

Tomlinson, Jason

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**From:** Eriksen, James Paul  
**Sent:** Tuesday, March 25, 2014 4:27 PM  
**To:** Saffer, David  
**Cc:** Tomlinson, Jason; Inman, A. Keith  
**Subject:** RE: Heuser Documents

Yes, I am fine with this.

Thanks,  
Jim

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**From:** Saffer, David [<mailto:dsaffer@stites.com>]  
**Sent:** Tuesday, March 25, 2014 3:02 PM  
**To:** Eriksen, James Paul  
**Cc:** Tomlinson, Jason; Inman, A. Keith  
**Subject:** RE: Heuser Documents

Per the LOI, the amount of the note is "the fair market value of [the] non-managing interest, as determined by a business valuation of [Sapulpa] conducted at the sole cost and expense of [Sapulpa]". I don't think that's been completed yet. I agree that the plan is for the note to be Henry's cost basis but to jump through their tax hoops they will need that valuation. Provided you are ok, I will ask about that valuation and the corresponding amount of the note when I send my comments. Thanks.

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**From:** Eriksen, James Paul [<mailto:jim.eriksen@louisville.edu>]  
**Sent:** Tuesday, March 25, 2014 2:57 PM  
**To:** Saffer, David  
**Cc:** Tomlinson, Jason; Inman, A. Keith  
**Subject:** RE: Heuser Documents

Hi David,

The amount of the promissory note is Henry's cost basis or \$3.5mm. Go ahead and add that to your comments. My understanding is that the Phase 1 is in process.

Thanks,  
Jim

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From: Saffer, David [<mailto:dsaffer@stites.com>]  
Sent: Tuesday, March 25, 2014 2:55 PM  
To: Eriksen, James Paul  
Cc: Tomlinson, Jason; Inman, A. Keith  
Subject: RE: Heuser Documents

Great. Before I send these out I think we should decide next steps. The email from Ted talks about "getting this wrapped up" this week. I don't know what that means given that we don't have an amount for the promissory note or a Phase I, but I suspect someone will start pushing.

Jason: Have you heard from Kathleen about proceeding with this absent a Foundation Board meeting? If not, once I know what wrapping it up means I will email her.

Thanks.

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From: Eriksen, James Paul [<mailto:jim.eriksen@louisville.edu>]  
Sent: Tuesday, March 25, 2014 2:51 PM  
To: Saffer, David  
Cc: Tomlinson, Jason; Inman, A. Keith  
Subject: RE: Heuser Documents

David: Thank you for your responses. For Items 2 & 3, I think if you are comfortable with Section 2 I am fine with it. For item 5 (Operating Agreement Para. 8.5), I think we should not request a change but leave it as is.

Thanks,  
Jim

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From: Saffer, David [<mailto:dsaffer@stites.com>]  
Sent: Tuesday, March 25, 2014 2:38 PM  
To: Eriksen, James Paul  
Cc: Tomlinson, Jason; Inman, A. Keith  
Subject: RE: Heuser Documents

Jim: Please see my responses in ALL CAPS below. Once you have reviewed, please confirm I am ok to send the comments. Thanks.

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From: Eriksen, James Paul [<mailto:jim.eriksen@louisville.edu>]  
Sent: Tuesday, March 25, 2014 1:05 PM  
To: Saffer, David  
Cc: Tomlinson, Jason; Inman, A. Keith  
Subject: RE: Heuser Documents

HJ David,

I concur with your amendments to the documents. After reviewing the documents, I have the following comments:

1. Nonrecourse Promissory Note: My only comment is that the Note refers to a "Pledge Agreement" (last paragraph) but the agreement attached is titled "Security Agreement". GOOD CATCH; REVISED
2. Security Agreement: Under Para. 1, "Grant of Security Interest," the language indicates, *inter alia*, that the collateral for the note includes "all payments" under the Operating Agreement. It seems this might create a right to the payments that the Foundation receives (1/3 of net operating profits) that are not subject to the Note pay down provision. I recommend that we clarify that monies received by the Foundation under the Operating Agreement are specifically excluded.
3. Security Agreement: Under Para. 2, "Rights of the Foundation: Rental Income," I think we need to clarify that the 1/3 of the income and distributions are exempted from the collateral language of Para. 1.
4. Operating Agreement: Para. 7.1 (c)(14): The last phrase ("...reasonable documentation for such expenses.") seems to only qualify subpara. (vi). I suggest amending it to "...reasonable documentation for all such expenses mentioned herein." REVISED.
5. Operating Agreement: Para. 8.5: It seems like we need to have the ability to withdraw should we choose to surrender our note.

Thanks,  
Jim

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From: Saffer, David [<mailto:dsaffer@stites.com>]  
Sent: Tuesday, March 25, 2014 10:16 AM  
To: Tomlinson, Jason; Eriksen, James Paul; Inman, A. Keith  
Subject: Heuser Documents

Everyone: I have attached my comments to the various documents provided by Ted King yesterday. Please let me know if you have additional comments or questions. Once I have collected all of the comments I will pass them on to Ted.

Thanks.

David E. Saffer

Member

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