

Via Email

February _____, 2012

Darren K. Indyke
Darren K. Indyke, PLLC
301 East 66th Street, 10B
New York, NY 10065

RE: REVERSE EXCHANGE OF AIRCRAFT

Exchangor: Hyperion Air, Inc.

Relinquished Aircraft: One (1) Gulfstream Aerospace G1159B aircraft, bearing manufacturer's serial number 151, currently registered with the Federal Aviation Administration as N909JE, which is capable of carrying at least 8 people (including crew), (listed on the International Registry drop down menu as GULFSTREAM Gulfstream G-1159B (GIIB)), equipped with two (2) Rolls-Royce _____ engines, bearing manufacturer's serial numbers 8813 and 8827, each of which has at least 1,750 lbs. of thrust or its equivalent, (listed on the International Registry drop down menu as _____)

Replacement Aircraft: One (1) Bell 430 aircraft, bearing manufacturer's serial number 49078, currently registered with the Federal Aviation Administration as N901RL, which is capable of carrying at least 5 people (including crew), equipped with two (2) Rolls Royce 250-C40B engines, bearing manufacturer's serial numbers CAE 844167 and CAE 844169, each of which has at least 550 rated takeoff shaft horsepower or its equivalent, (listed on the International Registry drop down menu as ROLLS ROYCE 250-C40)

**Exchange
Accommodation Titleholder:** TVPEAT, Inc. ("EAT")

Parking Entity: Steen Acquisitions, LLC, a wholly owned subsidiary of EAT and disregarded entity ("Steen")

Seller: Bovale Developments, Inc., Trustee and bovadle
Develoments, Trustor

initials _____

Dear Darren:

This letter provides important instructions and information concerning the proposed “safe harbor” reverse exchange transaction under Revenue Procedure 2000-37 involving the parties and the aircraft identified above. This letter is or will be referred to as the “Instruction Letter” in the Qualified Exchange Accommodation Agreement and the Exchange Contract, described below.

Time Value Property Exchange, Inc. (“**TVPX**”) provides qualified intermediary services for 1031 exchange transactions. EAT acts as an Exchange Accommodation Titleholder in reverse exchanges and its subsidiary, Steen, will act as titleholder for the Replacement Aircraft during the exchange.

In this reverse exchange transaction, the Exchangor will assign its rights to purchase the Replacement Aircraft to Steen and Steen will “step into Exchangor’s shoes” as the Buyer of the Replacement Aircraft. Once the Replacement Aircraft is “parked” with Steen, Steen will lease the Replacement Aircraft to the Exchangor. When Exchangor is ready to dispose of the Relinquished Aircraft, the sale of the Relinquished Aircraft and the purchase of the Replacement Aircraft by Exchangor will be structured as components of an exchange under IRC Section 1031.

Revenue Procedure 2000-37 provides certain specific time restrictions that, if not adhered to, will cause a transaction not to qualify for the safe harbor. The two most important of these restrictions are as follows: First, no later than 180 days after the transfer of qualified indicia of ownership of the Replacement Aircraft to Steen, the Relinquished Aircraft must be sold to a third party buyer and the Replacement Aircraft must be transferred (either directly or indirectly through a “qualified intermediary”) to Exchangor and second, the time period that the Replacement Aircraft is held in the Qualified Exchange Accommodation Agreement arrangement, described below, must not exceed 180 days.

You should also be aware that for an exchange to be fully tax deferred under Section 1031, the equity and the purchase price on the Replacement Aircraft must each equal or exceed the equity and the sales price on the Relinquished Aircraft. For example, if you are selling an aircraft valued at \$2,500,000.00 with debt of \$1,000,000.00, you must purchase an aircraft with equity of at least \$1,500,000.00 and a purchase price of at least \$2,500,000.00. If you do not meet these requirements, you may be required to pay taxes on some or all of the sales price of the Relinquished Aircraft.

This letter will confirm your representation to TVPX, EAT and Steen that the following requirements for a valid Section 1031 Exchange are satisfied: (i) the Exchangor identified above is now and will at the closing of the Relinquished Aircraft be the sole owner for income tax purposes of the Relinquished Aircraft; (ii) the Exchangor will at the closing on its acquisition of the Replacement Aircraft be the sole owner for income tax purposes of the Replacement Aircraft; (iii) the Relinquished Aircraft is held by the Exchangor for productive use in its trade or business

initials _____

or for investment and not for personal use or as inventory; and (iv) Exchangor intends to hold the Replacement Aircraft for productive use in its trade or business or for investment and not for personal use or as inventory. Furthermore, Exchangor confirms that the information concerning the parties, the Relinquished Aircraft and the Replacement Aircraft stated above is true and correct.

The following documents will be used in connection with the first leg of the reverse exchange:

A **Qualified Exchange Accommodation Agreement** (“QEAA”) Revenue Procedure 2000-37 requires that the taxpayer and the Exchange Accommodation Titleholder enter into a written agreement that provides that the Exchange Accommodation Titleholder is holding the property for the benefit of the taxpayer in order to facilitate an exchange under IRC Section 1031 and Revenue Procedure 2000-37. As required by Revenue Procedure 2000-37, the QEAA specifies that the Exchange Accommodation Titleholder will be treated as the beneficial owner of the Replacement Aircraft for all federal income tax purposes. Both parties must report the federal income tax attributes of the property on their federal income tax returns in a manner consistent with this agreement.

An **Assignment of Aircraft Purchase Agreement** for the Replacement Aircraft. In order to purchase the Replacement Aircraft on behalf of Exchangor, the Aircraft Purchase Agreement between Exchangor and Seller must be assigned to Steen. At the closing, Steen will pay the purchase price and take legal title to the Replacement Aircraft.

An **Aircraft Dry Lease Agreement**, which includes an option to purchase the Replacement Aircraft. Once Steen has taken title to the Replacement Aircraft, Steen will dry lease (without crew) the Replacement Aircraft to Exchangor, which will permit Exchangor to use the Replacement Aircraft without being the titleholder. During the term of the Lease, Exchangor will pay Steen rent on the Lease equal to the interest payments due from Steen to Exchangor on the loan(s) to purchase the Replacement Aircraft. Steen will also collect from Exchangor any applicable state sales and use tax, local tax, and/or county tax on the rental payments and remit the tax to the appropriate taxing authority. Once Exchangor finds a Buyer for the Relinquished Aircraft, Exchangor can exercise the option to purchase the Replacement Aircraft under the Lease and the exchange under IRC Section 1031 will take place. **If Exchangor is not actually operating the Replacement Aircraft, it may be necessary for you to execute and file a sublease or other document. Please consult your aviation counsel if you need assistance.**

An **Aircraft Improvement Management Agreement**, which will allow Exchangor to management refurbishment of the Replacement Aircraft while Steen holds title.

Loan Documents. In order for Steen to acquire the Replacement Aircraft and pay for the refurbishment, Steen will borrow the funds from Exchangor pursuant to a Promissory Note. The Promissory Note will be secured by an Aircraft Loan and Chattel Mortgage Agreement on the Replacement Aircraft.

initials _____

Exchange Contract. In addition to the documents referenced above, in order for you to have a valid exchange you will need to enter into an Exchange Contract and related assignments before you sell your Relinquished Aircraft. TVPX will assist you in preparing those documents, but it is essential that you provide us with a final copy of the Sales Agreement for the Relinquished Aircraft at least several days prior to the anticipated closing date and that you keep us fully informed as to the closing agenda. We have attached a proposed form of Exchange Contract for your review and execution, if acceptable. Please note, however that the Assignment of Sales Agreement and the Assignment of Purchase Agreement are each critically important to the exchange and will be prepared at a later date when all information is available. **You should not sell your Relinquished Aircraft until the Exchange Contract, Assignment of Sales Agreement and Assignment of Purchase Agreement are fully executed and returned to TVPX.**

Steen is acting in the limited capacity of an independent arm's length third-party parking entity for the EAT and TVPX is acting in the limited capacity of a qualified intermediary. TVPX, EAT and Steen are not in the business of giving legal or tax advice, and do not -- and cannot -- guarantee that this transaction will qualify as a tax-deferred exchange under the Code. TVPX, EAT and Steen **strongly** recommend that Exchangor consult with its legal counsel and tax advisors **before** entering into the proposed exchange transactions to ensure that Exchangor's rights and interests are adequately protected and that the structure and documentation satisfy the requirements for a tax-deferred reverse exchange transaction. Exchangor and its legal counsel and tax advisors must fully understand and independently evaluate and determine Exchangor's tax position in connection with the reverse exchange for all federal and state income tax purposes.

Please note that no expenses, other than certain allowable exchange expenses, may be paid out of the proceeds from the sale of the Relinquished Aircraft. Common examples of expenses that may not qualify are accrued interest, prepayment penalties and certain repair costs. Exchangor must have its tax advisor review all proposed expenses in advance to assure that payment will not adversely affect the Section 1031 Exchange or result in the imposition of any tax liability.

Additionally, since this exchange involves the purchase of the "parked" aircraft by Steen, the lease of the "parked" aircraft to Exchangor, the sale of the Relinquished Aircraft to a third party and the acquisition of the Replacement Aircraft by Exchangor, the applicable state and local taxes, including, but not limited to sales, use, franchise, excise, gross receipts, VAT and property taxes and registration fees must be carefully evaluated. State and other tax laws, regulations and interpretations may change suddenly and sometimes apply retroactively, so it is critical that Exchangor stays fully informed on the latest developments. All taxes that arise in connection with the exchange, whether owed by Exchangor, TVPX, EAT or Steen, are the responsibility of Exchangor, other than the income taxes on TVPX's and EAT's fee income. Certain taxes may not be due until after the exchange is completed, so it is important for Exchangor to understand that its liability for taxes will continue and that Exchangor will need to make prompt and complete payment for all such taxes when requested by TVPX or EAT at some

initials _____

point in the future. Exchangor and its tax and legal advisors should thoroughly review and understand the documents referred to in this letter and the sales, use and other taxes that will be due in connection with each step of the reverse exchange. Certain exemptions and alternative structures are permitted under the laws of certain jurisdictions, but it is important that TVPX be provided with all required document modifications before the documents are executed.

This letter will confirm that Exchangor has not received or relied upon any legal or tax advice, assistance or representation from TVPX, EAT or Steen or any person purportedly acting on their behalf, and that TVPX, EAT and Steen have strongly recommended that Exchangor consult with its own legal counsel and tax advisors before entering into the contemplated exchange transaction.

Without limiting the generality of the foregoing, Exchangor acknowledges that the provisions of the Cape Town Convention are effective as of March 1, 2006 and that the Exchangor shall be responsible for compliance with such requirements. TVPX recommends that Exchangor retain the services of experienced aviation counsel for assistance.

We also want to remind you that the FAA does not permit you to fly aircraft internationally or over international waters on a "pink slip" temporary registration. If you plan to fly the Replacement Aircraft internationally prior to the time that you have received the "hard card" registration, Steen must file a Declaration of International Operations with the FAA to expedite the processing of the registration. Please provide us with reasonable advance notice of your trip so that we may assist you.

If Exchangor is willing to proceed with the reverse exchange transaction subject to the foregoing terms and conditions, please take the following steps in connection with the enclosed documents:

- (1) Review the Aircraft Dry Lease Agreement, the Aircraft Loan and Chattel Mortgage Agreement, the Assignment of Aircraft Purchase Agreement, the Qualified Exchange Accommodation Agreement, Aircraft Improvement Management Agreement and the Exchange Contract. Be sure you and your legal counsel and tax advisors understand their terms of the documents and the structure of the "parking" arrangement. Some of the documents required in connection with the exchange will need to be signed by and/or obtained from third parties such as buyers, sellers, closing agents, attorneys and lenders. Exchangor is responsible for assuring that such signatures are obtained and the documents are provided to TVPX and all other required recipients prior to any closing. Exchangor is also responsible for confirming that all funds required to close are placed in escrow in a timely manner.
- (2) Sign four (4) copies of the Aircraft Dry Lease Agreement, but do not date the documents. Send one (1) original executed copy to **Insured Aircraft Title Services, Inc. 4848 Southwest 36th Street, Oklahoma City, Oklahoma 73179 Attn: Joan Roberts**, by overnight courier, send two (2) original executed copies by overnight courier back to us and place one (1) fully executed copy on the Replacement Aircraft along with the "pink

initials _____

- slip” temporary registration. Please insert the date of closing on the “pink slip” and the copy of the Aircraft Dry Lease Agreement that are placed on the Replacement Aircraft. You are also reminded that you will need to comply with the requirements for the FSDO notification of first flight under lease as set forth in FAR Section 91.23(c)(3).
- (3) Sign three (3) copies of the Aircraft Loan and Chattel Mortgage Agreement, but do not date the documents. Send one (1) original executed copy to **Insured Aircraft Title Services, Inc.** by overnight courier and send two (2) original executed copies by overnight courier back to us.
 - (4) Sign two (2) copies of the QEAA, but do not date the documents. Please overnight both copies of the signed QEAA to TVPX.
 - (5) Sign three (3) copies each of the Assignment of Aircraft Purchase Agreement and have all three (3) copies signed by Seller. Please overnight all three (3) original signed copies of each such document to TVPX.
 - (6) Sign two (2) copies of the Exchange Contract, but do not date the documents. Please overnight both copies of the signed Exchange Contract to TVPX.
 - (7) Sign two (2) copies of the Aircraft Improvement Management Agreement, but do not date the documents. Please overnight both copies of the signed Aircraft Improvement Management Agreement to TVPX.
 - (8) Arrange with **Insured Aircraft Title Services** to sign any additional instructions or documents necessary to close escrow for the purchase of the Replacement Aircraft by Steen.
 - (9) Sign one (1) copy of this letter and return to TVPX with the remainder of the documents. Please keep a copy of this letter for your files.

Please indicate that you have read and understood the foregoing and have knowingly and voluntarily assumed the risks of the proposed reverse exchange transaction by signing and returning the enclosed copy of this letter. If you have any questions concerning the enclosed documents or the exchange transaction, please call me at (978) 610-1234.

Very truly yours,

initials _____

TVPEAT, INC.

Jeffrey S. Towers
General Counsel

JST/Imp
Enclosures

THE UNDERSIGNED HAS READ, FULLY UNDERSTANDS AND AGREES TO THE CONTENTS OF THE FOREGOING LETTER AND KNOWINGLY AND VOLUNTARILY ASSUMES THE RISKS OUTLINED ABOVE. THE UNDERSIGNED HAS NOT RECEIVED OR RELIED UPON ANY LEGAL OR TAX ADVICE, ASSISTANCE OR REPRESENTATION FROM TVPX, EAT OR STEEN OR ANY PERSON PURPORTEDLY ACTING ON THEIR BEHALF REGARDING THE LEGAL OR TAX CONSEQUENCES OR ANY OTHER ASPECT OF THE PROPOSED TRANSACTION.

HYPERION AIR, INC.,
a Delaware corporation

By: _____

Name:

Its:

Dated: _____

initials _____