

From: David Mitchell <[REDACTED]>
To: jeffrey E. <jeevacation@gmail.com>
Subject: Re: Southampton - [REDACTED]
Date: Thu, 19 Oct 2017 09:04:20 +0000

He most likely never convert the notes

.....
DAVID MITCHELL
.....
Mitchell Holdings LLC
801 Madison Avenue
New York NY 10065
USA
[REDACTED]
[REDACTED]

On Oct 19, 2017, at 4:35 AM, jeffrey E. <jeevacation@gmail.com> wrote:

careful regarding tax consequences capital vs ordinary

On Wed, Oct 18, 2017 at 11:50 PM, David Mitchell <[REDACTED]> wrote:

.....
DAVID MITCHELL
.....
Mitchell Holdings LLC
801 Madison Avenue
New York NY 10065
USA
[REDACTED]
[REDACTED]

Begin forwarded message:

From: "Danow, Matthew" <[REDACTED]>
Date: October 18, 2017 at 11:04:44 AM EDT
To: "Constance Shields ([REDACTED])" <[REDACTED]>
Cc: David Mitchell <[REDACTED]>
Subject: Southampton - [REDACTED]

Constance—It was nice speaking with you. As we discussed, the Southampton house is currently owned by Mitchell Family Real Estate Limited Partnership (the "Partnership"). The partners of the Partnership are (i) Mitchell Brothers LLC, as general partner owning 1%, (ii) the Mitchell 2003 Family Trust, as limited partner owning 3.52185%, and (iii) the Estate of Jan Mitchell, as limited partner owning 95.47815% .

Attached are copies of (i) the Limited Partnership Agreement of Mitchell Family Real Estate Limited Partnership (the limited partnership that owns the Southampton Property), (ii) the Operating Agreement of Mitchel Brothers LLC, the general partner of the Partnership, (iii) the Mitchell 2003 Family Trust Agreement, and (iv) the Last Will and Testament of Jan Mitchell.

Regarding the deal between Ales, and David and Oliver, we propose the following:

- Alex will make a non-recourse loan in the amount of \$1,833,333.33 to each of David and Oliver (for a total of \$3,666,666.66 in the aggregate). The loan amount is based on an agreed upon value of the Property of \$12,000,000, less the outstanding principal balance of the mortgage encumbering the Property of \$6,500,000 held by Bank of America, leaving equity of \$5,500,000, one-third of which is \$1,833,333.33.
- David and Oliver will each execute a promissory note to Alex for the loan amount, and as security for the loan, David and Oliver will each pledge to Alex their right to receive any distributions from the Estate, the Trust and Mitchell Brothers LLC with respect to the Southampton property (including any interest in the real estate or proceeds from any sale or capital event with respect to the property).
- David, Oliver and Alex will modify the operating agreement of Mitchell Brothers LLC to provide that Alex will have sole control and discretion regarding all managerial decisions with respect to the Southampton Property. (Mitchell Brothers LLC is the general partner of the Partnership that owns the house. Therefore, by Alex having managerial control of all of the LLC's decisions regarding the Southampton Property, Alex will control the management decisions for the Partnership that owns the Property). Alexander will indemnify David and Oliver for any recourse obligations under the Bank of America mortgage loan secured by the Property.
- The Loans will mature on a late date, but will accelerate upon the occurrence of a capital event with respect to the Property (sale, refinance, or any casualty or condemnation proceeds), and the Loans will be repaid in full from such proceeds
- Any proceeds from a capital event in excess of the Loan Amount will belong to Alex as consideration for his making the Loans to David and Oliver.

Please contact me after you've reviewed the above points and attached documents, and let me know if you have any questions or issues with the structure.

Thanks very much, and I look forward to working with you on this!

Regards,

Matt

Matthew Danow, Esq.
Katsky Korins LLP
605 Third Avenue
New York, New York 10158
Direct Dial [REDACTED]
Direct Fax [REDACTED]

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please note

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