

**SO ORDERED**



  
THOMAS J. CATLIOTA  
U.S. BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)**

In re:	)	
	)	Chapter 11
FIRST FLIGHT LIMITED PARTNERSHIP,	)	
	)	Case No.: 17-18645-TJC
Debtor.	)	
_____	)	

**ORDER (I) AUTHORIZING SALE OF CERTAIN REAL PROPERTY OF  
THE DEBTOR FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES  
AND OTHER INTERESTS; (II) APPROVING SALE AGREEMENT;  
(III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN  
UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the *Motion for Order (I) Authorizing Sale of Certain Real Property of the Debtor Free and Clear of Liens, Claims, Encumbrances and Other Interests; (II) Approving Sale Agreement; (III) Authorizing Assumption and Assignment of Certain Unexpired Leases; and (IV) Granting Related Relief* (the “**Motion**”)<sup>1</sup> filed by First Flight Limited Partnership (the “**Debtor**”), and any responses thereto, and it appearing that cause exists to grant the relief requested in the Motion,

THE COURT HEREBY FINDS THAT:

<sup>1</sup> Unless otherwise provided, all initially capitalized terms used herein shall have the same meanings as ascribed to them in the Motion.

A. On June 25, 2017 (the “**Petition Date**”), the Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “**Bankruptcy Code**”).

B. Since the Petition Date, the Debtor has continued to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

C. The Debtor is a Virginia limited liability partnership that owns and operates certain real property located at 18450 Showalter Road, Hagerstown, Maryland.

D. Prior to the Petition Date, M&T Bank extended a \$9,750,000.00 commercial loan (the “**Loan**”) to the Debtor, as evidenced by, among other things: (a) a *Term Note*, dated October 11, 2013, executed and delivered by the Debtor to the order of M&T Bank in the original principal amount of \$9,750,000.00 (the “**Note**”); (b) a *Credit Agreement*, dated October 11, 2013, by and between the Debtor and M&T Bank (the “**Loan Agreement**”); and (c) various other documents.

E. The indebtedness and obligations owed by the Debtor to M&T Bank under the Note and the Loan Agreement are secured by first-priority duly perfected liens and security interests in, to and against certain real property and other assets of the Debtor pursuant to, to the extent provided for in and as more particularly described in the following documents: (i) a *Refinance Deed of Trust, Security Agreement and Fixture Filing*, dated October 11, 2013, executed by the Debtor for the benefit of M&T Bank, and recorded among the Land Records for Washington County, Maryland (the “**Land Records**”) in Liber 4651, folio 157 (the “**Deed of Trust**”); (ii) a *Refinance Assignment of Rents and Leases*, dated October 11, 2013, executed and delivered by the Debtor in favor of M&T Bank, and recorded among the aforesaid Land Records in Liber 4651, folio 175 (the “**Assignment of Leases**”); (iii) a *General Security Agreement*, dated October 11, 2013, executed

and delivered by the Debtor in favor of M&T Bank: and (iv) certain UCC-1 Financing Statements from the Debtor in favor of M&T Bank and recorded among the aforesaid Land Records and with the Virginia State Corporation Commission (collectively with the Deed of Trust and the Assignment of Leases, the “**Security Documents**”).

F. The Note, the Loan Agreement, the Security Documents, all other documents evidencing, securing, guarantying or otherwise documenting the indebtedness and obligations owed under the Loan, and all other documents relating thereto and/or executed in connection therewith, are hereafter collectively referred to as the “**Loan Documents**”.

G. All indebtedness and obligations owed by the Debtor to M&T Bank under the Loan Documents (including, all principal, accrued and unpaid interest, late charges, taxes, appraisal fees, attorneys’ fees and expenses, and all other sums now or hereafter due or payable to M&T Bank under the Loan Documents), are secured by, *inter alia*:

(a) a first-priority duly perfected deed of trust lien and security interest in, to and against (i) certain real property of the Debtor generally known as Unit 2, 41.9086 AC.+/-, First Flight Air Park Condominium, Inc., together with an undivided 97% interest in the common elements of the First Flight Air Park Condominium, Inc., located at 18450 Showalter Road, Hagerstown, Maryland 21742 (Tax ID Nos. 27-038166 and 27-005012) (collectively, the “**Property**”), (ii) all other assets of the Debtor described in the Security Documents and/or located at the Property, and (iii) all products and proceeds of any of the foregoing assets, pursuant to and as more particularly described in the Deed of Trust; and

(b) first-priority duly perfected liens in and assignments of the Debtor’s right, title and interest in and to, *inter alia*: (i) all present and future leases and other agreements relating to the Property (collectively, the “**Leases**”); and (ii) all rents, security deposits, income, receipts,

revenues, issues, profits and other sums now or hereafter due or payable to the Debtor as a result of or in connection with the Leases or the Property (collectively, the “**Rents**”), pursuant to and as more particularly described in the Deed of Trust and the Assignment of Leases. The Property, the Leases, the Rents and all other assets of the Debtor securing the Loan are hereafter collectively referred to as the “**Subject Collateral.**”

H. The Debtor has agreed to sell all of its right, title and interest in the Subject Collateral to First Flight Unit 2 Limited Partnership, a Virginia limited partnership or its assignee (the “**Purchaser**”), for a purchase price of \$8,800,000.00 (the “**Purchase Price**”), pursuant to the terms and conditions of a *Purchase and Sale Agreement, dated September 21, 2017*, by and between the Debtor and Purchaser (the “**Sale Agreement**”). A true and correct copy of the Sale Agreement is attached to the Motion as **Exhibit 1**.

I. By the Motion, the Debtor seeks the entry of an order approving the sale of the Subject Collateral to the Purchaser pursuant to the Sale Agreement, free and clear of liens, claims, encumbrances and other interests, pursuant to Section 363(b) of the Bankruptcy Code..

J. Adequate and proper notice of the Motion, the Sale Agreement and this Order was served on all parties entitled to be served in this bankruptcy case and all other parties-in-interest in compliance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Bankruptcy Rule 6004-1, and such notice constitutes fair, reasonable and sufficient notice under the circumstances.

K. The Debtor has established good, valid and sound business purposes for the sale of the Subject Collateral to the Purchaser pursuant to the Sale Agreement.

L. The terms and conditions of the Sale Agreement are fair and reasonable, and the sale of the Subject Collateral to the Purchaser pursuant to the Sale Agreement is in the best interests of the Debtor, its bankruptcy estate and the creditors thereof.

M. M&T Bank consents to the sale of the Subject Collateral pursuant to the terms and conditions of this Order (“**Order**”). All other parties-in-interest that claim any interest in the Subject Collateral either consent to the sale of the Subject Collateral or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest.

N. The sale of the Subject Collateral to the Purchaser has been conducted pursuant to a fair and equitable process and full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules of this Court.

O. The Debtor, the Purchaser, and M&T Bank have at all times acted in good faith and at arms-length with respect to the sale of the Subject Collateral in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules of this Court, and applicable law. In addition, there has been no evidence presented of fraud or collusion in connection with the sale of the Subject Collateral.

P. The Debtor is the record owner of the Subject Collateral and is duly authorized and empowered to: (i) execute and deliver the Sale Agreement and all other documents contemplated by the Sale Agreement to the Purchaser; (ii) assume and assign the Leases between D.M. Bowman Inc. and First Flight Limited Partnership for 30,000 (+/-) sf of warehouse space and Marble Mountain OC, LLC and First Flight Limited Partnership for 216,645 (+/-) sf of warehouse space to the Purchaser under the terms and conditions of the Sale Agreement; (iii) perform all other obligations under the Sale Agreement; and (iv) otherwise consummate the transactions contemplated thereby and the execution, delivery and performance of the Sale Agreement and any

documents to be executed in connection therewith. No other consents or approvals are necessary or required for the Debtor to enter into the Sale Agreement, perform its obligations thereunder and consummate the transactions contemplated thereby. The Debtor has represented to the Court that the Debtor will pay the allowed claims of all administrative priority creditors and unsecured creditors in this case in full within 30 days of the entry of this Order. The Purchaser assumes all obligations under the leases.

**NOW THEREFORE**, it is, by the United States Bankruptcy Court for the District of Maryland, hereby **ORDERED, ADJUDGED AND DECREED**:

1. The foregoing findings of fact are incorporated by reference into this Order.
2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. Venue of this proceeding and the Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) and (O). The statutory predicates for the relief sought in the Motion are Sections 105(a), 363(b), (f), (k) and (l), and 365(a) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007, and Local Bankruptcy Rule 6004-1(b).
3. The Motion is hereby **GRANTED** pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007, and Local Bankruptcy Rule 6004-1.
4. All objections to the Motion that were not withdrawn have been settled or are hereby overruled.
5. The Sale Agreement between the Debtor and the Purchaser, and each of the terms thereof and the transactions contemplated thereby, are hereby **APPROVED**.

6. The Debtor hereby is authorized and directed to sell the Subject Collateral to the Purchaser upon the terms and conditions of the Sale Agreement. In addition, the Debtor is hereby authorized and directed to execute and deliver such other documents and take such other actions as may be necessary, desirable or appropriate to effectuate, implement, and/or consummate the Sale Agreement, the sale of the Subject Collateral, the assumption and assignment of the Leases, and all other transactions described in the Sale Agreement, without further application to, or order of, this Court.

7. The Debtor is further authorized and directed to sell, convey, assign and transfer all of its right, title and interest in and to the Subject Collateral and Leases to the Purchaser, without further application to, or order of, this Court and upon the terms and conditions of the Sale Agreement and any related documents to be executed in connection therewith, as applicable.

8. Closing on the sale of the Subject Collateral and all other transactions described in the Sale Agreement shall occur on or before 3:00 p.m. on September 29, 2017 (“**Closing**”).

9. The transfer of the Subject Collateral to the Purchaser will be a legal, valid and effective transfer, and all of the Debtor’s right, title and interest in and to the Subject Collateral shall pass to the Purchaser at the Closing, free and clear of all prepetition and post-petition liens and claims (including, but not limited to, any “claim” as defined in Section 101(5) of the Bankruptcy Code), of any creditor who has been served with the Motion. (referred to collectively hereinafter as the “**Liens and Claims**”)), with all such Liens and Claims, including the first priority Liens of M&T Bank pursuant to the Security Documents, to attach to the proceeds of the sale of the Subject Collateral with the same extent, validity and priority as existed with respect to the Subject Collateral prior to Closing.

10. At Closing, M&T Bank's Liens and Claims against the Subject Collateral shall immediately attach to all proceeds arising from the sale of the Subject Collateral to the Purchaser pursuant to the Sale Agreement as a first priority lien against such proceeds of sale, and all net proceeds arising from the sale of the Subject Collateral to the Purchaser, which shall amount to at least \$8,800,000.00, shall be paid to M&T Bank, in immediately available funds, simultaneously with Closing.

11. The provisions of this Order authorizing the sale of the Subject Collateral free and clear of Liens and Claims to the extent hereinafter provided (with such Liens and Claims to attach to the proceeds of the sale of the Subject Collateral as provided for above) shall be self-executing, and neither the Debtor, the Purchaser nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale; provided, however, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the Sale Agreement and this Order shall become null, void and of no further force or effect if Closing on the sale of the Subject Collateral and all other transactions described in the Sale Agreement does not occur on or before 3:00 p.m. on September 29, 2017 or if M&T Bank does not receive payment of all net proceeds arising from the sale of the Subject Collateral to the Purchaser, which shall amount to at least \$8,800,000.00, on or before 3:00 p.m. on September 29, 2017. Without in any way limiting the foregoing, the Purchaser is empowered to execute and file releases, termination statements, assignments, consents, cancellations or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale.



12. The sale of the Subject Collateral and the payments and other transactions described in this Order are not avoidable and shall not be avoided pursuant to the Bankruptcy Code, the applicable Uniform Fraudulent Conveyance Act or the applicable Uniform Fraudulent Transfer Act.

13. The automatic stay of Section 362 of the Bankruptcy Code is hereby terminated solely to the extent necessary (a) to permit all net proceeds arising from the sale of the Subject Collateral to the Purchaser, which shall amount to at least \$8,800,000.00, to be paid to M&T Bank, in immediately available funds, simultaneously with Closing, and (b) to otherwise permit the Debtor, M&T Bank, and the Purchaser to implement the terms of this Order and the Sale Agreement, as appropriate.

14. The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any Order which may be entered confirming any plan of reorganization or which may be entered converting this case from Chapter 11 to Chapter 7, and shall be binding upon, and shall inure to the benefit of, the Debtor and the Purchaser and their respective successors and assigns (including any Chapter 7 trustee or Chapter 11 trustee hereafter appointed or elected for the Debtor's estate, any examiner appointed pursuant to Section 1104 of the Bankruptcy Code, and any other fiduciary hereafter appointed as a legal representative of the Debtor or with respect to the property of the Debtor's estate).

15. The failure specifically to include any particular provisions of the Sale Agreement in this Order shall not diminish or impair the efficacy of such provisions, it being the intent of this Court that the Sale Agreement and each and every provision, term, and condition thereof be and therefore is, authorized and approved in its entirety.

16. Except as specifically set forth herein, this Order shall not operate to modify, alter, impair, affect, abrogate, amend, restrict, or nullify any rights of M&T Bank with respect to any person or entity, nor to release, alter, impair, affect or abrogate any debts, claims, demand, actions and causes of action in law and equity, whether known or unknown, that M&T Bank may have as to any person or entity (including, without limitation, any non-debtor Guarantors) under the Loan Documents, applicable law, or otherwise.

17. All governmental recording offices and all other parties, persons or entities are directed to accept this Order for recordation on or after the Closing as conclusive evidence of the free and clear, unencumbered transfer of title to the Subject Collateral conveyed to the Purchaser at Closing as provided in this Order.

18. Debtor shall pay the allowed claims of all administrative priority creditors and unsecured creditors in this case in full within 30 days of the entry of this Order.

19. This Court shall retain jurisdiction over the Debtor, the Purchaser, and all parties asserting Liens and Claims on or in the Subject Collateral, to implement, interpret, consummate and/or effectuate the provisions of this Order, the Sale Agreement and all agreements arising out of, related to, or approved pursuant to this Order.

20. This Order shall be effective immediately upon entry pursuant to Bankruptcy Rules 7062 and 9014, and no automatic stay of execution, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure or Bankruptcy Rule 6004(h) shall apply with respect to this Order.

**\* \* \* END OF ORDER \* \* \***

# EXHIBIT 1

## **AGREEMENT OF PURCHASE AND SALE**

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement"), dated as of the \_\_\_\_ day of September, 2017, (the "Effective Date"), by and between **FIRST FLIGHT UNIT 2 LIMITED PARTNERSHIP**, a Virginia Limited Partnership, registered in the Commonwealth of Virginia, it's successors and/or assigns (the "Purchaser"); and **FIRST FLIGHT LIMITED PARTNERSHIP**, (the "Seller"), a Virginia Limited Partnership recites and provides:

### **RECITALS**

A. Seller is the owner of certain real property known as the Topflight Airpark Warehouse Building located at 18450 Showalter Road, Unit 2, Hagerstown Maryland 21472 and designated as Washington County Tax Map Parcels 27-038166 and 27-005012, consisting of approximately 41.9086 acres and 12.40 acres respectively, located in Washington County, Maryland, and as generally shown on Exhibit A, attached hereto and made a part hereof. The parcel including Seller's right, title and interest in and to all rights-of-ways, open or proposed streets, alleys, easements, strips or gores of land adjacent thereto, shall be referred to herein as the "Property".

B. Seller wishes to sell and Purchaser wishes to purchase the Property on the terms and conditions set forth herein. Unless otherwise specified herein, the Effective Date of this Agreement shall be the date of this Agreement as inserted above.

### **AGREEMENT**

NOW, THEREFORE, in consideration of their mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto covenant and agree as follows:

**1. Contract.** Subject to the terms of this Agreement, Seller agrees to sell and convey the Property to Purchaser and Purchaser agrees to purchase the Property. Except for those liabilities and obligations that Purchaser specifically agrees to assume as set forth herein, Purchaser is not assuming any of the debts, liabilities or other obligations of, or claims against Seller of any kind or nature whether direct or contingent and whether known or unknown. This Agreement shall constitute a binding contract for the purchase and sale of the Property, on the terms and conditions set forth herein. The recitals above are incorporated herein by this reference as material matters of contract and not mere recitals.

**2. Purchase Price.** The purchase price (the "Purchase Price") for the Property shall be EIGHT MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (**\$8,800,000.00**). The Purchase Price shall be paid by Purchaser at Settlement (as defined below) via wire transfer. Seller and Purchaser acknowledge and confirm that the Purchase Price of the Property is calculated in gross and not on a per acre basis.

**3. Delivery of Certain Material to Purchaser.** Upon execution of this Agreement by Seller and Purchaser, Seller has delivered to Purchaser:

(a) A true and complete copy of all owner's policies of title insurance, if any previously obtained by the Seller with respect to the Property.

(b) Copies of all surveys and engineering reports or other studies or similar reports in the Seller's possession relating to the Property.

(c) Seller has provided Purchaser with all current leases or agreements relating to the Property.

**4. Settlement.**

(a) **Time and Place.** Settlement of the purchase and sale of the Property shall occur on or before 3:00 p.m. on September 29, 2017 and in accordance with the terms and conditions more expressly set forth in Section 14, "Conditions Precedent to Settlement", (the "Settlement"). *Time being of the essence.* Settlement shall be made at the offices of Purchaser's settlement agent or at such other address as the parties may mutually agree. If settlement in connection with this Agreement has not taken place and the proceeds of sale in the amount of \$8,800,000.00 have not been transferred to the Seller's secured lender, M&T Bank, on or before 3:00 p.m. on September 29, 2017, Seller shall be under no obligation to proceed to settlement, and this Contract will be declared null and void, and each party shall have no further obligations to each other.

(b) **Purchaser's Deliveries.** At Settlement, the Purchaser shall: (i) pay the Purchase Price in the amount of \$8,800,000.00 to Seller by delivering the \$8,800,000.00 Purchase Price to Seller's secured lender, M&T Bank, via wire transfer, and (ii) shall deliver to the title insurance company a closing statement between Seller and Purchaser and any other documents reasonably necessary to complete Settlement.

(c) **Seller's Deliveries.** Seller shall deliver the following to Purchaser or the title insurance company or Purchaser's designee, as applicable, in form and substance satisfactory to Purchaser: (i) a general warranty deed with English covenants of title (the "Deed") conveying good and marketable fee simple title to the Property, free and clear of all monetary liens and deeds of trust, but subject to all easements, covenants and restrictions of record; (ii) an affidavit as to mechanics' liens and parties in possession as typically required by Purchaser's title insurance company; (iii) there will be no contracts as of the day of settlement; (iv) a closing statement between Seller and Purchaser; (v) an R-5, FIRPA and 1099 seller closing forms; and (vi) all organizational documents, resolutions, certificates and other materials reasonably required by Purchaser or Purchaser's title company to confirm Seller's authority to sell the Property.

(d) **Purchaser's Payment of Closing Costs and Other Charges.** Real estate taxes and all utilities paid or payable by Seller in connection with the Property shall be paid by the Purchaser at Settlement. All other charges or amounts payable by Seller in connection with the Property shall also be paid by the Purchaser at Settlement. Purchaser shall also pay, at Settlement, for all recordation and transfer taxes, closing

costs and other charges that are to be paid in connection with the conveyance of the Property to the Purchaser, so that the amount payable to the Seller's secured lender, M&T Bank, at Settlement from the sale of the Property to the Purchaser shall not be less than \$8,800,000.00. Purchaser shall also pay all rollback taxes due and owing in connection with the Property at the time of any re-zoning of the Property which would trigger such payment to be made.

(e) **Costs.** Purchaser shall also pay, at Settlement, the cost of the grantor's tax on the deed, the payment and cost of preparation of the deed and other conveyancing instruments, the cost of releasing any liens and security interests of record, all settlement fees charged by settlement agent, survey costs, all legal fees incurred by Purchaser and Seller, all recording taxes and fees imposed on recordation of the deed, title insurance premiums and search fees and other charges related to Purchaser's and Seller's due diligence and legal fees.

5. **"As Is" Condition.** Except as provided herein, Purchaser agrees to accept the Property at Settlement in its present physical condition.

6. **Risk of Loss.** The risk of loss or damage to the Property by fire or other casualty prior to Settlement thereon shall be on the Seller. Seller shall give Purchaser prompt written notice of any loss or damage to the Property by fire or other casualty. If such loss or damage materially and adversely affects the Purchaser's intended use and enjoyment of the Property as of Settlement, in Purchaser's reasonable opinion, the Purchaser shall have the option to (i) terminate this Agreement, in which event the parties hereto shall have no further obligations or liabilities to one another hereunder, this Agreement shall terminate and the Deposit shall be returned to Purchaser; or (ii) proceed to Settlement and accept an assignment of all insurance proceeds payable as a result of such casualty, together with a reduction of the Purchase Price equal to the deductible under Seller's insurance policy

7. **Condemnation.** If all or any portion of the Property is subject to actual or threatened taking pursuant to the power of eminent domain prior to Settlement, the Purchaser shall be entitled to elect either to (i) terminate this Agreement in which event the parties shall have no further obligations hereunder and the Deposit shall be returned to Purchaser; or (ii) proceed to Settlement, in which event, at Purchaser's option (a) all proceeds, awards and other payments arising from any such taking or sale shall be assigned and paid to the Purchaser; or (b) the Purchase Price paid at Settlement shall be reduced based on the prorata portion of the Property so taken, and Seller shall be entitled to all such proceeds, awards and other payments arising from such taking.

8. **Seller's Representations and Warranties.** Seller represents and warrants that the following matters are true and correct as of the Effective Date with respect to the Property:

(a) **Authority.** Purchaser is a limited partnership, duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. This Agreement has been duly authorized, executed and delivered by Seller, is the legal, valid and binding obligation of Seller, and does not violate any provision of any agreement or

judicial order to which Seller is a party or to which Seller is subject. All documents to be executed by Seller which are to be delivered at Settlement, will, at the time of Settlement, (i) be duly authorized, executed and delivered by Seller, (ii) be legal, valid and binding obligations of Seller, and (iii) not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller is subject.

(b) **Foreign Person.** Seller is not a foreign person within the meaning of Section 1445(f) of the Internal Revenue Code, and Seller agrees to execute any and all documents necessary or required by the Internal Revenue Service or Purchaser in connection with such declaration(s).

(c) **No Violation of Laws.** Seller has received no written notice of any and, to Seller's knowledge, there has been no violation of any Federal, state, county or other governmental order or requirement of any governmental body of, by, concerning, or caused by a condition existing upon, the Property which has not yet been remedied in all respects to the satisfaction of the governmental authority having jurisdiction.

(d) **Eminent Domain.** To best of Seller's knowledge, Seller has not received any written notice of any eminent domain or condemnation of the Property nor is Seller aware of any threatened eminent domain or condemnation of the Property.

(e) **Environmental.** Seller represents to the best of its actual knowledge direct or indirect, (i) there are not present at or under the Property any hazardous substances, wastes or materials, unclean fill, aboveground storage tanks, underground storage tanks, spilled or leaked petroleum products, friable asbestos-containing materials or PCB-containing transformers; (ii) the Property and all operations and activities on or at the Property, if any, are in compliance with all applicable environmental protection, wetlands, resource protection area and waste management laws, rules, regulations and ordinances; and (iii) Seller has not dumped or disposed of, or caused or allowed anyone else to dump or dispose of, any hazardous or toxic materials or wastes, debris or unclean fill on the Property. Seller furthermore represents and warrants that it has not received any written notice or been made aware of any hazardous substances or any other contaminates on the Property as of the date hereof to so cause the Property to be unsuitable for development that are not known to the Purchaser.

(f) **No Conflict.** Neither the execution nor the delivery of this Agreement or the documents contemplated hereby, nor the consummation of the conveyance of the Property to Purchaser, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, lease, license, permit or other instrument or obligation by which Seller or the Property is bound.

(g) **No Claims, Order, etc.** There is no claim, action, suit, investigation or proceeding, at law, in equity or otherwise, now pending or, to Seller's knowledge, threatened against Seller or the Property to which Purchaser might become a party. Seller is not subject to the terms of any decree, judgment or order of any court, administrative agency or arbitrator, which has or could result in a material adverse effect on the Property or the operation and leasing thereof.

(h) **Mechanics' Liens.** No party on behalf of Seller has performed any alteration, repair, construction or other work which would permit the filing of a mechanics' or materialmen's lien against the Property except such parties as have been paid in full for such work or for which payment has been provided.

The provisions of this Section 8 shall survive Settlement.

9. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that the following matters are true and correct as of the Effective Date.

(a) **Authority.** Purchaser is a limited partnership, duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. This Agreement has been duly authorized, executed and delivered by Purchaser, is the legal, valid and binding obligation of Purchaser, and does not violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject. All documents to be executed by Purchaser which are to be delivered at Settlement, will, at the time of Settlement, (i) be duly authorized, executed and delivered by Purchaser; (ii) be legal, valid and binding obligations of Purchaser; and (iii) not violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject.

The provisions of this Section 9 shall survive Settlement

10. **Default.** Except as otherwise provided hereunder, if Purchaser defaults in its performance of this Agreement and such default continues unremedied for one (1) day following receipt of written notice from the Seller specifying the nature of such default, then, this Agreement shall terminate and the Seller and Purchaser shall have no further obligations hereunder. In the event of Seller's default at or before Settlement and except as otherwise provided herein, and such default continues unremedied for one (1) day following receipt of written notice from the Purchaser specifying the nature of such default, then, this Agreement shall terminate and the Purchaser and Seller shall have no further obligations hereunder.

11. **Further Assurances.** The parties agree to grant such further assurances and to execute such instruments of conveyance as may be reasonably necessary to affect the intent and agreement contained herein.

12. **Conditions Precedent to Settlement.** The obligations of either party to proceed and perform at Settlement of the Property shall be subject to the following conditions (all or any of which may be waived in writing, in whole or in part, by either or both parties):

(a) **Title and Survey Objections.** Any objections to title reported by Purchaser under this paragraph shall have been resolved to Purchaser's satisfaction and there shall have been no adverse change in title. The Purchaser shall have until 5:00 p.m. on Tuesday, September 25, 2017, to report to Seller in writing any survey or title defects or other objections regarding the Property that are disclosed by Purchaser's



examinations which, in the opinion of Purchaser or its attorney, adversely affect marketability of title or Purchaser's intended use of the Property. Seller shall advise Purchaser within one (1) day after receipt of such notice of objections which, if any, of such objections will be corrected by Seller prior to or at the Settlement. If Seller fails to respond within such period, Seller will be deemed to have responded to Purchaser that Seller does intend to correct such objections prior to or at the Settlement. If Seller's response indicates that Seller does not intend to correct any one or more of Purchaser's objections, Purchaser shall have one (1) day after receipt of Seller's response within which to elect to either (i) terminate this Agreement by notice to Seller; or (ii) accept Seller's response and proceed to the Settlement despite such objections without any adjustment to the Purchase Price. If Purchaser elects to so terminate this Agreement, the rights and obligations of Purchaser and Seller hereunder shall terminate.

(b) **Inspection and Removal of Property.** Prior to Settlement, Seller shall remove all equipment, tires, automobiles, aboveground storage tanks, underground storage tanks, spilled or leaked petroleum products, friable asbestos-containing material, PCB-containing transformers, debris, and hazardous substances, waste or material from the Property, both above and below ground. Seller and Purchaser shall inspect the Property prior to Settlement to confirm that such items have been removed to the reasonable satisfaction of the Purchaser.

(c) **Representations and Warranties.** All representations and warranties of Seller shall be true as of the date of this Agreement and at Settlement.

(d) **Delivery of Deed and other Instruments.** Seller shall have delivered the deed and other instruments of conveyance and relating to title, and shall have performed all other covenants and obligations of Seller to be performed at or prior to Settlement as required under this Agreement.

(e) **No Adverse Change.** No material adverse change shall have occurred at or with respect to the Property, or any part or aspect thereof, whether physical or financial since the date of the execution of this Agreement by the parties hereto.

(f) **No Litigation.** This Agreement shall only be subject to United States Bankruptcy Court Case #17-18645 in the District of Maryland, Greenbelt Division.

**13. Notices.** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing by (i) personal delivery; (ii) reputable overnight delivery service with proof of delivery; (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, addressed as follows:

For the Seller:

FIRST FLIGHT LIMITED PARTNERSHIP  
4080 Lafayette Center Drive  
Suite 360

Chantilly, Virginia 20151

With a copy to: ATG Title, Inc.  
11320 Random Hills Rd Suite 120  
Fairfax, Virginia 22030

For the Purchaser: FIRST FLIGHT UNIT 2 LIMITED PARTNERSHIP  
4080 Lafayette Center Drive  
Suite 360  
Chantilly, Virginia 20151

**14. Assignment.** This Agreement may be assigned at the option of the Purchaser to any entity in which Purchaser owns a controlling interest without Seller's consent. Any assignee shall be obligated by this Agreement as if the Purchaser.

**15. No Presumption Against Drafter.** Purchaser and Seller agree and acknowledge that this Agreement has been freely negotiated by Purchaser and Seller; and in any event of any ambiguity, controversy, dispute or disagreement over the interpretation, validity or enforceability of this Agreement or any of its covenants, terms or conditions, no inference, presumption or conclusion whatsoever shall be drawn against Purchaser by virtue of Purchaser's having drafted this Agreement.

**16. Weekends and Holidays.** Any date specified in this Agreement for the performance of an obligation or the expiration of a time period which is a Saturday, Sunday or a legal holiday shall be extended to the first regular business day after such date which is not a Saturday, Sunday or a legal holiday.

**17. Counterpart Originals.** This Agreement may be executed in multiple original counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. In order to expedite the transaction contemplated herein, telecopied signatures may be used in place of original signatures on this Agreement. Seller and Purchaser intend to be bound by the signatures on the telecopied document, are aware that the other party will rely on the telecopied signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

**18. Brokerage.** Purchaser and Seller warrant that they have not been represented by any Broker in connection with the sale of the property. In addition, the Purchaser warrants and represents to the Seller that the Purchaser has not used the services of any other real estate broker or agent other than the Broker as specified above. In reliance of this warranty and representation of the Purchaser, the Seller agrees to hold the Purchaser harmless against all claims by any real estate broker or agent for a commission or fee arising out of the sale of the Subject Property.

**19. Force Majeure.** Neither party shall be held responsible for failure of delay in delivery or performance of its obligations set forth hereunder if such failure or delay is

the result of an act of God, more specifically death or incapacitation of the principal owners, the public enemy, governmental act, war, riot, strikes, major failure in the bank or lending industry or other cause of a similar nature that is beyond the control of the parties. In the event of such occurrence, this Agreement shall be amended by mutual agreement to reflect an extension in the period of performance and/or time of delivery. The parties agree to provide notice thereof to the other within five (5) working days of becoming aware of such an event and shall promptly advise the extent of the delay expected as a result.

**20. Miscellaneous.**

(a) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified or changed except by written instrument executed by both Seller and Purchaser. All prior negotiations, understandings, proposals and agreements whether oral or written are superseded and are merged herein. All provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. If any provisions herein shall be legally unenforceable or in the event that a Court of competent jurisdiction shall deem any of the provisions contained in this Agreement invalid or unenforceable, they shall be deemed severed from the other provisions of this Agreement, and the remaining provisions shall, nevertheless, be valid and enforceable and continue in full force and effect. The invalidity or the unenforceability of any particular provision of this Agreement shall not effect the other provisions hereof and the Agreement shall be construed in all respects as though such invalid or unenforceable provisions were omitted.

(b) This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia. The proper jurisdiction and forum for any litigation deriving from this Agreement shall be in the Circuit Court of Fairfax County, Virginia.

(c) Except as otherwise provided under this Agreement, the delivery of the deed by Seller and the acceptance thereof by Purchaser shall be deemed the full performance and discharge of every obligation on the part of the Seller and Purchaser to be performed hereunder, and shall thus not survive Settlement.

(e) All pronouns shall be construed to be of such gender and number as the context may require.

(f) **Exhibit A** - (Property Description") is incorporated herein as a material part of this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in its name pursuant to due authority as of the dates set forth below.

**SELLER:**

**FIRST FLIGHT LIMITED PARTNERSHIP**  
**By Airpark Holdings, Inc., General Partner**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**PURCHASER:**

**FIRST FLIGHT UNIT 2 LIMITED PARTNERSHIP**  
**By Airpark Holdings Unit 2, Inc., General Partner**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**

4651 0180  
CLERK OF THE CIRCUIT COURT  
WASHINGTON COUNTY

### Exhibit A

### Legal Description

ALL THAT LAND IN THE TWENTY SEVENTH (27<sup>TH</sup>) ELECTION DISTRICT, WASHINGTON COUNTY, MARYLAND, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

UNIT 2, FIRST FLIGHT AIR PARK CONDOMINIUM, INC., AS CREATED BY "CONDOMINIUM DECLARATION OF FIRST FLIGHT AIR PARK CONDOMINIUM, INC.", DATED MAY 31, 2008 AND RECORDED IN LIBER 3511 FOLIO 557 AND PER PLAT THEREOF RECORDED AT CONDOMINIUM PLAT NUMBERS 429, 420 AND 431, AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND.

TOGETHER WITH AN UNDIVIDED 97% INTEREST OR SUCH UNDIVIDED INTEREST AS MAY BE ESTABLISHED FROM TIME TO TIME, IN THE COMMON ELEMENTS AS SET FORTH IN THE DECLARATION OF FIRST FLIGHT AIR PARK CONDOMINIUM, INC. RECORDED IN LIBER 3511, FOLIO 557, IN THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

AND BEING A PORTION OF THE PROPERTY ACQUIRED BY THE OWNERS BY DEED RECORDED IN LIBER 836, FOLIO 438, AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND.

For Informational Purposes only:

Address: 18450 Showalter Road, Hagerstown, Maryland 21742  
MD Tax ID Nos.: 27-038166 and 27-005012

IMPROVEMENT F	40.00
RECORDING FEE	20.00
TOTAL	60.00
Rec# WA01	Rec# 8442
DJW HAW	BLK # 543
Oct 17, 2013	10:33 am