

Elysium Management LLC

445 Park Avenue
Suite 1401
New York, New York 10022

Ada Clapp

Phone: [REDACTED]

Email: [REDACTED]

To: Jeffrey Epstein
Cc: Eileen Alexanderson
Alan Halperin
From: Ada Clapp
Date: July 8, 2014
Re: Art Partnership Discussion Points

Following are open issues to be discussed in connection with the formation and administration of the proposed art partnership:

I. Formation Issues.

A. General Partner.

1. Entity Name and Governing Law. BFAP GP, LLC? Delaware?
2. Capitalization of GP. Will GP be a non-economic partner or will it contribute capital?
3. Members. Who will be the Members?
4. Class A Manager.
 - a. LDB to be the sole Class A Manager (makes all decisions for BFAP other than liquidation, withdrawal and distribution)?
 - b. Consider a Committee of Class A Managers that includes at least one Trustee. If a Committee, how will decisions be made (majority or by unanimous consent)?
 - c. Will LDB also buy/sell art in his individual name? Need to address "usurpation of corporate opportunity" issue?
5. Class B Manager
 - a. Who will be the Class B Manger (makes liquidation, withdrawal and distribution decisions)?

- b. Consider a committee of Class B Managers. If a Committee, how will decisions be made (majority or by unanimous consent)?

B. Limited Partnership.

1. Entity Name and Governing Law. BFAP LP? Delaware?
2. Partners. Who will be the Partners?
 - a. Narrows I and II, APO1 Agreement, APO2 Declaration, Pent Holdings?
 - b. Consider assigning the Scream from Narrows II to Narrows I, assigning promised and jointly owned works from Narrows I to Narrows II and thereafter, only Narrows I becomes a partner.
 - c. LDB's children individually (would create a "real" partnership for income tax purposes)?

C. Partnership Purpose. What is BFAP's purpose? Investment, management and preservation of a diversified portfolio of fine art?

1. Investment Profile. Formulate an investment policy statement that the Class A Manager will follow when investing on behalf of BFAP.
2. Increase Value. Discuss how BFAP will enhance the value of its portfolio:
 - a. Exhibition Loans?
 - b. Joint venture with Phaidon (to create books that highlight various works or artists)?
 - c. Operate a small gallery for exhibiting the works owned by BFAP?
3. Physical Presence. Discuss need for BFAP to maintain office space or a storage facility or other address to take delivery of purchased art.
 - a. Consider whether Elysium address can be used.
 - b. Consider storing certain pieces, particularly in advance of a 1031 exchange.

D. Contribution of Capital

1. Liquid Assets. Require each Partner to contribute liquid assets in addition to art to maintain a reserve for expenses?
2. Art Capital. Who pays for appraisals of art contributed to BFAP?

- a. Obtain one appraisal of all art and apportion cost based on contribution?
 - b. Require a “qualified appraisal” to reduce intra-family gift issue?
3. Pledged Art.
- a. If a Partner contributes art pledged as collateral for a personal loan, should that Partner pay BFAP a guaranty fee?
 - i. If not, does this raise gift issues?
 - ii. If so, is a NY sales tax triggered?
 - b. Consider whether BAC will substitute BFAP as the borrower in place of LDB and DRB so that BFAP is pledging partnership property for a partnership loan.

II. Governing Instrument Provisions.

A. Distributions/Withdrawals.

1. Should distributions of income (if any) be made only at the Class B Manager’s discretion?
2. Require that all distributions be made *pro rata* based on economic interest?
3. Permit Partners to withdrawal capital at any time or only upon consent of the Class B Manager? What about on a Partner’s death to pay estate tax?
4. Can capital be withdrawn or distributed in kind (can a Partner withdraw the exact works of art it contributed)? Income tax issues?

B. Transfers of Partnership Interests.

1. How should partnership interests be restricted from transfer (during life, at death, etc.)?
2. Who are permitted transferees?

C. Use of Partnership Property.

1. Permit Class B Manager to determine (in a fair and reasonable manner in accordance with fiduciary duty) whether a Partner can use partnership property in proportion to the Partner’s ownership interest?

2. Discuss that payment of rent for use of partnership property triggers a NY sales tax and potential gift tax issues as there is no benchmark for fair market rental of fine art.
3. Does the Partner using BFAP art pay to insure it? Does the partnership have the right to inspect it periodically?

D. Exhibition Loans/Bank Loans.

1. Permit loan of BFAP art for temporary exhibition?
2. Permit BFAP to pledge partnership property as collateral for loans?
3. Permit BFAP to pledge partnership property as collateral for a Partner's personal loan (guaranty fee issue again).

E. Capital Calls.

1. Will Partners be required to contribute additional capital for investment opportunities or to pay BFAP expenses?
2. Or will additional capital contributions be discretionary?

F. Officers.

1. Who are the Officers and what will their roles be?
2. Will Heather Gray be an Officer of BFAP or an employee?

III. Administration Issues.

A. BFAP Employees/Agents.

1. Will Heather be employed by BFAP GP or by BFAP?
 - a. What are her responsibilities?
 - b. Will Elysium reimburse a portion of her salary when she supports its legal department?
 - c. Will BFAP reimburse Elysium for Heather's use of office space, supplies, *etc*?
2. Will BFAP employ a curator?
3. Any other employees (bookkeeper)?
4. Will BFAP reimburse Elysium when it uses the services of Elysium employees?

B. Expenses. How to pay BFAP's expenses?

1. Employee salaries and benefits, fine art insurance, legal fees, appraisals, *etc.*?
2. Is an imminent sale of BFAP property anticipated?

IV. Tax Issues

A. Income Tax Issues.

1. When can BFAP's operating expenses (employee salaries, insurance costs, *etc.*) be deducted by LDB as investment expenses?
2. If BFAP is replaced as the borrower on the BAC loans, can it/LDB deduct the interest expense?
3. Assuming BFAP will be a disregarded entity as to LDB for income tax purposes while LDB is living—what happens upon LDB's death?

B. Sales Tax Issues.

1. Can a Partner who contributed only art receive a distribution of cash from BFAP without triggering a NY sales tax?
2. Will BFAP purchase art with the intention of reselling it? If so, will it obtain a resale certificate?