

### Proposed Terms of Second Mortgage Loan

A **\$7,500,000** second mortgage loan with a term from November 1, 2011 until June 30, 2012 secured by a second mortgage junior to TD's \$21,260,000 first mortgage.

#### Application of Loan Proceeds:

- \$5,300,000 to pay off existing second mortgage
- \$700,000 interest reserve until June 30, 2012 for TD first mortgage
- \$ 75,000- transaction costs (doc stamps, title binder)
- \$100,000 – fee to PP
- \$1,325,000 – loan proceeds to Swanson for 2011 taxes (\$160,000), insurance, maintenance, marketing and his personal overhead)

Interest payable for 8 month period is fixed at \$1,500,000 or 20% of loan amount. Interest accrues and is not paid currently. No reduction in \$1,500,000 interest amount for prepayment. Annualized rate is 30% if loan is outstanding until end of 8 month term.

The Second Mortgage lien will be for \$9,000,000 inclusive of \$1,500,000 for interest payable to lender.

Profit Participation. There is also a participation on sale of the greater of \$1,000,000 or 5% of gross sales price. This could be structured as a guaranteed distribution from the LLC which owns the property ("LLC"), as a fee, or as a loan to the LLC, in each case secured by an assignment of 100% of the membership interests in the LLC and the personal guaranties of Swanson and his wife.

PP becomes a co-manager and member of LLC from funding date until payoff with veto rights on any major action; e.g., borrowing, capital calls, recaps, creation of liens, admission of new members or transfer of interests in LLC, sale, lease, bankruptcy or other asset protection methods, and new obligations over \$25,000.

#### Scenario 1 – \$42 million sale in 6 months

Assume property sells for \$42,000,000 closing on May 1, 2012. Loan will have been funded for 6 months. Net proceeds of sale (less 4% commission and transaction costs) are \$40,000,000.

#### **\$40,000,000 - Proceeds of Sale after transaction costs and broker commission**

Less:

- \$21,260,000 Pay Off TD First Mortgage
- \$ 9,000,000 Pay Off Second Mortgage including \$1,500,000 interest
- \$ 2,100,000 Pay 5% Profit Participation (say divided between lender and PP)

\$ 7,640,000 to Swanson (not counting portion of net loan proceeds above applied to his personal expenses)

#### **Lender Side - \$7,500,000 advanced for six months**

Total payable to Lender and PP= \$3,600,000

\$1,500,000 to interest to Lender

\$1,050,000 profit participation to lender

**\$ 2,550,000 to lender (34% of amount advanced or 68% annualized rate)**

\$1,050,000 – profit participation to PP

**\$1,050,000** – total payable to PP

**\$3,600,000 – total payable to Lender and PP** (does not include \$100,000 fee to APP at funding)

#### **Scenario 2 – Default Case: \$35 million sale - 4 months after default by borrower**

Assume LLC defaults and property sells 4 months later (1 year from funding) for \$35,000,000 closing on November 1, 2012. Loan funded for 12 months. Net proceeds of sale (less 4% commission and estimated transaction costs) are \$33,260,000.

NB - Lender will be required to advance an additional approximately \$750,000 to carry the property from July 1, 2012 until November 1, 2012, estimated to be \$530,000 in first mortgage interest, \$100,000 in insurance and maintenance and \$120,000 for contingencies.

#### **\$33,260,000 - Proceeds of Sale after transaction costs and broker commission**

Less:

\$21,260,000 Pay Off TD First Mortgage  
340,000 – real estate taxes for 2012 (est.)  
\$ 11,660,000 – Net Proceeds of Sale

Application of Net Sale Proceeds:

\$7,500,000 return of original loan amount to lender  
\$ 750,000 return of expenses advanced by lender to carry house from July 1 – Nov. 1  
\$8,250,000 – total principal returned to lender  
\$3,410,000 - Excess Distributable over Return of Principal to Lender

Proposed Distribution:

\$1,500,000 – agreed interest on \$7,500,000 for 8 months  
687,500 – Interest on \$8.25M @25% for 4 months  
\$1,222,500 – excess proceeds over interest expense

Proposed Distribution of Excess Proceeds

\$ 611,250 to Lender  
\$ 611,250 to PP

**Total Return to Lender in excess of Amounts Advanced: \$2,798,750** on \$7,500,000 outstanding for 12 months and additional \$750,000 outstanding for 4 months.