

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

IN RE:

N214FT, LLC,

DEBTOR.

CASE NO. 17-43289-11

CHAPTER 11

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**DEBTORS' MOTION FOR ORDER AUTHORIZING AND APPROVING THE SALE  
OF THE DEBTOR'S AIRCRAFT, FREE AND CLEAR OF LIENS AND INTERESTS**

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**NOW INTO COURT**, through undersigned counsel, comes N214FT, LLC (the "Debtor"), who respectfully files this *Motion for Order Authorizing and Approving the Sale of the Debtor's Aircraft, Free and Clear of Liens and Interests* (the "Motion"), and in support of its Motion states as follows:

**RELIEF REQUESTED**

1. The Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order") authorizing the Debtor to sell the Debtor's Dassault Aviation Model Mystere-Falcon 50, bearing FAA registration number N214FT, previously bearing FAA registration number N549CP (the "Aircraft") pursuant to the terms incorporated in the *Purchase and Sale Agreement (N214FT)* (the "PSA") attached hereto as **Exhibit B**.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a "core" proceeding pursuant to 28 U.S.C. § 157(b).

3. The statutory bases for the relief requested herein are sections 105(a), 361 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), and

Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 2002, 6004, and 9006.

### **BACKGROUND**

4. In order to finance its purchase of the Aircraft, the Debtor obtained a loan from UMB Bank, N.A. (“UMB”) which included: a note securing payment of the loan (the “UMB Note”). As reflected in the Debtor’s Schedules [Dkt No. 18], the Aircraft is the Debtor’s only substantial asset.

5. UMB has a claim secured by the Aircraft of approximately \$3,827,000.00 (the “UMB Claim”).

6. Upon filing for bankruptcy, the Debtor attempted to negotiate with UMB, and propose a consensual sale process for the Aircraft but was unable to reach an agreement. UMB filed a *Motion to Lift the Automatic Stay* (the “Motion to Lift Stay”) [Dkt. No. 20] seeking to lift the stay to foreclose on the Aircraft.<sup>1</sup> In support of its Motion to Lift Stay, UMB filed its appraisal asserting its belief that the Aircraft’s estimated fair market value is \$2.7 million (assuming an extended marketing process of approximately 18 months) and an orderly liquidation range \$2,130,000 to \$2,214,000.00 Motion to Lift Stay, ¶27; [Dkt. No. 24, §5].

7. Tarrant County has asserted a priority tax claim under section 507(a)(8)(B) of the Bankruptcy Code also secured by the Aircraft in the amount of \$354,513.65.<sup>2</sup>

8. Upon failure to negotiate a consensual sale process, the Debtor began seeking a broker to sell the Aircraft and discussions concerning the terms of a chapter 11 plan. The Debtor has filed an application seeking Court approval to retain Swartz Aviation Group, LLC (“Swartz Aviation”) to sell the Aircraft (the “Application to Employ”) [ECF Doc. No. 25]. As explained

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<sup>1</sup> This Court denied the Motion to Lift Stay at the hearing on November 21, 2017, but carried the Motion to the Confirmation Hearing. See Transcript, November 29, 2017 [Dkt No. 63, 129–132].

<sup>2</sup> Tarrant County’s claim is based upon an inaccurate valuation of the Aircraft and the Debtor has commenced a protest of the valuation with the Tarrant County Tax Appraiser.

in the Application to Employ and attachments thereto, Swartz Aviation is a broker that specializes in marketing pre-owned aircraft for sale, with a particular specialization in Dassault Falcon aircrafts.

9. After Swartz Aviation listed the Aircraft, on approximately December 14, 2017, Swartz Aviation was approached by Jetstream Aviation (“Jetstream”), an aircraft broker, with an offer from purchaser, Colorado Structures, Inc. (the “Purchaser”), to purchase the Aircraft. After extensive negotiations between Swartz Aviation and Jetstream, the Purchaser and the Debtor arrived upon the terms contained in the attached PSA. As the PSA recites, the purchase price for the Aircraft is \$3,150,000.00 (the “Purchase Price”). PSA, §2.2.

10. Given that UMB seeks to foreclose and proposed a maximum valuation of \$2.7 million and a liquidation value of as low as \$2.13 million, the price under the PSA is between \$450,000 and \$1,020,000 greater than that proposed by UMB before this Court.

11. Also, should UMB be allowed to take possession of the Aircraft it would have to have to engage a management company (such as the Debtor did prepetition), which the Debtor presumes would be Baker Aviation, LLC, the same company with which the Debtor contracted. Likewise, the Debtor submits that UMB would engage a broker to market the Aircraft, and have to pay a broker fee at least as much as the Debtor would have to pay.

12. In other words, UMB would utilize the same process to maintain and market the Aircraft with one difference—it has stated on the record publically its opinion that the value of the Aircraft could be as low as \$2.13 million, which clearly would have a price depressing effect should UMB be in charge of selling the Aircraft, resulting in a much lower sale price.

13. Pursuant to the PSA, and as is customary in the sale of private aircrafts, the Debtor is responsible for airworthiness or safety-of-flight discrepancies discovered during the

inspection period. PSA, §3.03. The costs of such discrepancies (“Discrepancy Costs”) will be paid out of funds received from Purchase Price.

14. Additionally, pursuant to the Aircraft Broker Agreement, Swartz Aviation is owed a commission upon on any sale of the Aircraft of 3.3% of the Purchas Price, or \$99,000.00 (the “Broker Commission”). The Broker Commission will be paid out of funds received from the Purchase Price.

### **BASIS FOR RELIEF REQUESTED**

#### **A. The Sale of Aircraft Pursuant to the PSA is Supported by the Sound Business Judgment of the Debtor and the Best to Maximize the Value of the Aircraft.**

15. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The proposed use, sale, or lease of property of the estate may be approved under section 363(b) of the Bankruptcy Code if it is supported by the sound business judgment of the trustee or debtor in possession. *See ASARCO, Inc. v. Elliot Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard.”). This standard is flexible and encourages discretion. *Id.*

16. Here, as the Debtor has disclosed throughout this bankruptcy case, the Debtor believes that the sale of the Aircraft, through regular commercial channels, is in the best interest of the Debtor and its estate. A sale of the Aircraft is contemplated in the Debtor’s Chapter 11 Plan [Dkt. No. 56], and is the best way for the Debtor to maximize the value of its sole asset for the benefit of its creditors. The sale proposed is in the best interest of the estate and its creditors.

#### **B. The Aircraft Should be Assigned Free and Clear of the Interests.**

17. Pursuant to section 363(f) of the Bankruptcy Code, the Debtors propose that the

sale of the Aircraft be free and clear of the Interests.

18. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property of the estate “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) [the lienholder or claimholder] 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) [the lienholder or claimholder] could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

19. Because section 363(f) of the Bankruptcy Code is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of assets “free and clear” of liens and interests. *In re Nature Leisure Times, LLC*, No. 06-41357, 2007 WL 4554276, at \*3 (Bankr. E.D. Tex. Dec. 19, 2007); *In re C-Power Products, Inc.*, 230 B.R. 800 (Bankr. N.D. Tex. 1998); *In re Porras*, No. 95-30583, 2001 WL 871286 (Bankr. W.D. Tex. 2001).

20. As discussed herein, Tarrant County and UMB have claims secured by the Aircraft. Their liens will be attached to the proceeds of the sale of the Aircraft. Pursuant to section 363(f)(5) of the Bankruptcy Code, the sale of the Aircraft free and clear of liens is proper because both Tarrant County and UMB could be compelled to accept money in satisfaction of their liens in a legal or equitable proceeding, with a foreclosure sale under application state law, both lienholders would be compelled to take the foreclosure price in satisfaction of their claims.

21. Pursuant to the terms of the Debtor's proposed Chapter 11 Plan, the net sale proceeds will be distributed to Tarrant County in satisfaction of their lien as ultimately determined. The remaining net proceeds sale will be distributed to UMB, with the unpaid balance of the UMB Claim to be funded with new notes from the Debtor. Additionally, UMB retains all rights under the UMB Note with respect to actions against third parties. .

**C. The Sale must be Free and Clear.**

22. Under the terms of the PSA, the sale of the Aircraft must be free and clear of all liens and interests. Therefore, the proposed order provides:

The sale of the Aircraft shall be free and clear of all liens pursuant to section 363(f) of the Bankruptcy Code including that of Tarrant County and UMB Bank;

**D. The Purchaser Should Be Afforded All Protections Under Section 363(m) of the Bankruptcy Code as a Good Faith Purchaser.**

23. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that a sale conducted under section 363(b) of the Bankruptcy Code is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy provides that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

24. Courts have defined "good faith purchaser" as a purchaser of assets for value, in good faith, and without notice of adverse claims. *In re TMT Procurement Corp.*, 764 F.3d 512,

521 (5th Cir. 2014).

25. The Purchaser and the Debtor have negotiated the terms of the PSA extensively through Swartz Aviation and Jetstream, and the terms of the PSA are market terms.

26. The Debtor requests that the Court make a finding in the Order that the Purchaser is a good faith transferee under the PSA, and that the PSA has been perfected and will be consummated in good faith, such that the Purchaser and the Debtor, along with the transaction, represent and constitute agreements providing for exchanges for good and equivalent consideration and that all parties are entitled to the full protections of section 363(m) of the Bankruptcy Code.

**E. UMB Retains Credit Bid Abilities**

27. The PSA provides that it is subject to Bankruptcy Court approval. The Debtor acknowledges the right of UMB to credit bid its lien claims should it so choose.

**F. There is Good Cause to Shorten the Notice Period.**

28. The notice and hearing requirements contained in section 363(b)(1) of the Bankruptcy Code are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining “after notice and a hearing” to mean such notice and an opportunity for hearing “as [are] appropriate in the particular circumstances”).

29. While Bankruptcy Rules 2002(a)(2) and 2002(i) generally require a twenty one-day notice of proposed sales of property outside the ordinary course of business be provided by mail to “the debtor, the trustee, all creditors and indenture trustee,” courts are authorized to shorten the twenty one-day notice period generally applicable to asset sales, or direct another method of giving notice, upon a showing of “cause.” *See* FED. R. BANKR. P. 2002(a)(1)(2).

30. Here, noticing the sale of the Aircraft on twenty one-days' notice is not possible. The Debtor has obtained approval of an extension of the Delivery Date to February 19, 2018, and the Court has set aside February 14, 2018 as hearing date in this case. Therefore, the expedited hearing will be only slightly expedited. Given the extensive inspection requirements and complicated logistics of delivery, an order approving the sale must entered on a more expedited basis. As the representative of Swartz Aviation testified, the prime window to sell private aircrafts is from late December to early February, and therefore, now is the time to sell private aircrafts. *See Transcript, November 29, 2017* [Dkt No. 63, p. 83]. The Debtor seeks to close the sale during this prime window for private aircraft sales.

31. For these reasons, the Debtor submits that consideration and approval of this Motion on an emergency basis is necessary and proper.

**G. Waiver of Bankruptcy Rule 6004(h) is Appropriate.**

32. The Debtor seeks a waiver of any stay of the effectiveness of the order approving this Motion. Under Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.”

33. Because The Debtor must close the sale within the 14 day period provided for by rule 6004, ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

**CONCLUSION**

**WHEREFORE**, the Debtor respectfully requests entry of the Order, substantially in the form attached hereto as **Exhibit A**, authorizing and approving the sale of the Aircraft and as well the consummation of the PSA.



January 26, 2018

Respectfully submitted,

**KELLY HART & PITRE**

/s/ *Louis M. Phillips*

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*Counsel for N214FT, LLC*

**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that a copy of the foregoing pleading was served on the following parties through this Court's CM/ECF System:

Tarrant County Linebarger, Goggan, Blair & Sampson LLP 2777 N Stemmons frwy Suite 1000 Dallas, TX 75207-2328	UMB Bank co Brian J. Smith Holland & Knight LLP 200 Crescent Court, Ste 1600 Dallas, TX 75201-1829
Baker Aviation, LLC co Matthew D. Cavanaugh Jackson Walker LLP 1401 McKinney Street, Suite 1900 Houston, TX 77010	Office of the U.S. Trustee 1100 Commerce Street, Room 976 Dallas, TX 75242-1011 Baker Aviation, LLC

/s/ **Louis M. Phillips**  
Louis M. Phillips

**AIRCRAFT PURCHASE AGREEMENT (N214FT)**

This AIRCRAFT PURCHASE AGREEMENT (N214FT), dated as of December \_\_, 2017 (this “*Agreement*”), is made by and among (i) N214FT, LLC, a Texas limited liability company (together with its successors and permitted assigns, the “*Seller*”), (ii) Colorado Structures, Inc., a Colorado corporation (together with its successors and permitted assigns, the “*Buyer*”), and (iii) AIC Title Service, LLC, an Oklahoma limited liability company, as escrow agent (together with its successors and permitted assigns, the “*Escrow Agent*”).

**RECITALS:**

Subject to the terms and conditions set forth herein, (a) the Seller is willing to sell the aircraft described on Schedule A hereto (the “*Aircraft*”) to the Buyer and (b) the Buyer is willing to purchase the Aircraft from the Seller.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.01. Definitions.** For the purposes of this Agreement, unless the context otherwise requires, capitalized terms used and not defined in the recitals or the body of this Agreement will have the respective meanings set forth or incorporated by reference, and will be construed and interpreted in the manner described, in Annex A hereto.

**ARTICLE II  
AIRCRAFT PURCHASE**

**Section 2.01. Aircraft Purchase.** Subject to the satisfaction of the conditions set forth herein, on the Delivery Date (a) the Seller agrees to sell and transfer title to the Aircraft to the Buyer in accordance with the terms hereof, and (b) the Buyer agrees to purchase and take title to the Aircraft from the Seller (such sale and purchase, the “*Aircraft Purchase*”) in accordance with the terms hereof.

**Section 2.02. Purchase Price.** The purchase price payable by the Buyer for the Aircraft shall be \$3,150,000 (Three Million One Hundred Fifty Thousand Dollars) (the “*Purchase Price*”). On the Delivery Date, the Buyer shall pay the Seller the Purchase Price by authorizing the Escrow Agent to wire transfer immediately available funds to the account directed by the Seller.

**Section 2.03. Escrow Agent; Deposit.**

(a) Each of the Seller and the Buyer hereby irrevocably appoints, authorizes and directs the Escrow Agent to act as escrow agent hereunder for such specific purposes and with such powers as are specifically delegated to the Escrow Agent by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. The Escrow Agent: (i) shall have no duties or responsibilities except those expressly set forth in this Agreement; (ii) shall not be responsible for the failure by the Seller or the Buyer to perform any of its obligations hereunder; (iii) may consult with legal counsel in connection with its duties hereunder and shall

be fully protected if any action is taken, suffered or permitted by it in good faith in accordance with the advice of counsel selected by it with due care; and (iv) shall not be responsible for any action taken or omitted to be taken by it hereunder or provided for herein or in connection herewith, except for its own willful misconduct or gross negligence (or simple negligence in connection with the handling of funds).

(b) The Buyer has paid to the Escrow Agent a security deposit in the amount of \$50,000 (Fifty Thousand Dollars) (the “*Deposit*”) to be held in escrow and applied to the Purchase Price on the Delivery Date. The Deposit shall be held in escrow by the Escrow Agent in accordance with the terms of this Agreement. The Deposit shall be refundable at the sole direction of the Buyer (other than with respect to an amount equal to the Seller’s cost to deliver the Aircraft to the Inspection Facility and the cost of the Inspection and Test Flight, if not paid by the Buyer previously, which amount shall be delivered to the Seller), upon Buyer’s written demand until such time as the Buyer delivers a Technical Acceptance Certificate to the Seller, in which case the Deposit shall become non-refundable except as otherwise contemplated by the terms of this Agreement.

Following the delivery of a Technical Acceptance Certificate:

(i) if the Delivery does not occur as a result of the Seller’s failure to satisfy, by the Delivery Deadline, the conditions precedent to the Buyer’s obligation to consummate the Aircraft Purchase or the Seller’s breach of its obligations hereunder, the Escrow Agent shall, upon the Buyer’s written demand, return the Deposit to the Buyer; provided, that the Buyer shall have satisfied all of the conditions precedent to the Seller’s obligation to consummate the Aircraft Purchase and the Buyer shall not be in breach of its obligations hereunder; or

(ii) if the Delivery does not occur as a result of the Buyer’s failure to satisfy, by the Delivery Deadline, the conditions precedent to the Seller’s obligation to consummate the Aircraft Purchase or the Buyer’s breach of its obligations hereunder, the Escrow Agent shall, upon the Seller’s written demand, transfer the Deposit to the Seller as liquidated damages for loss of a bargain and not as a penalty; provided, that the Seller shall have satisfied all of the conditions precedent to the Buyer’s obligation to consummate the Aircraft Purchase and the Seller shall not be in breach of its obligations hereunder.

Each of the Buyer and the Seller acknowledges and agrees that in the event the Delivery does not occur as a result of the Buyer’s failure to satisfy, by the Delivery Deadline, the conditions precedent to the Seller’s obligation to consummate the Aircraft Purchase or the Buyer’s breach of its obligations hereunder, the retention of the Deposit as liquidated damages constitutes reasonable compensation for the minimum harm or damage to the Seller in such circumstances and that it is otherwise impractical, infeasible and difficult to determine such harm or damage or otherwise obtain an adequate remedy. The retention of the Deposit by the Seller shall constitute the Seller’s exclusive remedy for damages in such circumstances, and is in lieu of all other damages, claims and remedies of the Seller arising at law or otherwise, including the Seller’s right to seek specific performance.

#### **Section 2.04. Closing of Aircraft Purchase.**

(a) Subject to the satisfaction or waiver of the conditions set forth in Article V, the closing of the Aircraft Purchase and Delivery will be deemed to take place while the Aircraft is at a location mutually agreeable to the Buyer and the Seller (the “*Delivery Location*”), and will take

place on such date and such time, in each case as selected by the Seller and notified in writing to the Buyer and the Escrow Agent, provided that such date and time will be reasonably acceptable to the Buyer (the “*Delivery Date*”); and provided, further, that the Delivery Date shall in any event occur no later than 3:00 p.m. CST on February 6, 2018, unless otherwise agreed to by the parties (the “*Delivery Deadline*”).

(b) Subject to the Escrow Agent’s receipt on the Delivery Date of written notice by each of the Seller and the Buyer that the conditions precedent to its obligation to consummate the Aircraft Purchase have been satisfied or waived, on the Delivery Date, at such time as it is instructed to do so by each of the Seller and the Buyer, the Escrow Agent shall: (i) deliver the Delivery Certificate and disburse the Purchase Price to the Seller; (ii) file with the FAA the Registration Application and the FAA Bill of Sale; (iii) deliver the Warranty Bill of Sale to the Seller; and (d) if requested by the Buyer, cause the sale of the airframe and each engine from the Seller to the Buyer to be registered on the International Registry.

### **ARTICLE III TECHNICAL ACCEPTANCE PROCESS**

**Section 3.01. Inspection.** Promptly following the date hereof, the Seller shall deliver the Aircraft, together with all logs and records relating to the maintenance, operation and repair of the Aircraft that are in the Seller’s possession (collectively, the “*Records*”) to the Inspection Facility for purposes of a pre-delivery inspection of the scope described in Exhibit A attached hereto (the “*Inspection*”). The Buyer shall be responsible for all costs incurred by the Seller in delivering the Aircraft from its home base to the Inspection Facility. The Inspection shall include a test flight, not to exceed two (2) hours, to demonstrate to the Buyer the satisfactory functioning of the Aircraft (the “*Test Flight*”), which flight shall be subject to the supervision and operational control of the Seller’s flight test personnel at all times. The Buyer may have a maximum of four (4) of its representatives accompany the Test Flight, during which the Buyer’s representatives shall comply with the instructions of the Seller’s pilot at all times. At all reasonable times during the Inspection (and the repair of any Discrepancies), the Buyer and its representatives shall have reasonably unrestricted access to the Aircraft and the Records for examination, which access shall include the right to have one or more technical representatives of the Buyer accompany any verification or return-to-service flights following the correction of any Discrepancies; provided that any such examination (a) shall be subject to the safety, security and workplace rules of the Inspection Facility, and (b) shall be conducted so as not to interfere with the Inspection Facility’s business and shall not in any respect interfere with the normal conduct of the Inspection or extend the time required for the Inspection (as determined by the Inspection Facility in good faith). The Buyer will be responsible for the direct costs associated with the Inspection and the cost of fuel incurred by the Seller for the Test Flight.

**Section 3.02. Inspection Report.** Following completion of the Inspection, the Inspection Facility shall deliver a written report to the Buyer and the Seller (the “*Inspection Report*”) specifying any airworthiness or safety-of-flight discrepancies discovered during the Inspection (collectively, “*Discrepancies*”). Any dispute regarding whether a Discrepancy exists, or has been corrected, shall be resolved by a mutually agreeable, qualified technical representative of the Inspection Facility. The costs of retaining such qualified technical representative shall be borne by the party against whom the technical representative decides adversely.

**Section 3.03. Technical Acceptance; Rejection.**

(a) Within three (3) Business Days after the Inspection Report is delivered, the Buyer shall execute and deliver to the Seller, in the Buyer’s sole discretion, either a Technical

Acceptance Certificate (designating, as applicable, that the Buyer accepts the Aircraft “as is” or accepts the Aircraft subject to repair of the Discrepancies) or Rejection Notice in the form attached hereto as Exhibit B. In the event the Buyer fails to deliver either a Technical Acceptance Certificate or Rejection Notice within three (3) Business Days after delivery of the Inspection Report, the Buyer shall be deemed to have rejected the Aircraft.

(b) If the Buyer accepts the Aircraft subject to repair of the Discrepancies, the Seller will authorize the Inspection Facility to perform repairs of the Discrepancies at the Seller’s expense. Repair of the Discrepancies will be deemed to be accomplished when the Inspection Facility returns the Aircraft to service, as evidenced by a “Return to Service” logbook entry in the Records.

(c) If the Aircraft is, or is deemed to be, rejected by the Buyer, (i) the Buyer shall pay any costs and expenses incurred by the Seller to restore the Aircraft to its pre-Inspection condition, and (ii) following such payment (if any) the Escrow Agent shall refund the Deposit to the Buyer, and this Agreement shall terminate as provided in Section 8.01(a).

**Section 3.04. Aircraft Utilization.** The Aircraft will not be flown or otherwise used by the Seller or any other person following completion of the Inspection, except thereafter the Seller will be entitled to fly the Aircraft as may be necessary to re-position the Aircraft for the Delivery.

#### **ARTICLE IV DISCLAIMER OF WARRANTIES; TITLE.**

**Section 4.01. Disclaimer of Warranties; Title.**

THE BUYER ACKNOWLEDGES AND AGREES THAT, AS OF THE DELIVERY DATE, (1) THE AIRCRAFT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO THE BUYER AND SUITABLE FOR ITS PURPOSES, (2) THE SELLER IS NOT A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (3) THE AIRCRAFT IS SOLD HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENT REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME IS DELIVERED TO THE BUYER, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE SELLER EXCEPT AS TO TITLE AND LIENS AS PROVIDED BELOW, AND (4) THE SELLER SELLS THE AIRCRAFT “AS-IS, WHERE-IS” WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AND THE SELLER EXPRESSLY DISCLAIMS ANY WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO (i) AIRWORTHINESS, CONDITION, QUALITY, DESCRIPTION, DURABILITY, SUITABILITY, FITNESS FOR USE FOR A PARTICULAR PURPOSE, DESIGN, VALUE, OPERATION OR MERCHANTABILITY THEREOF, (ii) QUALITY OF MATERIAL OR WORKMANSHIP, OR ABSENCE OF LATENT OR OTHER DEFECTS WHETHER OR NOT DISCERNIBLE, (iii) ABSENCE OF AN INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, (iv) ABSENCE OF ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT, (v) THE BUYER’S TITLE THERETO OR (vi) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY THE BUYER, EXCEPT THE SELLER REPRESENTS AND WARRANTS THAT ON THE DELIVERY DATE, THE SELLER SHALL HAVE TITLE TO THE AIRCRAFT FREE AND CLEAR OF ALL LIENS, AND; PROVIDED THAT NOTHING SET FORTH IN THIS PARAGRAPH SHALL BE CONSTRUED AS A WAIVER BY THE BUYER OF ANY WARRANTY OR OTHER CLAIM AGAINST ANY MANUFACTURER, SUPPLIER, DEALER, CONTRACTOR, SUBCONTRACTOR OR OTHER PERSON THAT IS NOT A PARTY TO THIS AGREEMENT.

The provisions of this Article IV have been negotiated by the parties hereto and are intended to be a complete exclusion and negation of any representations or warranties of the Seller, express or implied, with respect to the Aircraft that may arise pursuant to any applicable law now or hereafter in effect, or otherwise, other than the Seller's warranty of title and the Seller's representations relating to Liens, in each case as expressly set forth in this Article IV.

## ARTICLE V CONDITIONS PRECEDENT

**Section 5.01. Conditions Precedent to the Obligations of the Buyer.** The obligation of the Buyer to consummate the Aircraft Purchase shall be subject to the satisfaction, prior to or at the Delivery, of the conditions precedent set forth in this Section 5.01; provided that it shall not be a condition precedent to the obligations of the Buyer that any document be delivered or action be taken that is to be delivered or be taken by the Buyer or an Affiliate of the Buyer:

- (a) the Buyer shall have received written notice of the Delivery Date from the Seller pursuant to Section 2.04(a);
- (b) the Seller shall have executed each of the following documents and executed counterparts thereof shall have been delivered to the Escrow Agent (unless the failure to receive such document is the result of any action or inaction by the Buyer or by an Affiliate of the Buyer):
  - (i) the FAA Bill of Sale; and
  - (ii) the Warranty Bill of Sale;
- (c) the Seller shall have authorized the Escrow Agent to file the FAA Bill of Sale for recording with the FAA;
- (d) the representations and warranties made herein by the Seller shall be correct in all material respects as of the Delivery Date, and the Seller shall have performed and observed, in all material respects, all of its covenants, obligations and agreements in this Agreement and in the other Purchase Documents to which it is party to be observed and performed by it as of the Delivery Date;
- (e) the Aircraft shall be free and clear of Liens;
- (f) if requested by the Buyer, the Seller shall have appointed the Escrow Agent as its "professional user entity" (as defined in the Cape Town Treaty) to make the registrations described in Section 2.04(b) and shall have authorized the making of such registrations;
- (g) upon reasonable request of the Buyer, the Seller shall have delivered, or caused to be delivered by the relevant Person, duly executed sales or other Tax exemption certificates, as applicable;
- (h) the Aircraft shall have a current and valid Certificate of Airworthiness issued by the FAA;
- (i) the Aircraft shall be in compliance with the manufacturer's maintenance program and in airworthy condition, with all equipment and systems affecting airworthiness operational to

manufacturer's specifications, as at the time the Aircraft was returned to service by the Inspection Facility, and shall be in compliance with all airworthiness directives and mandatory service bulletins that require compliance no later than the Delivery Date, as and to the extent required by such airworthiness directives and the Aircraft manufacturer's maintenance program prior to such date;

(j) the engines shall be enrolled in the Honeywell MSP maintenance program, which shall be fully paid, in good standing and eligible for Buyer's enrollment at Buyer's expense upon Delivery;

(k) no Event of Loss with respect to the Aircraft shall have occurred; and

(l) the Bankruptcy Court Order shall have been issued.

**Section 5.02. Conditions Precedent to Obligations of the Seller.** The obligation of the Seller to consummate the Aircraft Purchase shall be subject to the satisfaction, prior to or at the Delivery, of the conditions precedent set forth in this Section 5.02; provided that it shall not be a condition precedent to the obligations of the Seller that any document be delivered or action be taken that is to be delivered or be taken by the Seller or an Affiliate of the Seller:

(a) the Buyer shall have executed each of the following documents, and executed counterparts thereof shall have been delivered to the Escrow Agent (unless the failure to receive such document is the result of any action or inaction by the Seller or by an Affiliate of the Seller):

(i) the Registration Application;

(ii) the Warranty Bill of Sale; and

(iii) the Delivery Certificate;

(b) the Buyer shall have authorized the Escrow Agent to file the Registration Application with the FAA;

(c) the Buyer shall have made the balance of the Purchase Price available to the Escrow Agent in immediately available funds and shall have authorized the Escrow Agent to pay the Purchase Price for the Aircraft as described in and in accordance with Section 2.02;

(d) the representations and warranties made herein by the Buyer shall be correct in all material respects as of the Delivery Date, and the Buyer shall have performed and observed, in all material respects, all of its covenants, obligations and agreements in this Agreement and in the other Purchase Documents to which it is party to be observed and performed by it as of the Delivery Date;

(e) if applicable, the Buyer shall have appointed the Escrow Agent as its "professional user entity" (as defined in the Cape Town Treaty) to make the registrations described in Section 2.04(b) and shall have authorized the making of such registrations;

(f) upon reasonable request of the Seller, the Buyer shall have delivered, or caused to be delivered, duly executed sales or other Tax exemption certificates, as applicable;

(g) no Event of Loss with respect to the Aircraft shall have occurred;



- (h) the Bankruptcy Court Order shall have been issued.

**ARTICLE VI  
REPRESENTATIONS AND WARRANTIES**

**Section 6.01. Representations and Warranties of Buyer.** As of the date hereof, the Buyer represents and warrants to the Seller that:

(a) The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado, has the requisite power, capacity and authority to enter into and perform its obligations under, this Agreement and the other Purchase Documents to which it is or will be a party.

(b) The execution, delivery and performance by the Buyer of this Agreement and the other Purchase Documents to be executed and delivered by the Buyer pursuant to Article II hereof on or prior to the Delivery Date and the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Buyer, and do not require any stockholder approval or approval or consent of any trustee or holder of any indebtedness or obligations of the Buyer, except such as have been duly obtained and are in full force and effect.

(c) This Agreement has been duly executed and delivered by the Buyer and constitutes, and each other Purchase Document to be executed and delivered by the Buyer on or prior to the Delivery Date will be duly executed and delivered by the Buyer, and when executed and delivered, will constitute, the legal, valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

**Section 6.02. Representations and Warranties of the Seller.** As of the date hereof, the Seller represents and warrants to the Buyer that:

(a) The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, has the requisite power, capacity and authority to enter into and perform its obligations under this Agreement and the other Purchase Documents to which it is or will be a party.

(b) Subject to Section 9.13, the execution, delivery and performance by the Seller of this Agreement and the other Purchase Documents to be executed and delivered by the Seller pursuant to Article II hereof on or prior to the Delivery Date and the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Seller, and do not require any member approval or approval or consent of any trustee or holder of any indebtedness or obligations of the Seller, except such as have been duly obtained and are in full force and effect.

(c) Subject to Section 9.13, this Agreement has been duly executed and delivered by the Seller and constitutes, and each other Purchase Document to be executed and delivered by the Seller on or prior to the Delivery Date will be duly executed and delivered by the Seller, and when executed and delivered, will constitute, the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

**ARTICLE VII**  
**COVENANTS AND AGREEMENTS OF BUYER AND SELLER**

**Section 7.01. Further Actions.** Each party hereto, upon the reasonable request of the other party, shall perform or cause to be performed any and all acts and execute and deliver, or cause to be executed and delivered, any and all documents necessary to consummate the transactions contemplated in this Agreement; provided that any instrument, certificate or other document so executed by the Buyer or the Seller will not expand any obligations or limit any rights of the Buyer or the Seller, respectively, in respect of the transactions contemplated hereby.

**Section 7.02. Confidential Information.** The terms and conditions of this Agreement (the “*Confidential Information*”) shall be held confidential by each of the Seller, the Buyer and the Escrow Agent, and shall not be disclosed, directly or indirectly, to any Person other than (a) such party’s respective officers, directors and employees, and to officers, directors and employees of such party’s respective Affiliates, each of whom needs to know such Confidential Information in connection with the transactions contemplated hereby and (b) such party’s respective auditors, insurers, appraisers, agents, accountants and legal counsel, each with a need to know such information; provided that the Seller and the Buyer may also disclose any such Confidential Information (i) that has been publicly disclosed (other than by the Seller or the Buyer or any of their respective Affiliates in breach of this Section 7.02) or has rightfully come into the possession of the Seller or the Buyer (as applicable) or any of their respective Affiliates on a nonconfidential basis, (ii) as required by statute, rule, regulation, judicial process or order of any governmental agency or regulatory body, (iii) in connection with any litigation to which the Seller or the Buyer is a party so long as such litigation is in connection with the enforcement of rights or remedies against the Buyer or Seller (as applicable) in connection herewith and (iv) where such Confidential Information was previously known to the Seller or the Buyer free of any obligation to keep it confidential.

**Section 7.03. Tax.** The Buyer shall pay all Taxes on the Aircraft Purchase; provided, however, that the Seller shall (a) accept in good faith all certificates or other documents establishing an exemption from such Taxes, and (b) reasonably cooperate with the Buyer to minimize any such Taxes on the Aircraft Purchase. The Buyer and the Seller shall reasonably cooperate to close the Aircraft Purchase while the Aircraft is located in a jurisdiction that will reduce the overall incidence of Tax.

**Section 7.04. Indemnification.**

(a) The Buyer agrees to indemnify, defend, save and hold harmless the Seller and its respective officers, directors, employees, agents, representatives, successors and assigns (collectively, the “*Seller Indemnified Parties*”) from and against any and all Claims which may be incurred by any Seller Indemnified Party as a result of (i) the Buyer’s ownership, operation, maintenance or use of the Aircraft following the Delivery, (ii) any Taxes on the Aircraft Purchase, (iii) fees, commissions or other compensation payable to the Buyer’s broker in connection with the Aircraft Purchase, or (iv) the breach by the Buyer of any of its representations or warranties hereunder or under any Purchase Documents; provided, that the Buyer shall not be obligated to indemnify any Seller Indemnified Party for any Claims to the extent such Claims are caused by any such Seller Indemnified Party’s gross negligence or willful misconduct or any breach by the Seller of its representations, warranties or covenants herein.

(b) The Seller agrees to indemnify, defend, save and hold harmless the Buyer and its respective officers, directors, employees, agents, representatives, successors and assigns (collectively, the “*Buyer Indemnified Parties*”) from and against any and all Claims which may be incurred by any Buyer Indemnified Party as a result of (i) fees, commissions or other

compensation payable to the Seller's broker in connection with the Aircraft Purchase, or (ii) the breach by the Seller of any of its representations or warranties hereunder or under any Purchase Documents; provided, that the Seller shall not be obligated to indemnify any Buyer Indemnified Party for any Claims to the extent such Claims are caused by any such Buyer Indemnified Party's gross negligence or willful misconduct or any breach by the Buyer of its representations, warranties or covenants herein.

(c) Except for actions expressly required of the Escrow Agent hereunder, the Escrow Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have been indemnified by the party requesting such action in a manner reasonably satisfactory to it against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

## **ARTICLE VIII TERMINATION**

### **Section 8.01. Buyer's Termination.**

(a) If Buyer rejects, or is deemed to have rejected, the Aircraft in accordance with Section 3.03(a), this Agreement shall terminate without any further notice or action, and neither the Buyer nor the Seller shall have any further liability or obligation hereunder (except in respect of the Surviving Provisions, which obligations shall continue in full force and effect notwithstanding such termination).

(b) If any of the conditions precedent to Buyer's obligation to consummate the Aircraft Purchase are unsatisfied at 3:00 p.m. CST on the Delivery Date and are not waived or deferred in writing by the Buyer, and any such condition precedent is not unsatisfied as a result of a breach by the Buyer of any of its obligations under this Agreement (other than a breach caused by (i) any act or omission on the part of the Seller, or (ii) the Seller's failure or inability to meet any of the conditions precedent to the Buyer's obligation to consummate the Aircraft Purchase), and such condition precedent shall remain unsatisfied for a period of three (3) Business Days following delivery of written notice thereof to the Seller from the Buyer, the Buyer may at any time thereafter terminate its obligation to purchase the Aircraft by delivering written notice to the Seller and the Escrow Agent. In the event of such termination (A) the Escrow Agent shall return the Deposit to the Buyer and (B) this Agreement shall terminate, and neither the Buyer nor the Seller shall have any further liability or obligation hereunder (except in respect of the Surviving Provisions, which obligations shall continue in full force and effect notwithstanding such termination).

**Section 8.02. Seller's Termination.** If any of the conditions precedent to the Seller's obligation to consummate the Aircraft Purchase remain unsatisfied at 3:00 p.m. CST on the Delivery Date and are not waived or deferred in writing by the Seller, and any such condition precedent is not unsatisfied as a result of a breach by the Seller of any of its obligations under this Agreement (other than a breach caused by (a) any act or omission on the part of the Buyer, or (b) the Buyer's failure or inability to meet any of the conditions precedent to its obligation to consummate the Aircraft Purchase), and such condition precedent shall remain unsatisfied for a period of three (3) Business Days following delivery of written notice thereof to the Buyer from the Seller, the Seller may at any time thereafter terminate its obligation to sell the Aircraft by written notice to the Buyer and the Escrow Agent. In the event of such termination (i) the Escrow Agent shall deliver the Deposit to the Seller and (ii) this Agreement shall terminate, and neither the Buyer nor the Seller shall have any further liability or obligation hereunder

(except in respect of the Surviving Provisions, which obligations shall continue in full force and effect notwithstanding such termination).

**Section 8.03. Termination Following Event of Loss.** If, prior to the Delivery, an Event of Loss occurs with respect to the Aircraft, the Seller shall promptly give the Buyer and the Escrow Agent written notice thereof. In the event of any such Event of Loss (i) the Escrow Agent shall return the Deposit to the Buyer and (ii) this Agreement shall terminate, and neither the Seller nor the Buyer shall have any further liability or obligation hereunder (except in respect of the Surviving Provisions, which obligations shall continue in full force and effect notwithstanding such termination).

## ARTICLE IX MISCELLANEOUS

**Section 9.01. Expenses.** Except as provided in Sections 3.01, 3.02 and 3.03 hereof, each of the Seller and the Buyer will bear its own fees and expenses in connection with the transactions contemplated hereby and any commission or compensation payable in connection with any agent or broker retained by such party; provided that each of the Seller and the Buyer will be responsible for one-half of the Escrow Agent's fees and expenses.

**Section 9.02. Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices, requests, demands, authorizations, directions, consents or waivers required or permitted under the terms and provisions of this Agreement will be in English and in writing, and given by United States registered or certified mail, return receipt requested, postage prepaid, overnight courier service or electronic mail, and any such notice will be effective when delivered (or, if delivered by electronic mail, upon completion of transmission and confirmation by the sender (by a telephone call to a representative of the recipient) that such transmission was received) addressed as follows:

- (a) if to the Buyer, addressed to:

Colorado Structures Inc.  
540 Elkton Drive, Suite 202  
Colorado Springs, CO 80907  
Attn: Paul Tuttle  
E-mail: [ptuttle@csigc.com](mailto:ptuttle@csigc.com)  
Telephone: 719-499-2699

- (b) if to the Seller, addressed to:

N214FT, LLC  
1000 W. Weatherford St.  
Fort Worth, Texas 76102  
Attn: Dustin Rall  
E-mail: [dustinrall@me.com](mailto:dustinrall@me.com)

with copies to:

Kelly Hart & Hallman LLP  
301 Main St., Suite 1600  
Baton Rouge, Louisiana 70801  
Attn: Louis Phillips, Esq.  
E-mail: [louis.phillips@kellyhart.com](mailto:louis.phillips@kellyhart.com)

Telephone: 225-338-5308

(c) if to the Escrow Agent, addressed to:

AIC Title Service  
6350 W. Reno Avenue  
Oklahoma City, OK 73127  
Attn: Melissa Koboldt  
E-mail: [mkoboldt@aictitle.com](mailto:mkoboldt@aictitle.com)  
Telephone: 405-948-1869

Each party, by notice to the other parties hereto, may designate different addresses for subsequent notices or communications. Whenever the words “notice” or “notify” or similar words are used herein, they mean the provision of formal notice as set forth in this Section 9.02.

**Section 9.03. Governing Law; Submission to Jurisdiction.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES). THE LANGUAGE IN THIS AGREEMENT SHALL BE INTERPRETED AS TO ITS FAIR MEANING AND NOT STRICTLY FOR OR AGAINST ANY PARTY. ALL LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT SOLELY IN THE STATE DISTRICT COURTS OF TARRANT COUNTY, TEXAS, AND EACH OF BUYER AND SELLER EXPRESSLY SUBMITS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS. NOTWITHSTANDING THE IMMEDIATELY PRECEDING SENTENCE OR ANY OTHER AGREEMENT BETWEEN BUYER AND SELLER, THE COMPETENT COURTS OF THE STATE OF OKLAHOMA OR THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR ALL DISPUTES AGAINST ESCROW AGENT, AND NO OTHER COURTS SHALL HAVE ANY JURISDICTION WHATSOEVER IN RESPECT OF SUCH DISPUTES AGAINST ESCROW AGENT. SHOULD A DISPUTE ARISE BETWEEN BUYER AND SELLER RELATING TO THE DEPOSIT OR ANY OTHER ITEMS WHICH ARE IN THE POSSESSION OF ESCROW AGENT, ESCROW AGENT SHALL BE ENTITLED TO INTERPLEAD ANY FUNDS OR OTHER ITEMS IN ITS POSSESSION WITH THE COMPETENT COURTS OF THE STATE OF OKLAHOMA OR THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA.

**Section 9.04. Severability.** To the extent permitted by applicable law, any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 9.05. No Oral Modifications or Continuing Waivers.** This Agreement may be amended only by an instrument in writing signed by the parties hereto. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver hereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise hereof or the exercise of any other right, power or privilege.

**Section 9.06. Entire Agreement.** This Agreement and the Purchase Documents constitute the entire agreement between the parties and supersedes all previous communications, representations,

understanding or agreements, whether oral or written, between the parties with respect to the transactions contemplated hereby.

**Section 9.07. Effect of Headings and Table of Contents.** The headings of the various Articles and Sections herein and in the Table of Contents are for convenience of reference only and do not define or limit any of the terms or provisions hereof.

**Section 9.08. No Assignment.** The rights and obligations of the respective parties pursuant to this Agreement are personal to the respective parties, and no party may assign or otherwise transfer its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other parties. Any such assignment or transfer without such consent shall be null and void.

**Section 9.09. Successors and Assigns.** This Agreement shall inure to the benefit of and be enforceable by each party hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, gives to any Person, other than the parties hereto and their successors and permitted assigns hereunder, any benefit or any legal or equitable right, remedy or claim under this Agreement

**Section 9.10. Beneficiaries.** Nothing in this Agreement, express or implied, gives to any Person, other than the parties hereto and their successors and permitted assigns hereunder, any benefit or any legal or equitable right, remedy or claim under this Agreement, except as expressly provided herein.

**Section 9.11. Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by e-mail shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 9.12. Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN AN ACTION TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT.

**Section 9.13. Bankruptcy Court Approval.** The Buyer and the Seller acknowledge and agree that the consummation and effectiveness of this Agreement is conditioned upon and shall require approval by final order of the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (the "*Bankruptcy Court Order*"). In the event the Bankruptcy Court Order has not been issued by the Delivery Deadline, (A) the Escrow Agent shall return the Deposit to the Buyer and (B) this Agreement shall terminate, and neither the Buyer nor the Seller shall have any further liability or obligation hereunder (except in respect of the Surviving Provisions, which obligations shall continue in full force and effect notwithstanding such termination). The Seller acknowledges that the Buyer will not be involved in the proceedings undertaken by the Seller in its attempt to obtain the Bankruptcy Court Order and has no knowledge of the facts or events associated with the underlying bankruptcy action. Accordingly, the Seller, in addition to and not in substitution of its obligations arising under Section 7.04(b) of this Agreement, agrees to indemnify, defend, save and hold harmless the Buyer Indemnified Parties from and against any and all Claims which may be incurred by any Buyer Indemnified Party arising from a challenge by or on behalf of any creditor of the Seller or any third party regarding the validity or effectiveness of the transfer of the Aircraft to the Buyer or the sufficiency of the consideration paid by the Buyer under the terms of this Agreement.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the date first above written.

SELLER:

**N214FT, LLC**

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

Name:

Title:

**BUYER:**

**COLORADO STRUCTURES, INC.**

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

Name:

Title:



ESCROW AGENT:

**AIC TITLE SERVICE, LLC**

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

Name:

Title:

**AIRCRAFT DESCRIPTION**

U.S. Registration Number:	N214FT
Airframe Manufacturer and Model:	Dassault Aviation Falcon 50EX
Airframe Manufacturer's Serial Number:	50-300
Engine Manufacturer and Model:	Honeywell TFE-731-40-1C
Engine Manufacturer's Serial Numbers:	P115252, P115264 and P115254
APU Manufacturer and Model:	Honeywell GTCP36-100(A)
APU Manufacturer's Serial Number:	P-410

**DEFINITIONS**

**General Provisions**

(a) In the Agreement (as defined below), unless otherwise expressly provided, a reference to:

(i) each of “Buyer,” “Seller,” and “Escrow Agent” or any other Person includes, without prejudice to the provisions of the Agreement, any successor in interest to it and any permitted transferee, permitted buyer or permitted assignee of it;

(ii) words importing the plural include the singular and words importing the singular include the plural;

(iii) any agreement, instrument or document, or any annex, schedule or exhibit thereto, or any other part thereof, includes, without prejudice to the provisions of the Agreement, that agreement, instrument or document, or annex, schedule or exhibit, or part, respectively, as amended, modified or supplemented from time to time in accordance with its terms and in accordance with the Agreement, and any agreement, instrument or document entered into in substitution or replacement therefor;

(iv) any provision of any law includes any such provision as amended, modified, supplemented, substituted, reissued or reenacted prior to the date of the Agreement and thereafter from time to time;

(v) the word “government” is to such government and any instrumentality or agency thereof;

(vi) the words “Agreement,” “this Agreement,” “hereby,” “herein,” “hereto,” “hereof” and “hereunder” and words of similar import, refer to the Agreement as a whole and not to any particular provision of the Agreement;

(vii) the words “including,” “including, without limitation,” “including, but not limited to,” and terms or phrases of similar import, when used with respect to any matter or thing, mean including, without limitation, such matter or thing; and

(viii) a “Section,” a “subsection,” an “Exhibit,” an “Annex” or a “Schedule” in the Agreement or in any exhibit or annex thereto, is a reference to a section or a subsection of, or an exhibit, an annex or a schedule to, the Agreement or such exhibit or annex, respectively.

(b) Each exhibit, annex and schedule to the Agreement is incorporated in, and shall be deemed to be a part of, the Agreement.

(c) Headings and tables of contents used in the Agreement are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, the Agreement.

## Defined Terms

“**Affiliate**” means with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, “control” (including “controlled by” and “under common control with”) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or by contract or otherwise.

“**Agreement**” has the meaning specified in the preamble.

“**Aircraft**” has the meaning specified in the recitals.

“**Aircraft Protocol**” means the official English language text of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, adopted on November 16, 2001, at a diplomatic conference in Cape Town, South Africa, and all amendments, supplements, and revisions thereto, as in effect in the United States.

“**Aircraft Purchase**” has the meaning specified in the recitals.

“**Bankruptcy Court Order**” has the meaning specified in Section 9.13.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which commercial banks are required or authorized to close in Fort Worth, Texas or Oklahoma City, Oklahoma.

“**Buyer**” has the meaning specified in the preamble.

“**Buyer Indemnified Parties**” has the meaning specified in Section 7.04(b).

“**Cape Town Convention**” means the official English language text of the Convention on International Interests in Mobile Equipment, adopted on November 16, 2001, at a diplomatic conference in Cape Town, South Africa, and all amendments, supplements, and revisions thereto, as in effect in the United States.

“**Cape Town Treaty**” means, collectively, the official English language text of (i) the Cape Town Convention, (ii) the Aircraft Protocol, (iii) all rules and regulations adopted pursuant thereto and as in effect in the United States and (iv) with respect to each of the foregoing described in clauses (i) through (iii), all amendments, supplements and revisions thereto as in effect in the United States.

“**Claims**” means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs or expenses of whatsoever kind and nature (whether or not on the basis of negligence, strict or absolute liability or liability in tort), and, except as otherwise expressly provided, includes all reasonable out-of-pocket costs, disbursements and expenses (including reasonable out-of-pocket legal fees and expenses) actually incurred in connection therewith or related thereto.

“**Confidential Information**” has the meaning specified in Section 7.02.

“**Delivery**” means the transfer of title to, and physical possession and operational control of, the Aircraft from the Seller to the Buyer, as evidenced by the delivery by the Escrow Agent of the Warranty Bill of Sale and the Delivery Certificate, in each case executed by each of the parties thereto.

**“Delivery Certificate”** means a certificate delivered by the Buyer to the Seller in the form of Exhibit C hereto.

**“Delivery Date”** has the meaning specified in Section 2.04.

**“Delivery Deadline”** has the meaning specified in Section 2.04.

**“Delivery Location”** has the meaning specified in Section 2.04.

**“Deposit”** has the meaning specified in Section 2.03.

**“Discrepancies”** has the meaning specified in Section 3.01.

**“Dollars”** and **“\$”** mean the lawful currency of the United States.

**“Escrow Agent”** has the meaning specified in the preamble.

**“Event of Loss”** means any of the following events: (i) loss of the Aircraft or the use thereof due to theft, disappearance, destruction, damage beyond repair or rendition thereof permanently unfit for normal use for any reason whatsoever, (ii) any damage to the Aircraft that results in, or could reasonably be expected to result in, an insurance settlement on the basis of a total loss or a compromised or constructive total loss; or (iii) as a result of any rule, regulation, order or other action by the FAA or other governmental body of the U.S. having jurisdiction, the use of the Aircraft in the normal course of air transportation shall have been prohibited.

**“FAA”** means the United States Federal Aviation Administration and any agency or instrumentality of the United States government succeeding to its functions.

**“FAA Bill of Sale”** means the bill of sale for the Aircraft on FAA AC Form 8050-2 executed by the Seller in favor of the Buyer.

**“International Registry”** means the international registry established pursuant to the Cape Town Treaty.

**“Inspection”** has the meaning specified in Section 3.01.

**“Inspection Facility”** means Excel Aviation in Gainesville, Texas.

**“Inspection Report”** has the meaning specified in Section 3.01.

**“Lien”** means any mortgage, pledge, lien, charge, encumbrance, assignment, lease, sublease, sub-sublease, security interest or other similar interest, excluding the rights of the Buyer under the Purchase Documents.

**“Person”** means any individual person, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, trustee, unincorporated organization or government or any agency or political subdivision thereof.

**“Purchase Documents”** means each agreement, document, certificate or instrument to be executed and delivered in connection with the Aircraft Purchase, including, without limitation, this Agreement, the Warranty Bill of Sale, the FAA Bill of Sale, the Technical Acceptance Certificate and the Delivery Certificate.

**“Purchase Price”** has the meaning specified in Section 3.02.

**“Records”** has the meaning specified in Section 3.01.

**“Registration Application”** means the application for registration on FAA AC Form 8050-1 with respect to the Aircraft in the name of the Buyer.

**“Rejection Notice”** means a notice of rejection of the Aircraft in the form of Exhibit B hereto executed by the Buyer.

**“Seller”** has the meaning specified in the preamble.

**“Seller Indemnified Parties”** has the meaning specified in Section 7.04(a).

**“Surviving Provisions”** means Section 2.03; provisions for the payment of costs and expenses pursuant to Sections 3.01, 3.02, 3.03 and 9.01; Section 7.02; subsections (a) and (b) of Section 7.04 (but solely with respect to the obligation to indemnify for Claims incurred as a result of fees, commission or other compensation payable to a party’s broker); Section 9.03 and Section 9.12.

**“Tax”** and **“Taxes”** mean all governmental or statutory fees (including, without limitation, license, filing and registration fees) and all excise, stamp, value added, sales, use and gross receipts taxes imposed in lieu of a sales or use tax, together with any related penalties, fines, additions to tax or interest thereon imposed, levied or assessed by any taxing authority; excluding all governmental or statutory fees, taxes, assessments, levies, imposts, duties or charges, together with any related penalties, fines, additions to tax or interest thereon imposed, levied or assessed by any taxing authority based upon or related to the income of any Person (including, without limitation, a franchise tax or gross receipts tax imposed in lieu of an income tax, such as the Texas Franchise Tax).

**“Technical Acceptance Certificate”** means a technical acceptance certificate in the form of Exhibit B hereto completed and executed by the Buyer.

**“United States”** or **“U.S.”** means the United States of America.

**“Warranty Bill of Sale”** means the bill of sale in the form of Exhibit D hereto executed by the Seller in favor of the Buyer.

**INSPECTION WORK SCOPE**

2A+  
Pre-buy / technical survey

**FORM OF TECHNICAL ACCEPTANCE CERTIFICATE / REJECTION NOTICE**

\_\_\_\_\_, 201\_

N214FT, LLC  
1000 W. Weatherford St.  
Fort Worth, Texas 76102  
Attn:

RE: Dassault Aviation Falcon 50EX Aircraft bearing U.S. Registration No. N214FT and  
Manufacturer's Serial No. 50-300

Reference is made to that certain Aircraft Purchase Agreement (N214FT), dated as of December  
\_\_, 2017 (the "**Purchase Agreement**"), among N214FT, LLC, Colorado Structures, Inc. and AIC Title  
Service, LLC. Capitalized terms used herein and not otherwise defined herein shall have the meanings  
set forth in the Purchase Agreement.

Pursuant to Section 3.03(a) of the Purchase Agreement, this letter confirms that *[select applicable text  
below]*

- the Buyer accepts the Aircraft in "as is" condition.
- subject to repair, at Seller's sole cost and expense, of the Discrepancies specified in the  
Inspection Report, the Buyer accepts the Aircraft.
- the Buyer rejects the Aircraft.

BUYER:

**COLORADO STRUCTURES, INC.**

By: \_\_\_\_\_  
Name:  
Title:



**FORM OF DELIVERY & ACCEPTANCE CERTIFICATE**  
**N214FT – Manufacturer’s Serial Number 50-300**

This Certificate is delivered by the undersigned Buyer (“*Buyer*”) pursuant to the Aircraft Purchase Agreement (N214FT), dated as of December \_\_, 2017 (the “*Purchase Agreement*”), among N214FT, LLC, Colorado Structures, Inc. and AIC Title Service, LLC. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

Buyer hereby certifies that the Aircraft has been delivered by Seller to Buyer in compliance with the Purchase Agreement, and that Buyer hereby accepts the Aircraft as of the Delivery Date specified below for all purposes of the Purchase Agreement (including, without limitation, “operational control” thereof as such term is used and defined under the Federal Aviation Regulations). Buyer hereby further certifies that the following information is true and correct:

Delivery Date: \_\_\_\_\_, 201\_\_

Delivery Location: \_\_\_\_\_

Airframe: \_\_\_\_\_ hours

Engines: ESN P115252 \_\_\_\_\_ hours \_\_\_\_\_ cycles

ESN P115264 \_\_\_\_\_ hours \_\_\_\_\_ cycles

ESN P115254 \_\_\_\_\_ hours \_\_\_\_\_ cycles

APU: \_\_\_\_\_ hours

BUYER:

**COLORADO STRUCTURES, INC.**

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

Name:

Title:

Acknowledged as to Delivery Date, Delivery  
Location and hours/cycles:

SELLER:

**N214FT, LLC**

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

Name:

Title:

**FORM OF WARRANTY BILL OF SALE**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT N214FT, LLC, a Texas limited liability company (“SELLER”), is the owner of title to that certain Dassault Aviation Falcon 50EX airframe bearing U.S. Registration No. N214FT and Manufacturer’s Serial No. 50-300, together with three (3) Honeywell TFE-731-40-1C engines bearing Manufacturer’s Serial Nos. P115252, P115264 and P115254, respectively, together with all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment or property incorporated in, installed in or on or attached to such airframe or engines (the aforementioned property, collectively, the “AIRCRAFT”).

THAT for value received and other valuable consideration SELLER does this \_\_ day of \_\_\_\_\_, 201\_, grant, convey, transfer, bargain and sell, deliver and set over to COLORADO STRUCTURES, INC. (“BUYER”) all of SELLER’s title to the AIRCRAFT, together with all of SELLER’s other rights and interests in and to the AIRCRAFT, pursuant to the terms of the Aircraft Purchase Agreement (N214FT), dated as of \_\_\_\_\_, 201\_ (the “PURCHASE AGREEMENT”); capitalized terms not otherwise defined herein having the meanings given therein), by and among SELLER, BUYER and the Escrow Agent.

BUYER ACKNOWLEDGES AND AGREES THAT, AS OF THE DATE HEREOF, (1) THE AIRCRAFT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO BUYER AND SUITABLE FOR ITS PURPOSES, (2) THE SELLER IS NOT A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (3) THE AIRCRAFT IS SOLD HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENT REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME IS DELIVERED TO BUYER, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE SELLER EXCEPT AS PROVIDED BELOW AND IN THE PURCHASE AGREEMENT RELATING TO THE AIRCRAFT, AND (4) EXCEPT AS MAY BE OTHERWISE AGREED, SELLER SELLS THE AIRCRAFT “AS-IS, WHERE-IS” WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO (i) AIRWORTHINESS, CONDITION, QUALITY, DESCRIPTION, DURABILITY, SUITABILITY, FITNESS FOR USE FOR A PARTICULAR PURPOSE, DESIGN, VALUE, OPERATION OR MERCHANTABILITY THEREOF, (ii) QUALITY OF MATERIAL OR WORKMANSHIP, OR ABSENCE OF LATENT OR OTHER DEFECTS WHETHER OR NOT DISCERNIBLE, (iii) ABSENCE OF AN INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, (iv) ABSENCE OF ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT, (v) BUYER’S TITLE THERETO OR (vi) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY BUYER, EXCEPT THAT SELLER REPRESENTS AND WARRANTS AS PROVIDED IN THE IMMEDIATELY FOLLOWING PARAGRAPH; PROVIDED THAT NOTHING SET FORTH IN THIS PARAGRAPH SHALL BE CONSTRUED AS A WAIVER BY BUYER OF ANY WARRANTY OR OTHER CLAIM AGAINST ANY MANUFACTURER, SUPPLIER, DEALER, CONTRACTOR, SUBCONTRACTOR OR OTHER PERSON THAT IS NOT A PARTY TO THE PURCHASE AGREEMENT.

THAT SELLER hereby warrants to BUYER, its successors and assigns, that there is hereby conveyed to BUYER on the date hereof, title to the AIRCRAFT, free and clear of all right, title and interest of SELLER and all Liens, and that it will warrant and defend such title forever against all claims and demands whatsoever.

THAT SELLER hereby assigns and transfers to BUYER, its successors and assigns, all of SELLER's interests and rights under all warranties and indemnities from, and any and all claims against, any manufacturer or any other person or entity relating to or in respect of the AIRCRAFT or any part thereof.

THIS BILL OF SALE IS DELIVERED BY SELLER TO BUYER IN TEXAS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

[Signature Page Follows]

IN WITNESS WHEREOF, BUYER and SELLER have each caused this instrument to be executed by its duly authorized officer as of the date first above written.

SELLER:

**N214FT, LLC**

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

Name:

Title:

BUYER:

**COLORADO STRUCTURES, INC.**

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

Name:

Title:

**ADDENDUM TO AIRCRAFT PURCHASE AGREEMENT (N214FT)**

This ADDENDUM TO AIRCRAFT PURCHASE AGREEMENT (N214FT), dated December \_\_, 2017 (this “*Addendum*”) is an addendum to and forms a part of that certain Aircraft Purchase Agreement (N214FT), dated as of December \_\_, 2017 (the “*Purchase Agreement*”), by and among (i) N214FT, LLC, a Texas limited liability company (together with its successors and permitted assigns, the “*Seller*”), (ii) Colorado Structures, Inc., a Colorado corporation (together with its successors and permitted assigns, the “*Buyer*”), and (iii) AIC Title Service, LLC, an Oklahoma limited liability company, as escrow agent (together with its successors and permitted assigns, the “*Escrow Agent*”). Capitalized terms used herein without definitions have the meanings ascribed to them in the Purchase Agreement.

In the Purchase Agreement, the Buyer and the Seller acknowledge and agree that the consummation and effectiveness of the Purchase Agreement is conditioned upon and shall require approval by final order of the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (the “*Bankruptcy Court Order*”).

The Buyer and the Seller hereby further agree that, notwithstanding anything to the contrary in the Purchase Agreement, in the event the Bankruptcy Court Order has not been issued by the Delivery Deadline through no fault of the Buyer, the Seller shall reimburse the Buyer for the expenses (if any) the Buyer has incurred by reason of (a) the performance of the Inspection by the Inspection Facility and (b) the movement of the Aircraft from its home base to the Inspection Facility (including the costs of fuel, the flight crew and any required Aircraft maintenance).

IN WITNESS WHEREOF, the Seller and the Buyer have caused this Addendum to be duly executed by their respective officers thereunto duly authorized as of the date first above written.

SELLER:

**N214FT, LLC**

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

Name:

Title:

BUYER:

**COLORADO STRUCTURES, INC.**

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

Name:

Title:

**AMENDMENT TO AIRCRAFT PURCHASE AGREEMENT (N214FT)**

This AMENDMENT TO AIRCRAFT PURCHASE AGREEMENT (N214FT), dated January 25, 2018 (this "Amendment") amends that certain Aircraft Purchase Agreement (N214FT), dated as of December \_\_, 2017 (the "Purchase Agreement"), by and among (i) N214FT, LLC, a Texas limited liability company (together with its successors and permitted assigns, the "Seller"), (ii) Colorado Structures, Inc., a Colorado corporation (together with its successors and permitted assigns, the "Buyer"), and (iii) AIC Title Service, LLC, an Oklahoma limited liability company, as escrow agent (together with its successors and permitted assigns, the "Escrow Agent"). Capitalized terms used herein without definitions have the meanings ascribed to them in the Purchase Agreement.

The Buyer and the Seller agree that the Delivery Deadline under the Purchase Agreement is extended to February 19, 2018, and from and after the date hereof, the final proviso in Section 2.04(a) of the Purchase Agreement is hereby amended and restated to read as follows:

"provided, further, that the Delivery Date shall in any event occur no later than 3:00 p.m. CST on February 19, 2018, unless otherwise agreed to by the parties (the "Delivery Deadline")."

Save as expressly amended by this Amendment, the Purchase Agreement shall continue in full and unvaried force and effect as the legal, valid and binding rights and obligations of each of the Buyer, the Seller and the Escrow Agent.

IN WITNESS WHEREOF, the Seller and the Buyer have caused this Amendment to be duly executed by their respective officers thereunto duly authorized as of the date first above written.

SELLER:

**N214FT, LLC**

By: \_\_\_\_\_  
Name:  
Title:

BUYER:

**COLORADO STRUCTURES, INC.**

By: \_\_\_\_\_  
Name: Paul Tuttle  
Title: Chief Pilot