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MEMORANDUM

TO: Jeffrey Epstein
FROM: Darren K. Indyke
DATE: March 5, 2012
RE: Cessation of Inspection of G-IV

ISSUES

You have asked for my thoughts regarding the timing of any requirements under the Aircraft Purchase Agreement (the "Agreement") for JEJE, Inc. ("Purchaser") to notify WNP Aviation, Inc. ("Seller") of whether or not Purchaser intends to proceed with the purchase of Seller's G-IV aircraft, and what liability exposure there may be for Purchaser in the event that Purchaser ultimately determines not to proceed with the Purchase. These issues arise out of the cessation of a Pre-Purchase Inspection of the G-IV on February 28, 2012.

The relevant provisions of the Agreement are found in Sections 3 and 10 of the Agreement, as well as the provisions of the Preliminary Acceptance Certificate attached as an exhibit to the Agreement. The provisions of Section 3, Section 10 and the Preliminary Acceptance Certificate are reproduced for your reference on Exhibit A attached to this Memorandum.

BRIEF ANSWER

As is discussed more fully below, it would appear that the earliest possible date by which Purchaser could potentially be deemed in breach of the Agreement would be March 8, 2012. Inasmuch as Purchaser has a discretionary right to reject the aircraft which arguably is not required to be exercised before March 8, 2012, it seems unlikely that Purchaser could have any liability for any claimed breach for any failure prior to that date to reject the aircraft or give notice of its intention not to proceed with the purchase of the aircraft.

ANALYSIS

Preliminarily, I would note that Section 3(a) of the Agreement provides that Purchaser "shall have a **right** to perform a pre-purchase inspection of the Aircraft." This is a right and not an affirmative obligation. However, Section 3 provides further that:

Such pre-purchase inspection **shall** consist of an initial test flight of not more than two (2) hours duration, the inspections described on Exhibit B

hereof, and any other inspections which the Purchaser determines are necessary or appropriate in light of findings during the course of such test flight and the inspections described on Exhibit B hereof. In addition to the foregoing, such pre-purchase inspection **shall** include such other inspections as may be requested by Purchaser in writing, and consented to by Seller in writing (which consent shall not be unreasonably withheld), to determine and confirm that the Aircraft is in the Delivery Condition required in Section 2 above.

Moreover, Section 3(a) also provides that:

The Pre-Purchase Inspection **shall** commence at a time and date agreed to by the parties after the Aircraft is positioned at the Inspection Facility. Each party hereto shall be entitled to designate such representatives as such party may desire to attend the Pre-Purchase Inspection.

Arguably, however, the provisions relating to what shall be included in the inspection and when it shall commence are only effective if the Purchaser elects to exercise his right to proceed with the inspection. Moreover, I would argue that in view of the fact that the inspection is not obligatory and is a discretionary right of Purchaser, then Purchaser may elect to have performed less than all of the inspection items specified. That is to say, the provisions relating to the inspection are maximum limits and not minimum requirements for the inspection. Accordingly, even a visual inspection conducted by Purchaser and his representatives would constitute a "Pre-Purchase Inspection" for purposes of the Agreement.

Section 3(b) of the Agreement clearly provides that:

(b) Upon completion of the Pre-Purchase Inspection, and the issuance of a written report thereof by the Inspection Facility to both Purchaser and Seller (the "Inspection Report"), **Purchaser shall, in its sole discretion, accept or reject the Aircraft not later than seven (7) business days after Purchaser's receipt of the Inspection Report from the Inspection Facility.** The Inspection Report shall include written estimates of the costs to repair or correct each of the discrepancies noted, including, without limitation, airworthiness discrepancies; provided, however, that such estimates shall not be binding on Purchaser, and Purchaser shall have no liability to Seller in the event that the cost to correct or repair such airworthiness discrepancies exceeds the estimated cost provided in the Inspection Report. Such acceptance or rejection shall be evidenced by Purchaser's completion and execution of a preliminary acceptance certificate in the form of that attached hereto as Exhibit C to which Purchaser shall attach a true and correct copy of the Inspection Report (the "Preliminary Acceptance Certificate").

And Section 3(c) provides that:

(c) If, pursuant to subsection (b) above, Purchaser, in its sole discretion, rejects the Aircraft, Purchaser shall be responsible for and shall pay the costs of the Pre-Purchase Inspection, the Escrow Agent shall immediately refund the Deposit to Purchaser, this Agreement shall terminate and neither party shall have any further liability or obligation to the other.

Thus, the Agreement very clearly provides Purchaser with the ability to reject the Aircraft on a purely discretionary basis at any time within 7 days after Purchaser receives the inspection report. If I were Seller, however, I might try to argue a waiver of this discretionary rejection right. I would claim that as the discretionary rejection right only triggers "Upon completion of the Pre-Purchase Inspection," a cancellation by Purchaser of the inspection effectively waives that rejection right." In response, however, I would note that a Pre-Purchase inspection was commenced (albeit initially only a visual inspection by Purchaser), so the inspection right was not waived absolutely. In addition, Section 12(i) of the Agreement expressly precludes waiver of one right as a result of a claimed partial waiver of another right, and this combined with the requirement that modifications of the Agreement must be in writing and signed by both parties, dictates that any waiver argument by Seller should fail.

Seller will claim that Purchaser had agreed to commence Purchaser's pre-purchase inspection as outlined in Exhibit B on February 28, 2012. Seller might further claim that Purchaser either never commenced the inspection (which Seller might argue is a breach giving rise to the provisions of Section 10 discussed below) or that Purchaser discontinued the inspection almost immediately, effectively terminating the inspection (and potentially Purchaser's right to inspect further). However, clearly an inspection was commenced by Purchaser (Larry's flight and JE's and Larry's visual inspection) on February 27 and 28, and even Morandi's March 1, 2012 email to me states only that:

I have heard from Mr. Hart that your client has instructed his chief pilot and Gulfstream to **cease their inspection of the aircraft with no further instructions.** Obviously, we are concerned by this turn of events and request that you us with provide your client's position with respect to the purchase of the aircraft and compliance with the purchase agreement.

As you know, time is of the essence, so your prompt response is appreciated.

Thus, Seller has not claimed that Purchaser never commenced the inspection by an agreed date of February 28, 2012. In fact, Seller's claim that the Chief Pilot instructed Gulfstream to cease the inspection is at least a tacit acknowledgement that the inspection actually did begin. Nor has Seller claimed in its email that Purchaser terminated the inspection permanently, as Seller merely stated that Gulfstream was told to cease the inspection without further instructions. This implies that Seller is awaiting confirmation

as to whether the inspection will continue. Thus, Seller has not yet claimed any termination of the inspection triggering any period by which any response may be due from Purchaser under the Agreement.

Were I Seller, however, I might argue that instructing Gulfstream to cease the inspection without further instructions is effectively a termination of the inspection. If Seller argues that this is a termination of the inspection, then under the terms of the Agreement, Purchaser would have 7 business days after receipt of an inspection report to accept or reject the aircraft. However, since Purchaser terminated the inspection before any inspections could be undertaken by the inspection facility, Seller might argue that the 7 business days began to run from the date of the termination – i.e., acceptance or rejection must occur not later than 7 business days after termination occurred on February 28, 2012, or by not later than Thursday, March 8, 2012.

Seller might also argue that since Purchaser terminated the inspection before Gulfstream began its inspection work, Purchaser is not entitled to a 7 business-day decision period (since that 7 business day period presupposed that there would be inspection results that must be reviewed and considered by Purchaser). Seller might also argue that since Purchaser terminated the inspection before Gulfstream began the inspection items listed on Exhibit B of the Agreement, this itself was non-performance of Purchaser's obligations under the agreement from which certain rights flow under Section 10 of the Agreement.

Section 10(a) of the Agreement provides in relevant part that:

(a) Failure by Purchaser . . . to perform any of its obligations under this Agreement, . . ., shall, upon the actual or offered performance by Seller of all its obligations, and the failure by Purchaser to cure such failure within 7 days after Seller gives Purchaser notice of such failure, constitute a breach of this Agreement by Purchaser.

Thus, under Section 10(a) of the Agreement, Purchaser would not be in breach of the Agreement until there is failure or refusal by Purchaser to perform its obligations under this Agreement, an actual offer by Seller to perform its obligations and a failure by Purchaser to cure Purchaser's failure within 7 days after Seller gives Purchaser notice of such failure. Thus, even if Seller argues that the cessation of the inspection without further instructions is a failure of Purchaser to perform its obligations under the Agreement, and that somehow Seller's notice of such failure satisfied the requirements of Section 10(a), Seller's notice of such failure was not given until Morandi's email on March 1, 2012, which means that Purchaser would not be deemed in breach of the Agreement until it fails to cure its failure within 7 days after Morandi's notice, or coincidentally, by March 8, 2012.

Thus, it appears that March 8, 2012, is the earliest possible date to trigger a breach. Moreover, I am not certain that Morandi's email to me constitutes effective notice of Purchaser's failure to perform as Seller is not claiming that no inspection

commenced, and it is not claiming that the cessation of the inspection was a permanent termination. Morandi's notice simply states that the instruction to cease the inspection only created a "concern by this turn of events" and a request for our position with respect to "compliance with the Purchase Agreement", whatever that means. Moreover, there is no statement in Morandi's notice that Seller is offering to perform its obligations under the Agreement. Furthermore, Morandi's subsequent March 2, 2012 email to me about a third party offer and requesting Purchaser's advice as to whether Purchaser would proceed with the purchase implies the opposite – i.e., that Seller wants to proceed with the sale to another party. Nevertheless, assuming that March 8, 2012 is a possible trigger date for a deemed breach by Purchaser, your remaining question was what liability could flow from this.

Seller could argue that terminating the inspection before it began, particularly when Seller said it wanted a date certain to commence the inspection before Seller would sign the agreement, is a breach of the implied obligation of good faith and fair dealing in the Agreement. (Seller might also argue fraudulent inducement as well, which Seller might see as a useful basis for Seller to escape any contractual damages limitations and to claim damages from the loss of a sale to an alleged third party). Seller could also argue that Purchaser's ceasing the inspection without performing all of the items specified in Exhibit B is a breach. Purchaser's obvious response is that the express provisions of the agreement are clear that inspection is a discretionary right and not an affirmative obligation. In addition, an inspection was in fact commenced which has resulted in issues that must be considered by Purchaser, which is why the inspection was temporarily placed on hold until the issues could be considered. Moreover, Purchaser has a sole discretionary right to accept or reject the aircraft within a 7 business day period which does not even begin to run until after the inspection is completed and a report is received by Purchaser. In addition, the Agreement does not require Purchaser to specify any reason for a rejection or to base its rejection on any specific findings in an inspection report. In fact, the Preliminary Acceptance Certificate attached as Exhibit C to the Agreement does not contemplate providing any reason for the rejection; it only requires providing notice of the same (and attaching the inspection report – for informational purposes only).

Under the circumstances, Purchaser's failure to complete the inspection or proceed with the purchase should not result in any compensable damages to Seller, particularly if Purchaser rejects the aircraft on or before March 8, 2012, which is the earliest possible date by which Seller could possibly claim that Purchaser is in breach or by which Purchaser must give notice of rejection of the aircraft. This is particularly true in light of the provisions of Section 3(c) of the Agreement which provide that if Purchaser rejects the Aircraft as provided in Section 3(b) of the Agreement, "Purchaser shall be responsible for and shall pay the costs of the Pre-Purchase Inspection, the Escrow Agent shall immediately refund the Deposit to Purchaser, this Agreement shall terminate **and neither party shall have any further liability or obligation to the other.**"

Despite the provisions of Section 3(c) of the Agreement, based on the subsequent email we received from Morandi, Seller my try to argue damages as a result of a thwarted possible sale pursuant to an offer from a third party. On March 2, 2012, Morandi sent me an email which included in relevant part the following message:

As an update on our end, please accept the following.

We have received another offer on the aircraft. While the acceptance of this offer would need to be contingent on our current agreement being terminated, we are asking for your client's response as to whether or not he wishes to proceed with the purchase as soon as possible.

If Seller somehow were to lose its ability to accept this alleged third party offer and we rejected the aircraft on or before March 8, 2012, Seller will claim that on March 2, 2012, Seller put Purchaser on notice of this third party offer, and Purchaser's failure to promptly respond to Seller with notice of its intentions prevented Seller from accepting this offer, and, therefore, Purchaser is liable for the loss of the third party sale. Presumably, the theory of liability might be as a result of Purchaser's breach of the Agreement. However, in light of the provisions relating to the timing of and the discretionary nature of Purchaser's rejection rights, I am skeptical of whether Seller could prevail on any contractual claim. Moreover, Section 10(c) of the Agreement expressly excludes the right of either party to collect incidental or consequential damages:

“. . .no party hereto shall be entitled to recover any incidental or consequential damages (which are hereby expressly waived by the parties hereto) as a result of the breach of this Agreement by either party hereto.”

Thus, I would argue that Section 10(c) expressly precludes recovery by Seller under the contract for loss of the third party sale. At best, the sale might potentially serve as evidence of loss expectancy from the sale to Purchaser (i.e., JEGE, Inc.), but again, given Purchaser's discretionary right to reject, I am skeptical that Seller would have any rights to collect expectancy damages.

ADDITIONAL THEORIES OF LIABILITY

Seller might also try to argue some theory of negligence, fraud, fraudulent inducement, tortious interference, etc. to circumvent the limitations in the contract. I would need to research this further to provide any conclusive analysis, particularly since it would be possible that a theory of liability outside of contract could potentially implicate Nevada law. However, I cannot imagine how there could be liability in the face of a contractual discretionary right to reject the aircraft in favor of JEGE, Inc. I do not see how simply giving notice of a third party offer undermines that rejection right. I will research further if you wish.

EXHIBIT A

3. Pre-Purchase Inspection.

(a) Purchaser, or its agent, shall have a right to perform a pre-purchase inspection of the Aircraft at the facility located in Long Beach, California, or elsewhere on the West Coast of the United States, to be agreed upon by the parties in writing (the "Inspection Facility"). Seller, at Seller's sole cost and expense, shall position the Aircraft at the Inspection Facility promptly after this Agreement is executed by both Purchaser and Seller. Such pre-purchase inspection shall consist of an initial test flight of not more than two (2) hours duration, the inspections described on Exhibit B hereof, and any other inspections which the Purchaser determines are necessary or appropriate in light of findings during the course of such test flight and the inspections described on Exhibit B hereof. In addition to the foregoing, such pre-purchase inspection shall include such other inspections as may be requested by Purchaser in writing, and consented to by Seller in writing (which consent shall not be unreasonably withheld), to determine and confirm that the Aircraft is in the Delivery Condition required in Section 2 above. The foregoing described pre-purchase inspection shall hereinafter be referred to as the "Pre-Purchase Inspection". The Pre-Purchase Inspection shall commence at a time and date agreed to by the parties after the Aircraft is positioned at the Inspection Facility. Each party hereto shall be entitled to designate such representatives as such party may desire to attend the Pre-Purchase Inspection. The costs of the Pre-Purchase Inspection and fuel costs for the test flight will be at Purchaser's expense, except as otherwise provided in this Agreement.

(b) Upon completion of the Pre-Purchase Inspection, and the issuance of a written report thereof by the Inspection Facility to both Purchaser and Seller (the "Inspection Report"), Purchaser shall, in its sole discretion, accept or reject the Aircraft not later than seven (7) business days after Purchaser's receipt of the Inspection Report from the Inspection Facility. The Inspection Report shall include written estimates of the costs to repair or correct each of the discrepancies noted, including, without limitation, airworthiness discrepancies; provided, however, that such estimates shall not be binding on Purchaser, and Purchaser shall have no liability to Seller in the event that the cost to correct or repair such airworthiness discrepancies exceeds the estimated cost provided in the Inspection Report. Such acceptance or rejection shall be evidenced by Purchaser's completion and execution of a preliminary acceptance certificate in the form of that attached hereto as Exhibit C to which Purchaser shall attach a true and correct copy of the Inspection Report (the "Preliminary Acceptance Certificate").

(c) If, pursuant to subsection (b) above, Purchaser, in its sole discretion, rejects the Aircraft, Purchaser shall be responsible for and shall pay the costs of the Pre-Purchase Inspection, the Escrow Agent shall immediately refund the Deposit to Purchaser, this Agreement shall terminate and neither party shall have any further liability or obligation to the other.

(d) If Purchaser accepts the Aircraft, as evidenced by Purchaser's execution and delivery of the Preliminary Acceptance Certificate to both Escrow Agent

and Seller, the Deposit shall become nonrefundable to Purchaser except as provided in Section 10(b) below and subject to Seller's causing to be corrected at Seller's sole cost and expense at the Inspection Facility, or such other facility as shall be approved in writing by both Purchaser and Seller, those airworthiness discrepancies, if any, identified in the Inspection Report and those other discrepancies that must be corrected in order for Seller to deliver the Aircraft to Purchaser at the Closing (as hereinafter defined) in the Delivery Condition prescribed in Section 2 above (the "Inspection Airworthiness Discrepancies"). The Inspection Airworthiness Discrepancies shall be corrected in accordance herewith on or before the Completion Deadline (as hereinafter defined), at Seller's sole cost and expense; provided, however that Seller shall have no obligation to incur in excess of Two Hundred Thousand U.S. Dollars (\$200,000.00) to correct all the Inspection Airworthiness Discrepancies (the "Airworthiness Discrepancy Limit").

(e) In the event that the cost to correct all Inspection Airworthiness Discrepancies exceeds the Airworthiness Discrepancy Limit, and Seller refuses to pay in excess of the Airworthiness Discrepancy Limit to correct all Inspection Airworthiness Discrepancies, Seller shall give written notice of such refusal within three (3) business days after receipt of the Preliminary Acceptance Certificate from Purchaser, whereupon within three (3) business days thereafter, Purchaser shall have the option to either (i) elect to proceed with the purchase of the Aircraft without Seller paying more than the Airworthiness Discrepancy Limit to repair or correct the Inspection Airworthiness Discrepancies, provided that Seller shall pay Two Hundred Thousand U.S. Dollars (\$200,000.00) towards the total cost to correct all Inspection Airworthiness Discrepancies noted in the Inspection Report to ensure the correction of the same by the Completion Deadline, or (ii) elect to terminate this Agreement in which case Seller shall be responsible for and shall pay the costs of the Pre-Purchase Inspection up to Thirty Thousand U.S. Dollars (\$30,000.00), the Escrow Agent shall immediately refund the Deposit to Purchaser, this Agreement shall terminate and neither party shall have any further liability or obligation to the other.

(f) As used herein, the Completion Deadline shall mean within fifteen (15) business days after Seller's receipt of an executed Preliminary Acceptance Certificate from Purchaser.

(g) Upon Seller's causing to be completed the correction of such Inspection Airworthiness Discrepancies as reflected in the Inspection Report (including paying up to the Airworthiness Discrepancy Limit towards the costs of correcting the same), Purchaser shall have the right, at Seller's expense, to require an additional test flight of the Aircraft, with a duration not to exceed two (2) hours, to determine if the Inspection Airworthiness Discrepancies identified in the Inspection Report have been corrected.

* * *

10. Breaches and Remedies.

(a) Failure by Purchaser to pay the Purchase Price at Closing in accordance with this Agreement, to deliver any Closing documents required by this Agreement, or any other failure or refusal by Purchaser to perform any of its obligations under this Agreement, or any material misrepresentation by Purchaser pursuant to this Agreement, shall, upon the actual or offered performance by Seller of all its obligations, and the failure by Purchaser to cure such failure within 7 days after Seller gives Purchaser notice of such failure, constitute a breach of this Agreement by Purchaser.

(b) Failure by Seller to deliver the Aircraft in the condition required by this Agreement, the Warranty Bill of Sale or any other Closing documents required by this Agreement, or any other failure or refusal by Seller to perform any of its obligations under this Agreement, or any material misrepresentation by Seller pursuant to this Agreement, shall, upon the actual or offered performance by Purchaser of all of its obligations, and the failure by Seller to cure such failure within 7 days after Purchaser gives Seller notice of such failure, constitute a breach of this Agreement by Seller. In the event of such a breach by Seller, promptly upon the request of Purchaser, Escrow Agent shall return the Deposit to Purchaser.

(c) In the event of such a breach of this Agreement, each party hereto hereby reserves and shall have such rights and remedies as are available to such party at law or in equity as a result of the breach of this Agreement by the other party hereto; provided, however, that no party hereto shall be entitled to recover any incidental or consequential damages (which are hereby expressly waived by the parties hereto) as a result of the breach of this Agreement by either party hereto. If either party hereto commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action shall also have the right to recover reasonable attorneys' fees and costs from the other party to be fixed by the court in the same action, notwithstanding the limitations in Sections 10(a) and 10(b) above.

* * *

PRELIMINARY ACCEPTANCE CERTIFICATE

Gulfstream G-IV

**Manufacturer's Serial No. 1030
N1WP**

Pursuant to the Aircraft Purchase Agreement dated February __, 2012 (the "Agreement") by and between WNP AVIATION, INC., a Delaware corporation ("Seller"), and JEGE, INC., a Delaware corporation ("Purchaser"), Purchaser hereby confirms that Purchaser has completed its Pre-Purchase Inspection of the Aircraft (as defined in the Agreement) in accordance with the Agreement on March __, 2012, and Purchaser has (check one):

_____ Accepted the Aircraft as is. A copy of the Inspection Report is attached to this Preliminary Acceptance Certificate.

_____ Accepted the Aircraft subject to Seller's repairing and correcting the Inspection Airworthiness Discrepancies (as defined in Section 3 of the Agreement). Said Inspection Airworthiness Discrepancies are itemized on the Inspection Report attached to this Preliminary Acceptance Certificate.

_____ Rejected the Aircraft. A copy of the Inspection Report is attached to this Preliminary Acceptance Certificate for Seller's information.

JEGE, INC.

By: _____
Name: _____
Title: _____
Date: _____