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RIDDLE FARM FINANCIAL LIMITED PARTNERSHIP,	*	IN THE
	*	CIRCUIT COURT
Plaintiff	*	FOR
	*	WICOMICO COUNTY
v.	*	MARYLAND
	*	CASE NO. 22-C-05-001375
ROUTE 50 PARTNERS, LP, et al.,	*	
	*	
Defendants		

* * * * * * * * * * * * *

PLAINTIFF'S POST-TRIAL MEMORANDUM

NOW COMES Plaintiff, by and through its attorneys, Guy R. Ayres III, Bruce F. Bright, and Ayres, Jenkins, Gordy & Almand, P.A., and submits to this Honorable Court its Post-Trial Memorandum:

I. RFF'S SHARE OF THE PROCEEDS FROM THE SALE OF RFA'S FIFTY PERCENT INTEREST IN CENTEX/TAYLOR.

A. RFF's ownership interest in RFA is 31.25%, not 25%.

There is no dispute in this case that, under the terms of the original RFA Limited Partnership Agreement ("LPA") (Exhibits 1-3), RFF (and its predecessor RFDC) held a 31.25% ownership interest in RFA. There is also no dispute that, pursuant to section 6(c)(ii) of the LPA, in or about 1990, RFF's interest in RFA was diluted from 31.25% to 25%. See Exhibit 130. Thereafter, in 1996, the Third Amendment to the LPA (Exhibit 6) was executed on behalf of the partners by Goodwin Taylor, Robert Carmean (David Meinhardt's former partner in RFF), and Thomas Wilbur (of The Akridge Companies). Under the clear and unambiguous terms of the

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Third Amendment, RFF's 31.25% interest in RFA was restored. See Exhibit 6, at p. 3 (and attached Exh. A).

This Honorable Court held on January 30, 2006, that, as of September 1998 – the date of the arbitration panel's ruling upholding the validity and binding effect of the Second Amendment and Third Amendment (See Exhibit 140) – RFF owned a 31.25% interest in RFA. Based on that ruling, Defendants had the burden at trial of establishing that, after September 1998, RFF's ownership interest somehow became less than 31.25%. Defendants have advanced two arguments in this respect: (1) RFF and/or David Meinhardt made purported "admissions" (by which RFF is purportedly bound) to the effect that RFF's ownership interest is 25%; and (2) pursuant to the LPA, a "re-dilution" of RFF's interest occurred based upon capital contributions made after 1996 by Route 50 Partners. Defendants are wrong as to both of those arguments.

Purported "Admissions" by Meinhardt

The *only* evidence introduced by Defendants in support of their argument that Meinhardt made admissions that RFF's interest in RFA is 25% is as follows: (a) the private placement memorandum that Meinhardt filed with the State of Maryland with regard to Riddle Farm LLC; and (b) a filing made in Carmean's Delaware bankruptcy case. Both of those documents stated that RFF owned a 25% interest in RFA. The record is clear, however, that both of those documents were filed *prior to the date of the arbitration panel's ruling* (September 1998). See Exhibit 149 (Docket Entries, Carmean Bankruptcy, item #25, filed July 6, 1998); Exhibit 150 (Form MLOE-1, filed July 16, 1997). As Meinhardt explained in his trial testimony, prior to the arbitration panel's ruling (and in the arbitration itself), he was challenging the validity of the Second Amendment and the Third Amendment as having been signed by Carmean only (on

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behalf of RFF) without authority. Indeed, as Meinhardt testified at trial, he was not even aware of the existence of the Third Amendment until sometime shortly before the arbitration (which began in early 1998), and never actually saw the Third Amendment until it was provided to him in connection with the arbitration. The Third Amendment, of course, is the document that restored RFF's 31.25% interest in RFA.

Until the arbitration panel determined in September 1998 that the Third Amendment was valid and binding, as far as Meinhardt was concerned, RFF owned only a 25% interest in RFA and retained the distribution priorities and management rights provided for in the LPA. Therefore, the private placement memorandum and pleading in the Carmean bankruptcy filed by Meinhardt *prior to September 1998*, which stated that RFF had a 25% interest in RFA, do not constitute admissions by Meinhardt, and provide no support for Defendants' claim, that, after September 1998 (and presently), RFF's ownership interest in RFA is 25%.

Purported "Re-Dilution" of RFF's 31.25% Interest

Again, Defendants make the argument that, pursuant to the terms of section 6(c)(ii) of the LPA (Exhibit 1), RFF's interest was somehow diluted, after September 1998, based on capital contributions made after 1996 by Route 50 Partners (through Taylor Construction).[1]

First, it is clear that, under the unambiguous terms of the LPA, RFF was under *no* obligation to make any capital contributions beyond its initial contribution in the amount of

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[1] It should be noted that the purported "capital contributions" made after 1996 were never actually contributed by Route 50 Partners. They were advanced by Taylor Construction, purportedly on Route 50's behalf, then treated as capital contributions made by Route 50 Partners. This raises a serious question as to whether such "contributions" could properly be regarded as contributions made *by Route 50 Partners* for purposes of any "re-dilution" of RFF's interest under the terms of the LPA.

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approximately $500,000.00. See Exhibit 1, at section 6. Goodwin Taylor admitted this in his trial testimony. Under section 6(c)(ii) of the LPA, RFF's 31.25% interest in RFA was subject to a *one-time* dilution in the event that: (a) the General Partner requested additional capital from both limited partners (i.e., makes one or more capital calls) *up to a maximum amount of $250,000.00*; (b) RFF declined to make the requested contribution(s); and (c) Route 50 Partners elected to make the requested contributions. See Exhibit 1, at pp. 10-11. Prior to April 1990, Worcester Partners had, indeed, made capital call(s) to the limited partners in the aggregate amount of $250,000.00, Route 50 Partners elected to make contributions in response to such capital calls, and RFF elected *not* to make any additional capital contributions. Exhibit 130. As the LPA clearly states, at all relevant times, RFF had the *option*, but did not have any *obligation*, to make additional capital contributions, and it chose not to do so. By letter to Goodwin Taylor dated April 19, 1990 (Exhibit 130), Meinhardt stated as follows: "the General Partner and the Partnership have previously made . . . capital call of [RFF] in the aggregate amount of $250,000, thereby exhausting its right to make any further capital calls. In lieu of making such capital contributions, [RFF] was subjected to dilution."

Once capital calls were made upon the limited partners in the aggregate amount of $250,000, and Route 50 Partners elected to make the requested contributions while RFF elected not to do so, RFF's share was subjected to the one-time dilution under section 6(c)(ii) of the LPA. Thereafter, the dilution provisions of section 6(c)(ii) had no more operative effect. The dilution provision does not provide, explicitly or implicitly, that, after dilution occurs, additional capital calls made on the limited partners would subject the limited partners' interests to further dilution. To the contrary, the provision is clear that, once dilution occurs based on capital calls

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in the total maximum amount of $250,000, there can be no further dilution based on additional capital calls by the General Partner. As Goodwin Taylor admitted during trial, capital calls in the total amount of $250,000 were made upon RFF and Route 50 Partners prior to Meinhardt's April 1990 letter in which he acknowledged that RFF had been diluted to 25%, in lieu of making requested contributions.

In 1996, upon the execution of the Third Amendment, RFF's 31.25% interest in RFA was restored by agreement among all of the partners, however, RFF's restored 31.25% interest was *not* subject to any "re-dilution" based on additional capital calls (and additional capital contributions by or on behalf of Route 50 Partners) made after 1996. Just as RFF's diluted 25% interest could not, under the clear terms of the LPA, be *further* diluted after 1990 by virtue of additional capital calls and additional capital contributions by Route 50 Partners beyond the established $250,000 threshold, RFF's restored 31.25% interest could not be *re-diluted* after 1996 by virtue of additional capital calls and additional capital contributions by Route 50 Partners beyond the $250,000 threshold. The LPA contemplated but *one* dilution of RFF's interest and, once that dilution occurred in 1990, RFF's interest in RFA was not subject to any further dilution or any "re-dilution," notwithstanding the fact that the Third Amendment adjusted RFF's interest back to 31.25%.

<u>Other evidence that RFF's interest has remained 31.25% since 1996</u>

Beyond what is set forth above, there is extensive evidence in the record that belies Defendants' "re-dilution" argument, and exposes such argument as an "after-the fact" ploy manufactured during (and well into) this litigation to "gain back" ground that Defendants clearly lost on other distribution-related issues, such as the "accrued compensation" issue. The

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following documents constitute written, unqualified acknowledgments by Defendants that, at all times after the Third Amendment was executed and held to be valid, RFF's interest has been 31.25%:

(1) Defendants' proposed distribution sent by its counsel to RFF's counsel *in February 2004*, using a 31.25% interest (Exhibit 122);

(2) The proposed distribution, using 31.25%, prepared by RFA's accountant Peter Cramer *in November 2003* (at the instruction of Taylor) (Exhibit 123);

(3) Document entitled "Centex/Taylor Tax Consequences" prepared by Defendants (or RFA's accountant) *sometime after May 2001*, using 31.25% (Exhibit 125);

(4) Distribution made to RFF by RFA *in April 2004* (in the amount of $48,854.75), calculated using 31.25% (Exhibits 118, 49).

Defendants contend that the tax returns for RFA constitute evidence supporting their claim of "re-dilution," because they use a 25% interest for RFF from tax year 1991 forward. In fact, the tax returns are strong evidence undermining Defendants' re-dilution argument. See Exhibits 43-109. If, as Defendants now contend, RFF's interest was, in fact, re-diluted after 1998 (or 1996, when the Third Amendment was executed), then the RFA tax returns should properly have used 31.25% for some length of time (and until such alleged re-dilution occurred). Also, any re-dilution would presumably have occurred over time, rather than all at once and in the exact same amount as the 1990 dilution, and the tax returns do not reflect any such incremental "re-dilution." Instead, as stated, RFA's tax returns continued to use 25% as a fixed percentage for RFF's ownership interest at all times from 1991 to the present. Peter Cramer admitted during his testimony that he continued to use 25% at all times, and that, contrary to applicable IRS regulations, he failed to consider the Third Amendment (signed in 1996) and the arbitration panel's ruling (issued in 1998) in determining the partners' respective shares for tax

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purposes.

It is also notable on this issue that no evidence was presented by Defendants – indeed, none exists – demonstrating that, after 1996, formal capital calls were made upon RFF and Route 50 Partners pursuant to section 6(c)(ii) of the LPA, and that, based upon formal responses received from RFF and Route 50 Partners, a dilution was triggered under that section. There is no evidence that any of the Defendants at any time notified RFF or otherwise made any written record that its partnership interest had been "re-diluted" from 31.25% to 25%. All that is in the record are vague references in Taylor's own periodic "status reports" evidencing that RFF was not making any capital contributions after 1996. None of those purported "status reports" memorialize in any way that any "re-dilution" of RFF's interest had occurred based upon RFF's election not to make additional capital contributions, or that the purported "capital calls" were being made pursuant to section 6(c)(ii) of the LPA. Again, assuming *arguendo* that any "re-dilution" of RFF's share is contemplated under the LPA, Defendants had the burden of establishing that such "re-dilution" occurred in a way that was strictly in compliance with section 6(c)(ii). Defendants failed to do so at trial.

B. The $100,000.00 "SK Penalty" should be added back to the sale proceeds for purposes of calculating RFF's share of the proceeds.

Taylor claims to have entered into the so-called "SK Contract" (for the sale of 46 Glen Riddle lots) to "force Centex to the table," i.e., to compel Centex to negotiate a buyout of RFA's interest in Centex/Taylor. There is *no* evidence in the record substantiating that claim. However, there are a number of undisputed facts with regard to the $100,000.00 "SK penalty." It is undisputed that Taylor entered into the SK Contract (in October 2003) *without any intention of following through on its terms*. It is undisputed that Centex had no knowledge that Taylor had

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entered into the SK Contract. It is undisputed that, according to Centex, Taylor had no authority to enter into the contract. See Exhibit 16, at pp. 5-6. It is undisputed that the counter-party to the SK Contract was an entity called "SK Properties Inc.," Taylor's partner in a project known as "Pepper Creek Marina" (in which Taylor was involved through his own entity "SK Pepper Creek LLC"). It is undisputed that the SK Contract had a termination charge of $100,000.00, *which Taylor knew full well when he entered into the contract would eventually be paid to his partner SK Properties*.

It is undisputed that, on December 16, 2003, Taylor used funds distributed to RFA by Centex/Taylor and reported to the IRS as partner "distribution escrow" funds (See Exhibits 43-54, 2003 and 2004 tax returns for RFA) to make a $100,000.00 unsecured loan to SK Pepper Creek, his own entity and the entity through which he was engaged in the Pepper Creek Marina project with SK Properties. See Exhibit 110.[2] It is undisputed that, on or about January 7, 2004 (the settlement/closing date on Centex Homes' purchase of RFA's interest in Centex/Taylor), SK Pepper Creek repaid the $100,000 to RFA, and, simultaneously, $100,000 was paid to SK Properties (Taylor's partner) and reduced from the sale proceeds paid to RFA. In other words, between December 16, 2003, and January 7, 2004, a total of $200,000.00 was paid to the Pepper Creek Marina project (Taylor's project) from RFA monies, and only $100,000 was repaid to RFA.

The bottom line is that $100,000 was subtracted from the agreed upon purchase price,

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[2] Notably, the purported "loan" to SK Pepper Creek was the subject of two separate promissory notes, having different terms and conditions, purportedly signed on the same day by Taylor. During trial, Taylor had no explanation for why two separate versions of a promissory note, apparently signed by him on the same day, having different repayment terms, are in existence.

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and diverted away from RFA *to Taylor's own marina project* (through his partner, SK Properties), based upon a contract that Taylor signed purportedly on behalf of Centex/Taylor, which he had no authority to execute, and on which he never intended to perform. Based on all of the foregoing undisputed facts, Plaintiff's expert Bruce Dubinsky testified that, in his opinion, the $100,000 "SK Penalty" should be added back in for purpose of calculating RFF's share of the sale proceeds.

Taylor claims that the SK Contract was the one and only impetus "forcing" Centex to negotiate the buyout of RFA, however, there is no evidence in the record – no testimonial or documentary evidence – to support that claim (other than Taylor's own unsupported, uncorroborated, self-serving testimony). There is no correspondence to or from Taylor, Centex, or any other party substantiating Taylor's claim in this regard. There was no witness who testified at trial on behalf of Centex or Centex/Taylor that it was "forced to the table" by Taylor's contractual maneuver with his partner, SK Properties. There was nothing at all presented at trial to substantiate Taylor's claim in this regard.

Taylor also contends that, although the $100,000.00 penalty was subtracted from the sale proceeds, he negotiated a $100,000.00 increase in the amount of the "EDU" proceeds to be paid to RFA, and, on that basis, the $100,000.00 penalty should not be added back for purposes of calculating RFF's distribution amount. Again, however, there is not a shred of evidence anywhere in the record to support or substantiate this self-serving claim by Taylor. Moreover, as Taylor readily conceded at trial, the "EDU" interest held by RFA – which Taylor agreed, and the documentary evidence (Exhibits 38, 40) clearly established, is a derivative, economic interest only in proceeds paid to Centex/Taylor for the sale of EDUs – could be worth nothing (i.e.,

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whether any monies will be derived at all from the sale of EDUs is a highly speculative proposition).

For all of the foregoing reasons, no part of the $100,000 "SK penalty" should be borne by RFF. Defendants will presumably argue that Taylor's decision to enter into the SK Contract, thereby subjecting the partnership to the $100,000.00 penalty, is protected by the "business judgment rule." First, the Court of Appeals has never extended the business judgment rule to partnerships, indeed, in the recent case *Della Ratta v. Larkin*, 382 Md. 553 (2004), the Court expressly declined to decide whether the business judgment rule applies to partnerships. *Id*. at 579. Even assuming *arguendo*, however, that the business judgment rule does apply to partnerships (and, more particularly, to limited partnerships), such rule *requires that the decision maker act lawfully and in good faith* in order for the subject business decisions to be insulated from judicial review. *Id*. Based on all of the foregoing undisputed facts – including the fact that Taylor entered into the SK Contract in bad faith, without authority, and without any intention of performing, knowing full well that his partner in the marina project, SK Properties, would receive the $100,000.00 termination penalty – the protection of the business judgment rule should not apply with regard to this matter, and this Honorable Court should be free to review and decide the propriety of the penalty being charged to RFF (as Defendants seek to do).

C. Only one $400,000.00 "developer fee" should be subtracted from the sale proceeds for purposes of calculating RFF's share.

Defendant's own "accounting" expert, Edward Tucker, agrees with Plaintiff and its expert that only one $400,000.00 "developer fee" should be deducted from the proceeds for purposes of calculating RFF's share. See Exhibit 26; Exhibit 33 (second page). The Second Amendment (Exhibit 5) provides that Taylor "shall be paid $400,000, as compensation for his

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services." It provides further, however, that "**[t]hese funds shall be paid by all partners of the Partnership with the exception of [RFF] which shall not contribute to this payment**." The Third Amendment (Exhibit 6) provides that, as the first step in the distribution process, "Four Hundred Thousand Dollars ($400,000.00) shall be paid as a developer fee to Taylor Construction, Ltd." Based on the foregoing, and in light of the position taken by both accounting experts, there can be no reasonable or legitimate claim by Taylor that more than one $400,000.00 fee should be deducted from the sale proceeds in connection with calculating RFF's share.

D. The funds paid by RFA to Akridge in May 2001, to satisfy a debt owed to Akridge by Taylor, should be accounted for as already-reimbursed capital contributions/expenses of Route 50 Partners, for purposes of calculating RFF's share of the sale proceeds.

In or about 1999, Taylor Family Investments LLC, agreed to purchase the Akridge Companies' interests in Worcester Partners and Route 50 Partners. Exhibits 12 and 14. The purchase price for that transaction, however, was not paid until 2001. In connection with the settlement in May 2001 on RFA's "sale" (or, more precisely, its contribution) of the Riddle Farm land to Centex/Taylor LLC (in exchange for a 50% interest in that entity), $917,002.32 of RFA's proceeds were paid to Akridge in satisfaction of the purchase price, plus accrued interest, owed by Taylor for his "buyout" of the Akridge interests in Route 50 Partners and Worcester Partners. Exhibit 15 (line 505). Both accounting experts (Tucker and Dubinsky) and Taylor agree that, for purposes of calculating RFF's share of the sale proceeds, such amount should be treated as funds already distributed to Taylor/Route 50 Partners, and should be subtracted from (credited against) the amount of capital contributions/reimbursable expenses owing to Route 50 Partners. See Exhibit 33 (second page); Exhibit 26.

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Notably, although Taylor was keenly aware of this distribution-related issue in February 2004 when he engaged in a calculation of amounts to be distributed to himself at that time (Exhibit 126), he conspicuously (and, Plaintiff contends, consciously) omitted the $917,000 from the proposed distribution that his counsel forwarded to RFF only days earlier (Exhibit 122). Only after extensive and costly litigation in this case did Taylor eventually concede this point.

E. Route 50 Partners is not entitled to be repaid a purported $100,000.00 "loan" plus interest, out of proceeds to be distributed to RFF.

In April 1990, Taylor sent a letter to Meinhardt (and Carmean) requesting their approval to treat a $100,000 contribution by Route 50 Partners as a loan to RFA, to be repaid with interest at "prime plus two percentage points." Exhibit 131. By letter dated April 19, 1990, Meinhardt approved the treatment of such contribution by Route 50 as a loan to RFA. Exhibit 130.

Based on those two letters, and not a single shred of other evidence, Defendants take the position that the sum of $410,314.00 should be deducted from the sale proceeds for purposes of calculating RFF's share. See Exhibit 26. Defendants do so despite the mountain of evidence which belies the claim that such contribution was ever *actually* treated as a loan to RFA. There is no promissory note or equivalent memorialization in the record. There is no other documentary evidence confirming the actual treatment of such contribution as a loan by RFA (after Meinhardt approved such treatment). There are numerous proposed distributions and other documents generated by Defendants or their agents many years after the "loan" was allegedly made, none of which make any reference to any loan(s) payable from Route 50 Partners. See Exhibits 119, 120, 121, 122, 123, 125, 126, 129 (pages 1, 3, and 5). None of the RFA tax returns from 1991-2004 reflect any loan made by Route 50 Partners to RFA. Exhibits 43-109 (see Schedule L to each tax return). None of the RFA ledgers reflect any loans from Route 50

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Partners to RFA. Neither Taylor nor Cramer could say for sure that the subject $100,000 amount was not actually treated as a capital contribution, rather than as a loan.

Like the so-called "re-dilution" argument, this purported "loan" argument is an "after-the fact" ploy manufactured during this litigation to "gain back" ground that Defendants clearly lost on other distribution-related issues, such as the "accrued compensation" issue.

F. There is no legal or factual basis for the payment of any "accrued compensation" to Taylor, his entities, or his children or employees.

First, the LPA specifically prohibits the payment of compensation to the General Partner (Worcester Partners). Exhibit 1, at p. 6 (section 4(c)) ("the General Partner shall not be paid any salary or other compensation for serving as the General Partner of the Partnership"). The payment of any compensation by RFA to either the General Partner, any individual employee of the General Partner, or any individual employee of the General Partner's general partner (Taylor Construction) is, in Plaintiff's view, in direct contravention of section 4(c) of the LPA.

Even assuming *arguendo*, however, that the LPA does not prohibit the payment by RFA of accrued compensation to Taylor, Taylor Construction, or their employees, there is no valid factual basis for any such compensation to be paid, under any of the changing theories that Defendants have advanced as this case has proceeded.

Compensation based on Meinhardt Employment Agreement

In 1988, Meinhardt entered into an Employment Agreement with Worcester Partners, with regard to the Riddle Farm project. Exhibit 243. Under the Employment Agreement, Meinhardt was to have been paid $40,000.00 per year. In or about October 1990, the Employment Agreement was terminated. Defendants contend, on that basis, that Taylor is somehow entitled to compensation at the rate of $40,000.00 per year, for the period commencing

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September 1, 1996, and continuing to the present (for an asserted total of $383,333.00).

First, there is no legal basis whatsoever for this argument. As stated, the Employment Agreement was between Meinhardt and Worcester Partners, not between Meinhardt and RFA. An obligation that *Worcester Partners* once had to pay $40,000.000 annually to Meinhardt under an agreement that was terminated *sixteen years ago* cannot possibly, under any valid theory, provide a basis for Taylor to claim $40,000.00 per year *from RFA*, for all of the years since September 1996. Second, as reflected in his trial testimony, Defendants' own expert, Mr. Tucker, agrees with Plaintiff and its accounting expert (Bruce Dubinsky) on this issue.

Notably, like many of Defendants' other arguments and theories, this particular theory of "accrued compensation" was not advanced by Defendants until just prior to trial. The deposition of Mr. Tucker in March 2006 was Defendants' first revelation of this "theory." Again, this is another example of Defendants' "after the fact" efforts to manufacture ends-oriented theories and arguments, during the throes of litigation in this case, to diminish the amount of sale proceeds flowing to RFF.

Purported Time-Based Compensation for Taylor and his Sons

In the initial proposed distribution sent by Defendants to RFF in February 2004 (Exhibit 122), they included in the calculation purported "Accrued GHT Salaries," to be paid to Taylor, his two sons, and his employee Sherri Conway, in the amount of $968,857.00. In a distribution calculation prepared only three months earlier (in November 2003) by Peter Cramer at the request and instruction of Taylor, there was *no* deduction for accrued salaries, in any amount. See Exhibit 123. In all of the tax returns for RFA for the years 1991-2003, there was no liability for accrued salaries reflected anywhere. The first reference to accrued and unpaid salaries

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appears in the tax return for tax year 2004, when a "current liability" first appeared in the amount of $970,052.00. Defendants' own expert, Edward Tucker, stated that he could find "zero support" for this nearly $1 million accrued salary figure claimed by Taylor. Mr. Taylor himself has admitted that he had no documentation whatsoever to support that figure.

On January 22, 2004, Kirk Taylor sent an e-mail to his father, Goodwin Taylor, in which he stated "I spoke to Otway and his notes are included on todays record. Basically, he said that Ay[r]es expected his client to be demanding and will look to review all charges against his distribution. We have about one week to reconstruct our time charges in this regard. I am contacting Sherry so that she can work on her records and Peter Cramer to see if he has any thoughts on further preparation." Exhibit 139. Clearly, there is no valid evidentiary or legal basis for accrued salaries in any amount – and certainly not in the amount of nearly $1 million – to be paid to Taylor and his sons by RFA.

<u>There is no valid basis for compensation to be paid to Sherri Conway</u>

Again, under the clear terms of the LPA, there is no basis for salaries or other compensation to be paid by RFA to Worcester Partners or its agents, including Sherri Conway. In any event, however, purported time records for Sherri Conway's alleged work, which are in the possession of Defendants and their counsel and were referred to at trial, were conspicuously never introduced or admitted into evidence at trial, and Sherri Conway was not called to testify. In the absence of the available time records and/or Sherri Conway's testimony, which would have been the best evidence, if any, of a factual basis for Defendants' claim for accrued compensation for Ms. Conway, no such compensation should be deducted from the sale proceeds for purposes of calculating RFF's share.

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There is no evidence in the record from which the trier of fact can evaluate and determine: (1) whether the work allegedly performed was related to RFA business; (2) how and in what increments her time was purportedly recorded; (3) whether the time recorded is reasonable with regard to the nature of the work allegedly performed; (4) whether the records were kept contemporaneously with the work performed, or, alternatively, were "re-constructed" at a later date; (5) whether the time records were altered or augmented in any respect; and (6) whether, from whom, and in what amount Ms. Conway had already been paid for the alleged work on behalf of RFA.

In short, there is no valid basis, legal, factual, or otherwise, for Defendants' claim for accrued compensation for Sherri Conway.

Worcester Partners, Taylor, and his affiliates have already received, or will receive, ample compensation

It is important to bear in mind with regard to Defendants' purported claim for accrued compensation that Worcester Partners and the other "Taylor interests" have already received, or will receive, substantial compensation in connection with the Riddle Farm project, in a variety of forms, including the following:

(1) Project Management Consulting Agreement between Taylor Construction and Centex/Taylor dated May 2001 (Exhibit 9), providing for payment to Taylor of $179,000.00 per annum;

(2) Third Amendment to Route 50 Limited Partnership Agreement, providing for $200,000 to be paid to a Taylor entity;

(3) $400,000 development fee to Taylor Construction under the Third Amendment (Exhibit 6);

(4) Worcester Partners' ownership interest in RFA (37.5%), despite the lack of any capital

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contributions by Worcester Partners (Exhibit 1);

(5) Consulting Agreement dated January 2004 between Taylor Construction and Centex/Taylor (Exhibit 17), providing for compensation at the rate of $150.00 per hour;

(6) Commissions from the sale of Glen Riddle lots paid to Taylor Construction by realtor Marvin Steen; and

(7) Purported "consulting fees" paid to Kirk Taylor by Taylor Construction (then later reimbursed by RFA) in the amount of approximately $3,750.00 per month, over a period of years.

In light of the foregoing list, Defendants cannot legitimately and "with a straight face" argue that, based on principles of equity and "fairness," accrued compensation for Taylor (and his affiliates) should be subtracted from RFF's share of the sale proceeds.

G. RFF is entitled to pre-judgment interest or, at the very least, it is entitled to 31.25% of the interest earned on the sale proceeds since January 2004.

Under Maryland law, the legal rate of pre-judgment interest is six percent. Md. Code, *Courts and Judicial Proceedings*, §11-107; *Crystal v. West & Callahan, Inc.*, 328 Md. 318 (1992). Whether a litigant is entitled to pre-judgment interest is, under Maryland law, in the discretion of the trial court. *Ver Brycke v. Ver Brycke*, 379 Md. 669, 702 (2004). Pre-judgment interest is allowable when "the obligation to pay and the amount due had become certain, definite, and liquidated by a specific date prior to judgment." *Id*. at 702 (*quoting Buxton v. Buxton*, 363 Md. 634, 656 (2001)).

In the present case, the amount of the sale proceeds owing to Plaintiff, as set forth by Bruce Dubinsky in his calculation, was a "definite and certain amount" that was due and owing by RFA to RFF as of January 2004, or as soon as practicable thereafter. On that basis, as reflected in Bruce Dubinsky's report, RFF is entitled to pre-judgment interest in the amount of $220,940.00. Exhibit 33 (at page 2 thereof). Alternatively, RFF is entitled to pre-judgment

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interest at six percent per annum on the amount of money that Defendants themselves proposed in February 2004 (See Exhibit 122) as RFF's share of the sale proceeds ($1,505,439). At a minimum, RFF is entitled to pre-judgment interest at six percent per annum, accruing from January 2004, on the amount of money that Defendants' own expert, Mr. Tucker, has stated in his distribution calculation that RFF is entitled to (See Exhibit 26).

Assuming *arguendo* that this Honorable Court determines that RFF is not entitled to pre-judgment interest, it would certainly then be entitled to 31.25% of the interest earned on the sale proceeds since January 2004, which Defendants' own expert calculates to be $305,095.00.

H. There should be no reduction from RFF's share of the sale proceeds for Robertson's claimed "finder's fee."

In the distribution calculation prepared by Defendants' expert, Edward Tucker, he subtracts from RFF's share of the proceeds an amount for the "finder's fee" claimed by John D. Robertson. Exhibit 26. There is no legal or factual basis for doing so.[3] The "Finder's Agreement" entered into between RFDC (RFF's predecessor) and Robertson, provides explicitly that Robertson's fee (if any) is to be paid from proceeds "distributed and actually received by [RFF]." The LPA provides expressly that Robertson's fee, if any, is to be paid *by RFF*, and that neither Worcester Partners, Route 50 Partners, nor the partnership shall be obligated to pay such fee. Exhibit 1, at p. 23. Robertson sought to intervene in this case based on the argument that he had some "claim" to the proceeds being held by RFA. This Honorable Court properly rejected that argument and refused to permit Robertson to intervene, and such decision by this Court is controlling, under principles of collateral estoppel (issue preclusion) and "law of the case," with

[3] Indeed, Tucker admitted that the only reason he did so was because Defendants' counsel instructed him to.

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respect to Defendants' assertion that the alleged finder's fee should be deducted from RFF's share of the proceeds, and retained by RFA.[4]

II. PLAINTIFF HAS BEEN ENTITLED TO RECEIVE ITS SHARE OF THE CASH PROCEEDS FROM THE SALE OF RFA'S INTEREST IN CENTEX/TAYLOR SINCE JANUARY 2004, AND DEFENDANTS' FAILURE AND REFUSAL TO DISTRIBUTE TO RFF ITS SHARE OF THE PROCEEDS, AND THEIR SIMULTANEOUS DISTRIBUTION AND ACCEPTANCE OF DISTRIBUTIONS TO THEMSELVES, CONSTITUTES A BREACH BY DEFENDANTS OF THE LPA, AS AMENDED, AND A BREACH OF THEIR FIDUCIARY DUTIES TO RFF.

The Third Amendment provides that "[n]otwithstanding anything to the contrary in the Agreement . . . , all cash distributions from net proceeds (after payment of any liabilities) from sale, refinancing, operations or any other source ***shall be distributed***." See Exhibit 6, at p. 2. Under that language, net proceeds (proceeds from any source, after payment of liabilities) must immediately be distributed to the partners, including RFF, and may not be withheld for any purpose. Contrary to what Defendants apparently contend, neither the Third Amendment nor the LPA provide that the general partner, in its free, absolute, and unfettered discretion, may retain proceeds for as long as it wishes and for whatever reasons it deems appropriate. Both the Third Amendment and the LPA mandate prompt distribution of proceeds to the partners, including RFF, after the payment of *liabilities*.

The term "net proceeds" is not explicitly defined in the LPA or the Third Amendment, however, "net cash flow" and "net income" are defined (in para. 8(a)(ii) of the LPA) as "net income or loss of the Partnership as shown or reported on the Partnership's U.S. Partnership

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[4] Notably, there is a case already filed by Robertson against RFF and currently pending in the Worcester County Circuit Court, in which he is seeking the alleged finder's fee from RFF. In the absence of a Court order in that case that such alleged fee is to be paid out of the sale proceeds being held by RFA, there is no legal or other basis for Defendants to withhold monies from RFF based on such alleged fee.

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Return of Income." Exhibit 1. Under the LPA, "net cash flow"/"net income" "shall be distributed no less frequently than quarterly." Exhibit 1, at p. 12 (Section 8(a)(i)). For tax year 2004, RFA reported *net income on its tax return of $4,773,773.00.* Exhibits 43-48. Plaintiff's expert Bruce Dubinsky arrives at a slightly higher number as the net amount to be distributed to the partners of RFA, however, clearly, the amount reported as net income in tax year 2004 for tax purposes was required under the Third Amendment and the LPA to be distributed immediately, and no later than the end of the first quarter of 2004.

There is no provision in the LPA or the Third Amendment for the establishment of any "reserve" for speculative or other future investment using net proceeds/income, especially investment (with regard to EDUs and construction of houses) that is unrelated to the defined business purpose of the partnership. Indeed, the only "reserve" that is contemplated *at all* by the Agreement is one for "any contingent or unforeseen liabilities or obligations of the Partnership arising out of or in connection with the Partnership business." See Exhibit A, at para. 8(a)(i)(A).

The LPA defines the scope of the business of the partnership. Exhibit 1. It states, as a basic premise, that "[t]he purpose and character of the business of the Partnership is to acquire, own, resell and/or develop the [Riddle Farm property]." Exhibit 1, at para. 2(a). The LPA goes on, in paragraph 2(a), to provide that the business of the partnership would (or may) also involve: (1) obtaining necessary legal and regulatory approvals for the project (pre-development work); (2) proceeding with the development of the project with an equity partner; (3) acquiring certain contiguous property in connection with developing the project, and (4) selling RFA's interest in the project to a third party. RFA and its General Partner (Worcester Partners) did, in

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fact, obtain necessary regulatory approvals for the project (i.e., complete pre-development work), proceed with development work with the participation (starting in May 2001) of an equity partner (Centex), acquire contiguous property to be included in the project, and, in 2004, sell its interests in the project to a third party (Centex Homes). Other than managing and eventually liquidating the non-cash components of the purchase price (the Glen Riddle lots and the economic interest in EDUs), as of January 2004, the business of the partnership as clearly contemplated and provided in the LPA was fulfilled and completed.

Using or indefinitely retaining partnership proceeds derived from the sale of the Riddle Farm property for the design and construction of houses on Glen Riddle lots, or for unspecified, speculative "development" of EDUs which RFA does even own is *not* permitted under the LPA or the Third Amendment, and is *not* within the scope of the clearly stated business and purpose of the partnership. Furthermore, there is no contractual basis in the LPA or the Third Amendment for Defendants to create any "reserve" or fund, or to otherwise retain or divert any of the sale proceeds, for those purported investments or for any other reason, other than to satisfy RFA's "liabilities." See Exhibit 1, at para. 8(a)(i)(A); Exhibit 6. As Taylor admitted and as the record developed at trial clearly demonstrated, (a) neither the EDU interest nor the Glen Riddle lots constitute a "liability" (to the contrary, they are assets of RFA), and (b) RFA has no other liabilities, and has not had any meaningful liabilities since prior to January 2004. Accordingly, as of January 2004, there was no legal basis for Defendants to retain the sale proceeds and refuse to distribute RFF's share to RFF, and Defendants' conduct in that regard has constituted a clear

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breach of the LPA and the Third Amendment.[5]

This is especially so because, beginning immediately after the January 2004 sale, Taylor began making significant distributions to himself, and he continued to do so through January 2006. Indeed, as of February 25, 2004, Taylor had already received: (a) $917,000.00 in connection with the May 2001 settlement; (b) a $400,000.00 development fee; (c) $440,000.00 in loans/advances to his own entities[6]; and (d) an additional payment of $91,662.00. See Exhibits 126, 33 (page 5). In January 2006, Taylor distributed to himself another $400,000.00. Exhibit 111. From January 2004 to March 2005, RFA reimbursed Taylor a total of $131,733.45 for purported expenses advanced by Taylor on behalf of the project. Exhibit 33 (page 6). By making all of those distributions to himself, Taylor has effectively waived or lost the right, if he ever had any right to begin with (which Plaintiff denies), to withhold distribution amounts owing

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[5] Defendants are apparently seeking to invoke the "business judgment rule" to argue that this Court should not involve itself in the "business decisions" of Worcester Partners with respect to holding the sale proceeds in "reserve," using the sale proceeds for future, speculative investment in regard to EDUs or construction of houses, and/or refusing to distribute the proceeds to RFF. First, as stated above, Maryland courts have never extended the business judgment rule to partnerships. *Della Ratta v. Larkin*, 382 Md. at 579. Even assuming *arguendo*, however, that such rule applies to partnerships (and limited partnerships), it does not operate to insulate a general partner, partner, or partnership from judicial scrutiny and/or claims for legal or equitable remedies where, as in this case, they are in breach of the terms of the partnership agreement or the Maryland Code. Indeed, Maryland statutes governing limited partnerships expressly contemplate and provide that: (1) a partner who becomes entitled to receive distributions under the partnership agreement has the status of, and is entitled to all remedies available to, an unpaid creditor of the partnership; and (2) a limited partner may maintain an action against the general partner, other limited partners, and the partnership for legal or equitable relief to enforce its rights under the partnership agreement. Md. Code, *Corporations and Associations*, §§10-606; 9A-405(b).

[6] Strangely, Taylor testified at trial that the disbursements totaling $440,000.00 (to Taylor Construction and Hotel St. Francis) that were recorded in RFA's ledger as loans , were, in fact, distributions to himself. He did so despite his own accountant, Peter Cramer, testifying that those items were, in fact, loans, and despite the fact that $190,000 of those amounts were repaid to RFA in November 2004.

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to RFF. He may not freely distribute substantial portions of the proceeds to himself while retaining or holding in reserve the remainder of the proceeds, including all of RFF's share. Any "reserve" for liabilities that could properly be established in this instance by the General Partner must have been set up prior to any distributions being made to any of the partners.

Under Section 10-601 of the Limited Partnership Act, "to the extent set forth in the partnership agreement, a partner is entitled to receive distributions from a limited partnership [including distributions constituting a return of capital contributions] before his withdrawal and before the dissolution and winding up of the limited partnership." Md. Code, *Corporations and Associations*, §10-601(1)-(2). Section 10-606 of Limited Partnership Act provides that "at the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution." Md. Code, *Corporations and Associations*, §10-606. Under Section 9A-404 of the Revised Uniform Partnership Act, the partners (including the general partner) owe certain fiduciary duties to the other partners, including the duty to discharge all obligations owed under the partnership agreement and under the Code. Md. Code, *Corporations and Associations*, §9A-404.[7] Under Section 9A-405, a limited partner may maintain an action against the partnership and/or another partner *"for legal or equitable relief*, with or without an accounting as to partnership business," to enforce the partner's rights under the partnership agreement (or under the Code). Md. Code, *Corporations and Associations*, §9A-405(b).

[7] Under section 10-108 of the Limited Partnership Act, the provisions of Title 9A with respect to partnerships "apply to limited partnerships except to the extent that those provisions are inconsistent with or are modified by the provisions of" the Limited Partnership Act. Md. Code, *Corporations and Associations*, §10-108.

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As stated, Defendants are in breach of their contractual and fiduciary obligations by failing and refusing to distribute to RFF its share of the proceeds from the sale of RFA's interest in Centex/Taylor. Plaintiff has established clearly, by the evidence adduced at trial, the amount of its share of those proceeds. The LPA and the Third Amendment required distribution of that amount in or about January 2004, and Defendants breached their fiduciary and contractual obligations by failing to make the required distribution to RFF. Based on the foregoing, under the Maryland Code and common law, RFF clearly has a right, and a legal and factual basis, to seek and obtain from this Honorable Court a judgment against Defendants in the amount of its share of the proceeds from the sale of RFA's interest in Centex/Taylor, and other available relief.

III. PLAINTIFF IS ENTITLED TO AN ACCOUNTING.

There are a number of important reasons why an accounting is warranted, indeed, necessary, in this case:

(1) The LPA at all times required the partnership to maintain a separate bank account and "true and correct books and record . . . in which shall be entered fully and accurately each and every transaction of the Partnership." Exhibit 1, at sect. 9(a)-(b) (page 16). The record is clear that a separate bank account was not maintained until October 2003 (Exhibit 110), and that, until that time, there was unregulated commingling of RFA's funds and expenses with those of Taylor Construction. The record is clear that Taylor's financial record-keeping was rife with mis-statements and inaccuracies, with respect to loans, other payments, and expenses. Taylor Construction's bank account functioned as the RFA bank account for many years, without any reconciliation or oversight of any kind by any accountant or other "outsider." Since 1996, there have been a total of at least $1,197,478.00 in purported "expenses" charged to the partnership (See Exhibit 26), without any verification of that figure, by reference to all of the invoices, receipts, and other supporting documentation.

(2) The sum of $100,000.00 payable to RFA in connection with the May 2001 settlement was, in fact, paid directly to Taylor Construction (See Exhibit 15, page 3).

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(3) Bruce Dubinsky, as stated in his written report, was unable to render a final opinion or reach final conclusions regarding his forensic investigation of the books and records or RFA and with regard to the financial management and stewardship of RFA by Taylor, because several necessary categories of records were never produced by Defendants. See Exhibit 23, at pp7-9.

(4) Taylor admitted more than once during his testimony that an accounting would be helpful and appropriate, given his inability to adequately and fully explain a number of accounting and bookkeeping issues. His own attorney, Mr. Otway, conceded that Mr. Taylor and Defendants are "guilty of bad accounting/record-keeping."[8]

(5) Defendants' expert has calculated interest income in the amount of $305,095.00, purportedly earned on the sale proceeds being held in certificates of deposit and other accounts. That interest income has never been independently verified, and there be other income to the partnership earned since the January 2004 transaction.

Plaintiff is not seeking to "go back to the beginning of time" with respect to its claim for an accounting. As pled in the Second Amended Complaint, Plaintiff is seeking an accounting back to 1996, when Goodwin Taylor admitted during his testimony that he took over total control of RFA, its books, records and affairs. A party may be entitled to an accounting under Maryland law where the legal remedy is difficult, inadequate, or incomplete. *Gianakos v. Magiros*, 238 Md. 178 (1965); *Johnson v. Bugle Coat, Apron & Linen Service*, 191 Md. 268

[8] In a classic example of blaming the one who is not in the room to mount a defense, Defendants repeatedly during the trial "pointed the finger" of responsibility at Sherri Conway, a staff member of Taylor's who purportedly had some bookkeeping responsibilities, for all of the accounting problems. Each time an inaccuracy or other problem was raised with respect to RFA's financial records, Defendants and their witnesses would remind the Court that Ms. Conway was "keeping the books" and that she was less than knowledgeable with respect to how to do so. Setting aside the evasive nature of that ploy by Defendants, the reality is that Goodwin Taylor was in control of RFA and its books and records at all times since the 1996, and Worcester Partners, controlled and owned at all relevant times by Taylor, was the tax partner, as designated by the LPA. Defendants' contention that Sherri Conway is to blame is notable with respect to their claim for accrued compensation for her – if, as Defendants maintained at trial, Sherri Conway was not capable of performing the book-keeping functions on behalf of RFA, and she was nevertheless selected by the General Partner to handle those function, why should RFF bear any burden for paying her?

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(1948). In the present case, although Plaintiff's accounting expert, Bruce Dubinsky, has calculated with precision the amount of the sale proceeds that should be distributed to RFF, he has done so (a) accepting as valid all of the purported post-1996 expenses charged to RFA by Defendants (and reimbursed to Taylor Construction), (b) accepting as accurate the figure used by Defendants' expert for interest income earned on the sale proceeds since January 2004, (c) without knowing with certainty (i.e., without being ale to verify) that no other income has flowed into the partnership; and (d) without all of the necessary records to complete a forensic investigation of the books and record. With full information, RFF's share of proceeds to be distributed could be higher than as calculated by Mr. Dubinsky.

At all relevant times, Defendants, in particular the partnership and Worcester Partners, have been under a legal duty to account for RFA's money and assets. See Md. Code, *Corporations and Associations*, §9A-404(b)(1). Plaintiff has demanded an accounting, and Defendants have refused to provide any accounting. On that basis, Plaintiff is entitled to the requested accounting. *See P.V. Properties, Inc. v. Rock Creek Village Assoc.*, 77 Md. App. 77 (1998).

IV. PLAINTIFF IS ENTITLED TO ATTORNEYS FEES AND ACCOUNTING (EXPERT) FEES IN CONNECTION WITH PROSECUTING THIS ACTION.

Under Maryland Rule 1-341, "[i]n any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party . . . to pay the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees incurred by the

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adverse party in opposing it."

As of February 12, 2004, shortly after the settlement of the "buyout" of RFA's interest in Centex/Taylor, Defendants, through their counsel, submitted their own proposed distribution in which *they proposed* that over $1.5 million of the proceeds would be distributed to RFF. Since RFF rejected that proposed distribution, Defendants have held RFF's money hostage, and have sought, through a variety of baseless arguments, to compel RFF to accept less than that which it is rightfully entitled to receive under the LPA and the Third Amendment. In February 2004 and prior to that time (even for some period after that time), there was no argument or even suggestion by Defendants that RFF was not the successor to RFDC, or that its interest in RFA was anything less than 31.25%. Plaintiff has nevertheless been forced to litigate those non-meritorious issues in this case. In February 2004, Taylor knew (indeed, was keenly aware) that, three years earlier (in May 2001), he had already used and effectively received over $917,000 of RFA monies to satisfy his debt to Akridge, yet he omitted that nearly $1 million amount from his proposed distribution, and forced Plaintiff to litigate in order to expose that issue.

Taylor knew in February 2004 that he had no documentation to support any claim for "accrued compensation," that he had never even recorded any liability on RFA's books for such alleged compensation, and that he had previously calculated proposed distributions without any deduction for accrued compensation. However, in his February 2004 distribution proposal, Taylor sought to introduce nearly $1 million dollars, a figure that he arbitrarily "made up" with no support, into the calculation, thereby attempting to reduce RFF's share of the proceeds by over $300,000.00. Plaintiff was forced to litigate with Taylor in this case to expose that non-

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meritorious ploy by Taylor.[9]

Taylor refused to provide Plaintiff any access to the books and records of RFA in the absence of a court order (obtained in this case), even though, at all times, the LPA clearly entitled RFF to audit the books and records.

Although his February 2004 distribution proposal (and all prior distribution documents generated by Taylor or his accountant) contemplated only one "developer fee," and the Second Amendment clearly and unequivocally provides that RFF does not participate in the payment of any fees to Taylor referred to therein, Taylor nevertheless improperly maintained in this case that he is entitled to deduct two (2) separate $400,000.00 developer fees from the monies to be distributed to RFF.

Although his February 2004 distribution proposal and all books and records of RFA, including tax returns and ledgers, make no mention of any $100,000.00 loan payable to Route 50 Partners, Defendants introduced that non-meritorious issue into this litigation, and sought to reduce RFF's share of the proceeds on that basis.

Since Plaintiff's appropriate rejection of the proposed distribution submitted by Defendants in February 2004, Defendants have, through a variety of manufactured, non-meritorious arguments, sought to "carve away" at RFF's rightful share of the proceeds, and they have forced Plaintiff to engage in protracted, contentious litigation in order to expose the

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[9] After it became obvious in the course of this litigation that Defendants had no basis for deducting from the proceeds nearly $1 million in "accrued compensation" for Taylor and his sons, rather than concede the point, Defendants asserted a new and completely different, but no more valid, argument for purported compensation, one which they never raised until late in this litigation – the alleged right to compensation based upon Meinhardt's terminated employment agreement with Worcester Partners.

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baseless nature of those arguments. On that basis, Plaintiff is entitled to reasonable attorneys fees and litigation expenses under Maryland Rule 1-341, I an amount to be determined as a post-trial matter.

WHEREFORE, Plaintiff respectfully requests the following relief (in addition to declaratory relief previously granted to Plaintiff by this Court in connection with summary judgment proceedings):

1. A declaration that RFF is, and has been at all times since September 1998, a 31.25% partner in RFA;

2. A declaration that that RFF is entitled to an immediate distribution from RFA in the amount of $1,805,882 (as calculated by Bruce Dubinsky);

3. A declaration that RFF is entitled to receive 31.25% of all of the proceeds from the non-cash components of the purchase price paid by Centex Homes (the two Glen Riddle lots and the interest in EDUs);

4. A judgment in Plaintiff's favor and against Defendants in the amount of $1,805,882, plus post judgment interest at the legal rate, plus reasonable attorneys fees and litigation expenses incurred by Plaintiff in connection with this matter;

5. An order compelling Defendants to immediately tender payment of the judgment amount to Plaintiff or its attorneys; or, in the alternative, compelling Defendants to pay such amounts into the Court Registry, to be distributed in accordance with this Court's Order(s);

6. Appointing a trustee to sell the Glen Riddle lots, manage and distribute the proceeds from such sale, and manage and distribute all proceeds form the sale of EDUs which are paid to RFA; and

7. An order compelling Defendants to provide an accounting as to the affairs of RFA from 1996 to the present, to be supplemented on a quarterly basis going forward by Defendants and/or the court-appointed Trustee.

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AYRES, JENKINS, GORDY & ALMAND, P.A.

By: ________________________________

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2006, a copy of the foregoing Plaintiff's Post-Trial Memorandum was served, via hand-delivery, on: James L. Otway, Esq., and Christopher J. Russo, Otway Russo, LLP, P.O. Box 4096, Salisbury, MD 21803-4096.

____
Bruce F. Bright