

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:)	
FLYBOY AVIATION PROPERTIES, LLC,)	CASE NO: 13-55775-BEM
Debtor.)	CHAPTER 11
_____)	
FLYBOY AVIATION PROPERTIES, LLC,)	CONTESTED MATER
Plaintiff,)	
vs.)	
GWINNETT COMMUNITY BANK,)	
RUBY LEE KIMBRO MATHIS AS)	
EXECUTRIX OF THE ESTATE OF)	
CLAUDY JOHN MATHIS AND)	
RICHARD FRANCK)	
_____)	
Defendants.)	

**MOTION FOR AUTHORIZATION TO SELL REAL PROPERTIES
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**

COMES NOW Flyboy Aviation Properties, LLC, ("Debtor"), by and through the undersigned counsel, and hereby files this "Motion for Authorization to Sell Real Properties Free and Clear of Liens, Claims, Encumbrances, and Interests" ("Motion"). In support of the Motion, Debtor shows the Court as follows:

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The Statutory predicate for the relief requested herein is 11 U.S.C. §§ 105 and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure.

2. On March 15, 2013 ("Petition Date"), Debtor, filed a petition for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (as amended, modified or supplemented, the "Bankruptcy Code"). Debtor continues to operate its business and manage

its affairs as a debtor-in-possession in accordance with Sections 1107 and 1108 of the Bankruptcy Code.

3. Debtor is a Georgia limited liability company which owns two pieces of land in Forsyth County: (i) 14.0763 acres in Land Lots 994, 995, 102 & 1022, 1st Section, 2nd Land District of Forsyth County located at 3747 Mathis Airport Drive, Suwanee, GA (“Air Field Real Property”) as more particularly described in the Agreement (as defined below); and (ii) 1.992 acres in Lot 1022, 2nd District, 1st Section of Forsyth County, Georgia (the “Forsyth Real Property”) as more particularly described in the Agreement. (The Air Field Real Property and Forsyth Real Property are collectively referred to herein as the Real Properties”)

4. JEH Homes, LLC, a Georgia limited liability company, and or its successors or assigns (“Buyer”) has made an offer to purchase the Real Properties. A copy of the Purchase Agreement (“Agreement”) is attached hereto and incorporated herein by reference as Exhibit “1.”

5. As set forth in the Agreement, Buyer’s offer encompasses paying \$90,000 per acre based on a Survey (as defined in Section 3.02 of the Agreement) (the “Purchase Price” and “Sale Proceeds”). Debtor estimates the total acreage of the Air Field Property is 14.0763 acres, which equals an estimated Air Field Purchase Price of \$1,266,867. Debtor estimates the total acreage of the Forsyth Real Property is 1.992 acres, which equals an estimated Forsyth Purchase Price of \$179,280. Accordingly, Debtor estimates the Total Purchase Price under the Agreement will be \$1,446,147.00.

6. The Agreement has an Effective Date of July 10, 2013, but further provides that the Agreement is subject to Bankruptcy Court approval.

7. The Agreement provides for a Deposit of: (i) \$25,000 with Jones and Walden, LLC as escrow agent to be held in Jones and Walden, LLC’s IOLTA trust account within 10

days of execution of the Agreement (i.e. by July 20, 2013¹); and (ii) an additional \$74,000 deposit with the escrow agent to be held in its IOLTA trust account following the expiration of the Investigation Period (defined in paragraph Section 4.01 of the Agreement as the period ending the 60th day after the Effective Date of the Agreement i.e. September 8, 2013).

8. The Agreement requires the rezoning of the Real Properties from an airport to single-family residential. See Exhibit 1 at 14.16. Accordingly, the Real Properties will not operate as an airport after the rezoning.

9. Debtor has marketed the Real Properties for approximately 4 years. This is the best offer Debtor has received in that 4 year time frame. The Agreement represents the highest and best offer on the Real Properties and establishes the fair market value of the Real Properties is not more than \$90,000 per acre.

SUMMARY OF SECURITY INTERESTS, LIENS, CLAIMS,
ENCUMBERANCES AND INTERESTS

10. Upon information and belief, Gwinnett Community Bank (GCB) asserts a first priority lien on the Real Properties and proceeds therefrom pursuant to: (i) a promissory note dated December 5, 2011 in original principal amount of \$1,562,110.39, which was modified on March 3, 2012 (“Air Field GCB Note”), and secured by the Air Field Real Property pursuant to that Deed to Secure Debt and Security Agreement dated June 11, 2004 between Debtor and GCB recorded in the records of the Superior Court of Forsyth County on June 14, 2004 in deed book 3380 commencing on page 177 (the “Air Field Property GCB Security Deed”) as modified on March 3, 2012 pursuant to the Modification Agreement recorded on March 28, 2013 in the Superior Court of Forsyth County in deed book 6237 commencing on page 643 with a maturity date of November 19, 2014² and (ii) pursuant the promissory note between Debtor and GCB

¹ Jones & Walden, LLC received a check for \$25,000.00 on July 10, 2013, which it deposited into its IOLTA trust account.

² The Mathis Security Deed (as defined below) is subordinate to the Air Field Property GCB Security Deed pursuant to the Subordination Agreement dated June 11, 2004 and recorded in the records of the Superior Court of Forsyth County on June 14, 2004 in book 3380 commencing on page 221

dated December 5, 2011 in the original principal amount of \$55,500.00 ("Forsyth Note") secured by the Forsyth Real Property pursuant to the Deed to Secure Debt and Security Agreement dated April 10, 2009 and recorded in the records of the Superior Court of Forsyth County on April 14, 2009 in deed book 5389 commencing on page 376 (the "Forsyth Real Property Security Deed") as modified pursuant to the Modification Agreement recorded on December 27, 2011 recorded in deed book 6149 on page 35 with a maturity date of November 19, 2014. Pursuant to proof of claim 5, the outstanding balance on the Air Field GCB Note and Air Field GCB Security Deed is \$1,553,919.82 (consisting of principal of \$1,548,775.51 and pre-petition interest of \$5,164.31 accruing at the rate of 5% annually) (the "Air Field GCB Secured Claim") Pursuant to proof of claim number 4, the outstanding balance on the Forsyth Note and Forsyth Real Property Security Deed on the Filing Date was \$50,701.10 (consisting of principal in the amount of \$50,532.30 and pre-petition interest in the amount of \$168.80 accruing at the rate of 5% annually) (the "Forsyth GCB Secured Claim")³.

11. Upon Debtor's information and belief, Ruby Lee Kimbro Mathis as Executrix of the Estate of Claudy John Mathis ("Executrix Mathis") asserts a second priority lien on the Air Field Real Property and proceeds therefrom pursuant to the Deed to Secure Debt and Security Agreement dated June 11, 2004 and record August 14, 2004 in the records of the Superior Court of Forsyth County in deed book 3380 commencing on page 208 between Debtor and CJ Mathis (the "Air Field Mathis Security Deed"). A copy of the underlying promissory note is not attached to the proof of claim filed by the Executrix Mathis, but the Mathis Security Deed, states that it secures a promissory note between Debtor and CJ Mathis in the original principal amount of \$774,196.50 ("Air Field Mathis Note"). A copy of the letters testamentary are not attached to the proof of claim; however, upon Debtor's information and belief, CJ Mathis is deceased and Ruby Lee Kimbro Mathis asserts she is the executrix of the CJ Mathis estate. The Mathis

³ The Air Field GCB Deed and Forsyth GCB Deed include a drag net provision. Accordingly, the Air Field Real Property is additionally secured by the Forsyth Secured Claim and the Forsyth Real Property is additionally secured by the Air Field GCD Secured Claim.

Security Deed is subordinate to the Air Field GCB Security Deed pursuant to the Subordination Agreement dated June 11, 2004 and recorded in the records of the Superior Court of Forsyth County on June 14, 2004 in book 3380 commencing on page 221. Pursuant to proof of claim number 2 filed by Executrix Mathis the outstanding balance on the Air Field Mathis Note and Air Field Mathis Security Deed on the Filing Date was \$1,119,681.70 (consisting of principal in the amount of \$774,196.50 and pre-petition interest in the amount of \$345,458.20 accruing at the annual rate of 5.5%) (the "Air Field Mathis Secured Claim").

12. Upon information and belief, Richard (Rich) Franck ("Franck") asserts an easement against the Air Field Real Property pursuant to the Adversary Proceeding identified as case number 13-05111-bem pending in this Court, Notice of Lis Pendens recorded in the lien records of Forsyth County in Book 185 commencing on Page 43, and Addendum to Settlement Statement recorded March 9, 2005 in the records of the Superior Court of Forsyth County in Deed Book 3703 commencing on Page 119 (collectively the "Franck Asserted Easement")⁴. Debtor, as plaintiff, removed litigation pending in the Superior Court of Forsyth County to this Bankruptcy Court. Debtor initiated the subject litigation in the Forsyth Superior Court on March 5, 2008 as a Complaint for Injunctive Relief seeking to enjoin Rich Franck from trespassing on Debtor's Real Property and interfering with the operation of the airport located on the Real Property. On June 6, 2008, Rich Franck filed his Verified Answer and Counterclaim asserting a claim of easement for use of the Real Property for taxiing, takeoff and landing of aircrafts. Upon Debtor's information and belief, Rich Franck's claims of easements are based on: (i) a purported written easement between the prior owner of Debtor's Real Property and the prior owner of land Mr. Franck purchased in proximity to Debtor's Real Property (which document was unrecorded at the time Debtor purchased the Real Property); and (ii) a prescriptive easement. Debtor disputes that Mr. Franck has any easements on Debtor's Real Property. A true and correct

⁴ Debtor shows that Richard Franck did not timely file a proof of claim by the Bar Date, May 28, 2013. Accordingly, pursuant to the bar order (Doc. No. 22) any asserted claim of Mr. Franck is forever barred and discharged without payment.

copy of the purported written easement, which flows from an Addendum to Settlement Statement is attached hereto as Exhibit "2" and a true and correct of the Notice of Lis Pendens is attached hereto as Exhibit "3."

13. Pursuant to the Adversary Proceeding, Debtor disputes that Franck holds any liens, claims, easements or interest of any kind in the Air Field Real Property or any of Debtor's assets or Property. Moreover, the claimed easement, which Franck asserts flows from the Addendum to Settlement Statement was recorded after Debtor purchased the property. Accordingly, Debtor purchased the Air Field Real Property as a bona fide purchaser without notice of the claimed easement. Additionally, the claimed easement states that any purported grant of rights is limited by the clause "as long as Mathis Airport shall continue as an airport; however this shall not restrict Seller's rights to sell said airport property as an airport or for other uses." See Exhibit 2.

14. Upon Debtor's information and belief, Edward McCrimmon, Lisa McCrimmon and Alisha McCrimmon assert an easement to use Mathis Airport located on the Air Field Property for access and use of runways, taxiways, common areas, amenities, appurtenances, and approaches for egress and ingress, including aircraft, vehicular, golf car and pedestrian traffic pursuant to the Easement recorded July 30, 2008 in Deed Book 5195 commencing on Page 149 ("McCrimmon Easement"). Edward and Lisa McCrimmon serve as Special Counsel in the Adversary Proceeding, and Debtor understands the McCrimmons do not oppose this Motion and the sale of the Real Properties free and clear of their interests or claims.

PROPOSED DISTRIBUTION OF SALE PROCEEDS

15. Debtor request that it be authorized to use the Sale Proceeds as follows:

- (a) 6% sales commission of the Total Purchase Price to Debtor's Approved Broker, Ackerman & Co (estimated at \$86,768.82) broken down as 6% of the Air Field Purchase Price (\$76,012.02) and 6% of the Forsyth Purchase Price (\$10,756.80);

- (b) Customary closing costs attributable to Debtor as seller (including any outstanding or pro-rated real property taxes associated with the Real Properties);
- (c) All net proceeds from the Purchase Price to GCB to the extent of the Air Field GCB Secured Claim and Forsyth GCB Secured Claim and next to Executrix Mathis to the extent of the Air Field Mathis Secured Claim.

RELIEF REQUESTED

16. Debtor requests authority to enter into the Agreement and sell the Real Properties as described herein free and clear of liens, claims, encumbrances, and interests for the Purchase Price. Additionally, Debtor requests permission to disburse the Sale Proceeds as stated herein and take such action as necessary to effectuate the terms of the Agreement. Debtor requests that: (a) the Court waive any stay pursuant to Bankruptcy Rule 6004 or otherwise and (b) any order approving the sale of the Real Properties and disbursement of the Sale Proceeds be effective immediately upon entry of any order approving the sale of the Real Properties and disbursement of the Sale Proceeds as the parties wish to proceed under the Agreement as soon as possible and the Buyer may walk if the closing is delayed.

TRANSACTION IS IN THE BEST INTEREST OF THE ESTATE

17. Buyer has made an offer to purchase the Real Properties. Debtor believes the proposal represents the highest and best offer available. The transaction would provide a significant return to GCB and avoid detriment to the community caused by foreclosure resulting in an inoperable or abandoned airport.

BASIS FOR RELIEF

18. A debtor in possession may sell property under Section 363(f) of the Bankruptcy Code "free and clear of any interest in such property of any entity other than the estate" if any one of the following conditions is satisfied: (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens

on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. §363(f). Debtor anticipates that one or more of these requirements will be satisfied.

19. As to the GCB⁵ and Executrix Mathis liens, claims and interest, including the Air Field GCB Secured Claim, Air Field Executrix Mathis Secured Claim and Forsyth GCB Secured Claim, Debtor is authorized to sell the Real Properties free and clear of the same pursuant to §363(f)(3) and (5). Some Courts have held that to satisfy §363(f)(3), the sale must be greater to or equal to the value of the liens asserted against the property pursuant to 11 U.S.C. 506 rather than the face value of the liens. See *In re Becker Industries Corp.*, 63 B.R. 474 (Bankr. S.D. NY 1986). Courts have additionally allowed sales free and clear of liens pursuant to 363(f)(5) where a secured lender is not paid in full, so long as the true value of the asset is paid based on state laws allowing senior secured lenders to foreclose free and clear of junior lien holder's lien. See *In re Jolan*, 403 B.R. 866, 61 Collier Bank. Ca. 2d (MB) 1699 (Bankr. W.D. WA 2009). Georgia recognizes the ability of a senior lien holder to foreclose real property free and clear of a junior lien holder's claim.

20. As to the Franck Asserted Easement, the express terms of the Franck Asserted Easement allow such a sale free and clear of the Franck Asserted Easement. The Franck Asserted Easement states that any purported grant of rights is limited by the clause "as long as Mathis Airport shall continue as an airport; however this shall not restrict Seller's rights to sell said airport property as an airport or for other uses." See *Exhibit 2*. Buyer is purchasing the Real Properties for use other than as an airport and the sale is contingent upon rezoning to residential use. Accordingly, even if the Franck Asserted Easement is valid, the Franck Asserted Easement authorizes this sale free and clear of the Franck Asserted Easement because the Buyer is not going to operate an airport and in fact will not be able to operate an airport once the rezoning is approved.

⁵ Debtor anticipates seeking the consent of GCB to this Motion.

21. Moreover, as to the Franck Asserted Easement, Debtor is authorized to sell the same pursuant to 11 U.S.C. §363(f)(4) as the Franck Asserted Easement is subject to a bona fide dispute. The term bona fide dispute is not defined in the Bankruptcy Code; however, courts have repeatedly found that a bona fide dispute exists where “there is an objective basis for either a factual or legal dispute as to the validity of the debt.” *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D.II 1990) *citing In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987) (analyzing term “bona fide dispute” and stating same analysis applies in analyzing the term under 11 U.S.C. §363(f)(4) and §303) *see also Collier on Bankruptcy*, 3-363 ¶363.05[5] (15th Ed. Rev.). Additionally, the court does not need to determine the likely outcome of the dispute to authorize the sale; a bona fide dispute simply needs to exist. *Octagon Roofing* at 590 *citing Busick* (7th Cir. 1987).

22. Here, as stated in the Adversary Proceeding pleadings, Debtor purchased the Real Properties as a bona fide purchaser for value, prior to the recording of the Franck Asserted Easement and without knowledge of the Franck Asserted Easement. Accordingly, the Franck Asserted Easement and any of Franck’s claims or interest to the Real Properties are in bona fide dispute and the Real Properties can be sold free and clear of the same.

23. Buyer does not have a familial relationship to Debtor. Buyer is not an “affiliate” or “insider” of Debtor. Upon information and belief, Debtor shows that the proposed Buyer is a “good faith” purchaser. Debtor requests that the Court find such Buyer to be a good faith purchaser, pursuant to the provisions of Section 363(m) of the Bankruptcy Code.

24. Buyer has indicated its interest in proceeding under the Agreement as soon as possible.

WHEREFORE, for all of the foregoing reasons, Debtor moves the Court to enter an Order:

- (a) Granting the Motion;
- (b) Authorizing disbursement of the sales proceeds as described herein or as otherwise may be approved by the Court;

- (v) Waving the say of such Order pursuant to Bankruptcy Rule 6004 or any rule of similar import and making the Order effective upon its entry; and
- (c) Granting Debtor such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED this 12th day of July, 2013.

JONES & WALDEN, LLC

/s/ Leon S. Jones

Leon S. Jones
Georgia Bar No. 003980
Leslie Pineyro
Georgia Bar No. 969800
Attorneys for Debtor
21 Eighth Street, NE
Atlanta, Georgia 30309

EXHIBIT "1" FOLLOWS

**AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY
(MATHIS AIRPORT)**

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (“**Agreement**”) is made and entered into as of the Effective Date, as defined in Section 1.03 below, by and between **FLYBOY AVIATION PROPERTIES, LLC**, a Georgia limited liability company (“**Seller**”), and **JEH HOMES, LLC**, a Georgia limited liability company, and/or its successors or assigns (“**Buyer**”).

RECITALS:

A. Seller is the owner of certain real property located in Forsyth County (the “**County**”), Georgia, more particularly described on **Exhibit “A”** attached hereto and made a part hereof (the “**Land**”).

B. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller to be supportive of this Agreement in its entirety, it is hereby agreed as follows:

Article I

SALE – PURCHASE

Property. Seller agrees to sell and Buyer agrees to purchase the “**Property**,” consisting of (a) fee simple title to the Land and (b) all rights, ways, privileges and easements appurtenant to the Land, including Seller’s right, title and interest in and to all strips, gores, streets, alleys and ways, public or private, adjoining or crossing the Land, all of which are appurtenant to, and shall benefit, the Property.

Intangible Rights. The sale of the Property shall include the sale, transfer and conveyance of all of Seller’s right, title and interest in and to all warranties, guaranties, certificates, licenses, bonds, water and sewer agreements, permits, authorizations, consents and approvals which in any respect whatsoever relate to or arise out of the use, occupancy, possession, development, construction or operation of the Property (collectively, the “**Seller’s Permits**”), but shall not constitute an assumption by Buyer of any liabilities arising under Seller’s Permits, except as specifically set forth in this Agreement. The sale of the Property shall also include the sale, transfer and conveyance of all of Seller’s right, title and interest in and to all intangible personal property, including, without limitation, architectural plans, all floor plans, maintenance and service contracts, water and sewer hook-ups, impact fee credits, development agreements,

approvals, easements, permits, plans, reports, studies, consents and agreements, as well as all rents, issues, proceeds and profits now or hereafter accruing from the Land, all of which are intended to encompass all of Seller's contractual rights, benefits, and entitlements relating to the Property (collectively, the "**Intangible Personal Property**").

Effective Date. The "**Effective Date**" of this Agreement shall be the date on which the last of Seller and Buyer has executed this Agreement and so notified the other in writing. The "**Closing**" shall be the event which transpires on the "**Closing Date**" (as defined in Section 7.01 hereof).

Article II

PURCHASE PRICE AND TERMS OF PAYMENT

(A) Purchase Price. The Purchase Price for the Property shall be NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00) per acre based on the "Survey" (as hereinafter defined). The Purchase Price is inclusive of any sewer fees and water meters previously purchased by Seller or Seller's predecessor in title.

Terms of Payment. Buyer shall deposit the sum of TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) (the "**Deposit**") with Jones and Walden, LLC (the "**Escrow Agent**"), within ten (10) business days after the Effective Date. In the event that Buyer does not terminate this Agreement within the Investigation Period, then within three (3) days following the expiration of the Investigation Period Buyer shall deliver an additional SEVENTY FOUR THOUSAND AND NO/100 DOLLARS (\$74,000.00) to Escrow Agent, which amount shall also be a part of the Deposit under this Agreement. The Deposit shall be remitted to Escrow Agent by cashier's check, subject to clearance or wire transfer of immediately available federal funds. The Deposit shall be held by Escrow Agent in an IOLTA trust account. Escrow Agent shall hold the Deposit pursuant to the terms of this Agreement, subject only to mutually agreed upon written modifications executed by the parties hereto. Buyer shall receive a credit against the Purchase Price at Closing in the amount of the Deposit.

Article III

TITLE AND SURVEY

Title Examination. Buyer shall have the right to have title to the Property examined and to obtain a commitment for title insurance (the "**Title Commitment**") and a policy of title insurance (the "**Title Policy**"), all at Buyer's expense. At Closing, Seller shall convey title to the Property to Buyer by limited warranty deed, which shall expressly be made subject to the matters set forth in this Agreement and matters approved or waived by Buyer as provided below. The title shall be subject to current and future real property taxes and assessments not yet due and payable and general utility and right-of-way easements of record affecting the Property as of the Effective Date of the Title Commitment, which do not adversely affect Buyer's proposed development of the Property and permitted title exceptions, if any, which are set out in this Agreement which are not objected to or waived in writing by Buyer pursuant to Section 3.03

hereof. Seller shall not, between the date of this Agreement and Closing, convey or create any interest in the Property without Buyer's prior written consent. The Property shall not be subject to any mortgage, deed to secure debt or other title exception or defect that is monetary in nature, other than as set forth in this Section 3.01(the "**Monetary Encumbrances**"). In the event the Property is subject to a title defect or exception that is monetary in nature, Seller shall pay and satisfy of record any such Monetary Encumbrances prior to or at Closing at Seller's expense. The parties also agree that, at Closing, the Property shall not be subject to any leases, rental agreements or other rights of occupancy of any kind, whether written or oral, unless such matters have been agreed to by Buyer.

Survey. Buyer shall obtain and provide a survey (the "**Survey**") of the Property prior to the expiration of the Investigation Period. The Survey shall be prepared by a Georgia Registered Land Surveyor and be certified to Buyer and Buyer's title company. At Buyer's election, the Survey may be prepared in accordance with the minimum detail requirements established by ALTA/ACSM (with respect to a "Class A" survey) or the minimum standards prescribed by the State of Georgia. The Survey may include, without limitation, the spotting and location of all fences, drainage and utility easements, public or private rights-of-way or center line locations, encroachments, building set back requirements of record, other easements, improvements constructed thereon, if any, and all other matters requested by Buyer or required by the applicable standards. The Survey may also include a flood plain and wetland certification by the surveyor certifying the absence of the same from any portion of the Property. In the event the Survey reflects easements, encroachments, overlaps, or other defects not contained in the Permitted Exceptions to title, the parties shall have the same rights and duties relating to the remedy of such survey defects as are provided in Section 3.03 pertaining to the remedy of title defects. In the event that the property description drawn from the Survey differs from the description of the Property set forth on Exhibit A of this Agreement, then, in addition to the other required closing documents prescribed by this Agreement, Seller agrees to grant a Quitclaim Deed to Buyer conveying the property description drawn from the Survey.

Objections to Title or Survey. As to any other title exceptions or defects not covered by Section 3.01, and as to matters of survey, Buyer shall have until the end of the Investigation Period to examine title to the Property and deliver notice to Seller in writing of any objections that Buyer may have (the "**Objection Notice**"). If Buyer fails to furnish the Objection Notice, Buyer shall be deemed to have waived its right to object to title exceptions or defects and matters of survey. If Buyer does provide the Objection Notice, Seller shall, within three (3) days of the Objection Notice, provide notice to Buyer advising Buyer which if any of Buyer's objections Seller elects to attempt to cure (the "**Seller Response**"). If Seller fails to provide the Seller Response, Seller shall be deemed to have elected to cure. If Seller elects to cure (or is deemed to have elected to cure), Seller shall then have up to the time of the Closing, to cure or satisfy such objections. If Seller has elected to cure any objection but is not satisfied by Seller by Closing, then without prejudice to Buyer's rights under Section 12, Buyer shall have the

right to terminate this Agreement, and the full amount of the Deposit shall be returned to Buyer by Escrow Agent. If Seller does so cure or satisfy the objection(s), this Agreement shall continue in effect. Buyer shall have the right at any time to waive, in writing, any objections that it may have made and thereby preserve this Agreement in effect.

Article IV

INVESTIGATION OF PROPERTY

Right of Entry. Commencing as of the Effective Date and continuing for a period ending on the sixtieth (60th) day thereafter (which period shall be referred to as the "**Investigation Period**"), Buyer, and all of Buyer's agents, contractors, consultants, representatives and other persons designated by Buyer, shall have the right, with reasonable prior notice to Seller, to enter on any portion of the Property, for the purpose of investigation, discovery and testing of the Property, including, without limitation, surveying, soil testing and boring, hydrological studies, environmental studies, structural inspections or any other studies or tests Buyer determines in its reasonable discretion to be necessary or appropriate (collectively, the "**Inspections**"). Seller shall cooperate fully with Buyer in conjunction with Buyer's Inspections, including providing access at all reasonable times prior to the Closing. Seller also agrees to provide Buyer with Seller's cooperation in regard to Buyer's efforts to obtain all appropriate or relevant information concerning the Property. Provided Buyer has not terminated this Agreement or defaulted hereunder, this right of entry, as well as all rights provided to Buyer in this Section 4.01, shall continue unabated through the Closing. All of Buyer's Inspections shall be at Buyer's sole cost and expense, and shall be performed in a manner so as not to unreasonably interfere with Seller's interest in the Property. Buyer has no authority or right to create liens upon the Property. Buyer shall remove by a statutory permitted bond or otherwise within five (5) days after any lien of any type attaches to the Property as a result of any Buyer's Inspections. Upon completion of any Inspection, Buyer shall restore any damage to the Property caused by such Inspection as near as practical. Buyer hereby indemnifies and holds Seller and its shareholders, officers, employees, agents, members, guests and other invitees harmless from all injury, damage, loss, cost or expense, including, but not limited to, attorneys' fees and court costs resulting from Buyer's Inspections.

Property Documents. Within three (3) days following the Effective Date, Seller shall furnish to Buyer all information concerning the Property which Seller possesses, or that which Seller may reasonably obtain, and Seller shall continue to furnish to Buyer all information concerning the Property of which Seller acquires possession subsequent to the Effective Date, including, but not limited to, copies of all plans, plats, surveys, zoning and land use information, contracts, soil tests and reports, environmental tests and reports, engineering studies, inspection reports, due diligence materials, CAD files, appraisals, feasibility studies, landscape plans, site plans and all other governmental and quasi-governmental applications, approvals, consents and authorizations relating to the Property. All of the information to be furnished under this Section 4.02 shall collectively

be referred to as the "**Property Documents**." Any delay in Seller's delivery of the Property Documents shall result in an extension of the Investigation Period for an equal number of days. Seller hereby represents and warrants that, to the best of Seller's knowledge, all of the information contained in the Property Documents is true and correct in all material respects and fairly and accurately reflects the condition or statement of facts reported to be described or represented thereby. At Closing, Seller shall assign to Buyer, without recourse, representation or guaranty, all of its right, title and interest in and to the Property Documents and deliver all of the original Property Documents, and Seller's Permits and Intangible Personal Property.

Right of Cancellation. Buyer shall have the absolute and unqualified right, by notice to Seller, to terminate this Agreement at any time prior to the expiration of the Investigation Period for any reason whatsoever or for no reason. Upon any such termination, the Deposit shall be returned promptly to Buyer (less \$100.00 which shall be paid to Seller in consideration of the termination rights afforded herein), and this Agreement will be terminated in all respects and neither Buyer nor Seller will have any further rights or obligations hereunder, except as may be otherwise expressly set forth in this Agreement. Notwithstanding anything to the contrary herein, following "**Final Rezoning**" (as hereinafter defined) the Deposit shall be non-refundable to Buyer apart from the following: (i) a default by Seller under this Agreement; (ii) failure of the Condition Precedent set forth in Section 13.01(B) of this Agreement (Title); (iii) failure of the Condition Precedent set forth in Section 13.01(F) of this Agreement (acquisition of the adjacent parcel); or (iv) failure of the Condition Precedent set forth in Section 13.01(H) (issuance of court order) (each of the foregoing being referred to as a "Refundable Event")..

Article V

SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer, as true and correct, both on the Effective Date and throughout the period of time until and through Closing as follows. All of the following representations shall survive Closing.

Violations, Litigation and Adverse Information. Seller has not received any notice of nor does Seller have knowledge of: (a) violation of any law, statute, ordinance, order, regulation, rule, restriction or requirement of any federal, state and local governmental and quasi-governmental agencies, entities, boards and authorities that have jurisdiction over the Property (each a "**Governmental Entity**" and collectively, the "**Governmental Entities**") pertaining to or affecting any portion of the Property; or (b) any suit or proceeding pending or threatened affecting any portion of the Property in any court or before any Governmental Entity or tribunal; or (c) other fact or condition which would have a material adverse effect upon the Property or its value which has not been disclosed in writing to Buyer, except that it is further provided that Seller has disclosed the Franck Claims.

Ownership and Parties in Possession. Seller owns marketable fee simple title to the Property. There are no parties in possession of any portion of the Property whether as lessees, tenants-at-sufferance, trespassers or otherwise, other than Seller. No other person or entity has any right, claim or interest in the Property or any portion thereof, arising out of adverse possession, prescriptive rights, or otherwise, except that Seller has disclosed the existence of the Franck Claims.

Prior Application or Commitments. Other than matters of public record, there are no applications or commitments to any Governmental Entity or utility which would affect the Property which have not been disclosed in writing to Buyer.

No Liens. No work has been performed or is in progress upon, and no materials have been furnished to, the Property or any part thereof, which might give rise to any mechanic's, materialmen's, or other liens against the Property. To the best of Seller's knowledge and belief there are no special assessments, pending or certified, which may now or hereafter become an obligation of Buyer, monetary or otherwise.

FIRPTA. Seller is not a "foreign person," as defined by Section 1445 of the Internal Revenue Code. Seller shall comply with all requirements imposed by the Internal Revenue Service in regard to same.

Authority of Seller. Seller is a Georgia, limited liability company in good standing, and the individual signing this Agreement on behalf of Seller has the lawful right, power, authority and capacity to bind Seller to the terms hereof and consummate the transactions contemplated by this Agreement, pursuant to the terms, provisions and conditions of this Agreement.

Title to Property. Seller will not cause, permit or suffer any act to be performed or not performed, the result of which will cause any lien, encumbrance or cloud upon Seller's title to the Property such that Seller shall be unable to convey title to the Property to Buyer in accordance with this Agreement. From and after the Effective Date, Seller shall take no action to encumber the Property or otherwise affect title to the Property without the prior consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

Changes to Documents and Condition of the Property. Seller shall maintain the Property in substantially the same condition as exists as of the Effective Date and shall not terminate, modify, amend or waive any provision of any lease, contract, permit, agreement, or any other document previously provided, or to be provided, to Buyer in accordance with this Agreement, or any benefit or entitlement described in this Agreement to be conveyed to Buyer, without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

Environmental Condition. Seller has not used, and, subsequent to the Effective Date, shall not and will not permit any other party to use, any Hazardous Substances on the Property. Seller represents and warrants to Buyer that, to the best of Seller's knowledge, there is not any: (a) presence of any "Hazardous Substance" (defined below) above, below, on, or within the Property; (b) present or past generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance on the Property; or (c) failure by Seller or any former owner of the Property to comply with any applicable local, state or federal environmental laws, regulations, ordinances or administrative or judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance. As used herein, the term "Hazardous Substance" means any substance or material defined or designated as a hazardous or toxic waste, material or substance, chemical contaminant, or other similar term, deemed to be such by any federal, state or local environmental statute, regulation or ordinance presently or hereafter in effect, as such statutes, regulations or ordinances may be amended from time to time.

Bankruptcy. Seller is currently a Debtor in a Chapter 11 Case No. 13-55775, pending in the U.S. Bankruptcy Court, Northern District of Georgia (the "Bankruptcy Court"). The parties acknowledge and agree that Seller shall seek the Bankruptcy Court's authorization and approval of this Agreement within 5 days of the Effective Date and that Seller's right and ability to enter, consummate and close the transactions set forth in this Agreement are subject to and contingent upon the Bankruptcy Court's approval of this Agreement. Without limitation of the foregoing, Seller shall request the Bankruptcy Court to authorize the sale of the Property free and clear of the Franck Claims. For purposes of the provisions of this Agreement, including but not limited to sections 5.01, 5.02, and this section 5.10, the Frank Claims shall be defined as follows: all those claims of Richard Franck, without limitation, set forth in the Civil Action No. 08CV-0509 (the "Forsyth Action"), as removed to the U.S. Bankruptcy Court and assigned Adversary Proceeding No. 13-05111, and that certain Lis Pendens recorded in Forsyth County Superior Court at Book 185, Page 43 ("Lis Pendens"). Seller shall promptly notify Buyer of any action by the Bankruptcy Court which relates to this Agreement, the Franck Claims and the Lis Pendens.

Contracts. There are no management, employment, service, equipment, supply, maintenance, water, sewer, or other utility or concession agreements or agreements with municipalities or other parties (including improvement or development escrows or bonds) with respect to or affecting the Property which will burden the Property or Buyer after Closing in any manner whatsoever. There are no pending contracts for the sale of any portion of the Property, other than this Agreement.

Article V.1. Community Development District. The Property is not within the boundaries of any community development district to the best of the seller's knowledge.

Cemeteries. There are no cemeteries, graves or burial grounds or historic artifacts within the Property to the best of the seller's knowledge.

Article V.2. Special Use Tax. The Property has not and is not being, assessed or taxed under any agricultural, special use, open space, "conservation use", "current use", or similar valuation (each, a "**Special Use**"). If the Property has been or is now being assessed or taxed under any Special Use valuation then, Seller shall pay all applicable taxes and penalties associated with the change in use contemplated by Buyer as and when such taxes and/or penalties are assessed.

Article VI

BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller, as true and correct, both on the Effective Date and throughout the period of time until and through Closing, that Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia, and the person executing this Agreement on behalf of Buyer has the lawful right, power, authority and capacity to bind Buyer to the terms hereof and consummate the transactions contemplated by this Agreement, pursuant to the terms, provisions and conditions of this Agreement. All representations and warranties by Buyer in this Agreement shall be true and correct as of the Effective Date hereof and as of Closing.

Article VII

CLOSING

Closing. Subject to the terms and conditions of this Agreement, Closing shall occur on or before thirty (30) days following satisfaction of all conditions precedent under this Agreement to include the occurrence of Final Rezoning but in no event later than March 31st 2014 (the "**Outside Date**"). If, by the Outside Date, Closing has not occurred for any reason other than a default by Buyer, then without prejudice to the parties' rights under Article XII of this Agreement, this Agreement shall terminate and the Deposit will be promptly returned to Buyer. Notwithstanding anything to the contrary herein, following Final Rezoning, the Deposit shall be non-refundable to Buyer other than by reason of a Refundable Event.

Place of Closing. The Closing shall be accomplished via wire transfer of funds and electronic mail of executed documents, to be followed by original documents.

Article VII.1. Expenses of Closing and Prorations.

(A) **Taxes.** Ad valorem and non-ad valorem real property taxes shall be prorated at Closing. Buyer will assume all ad valorem and non ad valorem taxes and assessments accruing after Closing.

(B) Recording Fees and Transfer Tax. Seller shall pay State of Georgia transfer tax and the recording fees associated with the release of any liens or mortgages and/or corrective title instruments. Buyer shall pay the recording fee for the Deed (as hereinafter defined).

(C) Title Policy and Survey. Buyer shall pay all costs associated with Buyer's title examination, title commitment and policy and the Survey.

(D) Attorneys' Fees. Each party shall pay its own attorneys' fees and costs.

Documents for Closing. Prior to or at Closing, the parties will execute and provide any and all documents reasonably necessary to effectuate the terms, conditions and intent of this Agreement.

(E) At Closing, Seller shall execute and deliver each of the following documents in form reasonably acceptable to Buyer:

(i) A limited warranty deed (the "**Deed**"), conveying marketable and insurable fee simple title to the Property to Buyer, subject only to exceptions to title acceptable to Buyer;

(ii) A Seller's Title Affidavit in form and content of which is reasonable acceptable to Buyer's title insurance company;

(iii) An Assignment evidencing the transfer and assignment of all Seller's benefits and entitlements hereunder, including Seller's Permits and Intangible Personal Property, as each is described in Article I hereof, utility capacities, as well as all other leases, contracts, licenses, agreements or other documents, which are in effect as of the Closing Date;

(iv) A FIRPTA Affidavit;

(v) An Affidavit reflecting that Seller has the authority to transact the sale of the Property to Buyer;

(vi) A Closing Statement;

(vii) A Certificate of Seller to the effect that the representations and warranties of Seller contained in this Agreement are true and correct on and as of the applicable Closing Date; and

(viii) Any other documents reasonably requested by Buyer.

(F) At Closing, Buyer shall execute and deliver to Seller the purchase price and each of the following documents in form reasonably acceptable to Seller:

- (i) The Closing Statement; and
- (ii) Any other documents reasonably requested by Seller.

All of the documents will be duly authorized, legal, valid and binding obligations of Seller or Buyer, as applicable, which, at the time of Closing, will be sufficient to convey title (if they purport to do so), and do not, and at the time of Closing will not, violate any provisions of any agreement to which Seller or Buyer, as applicable, is a party or to which it is subject. The parties agree to execute any other document, following Closing, as reasonably necessary to effectuate the intent of all terms and conditions set forth in this Agreement.

Article VIII

REAL ESTATE BROKERS

The parties each represent to the other that there are no real estate brokers, salespeople, finders or consultants, who are or were involved in the negotiation and/or consummation of this transaction, other than Ackerman & Co. (the "**Broker**"), who shall be paid a commission by Seller pursuant to a separate agreement. Seller agrees to defend, indemnify and hold Buyer harmless from and against any and all costs and liabilities, including, without limitation, attorneys' fees through all levels of proceedings, for brokerage or professional service fees claimed by any broker employed or claiming to have been employed by Seller or any party other than Buyer. Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all costs and liabilities, including, without limitation, attorneys' fees through all levels of proceedings, for brokerage or professional service fees claimed by any broker employed or claiming to have been employed by Buyer, other than the Broker. The indemnification provided hereunder shall be applicable to any party claiming that it is owed a fee or other form of compensation due to or arising out of this Agreement.

Article IX

ESCROW

If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, including any monies or documents which it holds, or as to whom same are to be delivered, Escrow Agent will not be obligated to make any delivery, but in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by Seller and Buyer directing the disposition of same, and in the event either party would be entitled to the Deposit, or other monies or documents held by Escrow Agent, the parties agree to forthwith execute such joint written authorization upon the request of any party hereto. In the absence of such authorization, Escrow Agent may hold the Deposit, or other monies or documents in its possession until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit said funds or documents in court, pending such determination. Notwithstanding the foregoing, in the event that this Agreement is terminated pursuant to Section 4.03, Escrow Agent may return the deposit to Buyer without the need for joint written

instructions. Escrow Agent shall not be responsible for any acts or omissions of Escrow Agent, unless same are a result of the gross negligence, willful misconduct or fraud. Otherwise, provided Escrow Agent acts in accordance with this Agreement, Escrow Agent shall have no liability following the delivery of any funds or documents which Escrow Agent holds pursuant to this Agreement. If Escrow Agent elects to bring an appropriate action or proceeding in accordance with the terms of this Article, then Escrow Agent shall be entitled to recover all of its reasonable attorneys' fees and costs incurred in connection with the action from the party not entitled to receive the Deposit or other monies or documents as determined by a court of competent jurisdiction. The parties agree that they will hold Escrow Agent harmless from and indemnify it against any costs or liabilities, including reasonable attorneys' fees, resulting from any action brought against Escrow Agent, unless due to Escrow Agent's willful misconduct, gross negligence, or fraud.

Article X

NOTICE

Notice and Addresses. All notices required or desired to be given under this Agreement shall be in writing and either: (a) hand-delivered, (b) sent by certified mail, return receipt requested, (c) sent via FedEx or similar overnight service, or (d) sent via facsimile or electronic mail. All notices shall be addressed to the party being noticed, and shall be deemed to have been given (w) when delivered, if by hand delivery, (x) three (3) business days after deposit in a U.S. Post Office or official letter box, if sent by certified mail, (y) one (1) business day after timely deposited in a FedEx or similar overnight service depository, or (z) upon confirmation of receipt by sender if sent via facsimile or electronic mail. All notices shall be delivered or sent prepaid for the specified service by the party giving notice, and shall be addressed as follows:

SELLER: FLYBOY AVIATION PROPERTIES, LLC,
a Georgia limited liability company
142 Bayway Circle
Berkeley Lake, GA 30096
Facsimile No.: (770) 416-8903
Attn: Mr. John Speros
E-Mail: jvoyles007@gmail.com

Copy To: JONES & WALDEN, LLC
21 Eighth Street NE
Atlanta, GA 30309
Facsimile No.: (404) 564-9301
Attn: Leslie Pineyro, Esq.
E-Mail: lpineyro@joneswalden.com

BUYER: JEH HOMES, LLC, a Georgia limited liability company
6845 Shiloh Road East, Suite D-3
Alpharetta, GA 30005
Telephone: (770) 945-3600 ext. 2
Attn.: Jim Jacobi
Email: jimj@jeh-homes.com

Copy To: THE ABRAM LAW GROUP, LLC
1200 Ashwood Parkway, Suite 560
Atlanta, Georgia 30338
Facsimile No.: (770) 349-0121
Attn: Richard S. Abram, Esq.
E-Mail: rich@abramlawgroup.com

or to any other address hereafter designated by any of the parties, from time to time, in writing and otherwise in the manner set forth herein for giving notice.

Attorneys. The respective attorneys for Seller and Buyer are hereby authorized to give any notice pursuant to this Agreement on behalf of their respective clients.

Article XI

CONDEMNATION AND MORATORIUM

Condemnation. If, prior to Closing, all or any portion of the Property is taken by eminent domain or is the subject of a pending taking which has not been consummated (collectively, a "**Taking**"), Seller shall so notify Buyer in writing, and Buyer shall have the option to either (a) terminate this Agreement upon notice to Seller given not later than fifteen (15) days after receipt of Seller's notice, or (b) proceed with Closing in accordance herewith. Buyer shall have the right, but not the obligation, to contest and negotiate the amount of money offered for such Taking, as well as any of the terms related thereto. If this Agreement is terminated as aforesaid, the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations to the other hereunder (except for any matters which expressly survive termination of this Agreement). If Buyer has not elected to terminate this Agreement as aforesaid, Seller agrees to assign to Buyer at Closing all sums which are to be awarded for the Taking. Buyer shall thereafter be entitled to receive and keep any awards for such Taking by eminent domain. The Closing Date hereunder shall be extended for a period of time equal to the amount of time required by Buyer to provide Seller with notice of termination of this Agreement in accordance with the time periods set forth in this Section.

Moratoria. If, at the time of Closing, there is a moratorium on building, platting, water and sewer, or other moratoria prohibiting or delaying Buyer's ownership, development and operation of the Property, including, without limitation, a moratorium

on the issuance of building permits by the Governmental Entities, Buyer shall have the right to automatically extend the Closing for a period not to exceed one hundred eighty (180) days, at which time if a moratorium still exists for any of the foregoing items, Buyer shall have the following options: (a) terminate this Agreement whereupon the Deposit shall be promptly returned to Buyer, and the parties shall be relieved of any further obligations hereunder (except for any matters which expressly survive termination of this Agreement); or (b) waive such condition and proceed to Closing of this transaction. In the event Buyer chooses to close, the Closing shall occur within ten (10) days of Seller's receipt of Buyer's notice as provided hereinabove.

Article XII

DEFAULTS

Buyer's Closing Default. In the event that Buyer defaults in its obligations to close as required hereunder, Seller's sole and exclusive remedy shall be to terminate this Agreement and to give Buyer written notice thereof, whereupon Seller shall receive the Deposit as Seller's full liquidated damages from such a default, and: (i) the parties hereby acknowledge that the actual damages in the event of such a default or breach of this Agreement is difficult or impossible to estimate accurately; (ii) the parties agree that it is impossible to more precisely estimate the damages to be suffered by Seller upon Buyer's default; (iii) the parties agree that such payment of Deposit is intended not as a penalty or forfeiture, but as full liquidated damages; and (iv) the parties agree and stipulate that the amount of the Deposit constitutes a good faith and reasonable estimate of the potential loss or damages arising from Buyer's breach. Upon receipt of the Deposit, the Seller's right to so terminate this Agreement and to receive payment of the Deposit as full liquidated damages is Seller's sole and exclusive remedy at law or in equity in the event of default hereunder by Buyer

Seller's Closing Default. In the event that Seller defaults in its obligations to close as required hereunder: (i) Buyer may terminate the Agreement in which event the Deposit shall be returned to Buyer, and each party shall be relieved of any other obligations under the terms of this Agreement; or (ii) Buyer may bring an action against Seller for specific performance. Notwithstanding the foregoing, in the event that the remedy of specific performance is unavailable to Buyer by virtue of Seller having conveyed the Property, or portions thereof, to a third party, then in such event Buyer may exercise all remedies and rights available under law and equity and to recover actual damages arising out of such breach including reasonable attorney fees and court costs.

Article XII.1. Other Defaults. In the event that Buyer or Seller defaults in any obligations under this Agreement other than a failure to consummate Closing, as provided in the foregoing Sections 12.01. and 12.02., the non-defaulting party shall be entitled to exercise all remedies and rights available under law and equity and to recover actual damages arising out of such breach including reasonable attorney fees and court costs.

Notice and Cure Period. There shall not be a Default under this Agreement until the non-defaulting party shall have given the defaulting party Notice of such default, specifying in reasonable detail the nature of the default, and the defaulting party shall have ten (10) days in which to cure said default in the case of monetary defaults, and twenty (20) days in which to cure said default in the case of non-monetary defaults; provided however in the event either party fails to consummate Closing in a timely manner the defaulting party shall have three (3) business days in which to cure following Notice of such default.

Article XII.2. Indemnities Not Affected. The obligations of indemnity set forth in this Agreement shall not be limited by the foregoing Sections 12.01. and 12.02. of this or any other provision of this Agreement. Claims upon the foregoing obligations of indemnity shall be separate and independent from other claims under this Agreement and may be prosecuted without limitation or impairment by the operation of the foregoing Sections 12.01. and 12.02.

Article XII.3. No Special or Punitive Damages. In no event shall either party be entitled to recover consequential, speculative, special or punitive damages in connection with the breach of any obligation under this Agreement.

Article XIII

CONDITIONS PRECEDENT

Article XIII.1. Conditions Precedent to Closing. With respect to Closing, Buyer shall not be obligated to close unless each of the following conditions (the "Conditions Precedent") are either fulfilled or waived by Buyer in writing:

(A) **Covenants/Representations.** Seller shall have performed all covenants, agreements and obligations, and shall have complied with all conditions required by this Agreement to be performed or complied with by Seller prior to Closing, and Seller's representations and warranties shall be true and correct as of Closing.

(B) **Title.** The status of title to the Property shall be as required by this Agreement and Buyer's title insurance company shall be prepared to issue an owner's title insurance policy insuring the Property in the amount of the Purchase Price subject only to the Permitted Exceptions.

(C) **Ability to Obtain Building Permits.** There shall exist no restrictions or conditions upon the issuing of any building permits for Buyer's intended home construction, and there shall be no other conditions imposed upon the Property other than standard development and construction requirements of the applicable Governmental Entities.

(D) **Environmental Conditions.** The Property is not in violation, nor has been or is currently under investigation for violation, of any federal, state or local law, ordinance, or regulation relating to industrial hygiene, worker health and safety, or environmental conditions in, at, on, under, or about the Property, including soil and groundwater conditions; the Property has not been subject to, and is not within 2,000 feet of, a deposit of any Hazardous Material; there has been no discharge, migration, or release of any Hazardous Material from, into, on, under, or about the Property; and there is not now, nor has there ever been, on or in the Property underground storage tanks or surface or below-grade impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers, or other equipment.

(E) **Sewer Availability.** Public sanitary sewer lines and facilities are installed and available to serve the Property within public right of ways adjacent to the Property or within publically dedicated easements up to the Property's boundaries and there is sufficient sewer capacity to service Buyer's intended development and home construction within the Property.

(F) **Adjacent Parcel.** Buyer shall have entered into an Agreement with Hominy Holdings, LLC to acquire that certain 1.31 acre parcel identified on **Exhibit "B"** attached hereto and incorporated herein by reference (the "**Adjacent Parcel**") and upon Closing under this Agreement, Buyer shall have simultaneously acquired (closed upon) the Adjacent Parcel. The Property and the Adjacent Parcel may be collectively hereinafter referred to as the "**Assemblage Tracts**"

(G) **LDP.** The "**LDP**" (as hereinafter defined) shall have been issued.

(H) **Bankruptcy Court Order.** The Bankruptcy Court has issued a non-appealable court order authorizing the sale of the Property under this Agreement free and clear of all encumbrances to include Franck Claim and the Lis Pendens. .

Article XIII.2. Failure of any Conditions Precedent prior to Closing. If any one or more of the Conditions Precedent with respect to the Property is not satisfied prior to Closing, then Buyer may elect, in Buyer's sole discretion: (i) to terminate this Agreement, whereupon the Deposit shall be returned to Buyer; or (ii) to waive the Condition(s) Precedent and proceed to Closing.

Article XIV

MISCELLANEOUS PROVISIONS

Choice of Law and Venue. This Agreement shall be construed and interpreted under the laws of the State of Georgia, without giving effect to principles of conflict of laws, except where specifically pre-empted by Federal law. Seller and Buyer agree that the proper venue with respect to any state or federal litigation in connection with this

Agreement shall be Forsyth County, Georgia, except to the extent the jurisdiction of the Bankruptcy Court is applicable.

Amendments. No amendment to this Agreement shall bind any of the parties hereto unless and until such amendment is in writing and executed by Buyer and Seller.

Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the parties and no prior written documents, and no prior or contemporary oral statements, representations, promises, or understandings not embodied in this Agreement shall be of any force and/or effect.

Survival. All terms and provisions of this Agreement shall survive Closing. In addition, all of Seller's obligations to indemnify, defend and hold Buyer harmless and all of Buyer's obligations to indemnify, defend and hold Seller harmless pursuant to the terms of this Agreement shall survive termination of this Agreement.

Litigation. In the event of any litigation arising from this Agreement, the prevailing party shall be entitled to reimbursement of attorneys' fees and costs incurred at all proceedings, including, without limitation, before trial, at trial and all appellate levels, from the non-prevailing party. The provisions of this Section shall survive the termination of this Agreement.

Assignment.

(A) All of the covenants, conditions and obligations herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

(B) Buyer shall have the right to assign its rights and/or obligations in this Agreement to any entity (an "**Affiliate**") controlled by or under common control with Buyer, or to an entity which succeeds to Buyer in any merger or acquisition, whereupon Buyer shall be released from its obligations hereunder except for: (i) Buyer's representations and warranties, and (ii) those indemnities which expressly survive the Closing or termination of this Agreement, for which Buyer shall remain jointly liable along with its assignee Affiliate after such assignment. Buyer shall have the right to assign its rights and/or obligations in this Agreement to any other person or entity.

(C) Seller shall not be entitled to assign this Agreement.

Interpretation. Captions and section headings contained in this Agreement are for convenience and reference only; in no way do they define, describe, extend or limit the scope or intent of this Agreement or any provision hereof.

Number and Gender. All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

Possession. Possession of the portion of the Property shall be delivered to Buyer at Closing.

Representations. All representations and warranties set forth herein are material and of the essence to this Agreement and shall survive Closing.

Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.

Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

Time Periods. The calculation of the number of days that has passed during any time period prescribed in the Agreement shall be based on calendar days, unless otherwise expressly set forth herein, and shall commence on the day immediately following the action or event giving rise to the commencement of the period and shall expire at 5:00 p.m. on the last day of the time period. Furthermore, any time period provided for herein which shall end on a Saturday, Sunday or legal holiday in the State of Georgia, shall extend to 5:00 p.m. of the next full business day. The term "business day" as used herein shall not include Saturday, Sunday and legal holidays in the State of Georgia. For all purposes under this Agreement, all times shall mean either Eastern Standard Time or Eastern Daylight Time as then currently applicable in Forsyth County, Georgia.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. To facilitate execution and delivery of this Agreement, the parties may execute and exchange executed counterparts by facsimile or e-mail in a PDF file to the other party or to the other party's counsel. Facsimile or signatures in a PDF file shall have the same legal effect as original signatures.

Article XIV.2. WAIVER OF TRIAL BY JURY. BUYER AND SELLER HEREBY EXPRESSLY COVENANT AND AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION OR JUDICIAL PROCEEDING RELATING TO, DIRECTLY OR INDIRECTLY, OR CONCERNING THIS AGREEMENT OR THE CONDUCT, OMISSION,

ACTION, OBLIGATION, DUTY, RIGHT, BENEFIT, PRIVILEGE OR LIABILITY OF A PARTY HEREUNDER TO THE FULL EXTENT PERMITTED BY LAW. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN AND IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BUYER AND SELLER.

Article XIV.3. Rezoning. Buyer's obligations hereunder are contingent upon Buyer rezoning the Assemblage Tracts to a Forsyth County, Georgia single-family residential classification that will allow for a density of not less than 58 Lots and only with such conditions as are acceptable to Buyer (collectively, the "Rezoning"). Buyer shall apply to rezone the Property on or before the expiration of the Investigation Period. The acceptability of the Rezoning and any conditions of the Rezoning shall be determined by Buyer in its sole discretion. Seller hereby authorizes Buyer to file at its own cost all necessary applications, petitions and documents in connection with obtaining the Rezoning, and Seller shall at any and all times after the Effective Date support Buyer's efforts to obtain the Rezoning, cooperate with Buyer in obtaining the Rezoning, and execute and deliver to Buyer such authorizations, powers of attorney and other documents and letters as Buyer may reasonably request in connection with Buyer's efforts to obtain the Rezoning. If, prior to _____, 2013 (the "Zoning Deadline"), Buyer has not obtained the Final Rezoning, Buyer may, by notice to Seller, extend the Zoning Deadline for up to sixty (60) days. If Final Rezoning is not obtained by the Zoning Deadline, or if at any time following the filing of the Rezoning application, Buyer determines, in its sole discretion, that the Final Rezoning is not feasible or possible to obtain within the time frames authorized under this Agreement, Buyer may, by notice to Seller, terminate this Agreement.

The Rezoning shall become "Final Rezoning" upon a final decision of the appropriate Governing Authority in favor of the Rezoning, subject only to such conditions as are acceptable to Buyer, in Buyer sole discretion, and all appeal periods have lapsed with no appeal having been made, or in the event of an appeal, said appeal has been rejected or terminated conclusively in favor of the Rezoning of the Assemblage Tracts. In the event that this Agreement is terminated pursuant to this Section 14.16, Escrow Agent shall promptly return the Deposit to Buyer and thereafter the parties shall have no further rights, duties or obligations except for those which by their express terms are to survive termination.

Seller acknowledges and agrees that obtaining Final Rezoning is a condition precedent to Buyer's obligation to consummate Closing and such condition is for Buyer's sole benefit. Within Buyer's discretion, Buyer may waive such condition in writing and proceed to Closing in the event Final Rezoning is not obtained by the Zoning Deadline.

Notwithstanding anything to the contrary herein, apart from a Refundable Event, following Final Rezoning, the Deposit shall be non-refundable to Buyer.

Article XIV.4. LDP. Following Final Rezoning, Buyer shall promptly process and file an application for a Land Disturbance Permit (the "**LDP**") for the development of the Assemblage Tracts. Thereafter, Buyer shall diligently and in good faith pursue the issuance of the LDP. Seller shall cooperate with Buyer and sign such applications and documents as are required by the Governmental Entities for the processing and issuance of the LDP.

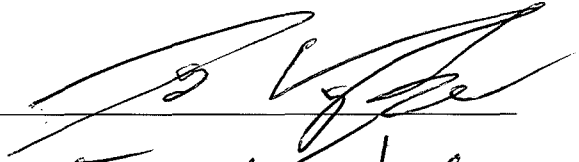
Article XIV.5. Payments to Seller. Following Final Rezoning, Escrow Agent shall be authorized to disburse SEVEN THOUSAND FIVE HUNDRED AND NO/100 (\$7,500.00) of the Deposit to the Seller on a monthly basis not to exceed four (4) months (\$35,000.00 total). For purposes of clarification, the amounts disbursed by Escrow Agent to Seller shall still be deemed to be a portion of the Deposit under this Agreement. Such amounts shall be applied as a credit to the Purchase Price upon Closing and shall be refundable to Buyer only by virtue of a Refundable Event.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties hereto have duly executed this Agreement on the dates indicated below.

SELLER:

**FLYBOY AVIATION PROPERTIES,
LLC**, a Georgia limited liability company

By: 
Name: Joe Voyles
Title: MBY. Member
Dated: 7/8/13

[Execution Continued on Following Page]

BUYER:

JEH HOMES, LLC,
a Georgia limited liability company

By: James D. Jacob

Name: JAMES D. JACOBI

Title: V.P.

Dated: 7.10.2013

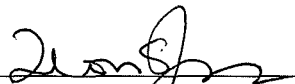
JEH\MathisAirport\Mathis Airport PSA v4 redline.doc

ESCROW AGENT

The undersigned agrees to act as Escrow Agent in accordance with the terms of this Agreement.

ESCROW AGENT:

JONES AND WALDEN, LLC

By: 

Name: Leok S Jones

Its: MANAGER

Dated: July 10, 2013

EXHIBIT "A"
Legal Description

Mathis Airport

ALL THOSE TWO TRACTS OR PARCELS OF LAND lying and being in Land Lots 994, 995, 1021, & 1022 of the 2nd Land District, 1st Section, Forsyth County, Georgia and being particularly shown and delineated on a Boundary Survey for Flyboy Aviation Properties, LLC, Gwinnett Community Bank, and Chicago Title Insurance Company dated June 3, 2004, prepared by Travis Pruitt and Associates, Inc., Bruce W. Hamilton, Georgia Registered Land Surveyor No. 2951, said tracts containing 14.0763 acres and being more particularly described in the aggregate in accordance with said survey as follows:

BEGINNING at an open top pin found on the Northerly edge of the right-of-way of Mathis Air Park Road (60 foot right-of-way width - paved), said open top pin found being located 301.89 feet Southeasterly, as measured along the Northwesterly edge of the right-of-way of Mathis Air Park Road and following the curvature thereof from the point of intersection of the Northwesterly edge of the right-of-way of Mathis Air Park Road with the Southwesterly edge of the right-of-way of Mathis Airport Drive (30 foot right-of-way width - unpaved-gravel); **RUNNING THENCE FROM THE TRUE POINT OR PLACE OF BEGINNING SO ESTABLISHED** Southwesterly, Westerly, Northwesterly, Northerly, and Northeasterly along the Northerly, Northeasterly, Easterly, and Southeasterly edge of the right-of-way of Mathis Air Park road, the following courses and distances; South 83 degrees 26 minutes 55 seconds West 53.10 feet; thence South 86 degrees 28 minutes 04 seconds West 55.56 feet; thence along an arc of a curve to the right, an arc distance of 105.63 feet, said arc having a radius of 141.05 feet and being subtended by a chord bearing of North 70 degrees 01 minute 18 seconds West a chord distance of 103.18 feet; thence Northwesterly and Northerly along the arc of a curve to the right an arc distance of 36.41 feet, said arc having a radius of 59.47 feet and being subtended by a chord bearing of North 31 degrees 01 minute 37 seconds West a distance of 35.85 feet to a point; continuing thence Northerly along the arc of a curve to the right, an arc distance of 38.86 feet, said arc having a radius of 134.97 feet and being subtended by a chord bearing of North 05 degrees 14 minutes 13 seconds West a chord distance of 38.73 feet to a point; continue thence Northeasterly along the arc of a curve to the right an arc distance of 64.38 feet, said arc having radius of 205.51 feet and being subtended by a chord bearing of South 12 degrees 26 minutes 13 seconds West a chord distance of 64.12 feet; continuing thence North 20 degrees 24 minutes 52 seconds East a distance of 60.75 feet to a point; continuing thence North 23 degrees 59 minutes 50 seconds East a distance of 97.21 feet to a point; continuing thence North 24 degrees 53 minutes 20 seconds East a distance of 103.17 feet to a point; continuing thence North 25 degrees 09 minutes 55 seconds East a distance of 112.71 feet to a point; continuing thence North 25 degrees 55 minutes 56 seconds East a distance of 111.87 feet to a point; continue thence North 25 degrees 49 minutes 17 seconds East a distance of 70.66 feet to a point; continuing thence North 25 degrees 49 minutes 17 seconds East a distance of 26.49 feet to a point; continue thence North 62 degrees 02 minutes 27 seconds East a distance of 40.95 feet to a point; running thence North 67 degrees 47 minutes 29 seconds West along the Northeasterly edge of the right-of-way of Mathis Air Park Road a distance of 153.99 feet to an axle found; running thence, and leaving the right-of-way of Mathis Air Park Road, North 32 degrees 02 minutes 06 seconds East a distance of 122.35 feet to a 1" open top pin found; running thence North 31 degrees 55 minutes 40 seconds East a distance of 352.47 feet to a ½ inch rebar found; running thence North 31 degrees 40 minutes 06 seconds East a distance of 216.38 feet to a ½ inch rebar found; running thence North 31 degrees 45 minutes 17 seconds East a distance 246.40 feet to a point; running thence North 66 degrees 40 minutes 50 seconds East a distance of 198.07 feet to a fence post found; running thence North 79 degrees 23 minutes 21 seconds East a distance of 49.13 feet to a ½ inch rebar found; running thence North 79 degrees 14 minutes 39 seconds East a distance of 207.97 feet to a ½ inch rebar found; running thence South 15 degrees 01 minute 44 seconds West a distance of 100.61 feet to a crimp top pin found; running thence South 33 degrees 28 minutes 55 seconds West a distance of 42.13 feet to a crimp top pin found; running thence South 33 degrees 40 minutes 01 second West a distance of 167.89 feet to a crimp top pin found; running thence South 34 degrees 25 minutes 43 seconds West a distance of 95.32 feet to a crimp top pin found; running thence South 23 degrees 36 minutes 44 seconds West a distance of 317.35 feet to a ½ inch rebar found; running thence South 20 degrees 31 minutes 12

seconds West a distance of 74.48 feet to a ½ inch rebar found; running thence South 19 degrees 21 minutes 56 seconds West a distance of 227.81 feet to a point; running thence South 19 degrees 57 minutes 39 seconds West a distance of 97.46 feet to a ½ inch rebar found; running thence South 20 degrees 01 minute 17 seconds West a distance of 72.87 feet to a ½ inch rebar found; running thence South 16 degrees 15 minutes 41 seconds West a distance of 79.37 feet to a ½ inch rebar set; running thence South 31 degrees 27 minutes 50 seconds West a distance of 13.10 feet to a ½ inch rebar set at the Northernmost terminus of the right-of-way of Mathis Airport Drive (variable right-of-way width); running thence South 31 degrees 37 minutes 45 seconds West along the Northwestern edge of the variable right-of-way of Mathis Airport Drive a distance of 116.10 feet to a ½ inch rebar set; running thence, and leaving the Northwesterly edge of the variable right-of-way of Mathis Airport Drive, North 61 degrees 37 minutes 11 seconds West a distance of 43.87 feet to a crimp top pin found; running thence South 33 degrees 29 minutes 25 seconds West a distance of 204.50 feet to a crimp top pin found; running thence South 59 degrees 38 minutes 32 seconds West a distance of 55.09 feet to a point; running thence South 33 degrees 43 minutes 11 seconds West a distance of 109.94 feet to a crimp top pin found; running thence South 02 degrees 45 minutes 48 seconds East a distance of 53.02 feet to a crimp top pin found; running thence South 13 degrees 17 minutes 05 seconds West a distance of 95.49 feet to an open top pin found and **THE TRUE POINT OR PLACE OF BEGINNING.**

The above described property is the same property described in that certain Warranty Deed from Darwin M. Puls and Deanna D. Puls to C.J. Mathis, recorded at Deed Book 1625, Page 691, Forsyth County Deed Records and in that certain Warranty Deed from Seven Oaks Properties, Inc. to C.J. Mathis, dated June 8, 1995 and recorded at Deed Book 861, Page 474, Forsyth County Deed Records.

EXHIBIT "A"
Legal Description

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING in Land Lot 1022 of the 2nd District, 1st Section of Forsyth County, Georgia and being Tract 1 containing 1.992 acres all as more particularly described on a plat of survey, being a Boundary and Typographic Survey for Flyboy Aviation Properties, LLC, prepared by Conroy & Associates, P.C., Daniel F. Conroy, Georgia Registered Land Surveyor No. 2350, dated February 10, 2006, said Tract 1 being more particularly described in accordance with said survey as follows:

BEGINNING at an iron pin found (1" CTP) at a right angle intersection corner of Mathis Air Park Road (a 60 foot private easement right-of-way width) and Mathis Air Park Road (a 60 foot private easement right-of-way width); **RUNNING THENCE FROM THE POINT OR PLACE OF BEGINNING SO ESTABLISHED** South 26 degrees 02 minutes 34 seconds West along the northwesterly edge of the 60 foot private easement right-of-way of Mathis Air Park Road a distance of 65.56 feet to a point; continuing thence South 25 degrees 55 minutes 56 seconds West along the northwesterly edge of the 60 foot private easement right-of-way of Mathis Air Park Road to an iron pin set; running thence, and leaving said private easement right-of-way, North 68 degrees 30 minutes 22 seconds West a distance of 486.37 feet to an iron pin set on the southeasterly edge of a 60 foot private easement right-of-way; running thence North 21 degrees 49 minutes 54 seconds East along the southeast edge of the private easement right-of-way a distance of 220.12 feet to an iron pin found on the southwesterly edge of the 60 foot private easement right-of-way of Mathis Air Park Road; running thence South 68 degrees 48 minutes 06 seconds East along the southwesterly edge of the private easement right-of-way of Mathis Air Park Road a distance of 499.24 feet to an iron pin found and the **TRUE POINT OR PLACE OF BEGINNING**.

TOGETHER WITH all rights of ingress and egress, vehicular and pedestrian, including the use of said easement by vehicle, aircraft, golf cart, ultralite or any other means of conveyance or transport for the entire width of the 60 foot right-of-way easement as set forth and established by Consent Order issued in the Superior Court of Forsyth County, State of Georgia, Civil Action No. 95-25968, in the Case of William R. Durham, et al, Plaintiffs vs. L.G. Mathis and Patrick E. McLaughlin, Sr., Defendants.

The above described Tract being a portion of Lot 7 of Mathis Air Park Subdivision.

EXHIBIT "B"

ADJACENT PROPERTY

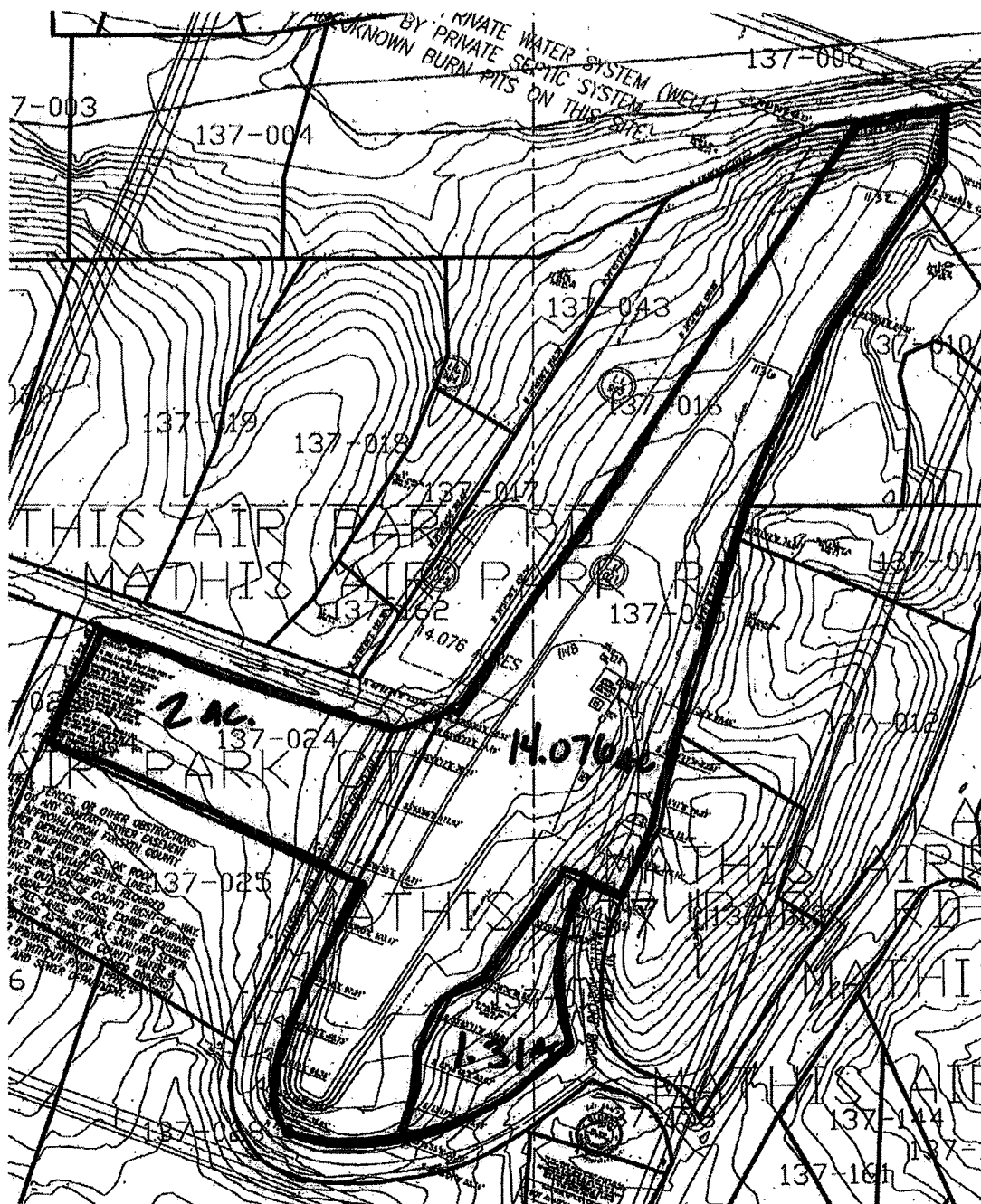


Exhibit "2" Follows

Page 1 of 4 of the recorded document is included in Exhibit 2.

Pages 2, 3 and 4 redacted as irrelevant.

Ret Rick Franck
370 Decatur St.
Alpharetta, Ga. 30022

ADDENDUM TO SETTLEMENT STATEMENT

As part of consideration of this purchase and sale, Sellers agree that Purchasers shall be allowed to join taxiways to airport taxiways of Mathis Airport and to have use of landing strip as long as Mathis Airport shall continue as an airport; however this shall not restrict Sellers' right to sell said airport property as an airport or for other uses.

Purchasers agree that they will not operate an aircraft repair service on the subject property so long as an aircraft repair service is maintained at Mathis Airport.

This agreement shall survive the closing of this transaction.

This the 31st day of May, 1984.

As to L. G. Mathis,
signed, sealed and delivered
in the presence of:

"SELLERS"

L. G. Mathis
L. G. Mathis

[Signature]
Notary Public
My Commission Expires Feb. 15, 1987

[Signature]
Patrick E. McLaughlin, Sr.

As to Patrick E. McLaughlin, Sr.,
signed, sealed and delivered
in the presence of:

Donna J. Barclay
WITNESS

Doc ID: 001099290004 Type: GLA
Filed: 08/09/2008 at 06:04:45 PM
Fee Amt: \$18.00 Page 1 of 4
Forsyth, GA
Douglas Scrrelle Clerk Superior Ct
BK 3703 PG 119-122

[Signature]
Becky S. Smith
Notary Public
My Commission Expires: August 12, 1985

signed and delivered
in the presence of:

"PURCHASERS"

Louis A. Musgrove, Jr.
Louis A. Musgrove, Jr.

[Signature]
Notary Public
My Commission Expires: 1987

Paula Marie Staab
Paula Marie Staab

Exhibit "3" Follows

Doc ID: 010553120003 Type: LEN
Filed: 06/10/2008 at 03:49:42 PM
Fee Amt: \$9.00 Page 1 of 3
Forsyth County, GA
Douglas Sorrells Clerk Superior Ct
BK 185 PG 43-45

_____[SPACE ABOVE THIS LINE FOR RECORDING DATA]_____

NOTE TO CLERK OF COURT:
PLEASE CROSS-REFERENCE TO:
DEED BOOK: 3380; PAGES 174-176
and the name Fly Boy Aviation and
C.J. Mathis

AFTER RECORDING, RETURN TO:
Dominick & Van Sant, LLC
Ste. 501 - 327 Dahlonega Street
Cumming, Georgia 30040
678-965-5539

IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

FLYBOY AVIATION PROPERTIES,)
LLC. ,)
)
Plaintiff,) CIVIL ACTION
)
vs.) FILE NO. 08-CV-0509
)
RICHARD (RICH) FRANCK)
)
Defendants.)
_____)

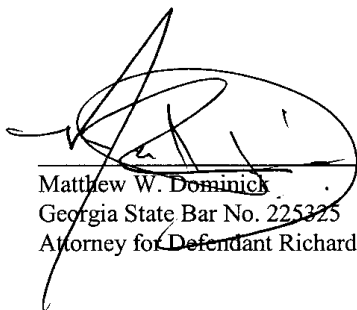
NOTICE OF LIS PENDENS

Notice is hereby given of the filing and pendency of a civil action concerning the below described real property. Defendant/Counter-claimant asserts counts for, *inter alia*, Trespass; Intentional Interference with Easement rights; Nuisance; Declaratory Judgment; Injunctive Relief and Bad Faith. The action is presently known as *Flyboy Aviation Properties, LLC v. Richard Franck*, and is pending in the Superior Court of Forsyth County, Georgia, Civil Action No: 08CV0509.

The Counterclaims were filed on June 6, 2008, involving certain real property in Forsyth County, Georgia, more particularly described within that certain Limited Warranty Deed Recorded at Deed Book 3380, Pages 174-176, Forsyth County, Georgia Records. Said records are incorporated herein by this reference. Said property is further described in the attached **Exhibit A**, which is also incorporated herein by this reference.

Defendant/ Counter-claimant in said action is seeking, *inter alia*, to obtain relief from the Court regarding Defendant/ Counter-claimant's rights in and to the described real property.

This 10th day of June, 2008,



Matthew W. Dominick
Georgia State Bar No. 225325
Attorney for Defendant Richard Franck

DOMINICK & VAN SANT, LLC
Ste. 501 - 327 Dahlonega Street
Cumming, Georgia 30040
678-965-5539 (Telephone)
678-965-4151

Exhibit A

70 degrees 01 minute 18 seconds West a chord distance of 103.18 feet; thence Northwesterly and Northerly along the arc of a curve to the right an arc distance of 36.41 feet, said arc having a radius of 59.47 feet and being subtended by a chord bearing of North 31 degrees 01 minute 37 seconds West a distance of 35.85 feet to a point; continuing thence Northerly along the arc of a curve to the right, an arc distance of 38.86 feet, said arc having a radius of 134.97 feet and being subtended by a chord bearing of North 05 degrees 14 minutes 13 seconds West a chord distance of 38.73 feet to a point; continue thence Northeasterly along the arc of a curve to the right an arc distance of 64.38 feet, said arc having radius of 205.51 feet and being subtended by a chord bearing of South 12 degrees 26 minutes 13 seconds West a chord distance of 64.12 feet; continuing thence North 20 degrees 24 minutes 52 seconds East a distance of 60.75 feet to a point; continuing thence North 23 degrees 59 minutes 50 seconds East a distance of 97.21 feet to a point; continuing thence North 24 degrees 53 minutes 20 seconds East a distance of 103.17 feet to a point; continuing thence North 25 degrees 09 minutes 55 seconds East a distance of 112.71 feet to a point; continuing thence North 25 degrees 55 minutes 56 seconds East a distance of 111.87 feet to a point; continue thence North 25 degrees 49 minutes 17 seconds East a distance of 70.66 feet to a point; continuing thence North 25 degrees 49 minutes 17 seconds East a distance of 26.49 feet to a point; continue thence North 62 degrees 02 minutes 27 seconds East a distance of 40.95 feet to a point; running thence North 67 degrees 47 minutes 29 seconds West along the Northeastly edge of the right-of-way of Mathis Air Park Road a distance of 153.99 feet to an axle found; running thence, and leaving the right-of-way of Mathis Air Park Road, North 32 degrees 02 minutes 06 seconds East a distance of 122.25 feet to a 1" open top pin found; running thence North 31 degrees 55 minutes 40 seconds East a distance of 352.47 feet to a 1/2 inch rebar found; running thence North 31 degrees 40 minutes 06 seconds East a distance of 216.38 feet to a 1/2 inch rebar found; running thence North 31 degrees 45 minutes 17 seconds East a distance 246.40 feet to a point; running thence North 66 degrees 40 minutes 50 seconds East a distance of 198.07 feet to a fence post found; running thence North 79 degrees 23 minutes 21 seconds East a distance of 49.13 feet to a 1/2 inch rebar found; running thence North 79 degrees 14 minutes 39 seconds East a distance of 207.97 feet to a 1/2 inch rebar found; running thence South 15 degrees 01 minute 44 seconds West a distance of 100.61 feet to a crimp top pin found; running thence South 33 degrees 28 minutes 55 seconds West a distance of 42.13 feet to a crimp top pin found; running thence South 33 degrees 40 minutes 01 second West a distance of 167.89 feet to a crimp top pin found; running thence South 34 degrees 25 minutes 43 seconds West a distance of 95.32 feet to a crimp top pin found; running thence South 23 degrees 36 minutes 44 seconds West a distance of 317.35 feet to a 1/2 inch rebar found; running thence South 20 degrees 31 minutes 12 seconds West a distance of 74.48 feet to a 1/2 inch rebar found; running thence South 19 degrees 21 minutes 56 seconds West a distance of 227.81 feet to a point; running thence South 19 degrees 57 minutes 39 seconds West a distance of 97.46 feet to a 1/2 inch rebar found; running thence South 20 degrees 01 minute 17 seconds West a distance of 72.87 feet to a 1/2 inch rebar found; running thence South 16 degrees 15 minutes 41 seconds West a distance of 79.37 feet to a 1/2 inch rebar set; running thence South 31 degrees 27 minutes 50 seconds West a distance of 13.10 feet to a 1/2 inch rebar set at the Northernmost terminus of the right-of-way of Mathis Airport Drive (variable right-of-way width); running thence South 31 degrees 37 minutes 45 seconds West along the Northwestly edge of the variable right-of-way of Mathis Airport Drive a distance of 116.10 feet to a 1/2 inch rebar set; running thence, and leaving the Northwestly edge of the variable right-of-way of Mathis Airport Drive, North 61 degrees 37 minutes 11 seconds West a distance of 43.87 feet to a crimp top pin found; running thence South 33 degrees 29 minutes 25 seconds West a distance of 204.50 feet to a crimp top pin found; running thence South 59 degrees 38 minutes 32 seconds West a distance of 55.09 feet to a point; running thence South 33 degrees 43 minutes 11 seconds West a distance of 109.94 feet to a crimp top pin found; running thence South 02 degrees 45 minutes 48 seconds East a distance of 53.02 feet to a crimp top pin found; running thence South 13 degrees 17 minutes 05 seconds West a distance of 95.49 feet to an open top pin found and **THE TRUE POINT OR PLACE OF BEGINNING.**

POOR ORIGINAL

The above described property is the same property described in that certain Warranty Deed from Darwin M. Puls and Deanna D. Puls to C.J. Mathis, recorded at Deed Book 1625, Page 691, Forsyth County Deed Records and in that certain Warranty Deed from Seven Oaks Properties, Inc. to C.J. Mathis, dated June 8, 1995 and recorded at Deed Book 861, Page 474, Forsyth County Deed Records.

Also conveyed hereby is all of my right, title, and interest in and to Mathis Airpark Road.



2-3