*Welcome fellow Real Estate Professionals …*

# MylesTitle's 2ND Quarter 2017
## Advisory Council Breakfast & Seminar

*Solutions to Key Maryland Real Estate Issues:*

**FINANCING & EXECUTING LARGE, MULTI-PHASED PROJECTS: ADVANCED FINANCING OPTIONS, DEVELOPMENT AND EXECUTION STRATEGIES & REAL LIFE CASE STUDIES**

***-AND-***

**RECENT CHANGES TO MARYLAND'S LLC LAWS AND THE IMPACT ON REAL ESTATE: EXPLORE TRANSFER, RECORDATION AND INCOME TAX ISSUES**

MYLESTITLE ADVISORY COUNCIL PANELISTS:


JAMES P. LIGHTHIZER,
*Founder and Owner,*
*Chesapeake Real Estate Group*

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*Rubin & Gibber, P.A.*

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MYLES L. LICHTENBERG, ESQ. &
MYLESTITLE | MARYLAND COMMERCIAL TITLE

Hayfields Country Club
May 4, 2017

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# GREENFIELD SITE

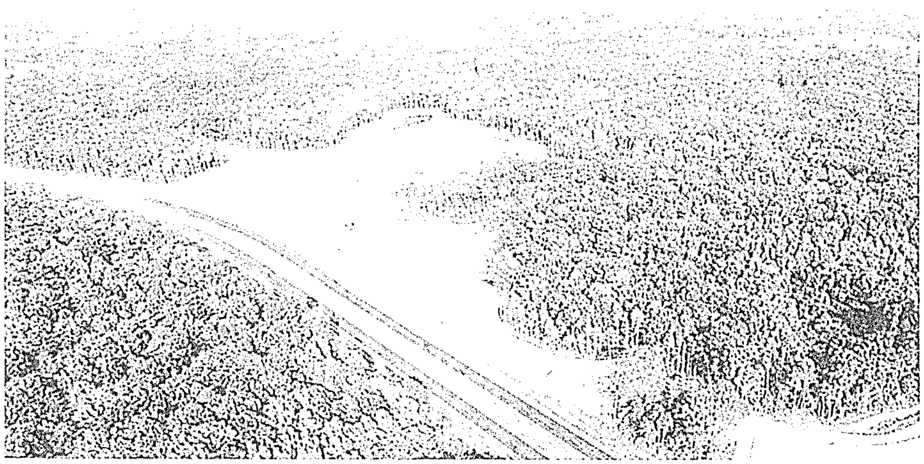
CREG
CHESAPEAKE REAL ESTATE GROUP

1

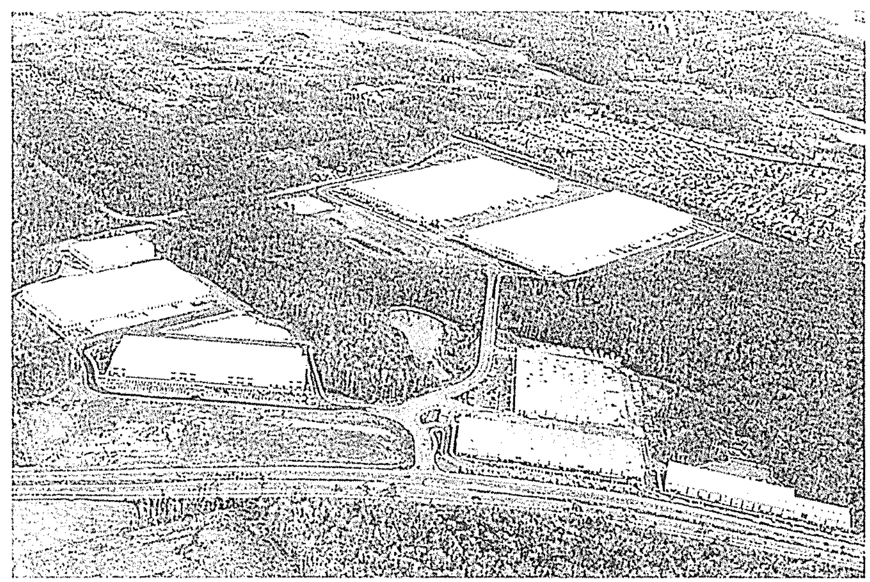
## BALTIMORE CROSSROADS @95

- Recently Completed
- 1,500,000 SF Development with Financial Partner PGIM
- 9 Buildings – 7 Owned by PGIM – 3 Phases
- Greenfield 10 Year Development

BEFORE



AFTER



# GREENFIELD SITE

CREG
CHESAPEAKE REAL ESTATE GROUP



## Financing

- 2006 Land loan with Prudential Guaranty
  (No longer available in market)
- Land development infrastructure for whole site day 1
- Land "carry" with debt is tolerable
- Land "carry" with 10% and equity is difficult

## Development / Execution

- Sell 3 lots users, do build-to-suit, build spec

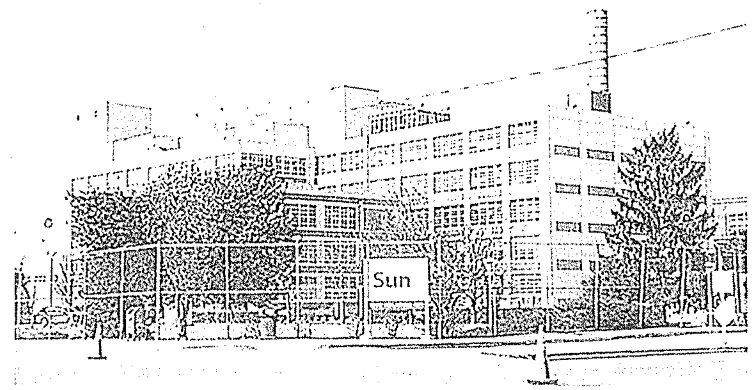
# REDEVELOPMENT SITE

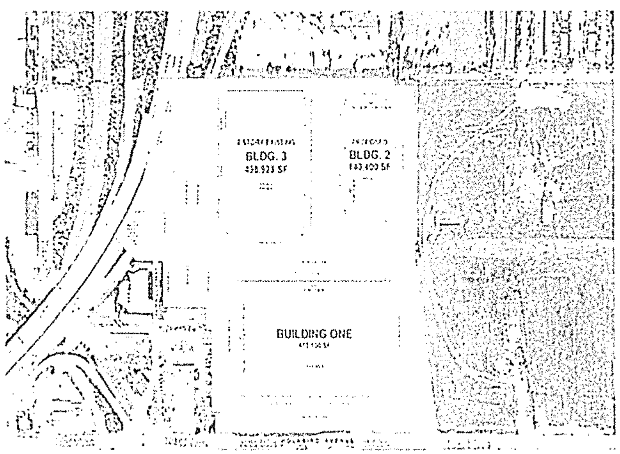
CREG
CHESAPEAKE REAL ESTATE GROUP

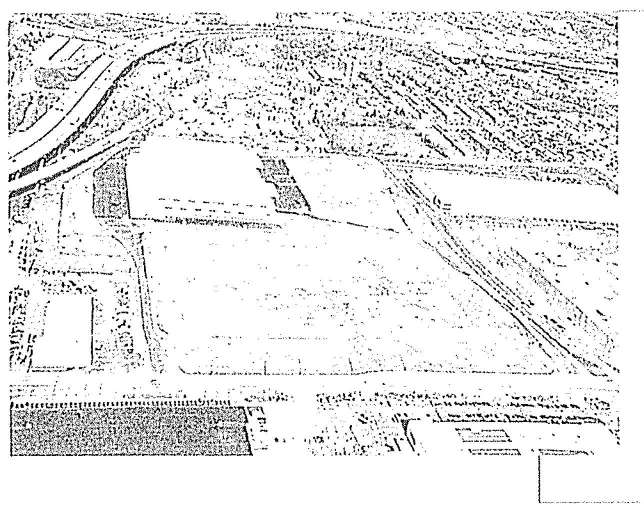


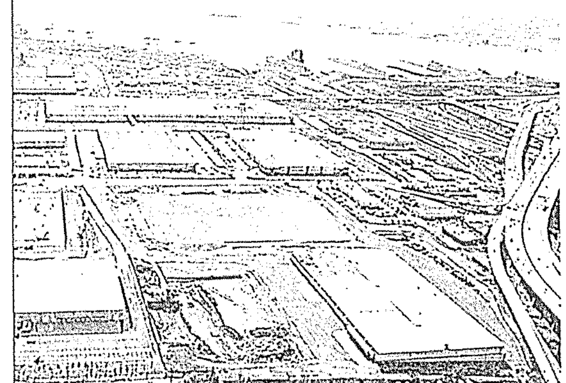
## PORT 95 INDUSTRIAL PARK

- Under Construction
- 48 Acre Former Laundry Detergent Unilever Plant.
- 550,000 SF New Class A
- 500,000 SF Redeveloped Class B
- 3 Phases





# REDEVELOPMENT SITE

CREG
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## Financing

- All cash – no phase 2 environmental!

## Development

- $3M demo phase 1
- $500K SF in 1 year pad site work

## Execution

- Sell existing 500,000 SF building and 140K SF pads
- Build 425K SF spec with 60% debt
- Target 7.5% return on equity

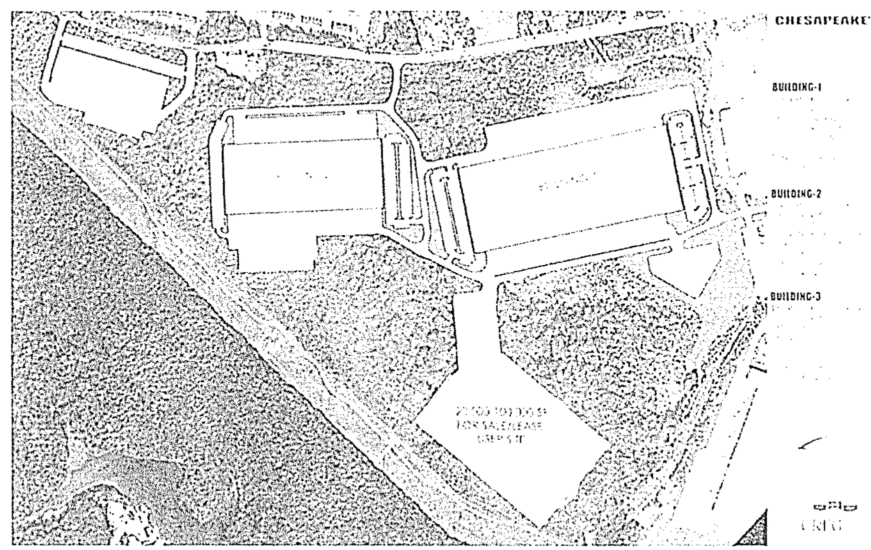
# BROWNFIELD SITE

CREG
CHESAPEAKE REAL ESTATE GROUP



## BRANDON WOODS III

- Under Contract With Exelon!
- Speculative 1,000,000 SF Development
- Fly Ash – Brownfield
- 4 Phases



# BROWNFIELD SITE

CREG
CHESAPEAKE REAL ESTATE GROUP



**Financing**

- 50% non recourse debt

**Development**

- Fly Ash VCP MDE approved RAP
- Wetlands
- On site roads $1.5M
- Off site road improvements - $2M

**Execution**

- 500K SF spec building
- Sell 2 lots to users
- 300K SF spec building

# MYLES TITLE'S 2ND QUARTER 2017

# ADVISORY COUNSEL BREAKFAST & SEMINAR

## Recent Changes
## to
## Maryland's LLC Laws
## and the
## Impact on Real Estate

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MAY 4, 2017

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## A. MARYLAND LLC ACT

### 1. RECENT STATUTORY CHANGES

1.1 Since the enactment of the Maryland LLC Act 25 years ago in 1992, the limited liability company has become the favored entity to acquire and own real estate in Maryland.

1.2 In 1988, the IRS issued a revenue ruling which recognized that LLCs could be treated as partnerships for federal income tax purposes. *See* Rev. Rul. 88-76, 1988-2 C.B. 360.

1.2.1 Even though Rev. Rul. 88-76 recognized that LLCs could be treated as partnerships for income tax purposes, practitioners struggled to make sure the LLC did not have a "preponderance" of corporate characteristics.

1.2.2 For example, because an LLC, by definition, had the corporate characteristic of "limited liability", the early LLC Acts struggled to make sure the LLC lacked at least two of the following other corporate characteristics: (1) perpetual existence; (2) free transferability of interests; and (3) centralized management.

1.3 The Maryland Limited Liability Company Act (the "Maryland LLC Act") was drafted by members of the MSBA and passed by the Maryland General Assembly and became effective on October 1, 1992.

1.3.1 The default rules in the initial Maryland LLC Act assured that the three corporate characteristics listed above did not exist.

1.3.2 Since 1992, every state, including the District of Columbia, has enacted an LLC statute.

1.4 On December 17, 1996, the IRS issued final regulations on entity classification, commonly referred to as the "check-the-box" regulations (notwithstanding the fact that there is actually no box to check to allow an LLC to obtain pass-through tax treatment).

1.4.1 These regulations radically simplified the rules for classifying non-publicly traded business entities.

1.4.2 The check-the-box regulations provide that, for federal income tax purposes, LLCs will automatically be treated as pass-through entities unless they affirmatively elect to be classified as corporations.

1.4.3 These regulations greatly simplified the organization of LLCs and the drafting of operating agreements.

1.5 Summary of Recent Changes. The Maryland LLC Act (Title 4A) of the Corporations and Associations Article) was modified and updated substantially in 2011, 2012 and 2013.

1.5.1 Policy Statement (§ 4A-102): The Maryland LLC Act now specifically provides that it is the policy of the Maryland LLC Act is to give the maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.

1.5.2 "Unless Otherwise Agreed" (§ 4A-101(t)): In addition, a new definition and concept of "unless otherwise agreed" was added to allow for freedom of contract from certain default rules.

1.5.3 Economic and Non-Economic Interest (§ 4A-101(i) and (o)): The Maryland LLC added new definitions in 2012 to distinguish between an "economic interest" and a "noneconomic interest."

1.5.4 Purpose Clause (§ 4A – 204): A purpose clause is no longer required in the Articles of Organization.

1.5.5 Parties to Operating Agreement (§ 4A-402): The LLC need not be a party to the Operating Agreement and the Operating Agreement is enforceable if only signed by a single member.

1.5.6 Non-Member Rights and Authority (§§ 4A-402 and -404): Parties who are non-members may take action on behalf of the LLC, including requiring consent for certain actions and approving amendments to the Operating Agreement.

(a) This provision was designed primarily to allow lenders or "non-member managers" to have the right to consent to or control certain LLC actions.

(b) In addition, in Wasserman v. Kay, 1997 Md. App. 586 (2011), the Court of Special Appeals acknowledged that § 4A-402(a) allows operating agreements to alter fiduciary duties or create other duties that would not otherwise exist.

1.5.7 Voting (§ 4A-403): The 2012 amendments substantially changed the default rules for voting procedures and actions of members. For example:

(a) Unless otherwise agreed, members vote in proportion to their interest in profits (which in turn is based on capital contributed);

(b) Unless otherwise agreed, decisions are made by a majority of the interests in profits; and

(c) A member may authorize another person to act as proxy.

1.5.8 Inspection (§ 4A-406): Modified inspection/information available to members. Note: Inspection rights do not appear to be subject to modification "unless otherwise agreed."

1.5.9 Member Admission and Assignment (§ 4A-601-606): Substantially changed when a member is admitted, what the effect of an assignment is and withdrawal of a member/cessation of membership.

1.5.10 Charging Orders (§ 4A-607): Substantially changed rights of a creditor and charging order rights and procedures.

1.5.11 LLC Conversions: New subtitle was added to allow for the conversion of an LLC into an "other entity" (and vice versa).

(a) An "other entity" is a corporation, general partnership, limited partnership, business trust and a foreign LLC.

(b) Caution: The transfer and recordation tax statutes were not modified to deal with these new conversions; only a confirmatory deed recorded upon the conversion of a partnership or "real estate enterprise" into an LLC is specifically exempt under the transfer and recordation tax statutes. Also, the "conversion" of a corporation to an LLC taxed as a partnership is a corporate liquidation for tax purposes which could trigger a double tax.

## 2. KEY DIFFERENCES BETWEEN DELAWARE AND MARYLAND LLC ACTS.

2.1 Requirement to Enter Into LLC Agreement. A Delaware LLC **must** enter into a limited liability company agreement before, after or at the time of the filing of the certificate of formation of a Delaware LLC. Delaware Limited Liability Company Act (the "Delaware LLC Act") § 18-201(d). The Maryland LLC Act does not require members to enter into an operating agreement.

2.2 Charging Orders/Foreclosure by Creditors. A charging order is a court order creating a lien on the debtor-member's economic interest (rights to distributions). See, e.g., Maryland LLC Act § 4A-607(b)(2).

2.2.1 A charging order requires the LLC to pay any distributions otherwise payable to the debtor-member to the charging creditor. A creditor who has obtained a charging order is NOT a member or assignee (or holder of an economic interest) and does not receive allocations of profits and losses. The debtor-member continues to receive allocations of profits and losses, but any offsetting distributions must be paid to the creditor.

2.2.2 Charging orders may be accompanied by equitable orders prohibiting payments that are not distributions (e.g., loans, salary) to the debtor-member.

2.2.3 It may be difficult to determine the appropriate court in which to file the charging order, particularly if the LLC and the debtor-member are resident in different jurisdictions.

2.2.4 A charging order is the **exclusive** statutory remedy available to a judgment creditor of a member of a Delaware LLC with respect to the member's interest in the LLC. Delaware LLC Act § 18-703(d). Creditors of a member of a Maryland LLC have three statutory remedies against the member's interest: (1) a charging order; (2) appointment of a receiver; and (3) unless the operating agreement provides otherwise, foreclosure on the member's economic interest. Maryland LLC Act § 4A-607(b).

2.3 Statutory Definition of "Manager". A "manager" of a Delaware LLC is a person who is named or designated as such in the limited liability company agreement. Delaware LLC Act § 8-101(10). Managers of Delaware LLCs have certain default rights and powers. The Maryland LLC Act does not define the obligations or powers of any non-member agent of a Maryland LLC.

2.4 Limitations on Indemnification. A Delaware LLC may indemnify any person, including members or managers, against any claim or liability. Delaware LLC Act § 18-108. A Maryland LLC may not indemnify a member, agent or employee for an action or failure to act that constitutes willful misconduct or recklessness. Maryland LLC Act § 4A-203(14).

2.5 Appraisal Rights. Members of a Delaware LLC do not have statutory appraisal rights. Members of a Maryland LLC have statutory appraisal rights in connection with a merger or conversion unless otherwise agreed. Maryland LLC Act §§ 4A-705, 4A-1102(c).

2.6 Duties of Members and Managers. The common law fiduciary duties applicable to directors of Delaware corporations apply to the managers, managing members and officers of Delaware LLCs, subject to modification in the limited liability company agreement. Delaware LLC Act §§ 18-1104, 18-1101(e). The Maryland LLC Act does **not** contain statutory duties or a statutory standard of care for members, managers or other agents of a Maryland LLC. A recent Maryland court decision suggests that managers or managing members owe a Maryland LLC and its members the common law fiduciary duties of an agent. *Wasserman v. Kay*, 197 Md. App. 586, 616 (2011). No Maryland court decision has clarified the extent to which these default duties can be modified.

2.7 Series LLCs. The Delaware LLC Act authorizes the creation of "series" LLCs, whereas the Maryland LLC Act does not.

## B. Transfer and Recordation Taxes

### 1. Controlling Interests.

#### 1.1 SDAT filings/website

(a) Pursuant to Tax Property Article (TPA) Sections 12-117 and 13-103, effective July 1, 2008, a Maryland "real property entity" must file a report with the SDAT of any transfer of a "controlling interest" in the real property entity that is completed within a period of 12 months or less, within 30 days following the date of final transfer.

(b) Such reports shall include all information to establish to the satisfaction of the SDAT any exemption provided by Section 12-117(c).

(c) The SDAT has a website that contains all reports of transfers of controlling interests:

http://www.dat.maryland.gov/sdatweb/transfercontrollinginterest.html

(d) Results:

(i) Of the 206 filed Reports from 2008-2015, 134 (65%) were not exempt from transfer and recordation taxes; 71 (35%) were exempt; and 1 was partially exempt;

(ii) The exempt Reports largely relied on the exemption in Section 12-117(c)(3) [discussed below]; and

(iii) Nearly all Reports were "Regular" and approximately 31 were "Permissive."

#### 1.2 2016 Statutory Changes to § 12-117(c)

(a) Prior to July 1, 2016, TPA Section 12-117(c)(3) provided the following exemption:

**"The recordation tax is not imposed on the transfer of a controlling interest in a real property entity to another business if the ownership interests in the transferee business entity are held by the same persons and in the same proportion as in the real property entity the controlling interest of which was transferred."**

(b) In several pre-2016 filings reviewed by Paul Anderson at SDAT, Anderson and his staff have advised that the SDAT interpreted this



4814-9644-4231, v. 1

exemption to allow only "drop downs" of controlling interests into subsidiary entities, but not "distributions" or "spin-offs" or cross-transfers.

(c) As Anderson described it, the SDAT looks at the "octopus" and if the transfer goes down the arms, the transfer is exempt; but if the transfer is a cross-arm transfer or an up-stream transfer, the transfer is not exempt.

1.3 2016 Legislation.

(a) Because of the narrow view of the SDAT, efforts were undertaken to provide modifications to the exemption in TPA Section 12-117(c)(3) as well as in TPA Section 12-117(c)(1).

(b) Effective July 1, 2016, the (c)(3) exemption now reads as follows:

"(3) The recordation tax is not imposed on the transfer of a controlling interest in a real property entity to another entity if the ownership interests in the transferee entity are owned, directly or indirectly by the same persons and in the same proportions as those persons own, directly or indirectly, the transferor entity or the real property entity the controlling interest of which was transferred."

(c) Further, effective July 1, 2016, the (c)(1) exemption reads as follows:

"(1) The transfer of a controlling interest in a real property entity is not subject to recordation tax if the transfer of the real property owned by the real property entity between the same transferor and transferee of the controlling interests and under the same circumstances would have been exempt under § 12-108 of this title."

## 2. PARENT/SUBSIDIARY TRANSFERS.

2.1 TPA Section 12-108(p) was amended in 2013 to expand the exemption for transfers of real property by deed between parent and subsidiary corporations to include a "Business Entity," which now includes both corporations and limited liability companies.

2.2 As a result of this change, it is now easy to "drop down" real estate from a parent LLC to a newly-formed solely-owned LLC "subsidiary" which can assist for financing purposes and credit protection purposes.

2.3 The same exemption also applies if real property is distributed up-stream from the subsidiary to the parent, provided that the parent previously owned the real property, has owned the interests in the subsidiary for 18 months or the subsidiary has been in existence and owned the real property for 2 years.

## 3. Refinancing Exemption: Who is an "original mortgagor"?

3.1 TPA Section 12-108(g) was amended in 2013 to allow commercial mortgages, including IDOTs, to be refinanced without incurring additional recordation tax in the same manner as previously applied only to residential mortgages.

3.2 Only "new money" (face amount of new mortgage/deed of trust in excess of the outstanding principal balance of the loan being refinanced) is subject to the recordation tax.

3.3 TPA Section 12-108(g)(2) reads as follows:

> **"A mortgage or deed of trust is not subject to recordation tax to the extent it secures the refinancing of an amount not greater than the unpaid principal amount secured by an existing mortgage, indemnity mortgage, or deed of trust at the time of refinancing if the mortgage or deed of trust secures the refinancing of real property that is (i) being refinanced by the original mortgagor or by the original mortgagor and, if applicable, the spouse of the original mortgagor..."**

3.4 The reference to refinancing an indemnity mortgage is helpful, since the "original mortgagor" in IDOTs is typically a mere guarantor, but not a borrower; nevertheless, IDOTs can now be refinanced using this exemption as straight deeds of trust (with the "original mortgagor" now becoming the new direct borrower) -- there is no further need for a separate borrower and guarantor in Maryland (unless the exemption for an IDOT less than $3.0 million is desired).

3.5 But how narrow is the definition of "original mortgagor"? TPA Section 12-108(g)(1)(i) provides that an original mortgagor includes: **"a person that assumed a debt secured by real property that the person purchased and paid the recordation tax on the consideration paid for the property."**

3.6 Consider the following examples where the initial party is the original mortgagor—can any of the successors be an "original mortgagor"?:

(a) A general or limited partnership converts to an LLC;
(b) A general or limited partnership elects to become an LLP or LLLP;
(c) A Maryland LLC merges or converts to a Delaware LLC;

(d) An LLC or partnership dissolves and distributes a deed in dissolution to an original partner/member;

(e) Property is dropped down from a parent business entity to a subsidiary business entity; and

(f) A and B are tenants in common; A buys out B and refinances the existing loan that A and B had on their TIC interests.

4. <u>LLCs Taxed as a Corporation: Super-Concrete Corporation v. SDAT (Unreported; No. 0887, Feb. 27, 2015)</u>

4.1 In <u>Super-Concrete</u>, the Court of Special Appeals held that Silver Hill Materials II LLC (a Maryland LLC which elected to be taxed as a corporation) could utilize the exemption under TPA Section 12-108(p)(2) (corporate mergers) when it merged into Super-Concrete in a qualifying reorganization pursuant to Section 368(a) of the Internal Revenue Code.

4.2 The SDAT, Maryland Tax Court and Baltimore City Circuit Court all held that Section 368 does not apply where one party to a reorganization is an LLC.

4.3 The Court of Special Appeals recognized that LLCs can be treated as corporations or like corporations in a variety of circumstances and that it should give deference to the "reasoned policy" of the General Assembly that a mere reorganization of assets for no consideration is not typically a taxable event.

## C. INCOME TAXES

### 1. NEW PARTNERSHIP INTEREST "BASIS" REGULATIONS

1.1 On October 5, 2016, the IRS issued final and temporary regulations dealing with how partners in a partnership obtain/retain "basis" in partnership debt under the "disguised sale" rules and as a result of certain "guarantees."

1.2 The rules are designed to prohibit "bottom-dollar" guarantees from being included in tax basis (which basis allows a partner to take a loss or receive tax-deferred distributions in excess of invested capital). The IRS views bottom-dollar guarantees as too contingent to be included in basis.

1.3 The new rules are beyond the scope of today's discussion, but there are two examples in the regulations that may alter how loan guarantees and indemnities are structured going forward. The examples are attached as Exhibit A.

### 2. TAX REFORM

2.1 President's Trump Proposal (Exhibit B).

2.2 House Ways and Means Proposal – "A Better Way: Our Vision For A Confident America" (June 24, 2016) (www.better.gop).

2.3 Trump Proposal vs. House Proposal (Exhibit C).

# EXHIBIT A

EXAMPLES 10 AND 11
FROM TEMP. REG. 1.752-2T(f)
(UNDERLINING ADDED)

**Example 10. Guarantee of first and last dollars.**

(i) A, B, and C are equal members of a limited liability company, ABC, that is treated as a partnership for federal tax purposes. ABC borrows $1,000 from Bank. A guarantees payment of up to $300 of the ABC liability if any amount of the full $1,000 liability is not recovered by Bank. B guarantees payment of up to $200, but only if the Bank otherwise recovers less than $200. Both A and B waive their rights of contribution against each other.

(ii) Because A is obligated to pay up to $300 if, and to the extent that, any amount of the $1,000 partnership liability is not recovered by Bank, A's guarantee is not a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section. Therefore, A's payment obligation is recognized under paragraph (b)(3) of this section. The amount of A's economic risk of loss under Sec. 1.752-2(b)(1) is $300.

(iii) Because B is obligated to pay up to $200 only if and to the extent that the Bank otherwise recovers less than $200 of the $1,000 partnership liability, B's guarantee is a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section and, therefore, is not recognized under paragraph (b)(3)(ii)(A) of this section. Accordingly, B bears no economic risk of loss under Sec. 1.752-2(b)(1) for ABC's liability.

(iv) In sum, $300 of ABC's liability is allocated to A under Sec. 1.752-2(a), and the remaining $700 liability is allocated to A, B, and C under Sec. 1.752-3.

**Example 11. Indemnification of guarantees.**

(i) The facts are the same as in Example 10, except that, in addition, C agrees to indemnify A up to $100 that A pays with respect to its guarantee and agrees to indemnify B fully with respect to its guarantee.

(ii) The determination of whether C's indemnity is recognized under paragraph (b)(3) of this section is made without regard to whether C's indemnity itself causes A's guarantee not to be recognized. Because A's obligation would be recognized but for the effect of C's indemnity and C is obligated to pay A up to the full amount of C's indemnity if A pays any amount on its guarantee of ABC's liability, C's indemnity of A's guarantee is not a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section and, therefore, is recognized under paragraph (b)(3) of this section. The amount of C's economic risk of loss under Sec. 1.752-2(b)(1) for its indemnity of A's guarantee is $100.

(iii) Because C's indemnity is recognized under paragraph (b)(3) of this section, A is treated as liable for $200 only to the extent any amount beyond $100 of the partnership liability is not satisfied. Thus, A is not liable if, and to the extent, any amount of the partnership liability is not otherwise satisfied. and the exception in paragraph (b)(3)(ii)(B) of this section does not apply.

As a result. A's guarantee is a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section and is not recognized under paragraph (b)(3)(ii)(A) of this section. Therefore, A bears no economic risk of loss under Sec. 1.752-2(b)(1) for ABC's liability.

(iv) Because B's obligation is not recognized under paragraph (b)(3)(ii) of this section independent of C's indemnity of B's guarantee, C's indemnity is not recognized under paragraph (b)(3)(iii) of this section. Therefore, C bears no economic risk of loss under Sec. 1.752-2(b)(1) for its indemnity of B's guarantee.

(v) In sum, $100 of ABC's liability is allocated to C under Sec. 1.752-2(a) and the remaining $900 liability is allocated to A, B, and C under Sec. 1.752-3.

## EXHIBIT B

## 2017 Tax Reform for Economic Growth and American Jobs

The Biggest Individual and Business Tax Cut In American History

### Goals for Tax Reform

- Grow the economy and create millions of jobs
- Simplify our burdensome tax code
- Provide tax relief to American families – especially middle-income families
- Lower the business tax rate from one of the highest in the world to one of the lowest

### Individual Reform

Tax relief for American families, especially middle-income families:

- Reducing the 7 tax brackets to 3 tax brackets of 10%, 25% and 35%
- Doubling the standard deduction
- Providing tax relief for families with child and dependent care expenses

Simplification:

- Eliminate targeted tax breaks that mainly benefit the wealthiest taxpayers
- Protect the home ownership and charitable gift tax deductions
- Repeal the Alternative Minimum Tax
- Repeal the death tax
- Repeal the 3.8% Obamacare tax that hits small businesses and investment income

### Business Reform

- 15% business tax rate
- Territorial tax system to level the playing field for American companies
- One-time tax on trillions of dollars held overseas
- Eliminate tax breaks for special interests

### Process

Throughout the month of May, the Trump Administration will hold listening sessions with stakeholders to receive their input and will continue working with the House and Senate to develop the details of a plan that provides massive tax relief, creates jobs, and makes America more competitive—and can pass both chambers."

# EXHIBIT C

## Comparison of Trump Proposal and House Proposal

| | Trump Proposal | House Proposal |
|---|---|---|
| | | |
| Tax Brackets | 12%<br><br>25%<br><br>33% | 12% (Up to $37,650 single; $75,300 married)<br><br>25% ($37,650 to $190,150 / $75,300 to $231,450)<br><br>$33% ($190,150+ / $231,450+) |
| Capital Gains and Dividends | 0%, 15%, 20%* | 6%, 12.5%, 16.5% |
| Standard Deduction | $25,200 (joint)<br>$18,600 (single with child)<br>$12,600 (single) | $24,000 (joint)<br>$18,000 (single with child)<br>$12,000 (single) |
| Personal Exemptions | Eliminated* | Eliminated, increased child and dependent credit of $1,500 |
| Itemized Deductions | Eliminate all itemized deductions except for mortgage interest and charitable contributions | Eliminate all itemized deductions except for mortgage interest and charitable contributions |
| AMT | Repeal | Repeal |
| Carried Interest | Tax as ordinary income not capital gain* | No position taken |
| 3.8% Obama Tax | Repeal | Repeal |
| Corporate Tax Rate | 15% | 20% |
| Pass-through Tax Rate | 15% | $25, plus immediate expensing |
| Estate Tax | Repeal (but silent on gift tax) | Repeal (but silent on gift tax) |

* Pre-election Proposal

| | | |
|---|---|---|
| Corporate Deductions | Immediate expensing available for manufacturing companies*<br><br>Repeal of interest deductibility*<br><br>Eliminates tax expenditures, except R&D tax credit* | Immediate expensing for tangible and intangible property, but not land<br><br>Repeal of interest deductibility, but allow deductions of interest expense against interest income<br><br>Keeps R&D tax credit |
| International Taxes | One-time tax of 10% on corporate cash held abroad when corporations repatriate money. Unclear whether this will be optional or mandatory, though Trump's website states that it will be "deemed repatriation."* | One-time, mandatory tax on corporate assets held abroad split at 8.75% on liquid holdings and 3.5% on illiquid holdings. Shift to territorial taxation of overseas income under destination-based taxes, on which sale and services are only taxed based on location of consumption. |
| Trade | Territorial Tax System | Border adjustment tax at 20% of the value of imports: Exports would not be taxed while imports would be subject to tax |
| Misc. | | Eliminate the 0.9% payroll tax, the medical device tax, and the ACA health insurance tax |

* Pre-election Proposal