests in Pacific Aviation Development, LLC; and the 2015 Land Rental Rate and Monthly Occupancy Rate for the premises located at 7900 Balboa Boulevard at Van Nuys Airport, which is commonly referred to as the VNY Propeller Park, as referenced on the board report attached herein and made part hereof; and

BE IT FURTHER RESOLVED that the Board of Airport Commissioners authorized the Executive Director to execute said First Amendment and all necessary documents to consummate this transaction, upon approval as to form by the City Attorney and upon approval of the Los Angeles City Council; and

BE IT FURTHER RESOLVED that the Board of Airport Commissioners further authorized the Executive Director to execute the Consent to Assignment of Membership Interests with Pacific Aviation Development, LLC, and all necessary documents to consummate this transaction upon approval as to form by the City Attorney; and

BE IT FURTHER RESOLVED that the Board of Airport Commissioners further authorized the Executive Director to adjust and apply the Land Rental Rate for 7900 Balboa Boulevard effective July 1, 2015 as applicable; and

BE IT FURTHER RESOLVED that the Board of Airport Commissioners further authorized the Executive Director to apply the referenced Monthly Occupancy Permit land rates as referenced in the board report; and

BE IT FURTHER RESOLVED that the issuance of permits, leases, agreements, gate and space assignments, and renewals, amendments or extensions thereof, or other entitlements granting use of existing airport facilities or its operations is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article III Class 1(18)(c) of the Los Angeles City CEQA Guidelines; and

BE IT FURTHER RESOLVED that actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of Los Angeles City Charter Section 606.

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I hereby certify that this Resolution No. 25424 is true and correct, as adopted by the Board of Airport Commissioners at its Regular Meeting held on Monday, June 2, 2014.

Sandra J. Miller – Secretary
BOARD OF AIRPORT COMMISSIONERS
SUBJECT: Amendment to Lease; Consent to Assignment of Membership Interests; and Land Rental and Monthly Occupancy Permit Rates at Van Nuys Airport

Approve the First Amendment to Lease No. VNA-8597 with Pacific Aviation Development, LLC; a Consent to Assignment of Membership Interests in Pacific Aviation Development, LLC; and the 2015 Land Rental Rate and Monthly Occupancy Rate for the premises located at 7900 Balboa Boulevard at Van Nuys Airport, which is commonly referred to as the VNY Propeller Park.

RECOMMENDATIONS:

Management RECOMMENDS the Board of Airport Commissioners:

1. ADOPT the Staff Report.

2. DETERMINE this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article III, Class 1 (18)(c) of the Los Angeles City CEQA Guidelines.

3. APPROVE the First Amendment to Lease No. VNA-8597 between the City of Los Angeles and Pacific Aviation Development, LLC at Van Nuys Airport as referenced in this report.

4. FURTHER APPROVE the Consent to Assignment of Membership Interests in Pacific Aviation Development, LLC. As referenced in this report.

5. FURTHER APPROVE the Land Rental Rate for the premises located at 7900 Balboa Boulevard that will be used for the five-year periodic adjustment as referenced in this report.

6. FURTHER APPROVE the use of Board of Airport Commissioners approved land rental rate for use as a Monthly Occupancy Permit land rate for 7900 Balboa Boulevard.
7. AUTHORIZE the Executive Director to execute the First Amendment and all necessary documents to consummate this transaction, after approval as to form by the City Attorney and approval of the Los Angeles City Council.

8. FURTHER AUTHORIZE the Executive Director to execute the Consent to Assignment of Membership Interests with Pacific Aviation Development, LLC, and all necessary documents to consummate this transaction after approval as to form by the City Attorney.

9. FURTHER AUTHORIZE the Executive Director to adjust and apply the Land Rental Rate for 7900 Balboa Blvd. effective July 1, 2015 as applicable.

10. FURTHER AUTHORIZE the Executive Director to apply the referenced Monthly Occupancy Permit land rates as referenced in this report.

DISCUSSION:

1. Purpose

The purpose of the proposed Amendment is to stabilize the development of the Van Nuys Airport (VNY) Propeller Park (Site) and increase the probability of successful development by restructuring Lessee development obligations, deferring Lessee construction deadlines, phasing-in rent obligations with Lessee’s actual use of defined areas within the Site, expanding LAWA’s rights to delete areas from the Lessee’s control, and giving LAWA greater control over Site development if Lessee is unsuccessful in completing the project as currently envisioned in the proposed Amendment.

2. Prior Related Actions

- **March 1992**
  Master Plan study was initiated by LAWA and the City Planning Department staff as a joint-effort to identify general plan and zoning classifications for VNY.

- **January 2006**
  The Van Nuys Airport Plan, Alternative “J” was approved by the Mayor and consists of the Plan Map and the Plan text which includes objectives, policies and measures to guide the long-term development and use of the airport as a general aviation center and promote the compatibility of the Airport and surrounding communities. Alternative J specifically reserves acreage for use by current and future propeller operators. The primary area specifically identified for propeller use in Alternative J is the 30 acre site on the west side of VNY, generally between Roscoe Boulevard and Stagg Street.

- **February 20, 2007**
  The Board authorized the release of a Request for Proposals (RFP) for the development of a Propeller Aircraft Park at VNY. Two proposals were received. However, both proposers failed to submit required documentation, which rendered the proposals non-responsive.

- **October 1, 2007 – Board Resolution No. 23423**
  The Board rejected all proposals related to the February 2007 RFP and again authorized release of the RFP for the development of a Propeller Aircraft Park at VNY. No material changes to the scope of the February 2007 RFP were made.
• August 15, 2011 – Board Resolution No. 24542
The Board approved a thirty-year Lease with Pacific Aviation Development, LLC for Premises located at 7900 Balboa Blvd. and adopted the Final Negative Declaration (NG-10-404 AD) to design, finance, construct, market, and operate a high quality, self-sufficient facility for the propeller aircraft community that would facilitate the relocation of propeller aircraft at VNY to the Premises and free other areas of VNY for development.

• April 2, 2012 – March 14, 2014
To facilitate relocation of existing t-hangars at VNY to the VNY Propeller Park, the Executive Director, under Board Resolution No. 21636, approved a series of short term non-Board leases to Woodley Pacific Aviation, LLC, a company with shareholders in common with Pacific Aviation Development, LLC, for approximately 7 acres of aviation land located on the eastside of VNY to be used exclusively as a temporary propeller aircraft facility. On March 14, 2014 LAWA terminated the Lease with Woodley Pacific, LLC reserving all right for remedy under the Lease for approximately $120,000 in rent in arrears from February 1, 2013 through January 31, 2014.

3. Current Action

For a variety of reasons Pacific Aviation Development, LLC (PAD) has failed to develop the VNY Propeller Park as originally proposed and has also fallen behind on obligations required by the Lease in regard to financing, constructing, and paying rent. After unsuccessful attempts to find new investors that would reinvigorate the project, the member-owners of PAD have, in the past six months, restructured their relative positions and established a new management team to address outstanding issues. These changes have yielded measurable improvements in performance. To record these changes, LAWA’s approval of a Consent to Assignment of Membership Interests in Pacific Aviation Development, LLC is required.

In parallel with these changes staff determined (1) the terms of the Lease, as originally approved, will not result in the successful development of the VNY Propeller Park and (2) the construction deadlines and economics of the Lease are not sustainable, given evident uncertain demand by potential users of the VNY Propeller Park. Staff also determined that proceeding with default and termination of PAD’s tenancy pursuant to LAWA’s rights under the Lease would likely (1) delay development of all aspects of the VNY Propeller Park for years (2) consequently delay relocation of tenants elsewhere at VNY to the VNY Propeller Park and (3) as a result, frustrate the redevelopment of other VNY sites expected to be vacated by tenants anticipating relocation.

In this context, staff negotiated (1) a proposed Amendment to the Lease to increase the probability of a successful development of the VNY Propeller Park by PAD, while enhancing LAWA’s rights to directly and indirectly influence the pace of development, (2) a work-out for the rental obligations outstanding arising from the termination of the Woodley Pacific, LLC Lease and (3) the July 1, 2015 periodic land rental rate adjustment, as required under the five-year periodic adjustment language within Lease No. VNA-8597.

Additionally, staff requests the Board authorize use of previously approved land rental rates through a Monthly Occupancy Permit (MOP), which would allow certain areas of the Site not yet incorporated into the Premises to be used for construction staging and laydown.
I. **First Amendment to Lease** — Approval of the First Amendment and Consent to Assignment of Membership Interests will result in the following key changes:

A. **Premises** — Separates the Demised Premises into four Construction Areas to be used for amended scheduled investment, construction due dates, and monthly rental amounts for each Area

B. **Term** — No change

C. **Use** — No change

D. **Required Improvements** — The amended Construction Phasing Schedule sets development timeframes, construction delay penalties, and allows LAWA certain reversionary rights upon the failure of the Lessee to meet performance requirements of the amended Lease and, and a Premises Delete Option for Area #4 without a failure of performance on part of the Lessee

E. **Rental Adjustments** — Updates standard appraisal process language

F. **Periodic Adjustments** — The 2015 Land Rental Rate has been established; the next Periodic Adjustment to be July 1, 2020

G. **VNY Deficit Recovery Program (DRP)** — Updates standard language

H. **Mortgage, Financing and Other Encumbrances** — Updates standard language, including provisions for Lessee construction financing or refinancing from a reputable lender acceptable to the Board

I. **Assignments and Subleases** — Updated to standard language

J. **Assignment Fees** — Staff has determined no assignment fee is due under this Lease, as the Lessee has demonstrated not gain from the assignment of Membership interests.

K. **Additional Rent** — Upon completion of Construction Area #2, the Lessee will pay LAWA a total of $120,000 in sixty equal monthly payments of $2,000 each to address the outstanding rents of Woodley Pacific, LLC.

Furthermore, the First Amendment will:

1. Reduce risks of impending default/termination and/or, tenant bankruptcy related to non-performance under the current Lease;

2. Upgrade and enhance the viability of development obligations and secure new financial guarantees with proposed Assignment of Membership Interests in PAD;

3. Provide a clear pathway and metering plan for development to occur;

II. Consent to Assignment of Membership Interests in Pacific Aviation Development, LLC

The Lessee requests the Board approve and consent to the Membership Interest Transfer which will result in a change in majority ownership interest of Pacific Aviation Development, LLC upon consummation of the Membership Interest Transfer. This Consent to Assignment is limited to approval of the Membership Interest Transfer and does not apply to any other actions contemplated by the Assignment Agreement. Staff has determined no assignment fee is due under the Lease given the absence of economic gain associated with the assignment.

III. Periodic Adjustment – Land Rental Rate

In accordance with the Los Angeles City Charter Section 607 (b), Los Angeles City assets under lease are subject to periodic adjustment every five years. LAWA initiated a land rental rate negotiation with PAD for the 2015 adjustment based on an appraisal and increases to the consumer price index. The parties agreed to a propeller-only land use rate of $17,750 per acre per year (PAPY) for the period from July 1, 2015 through June 30, 2020, subject to automatic, annual increases to the Consumer price Index (CPI) on July 1 of 2016 through 2019. During any Annual Adjustment year, the adjustment will be no less than 2% or greater than 7%.

IV. Monthly Occupancy Permit Rate

Until such time as areas of the Site are converted to Premises under the Lease and to allow flexibility to designate and assign space for short-term or transitional, intermittent or single-event use, staff requests the Board authorize the use of the previously approved land rates for use under a Monthly Occupancy Permit (MOP). On May 16, 2011, under Resolution No. 24463, the Board approved aeronautical land rental rates for VNY.

Action Requested

Staff recommends the Board approve the First Amendment to Lease No. VNA-8597 with Pacific Aviation Development, LLC; approve the Consent to Assignment of Membership Interests in Pacific Aviation Development, LLC; approve the Land Rental Rate effective July 1, 2015 for the premises located at 8030 Balboa Blvd. at Van Nuys Airport, and authorize the Executive Director to execute the First Amendment and Consent to Assignment of Membership Interests and adjust and apply the Land Rental/MOP Rates as applicable.

Fiscal Impact

On a cash basis approval of the amendment will result in no material fiscal impact on LAWA. However, as a result of the proposed Amendment and the rent restructuring therein, unpaid rents under the original lease will not be realized, which amount is approximately $600,000.

Pursuant to the proposed Lease Amendment, staff projects rental payments of $2.3 million over the first five years following approval, While this amount is approximately $575,000 less than what would have been due under the Lease in the absence of the proposed Amendment, staff believes the original Lease terms are not sustainable and the originally expected rents would not be realized either because LAWA would have terminated the Lease, given various unacceptable Lessee defaults, or the Lessee could file for bankruptcy protection.

Either of these failure scenarios would yield far less rent than under the proposed Amendment as the Site would yield zero rent while LAWA sought another tenant though a new competitive process. Staff estimates the rent arising from approval of the proposed
Amendment would be more than $1.2 million greater in the next five years than the amount that would be realized from a termination-and-relet or Lessee bankruptcy path.

4. Alternatives Considered

- **Take No Action**

If the First Amendment to Lease No. VNA-8597 and Consent to Assignment of Membership Interests are not approved, staff expects LAWA will aggressively pursue termination of Lease No. VNA-8597 and this action could result in tenant bankruptcy. Following such events, whenever they might conclude, LAWA would then likely issue a series of RFPs to lease sub-areas of the VNY Propeller Park using multiple tenants rather than a master developer. This course of action would delay development of the VNY Propeller Park for years and have consequence for redevelopment across VNY.

**APPROPRIATIONS:**

No appropriations are required for this item.

**STANDARD PROVISIONS:**

1. The issuance of permits, leases, agreements, gate and space assignments, and renewals, amendments or extensions thereof, or other entitlements granting use of existing airport facilities or its operations is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article III, Class 1 (18) of the Los Angeles City CEQA Guidelines.

2. This item is subject to approval as to form by the City Attorney.

3. Actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of Los Angeles City Charter Section 606.

4. Pacific Aviation Development is required by contract to comply with the provisions of the Living Wage/Service Contractor Worker Retention Ordinances.

5. The Minority/Women Business Enterprise Program does not apply to leases.

6. Pacific Aviation Development is required by contract to comply with the provisions of the Affirmative Action Program.

7. Pacific Aviation Development has been assigned Business Tax Registration Certificate number 0002631173-0001-4.

8. Pacific Aviation Development is required by contract to comply with the provisions of the Child Support Obligations Ordinance.

9. Pacific Aviation Development has approved insurance documents, in the terms and amounts required, on file with the Los Angeles World Airports

10. This action is not subject to the provisions of Los Angeles City Charter Section 1022 (Use of Independent Contractor).
11. Pacific Aviation Development must submit the Contractor Responsibility Program Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.

12. Pacific Aviation Development must be determined by Public Works, Office of Contract Compliance to be in compliance with the provisions of the Equal Benefits Ordinance prior to execution of the Lease Agreement.

13. This action is not subject to the provisions of the First Source Hiring Program.

14. Pacific Aviation Development must submit the Bidder Contributions CEC Form 55 and comply with its provisions prior to execution of the Lease Agreement.