

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge
2008-CP-10-2344

Case Tracking No.: 2011201949

KRITI RIPLEY, LLC AND ASHLEY RIVER PROPERTIES II, LLC,

Appellants,

v.

EMERALD INVESTMENTS, LLC AND STUART LONGMAN,

Respondents.

**AMENDED RECORD ON APPEAL
VOLUME III**

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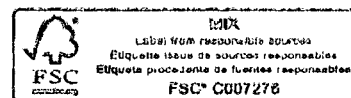
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VOLUME III

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2008 -CP-10-2344
)

KRITI RIPLEY, LLC and ASHLEY RIVER
PROPERTIES II, LLC,

Plaintiff,

vs.

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

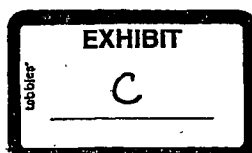
Defendants.

**PLAINTIFFS' OBJECTION TO
DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS**

The Plaintiffs object to Defendants' Requests for Production of Documents numbers 1 through 10 on the following grounds:

1. Defendants, as judgment debtors, are not entitled to engage in post-judgment discovery. Pursuant to SCRCP 69, only the judgment creditor can engage in post-judgment discovery.
2. To the extent that there is any justiable controversy between the Plaintiffs and the Defendants pertaining to the subject matter of the Defendants' Requests for Production, the controversy is subject to and governed by Plaintiffs' rights to submit the controversy to arbitration pursuant to the Ashley River Properties II Operating Agreement.

(The remainder of this page is intentionally blank)



3. The Court does not have jurisdiction in this proceeding to allow Defendants to engage in discovery because the Court's jurisdiction is limited to aiding in the execution or enforcement of a judgment that gives rise to this proceeding.

BUIST MOORE SMYTHE MCGEE P.A.


William C. Cleveland, S.C. Bar No. 1284
Five Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

February 13th, 2009
Charleston, SC

CERTIFICATE OF SERVICE

I do hereby certify that on the 13th day of February 2009, I served a copy of the within
~~PLAINTIFFS' OBJECTION TO DEFENDANTS' REQUEST FOR PRODUCTION OF~~
~~DOCUMENTS~~ to Counsel of Record in the within entitled matter by sending a copy of the same
in an envelope with the correct postage prepaid addressed to:

Richard Rosen, Esq.
134 Meeting Street
Suite 200
Post Office Box 893
Charleston, SC 29402

BUIST MOORE SMYTHE MCGEE P.A.

Christine Sadie

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2008-CP-10-2344
)

KRITI RIPLEY, LLC and ASHLEY
RIVER PROPERTIES II, LLC

Plaintiffs,

vs.

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

Defendants.

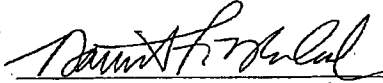
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009 FEB 18 PM 3:26
JULIE J. ARMSTRONG
CLERK OF COURT

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The undersigned hereby certifies that on the 18th day of February, 2009, a true and correct copy of Defendants' Motion to Alter and/or Amend Order was placed in an envelope with first class postage prepaid and affixed thereto and mailed to the following.

William C. Cleveland, Esq.
Buist Moore Smythe & McGee PA
5 Exchange St.
P.O. Box 999
Charleston, SC 29402


Daniel F. Blanchard, III, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-553

EMERALD INVESTMENTS, LLC,)
Plaintiffs,)

vs.)

ASHLEY RIVER PROPERTIES II, LLC;)
KRITI RIPLEY, LLC,)
Defendants.)

**NOTICE OF MOTION AND MOTION
TO DISMISS COMPLAINT**

2009 FEB 27 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

09-3213 Please take notice that the below motion is scheduled to heard on March 10, 2009 at 3:00 p.m. before the Honorable Roger M. Young in courtroom 3A at the Charleston County Court of Common Pleas.

The Defendants hereby move to dismiss the Complaint on the following grounds:

1. Plaintiff's first cause of action is barred by the doctrines of res judicata and/or collateral estoppel. Plaintiff's first cause of action for judicial dissolution of Ashley River Properties II, LLC ("ARP II") is barred because Plaintiff previously brought a lawsuit to dissolve ARP II, which lawsuit was dismissed by the Circuit Court on October 19, 2006. *Ashley River Properties I, LLC, Emerald Investments, LLC and Stuart Longman v. Ashley River Properties II*, 2005-CP-10-4571. In affirming that order on appeal, the South Carolina Court of Appeals held that unless the arbitration award that was the basis for the Circuit Court's order was overturned, Emerald had no standing to seek judicial dissolution of ARP, II.

Additionally, Appellants argue Emerald's claims to judicially dissolve Ashley River Properties II should not have been dismissed because a South Carolina court must entertain a lawsuit to

judicially dissolve a South Carolina limited liability company. However, the arbitration award gave Kriti the right to acquire all of Emerald's interest in Ashley River Properties II. Therefore, unless the arbitration award is overturned, Emerald has no standing to seek judicial dissolution of the business.

Ashley River Properties I, LLC, Emerald Investments, LLC and Stuart Longman v. Ashley River Properties II, 374 S.C. 271, 648 S.E.2d 295, 300 fn.1 (Ct. App. 2007).

No appeal has been taken from the Order of the South Carolina Court of Appeals and it is a final order. Moreover, the arbitration award referred to has not been overturned. Rather, it has been confirmed. See Exhibit K to the affidavit of Davidson Williams submitted in support of this motion to dismiss. Therefore, Plaintiff's first cause of action seeking judicial dissolution of ARP II should be dismissed.

2. Plaintiff's second cause of action seeking a declaratory judgment that it owns a 70% interest in ARP II is barred by the doctrines of res judicata and/or collateral estoppel. It is barred because Plaintiff sought the same relief in the arbitration proceeding and the relief was denied. Specifically, Emerald sought an adjudication in the arbitration proceeding that the February 28, 2005 capital call made of ARP II's members was for the purpose of increasing Kriti's economic interest in ARP II to 78.8 % and was therefore defective and of no force and effect. Emerald's claim was denied. See Affidavit of Davidson Williams and exhibits attached thereto.

To the extent that Plaintiff contends that it did not expressly seek a declaration as to the amount of its ownership interest in the arbitration proceeding, the second cause of action is still barred by the doctrines of res judicata and/or collateral estoppel because the claim was known to Plaintiff, could have been brought in the arbitration proceeding and the factual issues on which the claim is based were adjudicated by the arbitration proceeding.

3. To the extent the Court determines that either of Plaintiff's claims are not barred by the doctrines of res judicata and/or collateral estoppel, the Court should dismiss the claims because

pursuant to the ARP II operating agreement the claims are required to be arbitrated in New York.

4. To the extent the Court determines that either of Plaintiff's claims are not barred by the doctrines of res judicata and/or collateral estoppel, the Court should dismiss the claims because the parties agreed that the venue of any action involving ARP II should be in New York County, New York and that the parties agreed that the courts of the state of New York shall have sole and exclusive jurisdiction over any dispute among the parties.

Respectfully submitted,



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ATTORNEYS FOR THE DEFENDANTS
ASHLEY RIVER PROPERTIES II, LLC
AND KRITI RIPLEY, LLC

February 27, 2009
Charleston, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
CIVIL ACTION NO.: 2008-CP-10-2344

KRITI RIPLEY, LLC and ASHLEY
RIVER PROPERTIES II, LLC,

Plaintiffs,

v.

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

Defendants.

**OBJECTION
TO MOTION TO ALTER
OR AMEND**

2009 MAR -2 PM 12:30
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The Plaintiffs hereby object to the Defendants' Motion to Alter or Amend dated February 18, 2009. This objection is in addition to the grounds asserted in Plaintiffs' Objection filed February 4, 2009.

1. The Court's February 6, 2009 Order amply protects the Defendants. Distributions in ARP II cannot be diverted from Defendants without notice to the Defendants and an opportunity to be heard by the Court if they object.
2. The relief requested in Defendants' motion was requested prior to the issuance of the Court' Order of February 6, 2009, was considered by the Court and was denied. Rule 59(e) does not allow a party to repeatedly for the same relief once it has been denied.
3. In January of this year Defendant, Emerald, filed a lawsuit entitled Emerald Investments, LLC v. Ashley River Properties II, LLC and Kriti Ripley, LLC, Civil Action No. 2009-CP-10-553 (the "Lawsuit"). The Lawsuit seeks an order determining the amount of ARP II that Emerald owns. If Emerald is entitled to discovery on that issue, which Plaintiffs contend it is not, it should be determined

in the context of that lawsuit, not this execution proceeding.

4. Plaintiffs have filed a motion to dismiss the Lawsuit on the grounds that (1) the issue of Emerald's ownership interest has already been determined and therefore re-litigating it is barred by the doctrines of res judicata and collateral estoppel and ~~(2) if the issue has not been decided, then any dispute as to it is required to be~~ adjudicated by way of arbitration in New York, as the parties Operating Agreement provides. Any decision regarding allowing discovery on the ownership issue should be decided in the context of whether litigating that issue is precluded and whether the claim is subject to mandatory arbitration.

BUIST MOORE SMYTHE MCGEE P.A.



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March 2, 2009
Charleston, SC

ATTORNEYS FOR PLAINTIFFS KRITI
RIPLEY, LLC AND ASHLEY RIVER
PROPERTIES II, LLC,

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMERALD INVESTMENTS, LLC

Plaintiff,

vs.

**ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;**

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-553

2009 APR 23 PM 4:40
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

**PLAINTIFFS' SUPPLEMENTAL MATERIALS IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS**

1. Kriti's Pre-Hearing Memorandum submitted in New York arbitration.
2. Kriti's Post-Hearing Memorandum submitted in New York arbitration.

Respectfully submitted,

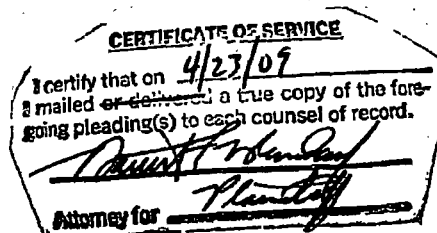
ROSEN, ROSEN & HAGOOD, LLC.

By:

Richard S. Rosen
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ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina
April 23, 2009.



AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY

-----X

KRITI RIPLEY, LLC and ASHLEY RIVER
PROPERTIES II, LLC,

CASE NO. 13 115 Y 00698 05

Claimants,

-against-

**CLAIMANTS' PRE-HEARING
MEMORANDUM**

EMERALD INVESTMENTS, LLC and
STUART LONGMAN

Respondents.

-----X

PRELIMINARY STATEMENT

Claimants Kriti Ripley, LLC ("Kriti") and Ashley River Properties II, LLC ("ARP-II"), by their attorneys Rand Rosenzweig Smith Radley & Gordon LLP, hereby submit their pre-hearing memorandum of law. As will be discussed below and proved at trial:

- A. There has been an Emerald Member Default (as defined in §13.01 of the Op. Agt. for ARP-II);
- B. Pursuant to §13.02 of the Op. Agt., an Emerald Member Default entitles Kriti to various remedies, including assuming voting control of ARP-II and purchasing the interests of Emerald Investments, LLC ("Emerald") in ARP-II, for Emerald's "unreturned Capital Contribution" (as defined in the Operating Agreement);
- C. According to the last paragraph of §13.02, if Emerald contests any of the remedies, as is the case here, and does not prevail, Emerald's interests in ARP-II are to be reallocated to Kriti without any payment;
- D. In §3.10 of the Op. Agt., Emerald and Stuart Longman ("Longman") agreed to indemnify ARP-II and Kriti for losses arising from the breach of their representations or warranties; and



- E. In accordance with §12.18 of the Op. Agt., the non-prevailing party is required to "pay the entire cost of the arbitration ...and reimburse the reasonable attorney's fees and disbursements of the prevailing party or parties."

FACTS

Background

Kriti is a Delaware limited liability company formed in December 2003, for the purpose of becoming a member of, and investing money in, ARP-II. ARP-II is a South Carolina limited liability company owning and developing real estate located in Charleston, S.C. in furtherance of a project known as the Ripley Light Yacht Club (the "Project"). The Project, which was commenced by Longman and his affiliates, involved the acquisition of several waterfront properties and an existing marina, and the development of these properties into residential condominiums with expanded marina facilities and other amenities. In late 2003, Longman sought an equity investor for the Project.

After lengthy negotiations, on December 29, 2003, Kriti entered into an Operating Agreement with Emerald, Longman and ARP-II pertaining to the Project (the "Op. Agt."). Pursuant to §3.7 of the Op. Agt., Emerald agreed to contribute certain assets to ARP-II, specifically including certain real property and permits necessary for the Project. Based on representations in the Op. Agt. and related documents, the parties agreed that Emerald's in-kind contribution would have a value of \$2,500,000. In turn, Kriti agreed to contribute \$1,250,000 in cash in exchange for a 30% membership interest in ARP-II.

Pursuant to the Op. Agt., ARP-II and Ripley Light Development, LLC ("RLD"), a Longman affiliate, entered into a Development and Management Agreement, dated December 30, 2003, appointing RLD as project manager and agreeing to pay RLD management fees and to reimburse its Project-related expenses (the "Management Agreement").

Various schedules disclosing the liabilities, contracts and other obligations and facts affecting the Project were appended to the various agreements between Kriti, on the one hand, and respondents and their affiliates, on the other hand. Emerald and Longman, personally, represented and warranted to Kriti and ARP-II material facts concerning the Project in §3.9 of the Op. Agt. They further agreed, in Article 13 of the Op. Agt., to give Kriti certain remedies in the event these representations and warranties were breached in any material respect, or if certain other material defaults occurred.

The Misappropriation and Embezzlement of Company Funds

Pursuant to §3.7 of the Op. Agt., on December 31, 2003, Kriti contributed \$1,250,000 to ARP-II by way of two wire transfers. The first, in the amount of \$95,000, was wired to Emerald's attorney, for closing costs and to discharge a portion of a debt assumed by ARP-II. The \$1,155,000 balance was wired to ARP-II's account at Union Savings Bank. On the same day it was received, respondents diverted the entire amount to Emerald. Thereafter, also on the same day, most of the funds were further diverted to Sapphire Development, LLC ("Sapphire") a Longman affiliate, and then to Gayla Longman, Longman's wife.

Respondents hid the foregoing transfers from Kriti by providing false financial statements and made other misleading and outright false statements. In August 2004, Kriti learned to its surprise that ARP-II had insufficient funds to make regular Project operating payments for dredging the harbor area. Thereupon, Kriti launched an investigation that revealed that respondents had embezzled ARP-II's funds, and that over \$800,000 was missing.

Caught out, Longman promised to repay the misappropriated funds. He eventually repaid part but, according to claimants' accountant, still owes ARP-II \$155,373, plus interest. Moreover, the lack of funds in ARP-II's bank account delayed time sensitive contracts for construction of the marina dock system, causing additional damage.

Material Misrepresentations in the Op. Agt.

In October 2004, three couples (von Grotthuss, Cunningham and Lussier) demanded a refund of deposits given to Longman for the purchase of condominium units in the Project. Each set of buyers had paid a 50% deposit under each contract, totaling over \$800,000, in exchange for the right to buy condominium units at a sale price equaled to the deposit. Although they should have been itemized, Longman omitted any mention of these liabilities (which with interest totaled over \$1 million) in the Op. Agt.

In 2005, two sets of these buyers commenced litigation against the Company, and filed notices of pendency against the Property. In April 2005, after von Grotthuss filed his claim, Marshall Investments Corporation ("Marshall"), the construction lender to ARP-II, called a default unless the notice of pendency was removed within thirty days. Only days before the cure period expired, Longman paid von Grotthuss \$300,000 to withdraw his claim without prejudice, and, promised to pay the balance of approximately \$65,000, plus interest by May 31, 2005. yes

In addition to the three aforementioned buyers, Kriti has learned that Longman, Emerald or their affiliates entered into a contract with Jan Marler, and that deposits accepted from Ron Patterson and Ron Acierno were diverted. None of this was disclosed in the Op. Agt.

Ironically, despite failing to discharge the claims of von Grotthuss and the other buyers, respondents have continually warned claimants not to negotiate or settle with the undisclosed buyers. When it became clear, however, that respondents would not pay the claims of the undisclosed buyers, claimants paid or entered into standstill agreements with several of them. Thus, when von Grotthuss threatened to re-file his claim after respondents failed to pay the promised balance, Kriti caused ARP-II to make the necessary payment. Similarly, at the end of June, ARP-II entered into an agreement with the Cunninghams to pay them \$356,816.80 on or

before December 31, 2005, with monthly interest on \$265,000 until paid. Finally, Kriti caused ARP-II to pay Ron Acierno the sum of \$1,891, in discharge of his claim.

On or about June 3, 2005, Lunar Systems, Ltd., owned by the Lussiers, commenced an action against ARP-II and others, and filed a notice of pendency. This action and the notice of pendency continue against ARP-II and its property. Efforts by Kriti and ARP-II to settle the claim short of immediate, full payment have been rejected. Claimants have notified Marshall of the situation and requested that the bank not call a default. Marshall has not responded, but has not yet called a default on the construction loan.

Material Misrepresentations Regarding Sapphire

In §3.9 (a) of the Op. Agt., respondents represented, among other things, that there were no proceedings affecting respondents or the "Company Opportunity Parcels." The "Company Opportunity Parcels" are defined in §6.1 of the Op. Agt. to include over 6 acres of land known as the "Collins Property;" land subject to a purchase agreement entered into by Sapphire. The Collins Property was of particular value for its size and location. Sapphire's rights under the purchase agreement for the Collins Property were assigned to ARP-II, subject only to pending litigation with Collins. The Bill of Sale and General Assignment represents that no further consent for the assignment is required and that no proceedings are pending against Sapphire. Although ARP-II paid litigation expenses to obtain the Collins Property, the case was eventually lost. Significantly, even had it been won, the assignment was void since Sapphire, unbeknownst to Kriti, had filed for bankruptcy protection in October 2003.

The Marshall Loan And The Failure To Fund Or Plan For The Bulkhead

On June 29, 2004, ARP-II entered into Construction Loan Agreement with Marshall for up to \$5 million (which included refinancing of prior loans). A precondition to the loan was the existence of a contract with Bellingham Marine for the construction of the marina docks. The

first draw request submitted by Longman for \$245,974.88, specified \$150,000 to be used for the contract deposit for Bellingham Marine. Although Marshall approved and paid the requested amount, the funds were transferred to Gayla Longman's account. Moreover, since the \$150,000 deposit was not timely paid, the Bellingham Marine contract submitted to Marshall lapsed.¹

The second draw request to Marshall in early August 2004, represented falsely that the \$150,000 had been paid to Bellingham. It also presented over \$30,000 in false invoices for payment. Of the \$206,029.25 disbursed to ARP-II on the second draw request, \$193,776.87 was again immediately transferred to Longman's wife Gayla.

Although the Marshall loan agreement contemplated marina completion by December 31, 2004, and the marina dock permits and plans required the construction of a bulkhead and pier to which the marina docks would be attached, Longman took no steps to commission the design or construction of the bulkhead or pier. Moreover, he took no steps to commission construction designs of the dock prior to authorizing Bellingham Marine to proceed. The consequences were delays of over one year in construction, increased interest and carrying costs and change orders.

By letter dated February 28, 2005, Kriti issued a capital call for \$2 million in costs for construction of the marina. Kriti paid \$600,000 as its 30% share of the subscription. After Emerald failed to pay its capital contribution, Kriti paid the additional \$1.4 million. Section 3.7(d) of the Op. Agt. provides for dilution of Emerald's Membership Interest.

Kriti's Remedies Under the Operating Agreement And Interference By Longman

After discovering respondents' embezzlement of Company funds and various material misrepresentations, on November 4, 2004, Kriti gave notice of default under the Op. Agt. and Project Management Agreement. Rather than responding to Kriti's demands to cure, on

¹ A contract was only entered into with Bellingham in August 2004, after Kriti discovered that the \$150,000 had not been paid. Longman's machinations precipitated a \$64,000 increase in the contract price, which Longman hid from Marshall.

December 15, 2004, without Kriti's knowledge or consent, and in violation of §5.1(m) of the Op. Agt., Longman entered into a finders or brokerage agreement with Steven E. MacIntyre on behalf of ARP-II and caused marketing materials for the property to be prepared for distribution which identified Longman as the "sole developer."

On January 14, 2005, Kriti exercised certain of its remedies under §13.02 of the Op. Agt. It declared that Emerald had forfeited its voting rights in ARP-II and terminated the Project Management Agreement with RLD.

Rather than yielding control in accordance with §13.02, on February 15, 2004, Longman signed a letter of intent with Centex Destination Properties ("Centex") to sell all of ARP-II's property along with respondents' ARP-I property. Despite being warned by Kriti not to act on behalf of ARP-II, Longman obtained from Centex a package deal that failed to allocate properly between the ARP-II and ARP-I properties. Longman insisted that Kriti accept the allocation presented as between ARP-I and ARP-II and refused to place the entire amount in escrow for division by arbitration. As a result of Longman's conflict of interest and interference, and Kriti's belief that the price allocated to ARP-II was too low, negotiations did not proceed.

Respondents have expressly and continually contested the existence of an Emerald Member Default and Kriti's right to the remedies under §13.02 of the Op. Agt., in their correspondence, their defenses and counterclaims in this proceeding, their interference with ARP-II's and Kriti's negotiations with Marshall and the undisclosed buyers, their improper assertion of rights to negotiate for the sale of ARP-II's property, and their refusal to accept legitimate and necessary capital calls or the resulting dilution of their interests.

ARGUMENT

KRITI IS ENTITLED TO THE AGREED REMEDIES FOR AN EMERALD MEMBER DEFAULT

Section 13.01 of the Op. Agt. provides that an Emerald Member Default occurs, among other things, upon any of the following occurrences: (i) a breach by Emerald or Longman of any representation or warranty, (ii) a default by RLD under the Project Management Agreement or by Emerald or Longman under the Indemnity Agreement or (iii) the taking of any unauthorized material action by Emerald, RLD or their affiliates. As will be shown, respondents have flagrantly and repeatedly violated all three criteria. Thus, by way of example:

- (i) The embezzlement of funds violates §§ 5.2(g) and (p), 5.7, 6.2 and 6.3 of the Op. Agt. and §2 of the Management Agreement.
- (ii) The failure to disclose that Sapphire was operating under Chapter 11 of the Bankruptcy Code, violates §3.9(a) of the Op. Agt.
- (iii) The failure to disclose the existence of over \$1 million in deposits received on contracts for the purchase of real property or marina slips at ARP-II, secured by an interest in land owned by ARP-II, violates §3.9(f) of the Op. Agt.
- (iv) The failure to timely discharge the claims of the undisclosed buyers and reimburse ARP-II for the costs incurred and payments made, violates the Indemnity Agreement.
- (v) The retention of a broker violates §5.2(m) of the Op. Agt.
- (vi) The entry into the construction loan agreement with Marshall on a fraudulent basis and the diversion of loan funds violates §§5.2 (g) and (p), 5.7, 6.2 and 6.3 of the Op. Agt. and §2 of the Management Agreement.
- (vii) The design, phasing and construction of a marina in a manner inconsistent with the permits and plans, violates §6.2 of the Op. Agt. and §2 of the Management Agreement.

The evidence adduced at the hearings will demonstrate that an Emerald Member Default has occurred. The parties provided for remedies for such a default in §13.02 of the Op. Agt.

Among the remedies are the loss of Emerald's voting rights in ARP-II (§13.02(a)) and the termination of the Management Agreement with RLD (§13.02(b)). Respondents have contested the existence of an Emerald Member Default, and have refused to acknowledge actions taken by Kriti on behalf of ARP-II.

On June 14, 2005, pursuant to §13.02(c) of the Op. Agt., and after the Lussiers filed their *lis pendens* against ARP-II's property, Kriti exercised its right to purchase Emerald's Membership Shares in ARP-II for a price equal to Emerald's "unreturned Capital Contribution." Kriti acknowledges that the amount of the unreturned Capital Contribution is subject to change, and has set the closing date for a date after the time for the award, so that the appropriate price can be paid.

Finally, as respondents have continually contested the existence of an Emerald Member Default, let alone the remedies flowing from them, respondents should be held to have forfeited their interest in ARP-II in accordance with the last paragraph of §13.02 of the Op. Agt.

The New York Court of Appeals has noted that it is "common and acceptable [for] provisions in a partnership agreement to provide for the withdrawal or expulsion of a partner." *Gelder Medical Group v. Webber*, 41 N.Y.2d 680, 683, 394 N.Y.S.2d 867, 870 (1977). Moreover, as the Second Circuit has observed: "[W]hen a partnership agreement expressly provides terms for removal, the partners' purposes should not be frustrated, absent evidence of overreaching or some other violation of public policy." *NCAS Realty Management Corp v. National Corp. for Housing Partnerships*, 143 F.3d 38, 45 (1998). Here, accordingly, Article 13 of the Op. Agt., negotiated between two experienced developers, should be given effect.

Since respondents cannot convincingly argue that an Emerald Member Default did not occur, it is anticipated that they will argue that the agreed contractual remedies are punitive and should not be applied. However, repurchasing a member's share for an amount equal to his

capital account, as contemplated by the first paragraph of §13.02(c), is hardly unusual or oppressive. See e.g. *Dore v. La Pierre*, 226 N.Y.S.2d 949, 952 (Sup. Ct. West. Co. 1962).

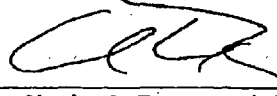
Even a punitive remedy is consistent with law. The Supreme Court of South Carolina recently upheld the award of punitive damages against managing members in a limited liability company on strikingly similar facts. *Jordan v. Holt*, 362 S.C. 201, 608 S.E.2d 129 (2005). There, the supreme court upheld the trial judge's award of punitive damages where the managing members engaged in egregious conduct, "including ignoring requests for financial information and meetings, using LLC monies for payment of personal debts and obligations, self-dealing ... and selling or transferring LLC property without the knowledge and consent of the LLC and then pocketing the monies." If, as expected, claimants prove that Longman engaged in self dealing, used LLC monies for personal debts and obligations, not only ignored requests for financial information, but provided false information, transferred to his wife construction loan proceeds intended to be used by ARP-II, and engaged in other misrepresentations and wrongful conduct, there is no reason that the arbitrators should not, consistent with South Carolina law, refrain from imposing an agreed remedy, simply because respondents think it punitive.

CONCLUSION

Accordingly, the arbitrators should grant the relief requested by claimants and deny Emerald's counterclaims, and further award claimants the costs and expenses of this proceeding, including reasonable attorney's fees.

Dated: New York, New York
August 16, 2005

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AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY

KRITI RIPLEY, LLC and ASHLEY RIVER
PROPERTIES II, LLC,

Claimants,

-against-

Case No. 13 115 Y 00698 05

EMERALD INVESTMENTS, LLC and
STUART LONGMAN

Respondents.

CLAIMANTS' POST-HEARING MEMORANDUM

Dated: New York, New York
September 23, 2005

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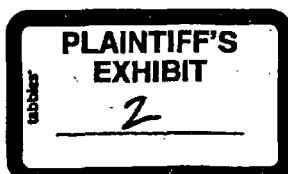


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PRELIMINARY STATEMENT

Claimants Kriti Ripley, LLC ("Kriti") and Ashley River Properties II, LLC ("ARP-II"), by their attorneys Rand Rosenzweig Smith Radley & Gordon LLP, hereby submit their post-hearing memorandum of law.

SUMMARY OF ARGUMENT

There has been an Emerald Member Default (as defined in §13.01 of the Operating Agreement for ARP-II). (POINT I) Pursuant to §13.02 of the Operating Agreement, an Emerald Member Default entitles Kriti to purchase the interests of Emerald Investments, LLC ("Emerald") in ARP-II, for Emerald's "unreturned Capital Contribution" (as defined in the Operating Agreement). (POINT II) If, as is the case here, Emerald contests any of the remedies and does not prevail, Emerald's interests in ARP-II should be reallocated to Kriti without any payment pursuant to the last paragraph of §13.02 and in accordance with South Carolina law. (POINT III) Emerald's counterclaims are without merit and should be dismissed. (POINT IV) If Kriti is the prevailing party in the arbitration, Emerald and Stuart Longman ("Longman") are required to "pay the entire cost of the arbitration ...and reimburse the reasonable attorney's fees and disbursements" of Kriti. (POINT V)

ARGUMENT

POINT I

AN EMERALD MEMBER DEFAULT HAS OCCURRED

Section 13.01 of the Operating Agreement provides that an Emerald Member Default occurs, among other things, upon any of the following occurrences: (i) a breach by Emerald or Longman of any representation or warranty, (ii) a default by Ripley Light Development, LLC ("Ripley") under the Project Management Agreement or by Emerald or Longman under the Indemnity Agreement or (iii) the taking of any unauthorized material action by Emerald, Ripley

or their affiliates. As will be discussed below, the evidence adduced at the hearing shows that respondents have flagrantly and repeatedly violated all three criteria. The specific instances of such violations and the applicable breaches of the covenants, warranties and representations contained in the Operating Agreement and related documents are discussed below.

A. The Embezzlement Of Funds In Violation Of
§§5.2(g) And (p), 5.7, 6.2 And 6.3 Of The Operating
Agreement And §2 Of The Management Agreement

Section 5.2(g) of the Operating Agreement prohibits the expenditure by ARP-II of any funds other than as set forth in the marina budget, and §5.2(p) of the Operating Agreement prohibits any distributions to Members, without the approval of both Kriti and Emerald. (Joint Exhibit ("JE") 1) Section 5.7 of the Operating Agreement specifies the way ARP-II's bank accounts were to be handled and expressly provides that the "funds of the Company shall not be commingled with the funds of any other party." It also prohibits Emerald from issuing checks in the aggregate of more than \$20,000 in a 12-month period. Although Longman admitted that he was aware of the restriction on bank accounts and "had no issue with it," (Hearing Transcript ("Tr.") 182-84), on December 31, 2003, almost immediately after the Operating Agreement was signed, he caused ARP-II to transfer the sum of \$1,155,000, from ARP-II's bank account to Emerald's bank account. (JE 46, Tr. 187-88) These funds represented almost all of the funds contributed by Kriti and the entirety of ARP-II's cash. (JE 1 §3.7, JE 46, Tr. 188). Thereafter, also on the same day, most of the funds were further diverted to Sapphire Development, LLC ("Sapphire") a Longman affiliate then operating under Chapter 11 protection, and then to Gayla Longman, Longman's wife. (JE 47, 48, 49, 50, Tr. 188-195). As Longman admitted, ARP-II's funds were used not only to fund Longman's other businesses, but also the personal accounts used by Stuart and Gayla Longman. (Tr. 297, JE 52)

For at least eight months, Longman, for himself, and through his bookkeeper and accountant, sought to keep Davidson Williams ("Williams") of Kriti from learning about the diversion of over \$1 million of ARP-II's funds. For example, Williams was provided with false bank ledgers (JE 76, 92, Tr. 818-21) and balance sheets (JE 93, Tr. 829-30). Kriti's requests, since January 2004, for information and copies of ARP-II's bank statements were routinely ignored. (JE 94, Tr. 827, 832-33) Respondents' fraud was so extensive that even ARP-II's 2003 tax return reflected cash of \$1,155,000, when there was none. (JE 56)

Respondents have admitted that the commingling lasted for eight months. (Tr. 142) As respondents' counsel conceded, "It's a problem of [Longman's] own cause," and "explanations about how this occurred 'frankly doesn't excuse the behavior.'" (Tr. 144) Even if, as respondents argue, but claimants contest, the funds were repaid, such repayment does not diminish the seriousness of the embezzlement. As the Southern District of New York observed when union officials asked the court to excuse their embezzlement, because they repaid the funds after they were caught: "to permit such actions to go unpunished merely because, having been caught with their fingers in the cookie jar, respondents decided to drop the cookie, defies common sense". *U.S. v. International Broth. of Teamsters*, 831 F.Supp. 278, 284 (1993).

Not only did Longman appropriate ARP-II's cash, but Longman, for himself and Ripley, charged ARP-II for expenses that were the responsibility of others, such as tax payments and interest payments to Gero von Grothuss, Landmark National Bank and Phil Blumenfeld. (JE 57, 120, 124 Tr. 857-59, 1087-89) After Williams discovered the diversion of funds and improper charges in August 2004 (JE 57, 115, 118, 120, Tr. 838-42) Longman promised to return \$592,001.27 to ARP-II out of the proceeds of the refinancing of Ashley River Properties I, LLC ("ARP-I"), and to replace the funds necessary to cover the outstanding ARP-II checks, including

the \$150,000 due Bellingham. (JE 123, 125, 133, Tr. 848-49, 851-57, 1087-88) However, the *pro forma* settlement statement provided to Kriti to obtain its consent to the ARP-I refinancing was false (JE 21), the amount available for disbursement to ARP-II was short (JE 20), and by the end of the year, the books and records of ARP-II, as endorsed by Longman, indicated that he still owed \$157,477 to ARP-II (JE 164, Tr. 207-08). Moreover, Longman's penchant for dipping into ARP-II's funds continued, albeit hindered by the fact that Williams took control of the bank accounts. Thus, in November 2004, when Williams sent down a check for \$5000 to be used to open a bank account for petty cash in Charleston, South Carolina, Longman again took the funds and deposited them in his account in Connecticut. (JE 160, Tr. 1179-80)

It is hard to imagine a more blatant, calculated and continuing default of respondents' obligations under their agreements with Kriti.

B. The Failure To Disclose That Sapphire Was Operating Under Chapter 11 Of The Bankruptcy Code In Violation of §3.9(a) Of The Operating Agreement

In §3.9 (a) of the Operating Agreement (JE 1), respondents represented, among other things, that there were no proceedings affecting respondents or the "Company Opportunity Parcels." The "Company Opportunity Parcels" are defined in §6.1 of the Operating Agreement to include over 6 acres of land known as the "Collins Property;" land subject to a purchase agreement entered into by Sapphire. The Collins Property was of particular value for its size and location (Tr. 758-61, JE 40A, 40B, Respondents' Exhibit ("RE") 57). Sapphire's rights under the purchase agreement for the Collins Property were assigned to ARP-II, subject only to pending litigation with Collins. (JE 3, §1(i)) The Bill of Sale and General Assignment represents that no further consent for the assignment is required and that no proceedings are pending against Sapphire, other than the Collins litigation. (JE 3, §2(c)). Although ARP-II paid

contracts were released from any escrow and applied to the Ripley project. (Tr. 216-17, 222, 224-25, 228) Although these purchasers specified condominium units planned for the Collins tract, which was never acquired, the "Early Purchase Addendum" to each of the three contracts provided that "as collateral for repayment of the funds, the Purchaser will receive a *pari passu*, dollar for dollar, interest in the purchase of the Condominium Property." (JE 336-38, Tr. 218). The Condominium Property was defined in the agreement to include the real property transferred to ARP-II.

In §3.9 (f) of the Operating Agreement, Emerald and Longman represent, among other things, that New Parcel A, the property owned by ARP-II, is not bound by any agreement other than as disclosed. (JE 1) Although purchase contracts are disclosed in Schedule A to the Operating Agreement, no disclosure is made with respect to condominium purchases by von Grotthuss, Cunningham or Lussier. (JE 1) Given that these contracts, which with interest totaled over \$1 million (JE 336-38, 333), were obviously material, their non-disclosure breached §3.9(f) of the Operating Agreement.

Respondents have never disputed that the amounts claimed by von Grotthuss, Cunningham and Lussier were due and owing, or that defenses to these claims existed (Tr. 1600-01). Rather, respondents make two arguments, albeit contradictory, in an effort to escape the import of their non-disclosure. On the one hand, they argue that respondents disclosed the existence of these buyers and the contract deposits to Kriti. On the other hand, they argue that no disclosure was required, as the buyers had no claims to the ARP-II property.

Respondents argue that the pre-construction buyers' claims were disclosed as "Customer Deposits" in the balance sheet and general ledger of Ripley as of October 31, 2003 (RE 21A,

21C, 21S) and in other Ripley general ledgers. (RE 21-22) However, as Longman himself admitted, he did not know whether Williams reviewed these accounting records (Tr. 499). On the other hand, Williams was unequivocal that he discovered the existence of the underlying contracts only in mid-October 2004 when Frank Guarino, the broker, sent him copies after interest paid to von Grotthuss appeared in ARP-II's books in August 2004. (Tr. 1132-1139) Moreover, even the existence in 2003 of the documents purporting to be Ripley's balance sheet and general ledger are in serious question because they do not tie in to Ripley's and respondents' other financial records. For example, the amount of \$4,549,039.81 shown as "Land Inventory" in Ripley's October 31, 2003 balance sheet is over \$1 million more than the amount of \$3,371,039.81 shown as the land cost on the Ripley cost allocation on September 30, 2003. (JE 44) In addition, if as respondents now claim, the customer deposits were apparent from the books and records available to Williams, there is no legitimate explanation for why these customer deposits do not also appear on Ripley's tax return for 2001 (Claimants' Exhibit ("CE") 16), on the balance sheets and general ledgers for ARP-I and ARP-II as of September 30, 2003 (CE 19) or on the ARP-II balance sheets for the first quarter of 2004 (JE 93). Either respondents maintained multiple and inconsistent books of account in 2003, or the books showing the existence of the customer deposits of von Grotthuss, Cunningham and Lussier were a later creation.

At a minimum, respondents cannot be excused for their misrepresentations and omissions in the Operating Agreement and related documents, by seeking to shift blame onto Williams for not ferreting out the customer deposits and the underlying contracts during due diligence. That Kriiti was taken unawares by the claims of the pre-construction buyers was conceded by

respondents in their amended answer (¶47). Any argument to the contrary, should be rejected as a belated attempt to avoid responsibility.

Respondents' other argument, that no disclosure of the pre-construction contracts was required, is outlandish. Section 3.9(f) of the Operating Agreement requires the disclosure of all agreements binding New Parcel A. As previously discussed, the Early Purchase Addenda specifically identified this tract as part of the purchasers' collateral. Although the buyers initially identified units for purchase to be located on the Collins tract (Tr. 145, 151, 212-13) and, in the case of the von Grothuss, expressed an interest in switching their unit to Parcel 6A (Tr. 218-19, JE 337 (9/8/03 letter)), at no time did any purchaser release New Parcel A as his or her collateral. As the memorandum of Ben Hagood, Esq. concludes, these purchasers have an equitable lien on New Parcel A, which even supersedes the construction loan mortgage of Marshall Investment Corporation ("Marshall"). (JE 229) Respondents offered no legal opinion to the contrary. (Tr. 1600) Indeed, until discovered by Williams, respondents were charging ARP-II for interest paid to von Grothuss and Cunningham. (JE 57) Moreover, there is no explanation, other than a malevolent one, for why respondents disclosed the existence of other contracts for condominium purchases on Collins or ARP-I property, and did not disclose these three. (See JE 1, Sch. A).

Marler

On October 21, 2003, during a stormy meeting in Charleston attended by Williams, Longman and Guarino, Jan Marler approached Longman and angrily demanded his money back. (Tr. 1142-45) As Kriti learned from a copy of the contract obtained months later, Marler had paid a deposit for the right to purchase the Collins marina and the dry stack boat storage facility on the Collins property for \$4 million, and the slips adjacent to New Parcel A. (JE 335, Tr. 1144-47) Respondents' failure to disclose the existence of such a contract for the marina assets,

violates the representations contained in §2(a) of the Bill of Sale and General Assignment and §3.9(f) of the Operating Agreement. (JE 1, 3)

Since the litigation to allow for the purchase of the Collins tract was unsuccessful, Marler's right is limited to the return of his deposit plus interest. He has asserted that Longman and Sapphire owe him the return of the deposit, (RE 40, ¶3). However, his declaration was curiously silent on whether he also had any claims against ARP-II. To ascertain whether he believed he did or was prepared to release them, Kriti sought an affidavit from Marler. As his affidavit indicates (CE 22), Marler is unprepared to waive his claims against ARP-II for the return of his deposit.

Diversion of Customer Deposits

Respondents and their affiliates assigned all customer deposits to ARP-II. (JE 3, §1(g)) Schedule A to the Bill of Sale identifies customer deposits of \$1,291 from Ron Acierno and \$31,050 from Rob Patterson. (JE 3) These funds were never paid over to ARP-II, but were kept or diverted to respondents and their affiliates. (Tr. 245-47)

D. The Failure To Timely Discharge The Claims Of The Undisclosed Buyers And Reimburse ARP-II For The Costs Incurred And Payments Made, Violates The Indemnity Agreement

Section 2(b) of the Indemnity Agreement (JE 5) requires respondents to indemnify ARP-II and Kriti from claims arising prior to December 30, 2003, other than as scheduled. The claims of the pre-construction buyers and Marler were not scheduled. By formal default notice on November 4, 2004, Kriti demanded, among other things, that respondents discharge the obligation to the three condominium buyers and Marler and a release of claims against ARP-II. (JE 152) Although Longman assured Williams in the meeting in Stamford a few days later that

he would take care of these claims, reiterating what he had said on October 21 in Charleston, he failed to do so. (Tr. 728-29)

Empty assurances by respondents that these obligations were going to be satisfied were expressed for months afterward. Thus, Scott Barnes, one of respondents' Charleston attorneys, wrote to Williams on February 14, 2005: "Mr. Longman ... is making arrangements to return the Cunningham's, von Grotthuss and Lussiers deposits with interest. He is also making arrangements with Mr. Jan Marler to return his security deposit in the amount of \$100,000 with interest." (JE 210) A month and a half later, respondents, by their New York counsel, give similar assurances, but coupled with a warning that Kriti should "desist from further communications" with the pre-construction buyers. (JE 252)

As Linda von Grotthuss eloquently testified, she had been concerned about her investment well before she ever met Williams. (L. von Grotthuss, p. 28) The von Grotthuss had requested their money back in January 2003 and had a lawyer before ever meeting with Williams (L. von Grotthuss, pp. 13, 25). Irrespective of what Williams advised, the von Grotthuss wanted to get paid in full and not accept partial payments. (L. von Grotthuss, p. 38) On or about March 9, 2005, von Grotthuss filed a complaint and *lis pendens* against property owned by ARP-II. (JE 228) The filing of the *lis pendens* was pursuant to the advice of two of their lawyers, out of concern that the property could be sold again. (L. von Grotthuss, p. 56) The only blame ascribable to Williams is that he, unlike Longman, told them the truth. As Mrs. von Grotthuss testified, when Williams told her that the property had been transferred from Ripley to ARP-I and ARP-II, she was "stunned about the fact that we could lose \$295,000 because we were not recorded in the documents for ARP-I and ARP-II." (L. von Grotthuss p. 26)

As a result of the filing of the von Grotthuss *lis pendens*, on March 28, 2005, Marshall notified Emerald and Kriti that an Event of Default had been triggered and that the lien must be removed within thirty days. (JE 245) On the last day to cure ARP-II's default, respondents (i) paid the von Grotthuss \$300,000 in partial payment for their claims, in exchange for a withdrawal, without prejudice, of the complaint and *lis pendens* and (ii) promised to pay the balance of approximately \$65,000, plus interest by May 31, 2005. (JE 281, 342) When respondents failed to pay the balance when due, ARP-II paid it. (JE 345) At the end of June, ARP-II entered into an agreement with the Cunninghams to pay them \$356,816.80 on or before December 31, 2005, with monthly interest on \$265,000 until paid. (JE 345) Kriti also caused ARP-II to pay Ron Acierno the sum of \$1,891, in discharge of his claim. (JE 346) No settlement has yet been reached with Marler or Patterson. (Tr. 230, 235, 239, 247, 1224) There is a pending action and *lis pendens* filed by Lunar Systems (Lussier). (JE 343)

Pursuant to §13.01(b) of the Operating Agreement, a material default by the Indemnitors constitutes an Emerald Member Default. The failure of respondents and their affiliates to discharge the obligations owed to the pre-construction buyers and refund their deposits (or deposit the amount with ARP-II) is, without question, such a material default.

E. The Retention Of A Broker In Violation
Of §5.2(m) Of The Operating Agreement

Section 5.2(m) of the Operating Agreement (JE 1) provides that the vote of 100% of the Members is necessary to select brokers. Section 13.01(c) provides that the taking of unauthorized material action by Emerald constitutes an Emerald Member Default.

On December 15, 2004, Longman entered into a finders or brokerage agreement with Hugh C. Knetzger and Steven E. MacIntyre. (CE 14) As the agreement stated, he acted in his

"capacity as the principal officer and owner of the entity or entities with development rights to an approximately 8.5-acre parcel of land off the Ashley River in or near Charleston, South Carolina." Respondents' actions were undertaken without the knowledge, let alone the approval of Kriti, as was required by the Operating Agreement. (Tr. 601-02, 1194-95) Although §5.2 (b) and (c) of the Operating Agreement prevents the unilateral sale by Longman of ARP-II's real property except in the ordinary course of business, Longman identified himself as "sole developer," and advertised ARP-II's property for sale without obtaining prior consent from Kriti.

**F. The Entry Into The Construction Loan Agreement
With Marshall On A Fraudulent Basis And The
Diversion Of Loan Funds In Violation Of §§5.2 (g)
And (p), 5.7, 6.2 And 6.3 Of The Operating Agreement
And §2 of the Management Agreement**

On June 29, 2004, ARP-II entered into the Construction Loan Agreement with Marshall for up to \$5 million (which included refinancing of prior loans). (JE 15) A precondition to the loan was the existence of a contract with Bellingham Marine for the construction of the marina docks. (JE 31, Tr. 266) The first draw request submitted by Longman for \$245,974.88, specified \$150,000 to be used for the contract deposit for Bellingham Marine. (JE 17) Although Marshall approved and paid the requested amount, the funds were transferred to Gayla Longman's account. (JE 54, 55, Tr. 282-83) This was an unauthorized material action under §§5.2(g) and (p) of the Operating Agreement and, therefore, an Emerald Member Default under §13.01(c). Moreover, since the \$150,000 deposit was not timely paid, the Bellingham Marine contract submitted to Marshall lapsed.

A new contract was entered into with Bellingham in August 2004, after Kriti discovered that the \$150,000 had not been paid. (JE 32, 116) Longman's machinations precipitated a \$64,000 increase in the contract price, which Longman hid from Marshall. (JE 33, 38, 39)

The second draw request to Marshall, in early August 2004, represented falsely that the \$150,000 had been paid to Bellingham. (JE 19, Tr. 304-313) It also presented over \$30,000 in false invoices for payment to move sales trailers, based on an estimate disguised as an invoice. (Tr. 314-17) Of the \$206,029.25 disbursed to ARP-II on the second draw request, \$193,776.87 was again immediately transferred to Longman's wife Gayla. (JE 58, 59)

G. The Design, Phasing And Construction Of The Marina, In A Manner Inconsistent With The Permits And Plans, Are Violations Of §6.2 Of The Operating Agreement and §2 of the Management Agreement

Although the marina dock permits and plans contemplated the construction of a bulkhead and pier (party deck) to which the marina docks would be attached (JE 28, 29, 30), Longman took no steps to proceed with such construction, or even preparation of final construction drawings, prior to authorizing Bellingham to proceed. (Tr. 333, JE 334) Moreover, the dock design given to Bellingham to build resulted in a marina layout which encroached into the inlet channel and docks which laid in the mud during low tide. (JE 34, Tr. 357-61) A redesign of the docks, in the fall of 2004, resulted in an additional and unnecessary expense of \$56,775. (JE 37)

Most significantly, and although the Marshall construction loan agreement contemplated marina completion by December 31, 2004 (JE 15), Longman failed to commission final construction drawings of the pier (party deck) and bulkhead until January 2005. (JE 180) This meant that the floating docks constructed by Bellingham and ready for installation in December 2004, could not be shipped from Jacksonville, Florida and installed until the construction drawings were completed and pier and bulkhead built. (Tr. 359-62) The consequences were a delay of between 12 and 13½ months (JE 334) and \$494,000 in extra and unnecessary overhead and interest costs. (JE 333)

Since the permits provided for a pier and bulkhead (JE 28-30), and the only engineering testimony was that they were necessary (Tr. 359-60, 390-91), Longman's unsubstantiated and personal opinion that he could have dispensed with a bulkhead in favor of riprap, rings hollow. He certainly took no steps to modify the permits to allow for riprap rather than bulkhead (Tr. 334), and advised Marshall, falsely, that "construction [was] proceeding on a bulkhead." (JE 164) While Longman claims that the bulkhead or riprap could have been constructed from the shore after the floating docks were attached, (RE 335-36) the professional engineering testimony is to the contrary (Tr. 359-60). As is currently being done, the marina must be constructed from the land side outwards, and the floating docks are attached after the pier and bulkhead are fixed in place. (JE 41, CI 12, Tr. 1263-1266)

Longman is not an unsophisticated builder who was mistaken about how to build a marina. As Mr. Williams testified, the only credible explanation is that Longman's goal was not to build a marina, "but in moving money around." (Tr. 1263-1266)

POINT II

AN EMERALD MEMBER DEFAULT ENTITLES KRITI TO PURCHASE EMERALD'S INTERESTS IN ARP-II FOR EMERALD'S UNRETURNED CAPITAL CONTRIBUTION

As discussed in POINT I, *supra*, the evidence demonstrates beyond peradventure that an Emerald Member Default has occurred. The parties provided for remedies for such a default in §13.02 of the Operating Agreement.

By letter dated November 4, 2004, Kriti gave Emerald and Longman formal notice of default and demanded that respondents take specified steps to remedy their defaults. (JE 152) When respondents essentially did nothing, on January 14, 2005, Kriti gave formal notice that it

was availing itself of certain of the remedies in §13.02, which provided for forfeiture of Emerald's voting rights and the termination of the Project Development Agreement with Ripley (JE 186). Subsequently, as previously discussed, respondents (i) continued to show ARP-II's property and negotiate for its sale, (ii) contested Kriti's right to issue a voluntary capital call, (iii) permitted the filing of an action and *lis pendens* by von Grotthuss against ARP-II property, (discharging it only in part on the last day to avoid a Marshall loan default) and (iv) otherwise failed to remedy their defaults.

After the Lussiers filed their *lis pendens* against ARP-II's property, on June 14, 2005, Kriti exercised its right to purchase Emerald's Membership Shares in ARP-II, pursuant to §13.02(c) of the Operating Agreement, for a price equal to Emerald's "unreturned Capital Contribution." (JE 317) In its letter, Kriti acknowledged that the amount of the unreturned Capital Contribution is subject to change, and set the closing date for a date after the time for the award, so that the appropriate price can be paid.

As the calculations set forth in Exhibit A, annexed hereto, show, (which are all based on the documentary evidence and the Strickland report (JE 333)) Emerald's unreturned Capital Contribution as of September 30, 2005 is \$471,893. Of course, this is before deduction for the costs and attorneys fees in this proceeding as discussed in POINT V, *infra*.

Amounts for the Marler, Patterson and Lussier claims must also be deducted from the calculation of Emerald's capital account, although the amounts set forth in Exhibit A have not yet been paid. Had respondents been able to settle these claims for lesser amounts, they had more than sufficient opportunity to do so. At this point, any protest by respondents that release of the claims can be had for less than the full amount rings hollow.

Notwithstanding the foregoing, for the reasons set forth in POINT III, *infra*, Kriti is entitled, pursuant to the provisions of the last paragraph of §13.02(c), to a reallocation of Emerald's interests in ARP-II without any payment.

SINCE EMERALD HAS CONTESTED KRITI'S
 REMEDIES UNDER §13.02, EMERALD'S
 INTERESTS IN ARP-II SHOULD BE
 REALLOCATED TO KRITI WITHOUT PAYMENT

The last paragraph of §13.02 of the Operating Agreement provides that if Emerald "shall contest any of the foregoing remedies and shall not prevail, ... Emerald ... shall forfeit all of its Membership Shares in [ARP-II]" As will be discussed below, there is no question but that Emerald has contested the existence of Emerald Member Defaults, let alone the remedies flowing from them. Accordingly, Emerald should be held to have forfeited its interest in ARP-II.

On January 14, 2005, Kriti exercised certain of its remedies under §13.02 of the Operating Agreement and declared that Emerald had forfeited its voting rights in ARP-II and terminated the Project Management Agreement with Ripley. (JE 186) After respondents ignored their removal from control and continued to show ARP-II's property for sale, Kriti was compelled to write another letter demanding that they cease and desist from such conduct. (JE 196) On February 14, 2005, Emerald's attorney responded, and characterized Kriti's action

taken by the January 14, 2005 letter as "inappropriate." Emerald's attorney concluded by requesting that Kriti's actions be withdrawn. (JE 210)

At a meeting of the members of ARP-II called by respondents on March 15, 2005, respondents and their attorneys demanded that Williams and Kriti withdraw the capital call, revise the operating agreement and remove the arbitration clause, or they would petition for the dissolution of ARP-II and throw ARP-I into bankruptcy. (Tr. 1230) Respondents refused to acknowledge that Williams, rather than Longman, was now in charge of ARP-II. (Tr. 1231) By letter dated March 17, 2005, Kriti gave respondents another chance to accept, rather than contest the change in voting control:

I respectfully ask you to advise me clearly and unequivocally, and in writing, by the close of business on Monday, March 21, whether you contest our action, or whether you agree that Emerald has forfeited all Voting Rights in [ARP-II].
(JE 233)

By letter dated March 21, 2005, respondents, by their attorneys, adhered to their previous position:

Until the question of whether there has been an "Emerald Member Default" has been resolved, it would appear premature for Emerald to make a determination as to whether it wishes to contest the enforceability [of] any of the remedies provide in Section 13.02.... (JE 238)

Respondents' March 21 letter is disingenuous. While pretending that an Emerald Member Default was an open issue and that Emerald had not yet decided "whether it wishes to contest," Emerald fought long and hard against Kriti's remedies and actions. Thus, it has

disputed Kriti's right to make the capital call for \$2 million to complete the marina and for design of the condominium units. (Tr. 346-47, JE 222, 252, 257) Contesting the right of Kriti to make a voluntary capital call is no trivial matter. Kriti has deposited and risked \$2 million to be used for the construction of the marina and the Phase I condominium drawings without any assurance that its investment will result in the bargained for adjustment in the Membership Interests. Indeed, among the relief sought by Emerald in this arbitration is the right to deposit its share of the capital call thirty days after the award, essentially leaving Kriti to the risk of advancing the funds during the construction of the marina and while a construction loan default looms due to the pendency of the Lussiers' action.

Respondents also contested Kriti's management of ARP-II by warning it against negotiating settlements with the pre-construction buyers, even after indicating to Judge Daniels that it had no objection to Kriti hiring counsel to defend ARP-II against these claims (RE 43 at 24, Tr. 634-35). It also opposed Kriti's proposal to Marshall that it accept subordinated liens in favor of the pre-construction buyers. (JE 262, 264) Additionally, while Emerald's consent was required for any sale of ARP-II property other than in the ordinary course, it clearly refused to allow Kriti and Williams to take the lead in negotiating the potential sale of the New Parcel A property to Centex. (JE 230, 189, Tr. 631, 1539, 1589)

Respondents have further contested Kriti's use of the §13.02 remedies by defending and counterclaiming in this arbitration, threatening Kriti with a South Carolina action for dissolution and refusing to accept Kriti's right to purchase Emerald's Membership Interest in ARP-II. (JE 341, Tr. 347) As Longman himself readily admitted, respondents do not want Kriti to continue in "the development of the marina and condominiums on the Ashley River parcel," and do not recognize Kriti's exercise of voting control to accomplish it. (Tr. 347-48)

Contrary to respondents' characterization of South Carolina law, courts there do not shy away from enforcing unambiguous contractual provisions in cases such as this. As the Supreme Court of South Carolina has held:

The Court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.

Jordan v. Security Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1974). See also, *Steffenson v. Olsen*, 360 S.C. 318, 323, 600 S.E.2d 129, 132 (Ct. of App. 2004).

The foregoing principle has been applied by South Carolina courts regardless of whether it would work a forfeiture. In *Wolf v. Colonial Life and Accident Ins. Co.*, 309 S.C. 100, 420 S.E.2d 217 (Ct. of App. 1992), the contract at issue provided for the forfeiture of vested insurance premium commissions for an employee's breach of covenants not to compete. The court noted:

Sound public policy generally requires the enforcement of contracts freely entered into by the parties. [citation omitted] *Barton v. Travelers Ins. Co.*, 84 S.C. 209, 66 S.E. 118 (1909) (although courts disfavor forfeiture clauses, they will enforce them where the clause is clear and it is violated.)

(emphasis supplied) 309 S.C. at 108, 420 S.E.2d at 221. Accordingly, the court upheld the forfeiture of the vested commissions. Similarly, here, where the clause providing for forfeiture if remedies are contested is clear, and where it has been violated knowingly and continually, both within and outside the arbitration context, the bargained for forfeiture clause should be enforced.

Although respondents do not dispute that they have contested the remedies in §13.02 of the Operating Agreement, they argue, by analogy to will contests, that a no-contest or forfeiture clause in a will is subject to the exception that where the contest or other opposition of the beneficiary is made in good faith and with probable cause, such clause is not binding and a forfeiture will not result under such circumstances. *Rouse v. Branch*, 91 S.C. 111, 74 S.E. 133 (1912). Of course, this analogy, when applied to contractual matters, is strained. Unlike a beneficiary of a will, respondents unequivocally agreed to the forfeiture provision. Moreover, as the Supreme Court noted in *Rouse*, where there is probable cause that a forgery of the will has occurred, the right to bring proceedings to contest a forged will is founded on "justice and morality." 74 S.E. 135. In *Ryan v. Wachovia Bank Trust Co.*, 235 N.C. 585, 590, 70 S.E.2d 853, 856 (1952), the Supreme Court of North Carolina noted that the principle of law articulated by courts such as in *Rouse*, was premised on the rationale that "if a will has been procured by undue influence or fraud, there is no intent of the purported testator to thwart, sustain or defeat." This rationale is obviously not present here, where the intent of the parties when agreeing to the remedies in Article 13 of the Operating Agreement is clear.

Moreover, even were application of the anti-forfeiture rule in will contests to be stretched to contractual situations, respondents' attempt to escape from the clear provisions of the last remedy in §13.02 (c) is unavailing. As *Rouse* itself notes, the contestant must have probable cause to avoid application of the will-forfeiture rule. Thus, in *Barry v. American Security & Trust Co.*, 135 F.2d 470, 473 (D.C. Cir. 1943), the court held that the contestant forfeited his interest under the will where he lacked probable cause to set it aside. Here, while respondents may have had probable cause to claim that there was a legitimate issue with respect to the amount of money repaid or to be credited against the funds taken from ARP-II, they had no

probable cause or legitimate basis to contest the existence of an Emerald Member Default. As discussed in POINT I, *supra*, there have been so many continuing and flagrant events giving rise to a default, that pretending to the contrary both within and outside the arbitration proceeding, as respondents have done, is not genuine and does not constitute probable cause. Accordingly, having contested the Article 13 remedies, Emerald should be held to have forfeited its Membership Shares in accordance with the last paragraph of §13.02(c) of the Operating Agreement.

As an alternative, the arbitrators should, in accordance with the recent South Carolina Supreme Court decision in *Jordan v. Holt*, 362 S.C. 201, 608 S.E.2d 129 (2005), award punitive damages against respondents in an amount not less than Emerald's remaining capital account. As discussed in claimants' pre-hearing memorandum, the supreme court in *Jordan* upheld the trial judge's award of punitive damages where the managing members engaged in egregious conduct, "including ignoring requests for financial information and meetings, using LLC monies for payment of personal debts and obligations, self-dealing ... and selling or transferring LLC property without the knowledge and consent of the LLC and then pocketing the monies." 362 S.C. at 206, 608 S.E.2d at 131. Since respondents have engaged in similar if not even more egregious conduct here, there is no reason that the arbitrators should not, consistent with South Carolina law, award claimants' punitive damages in an amount no less than Emerald's remaining capital account in ARP-II. See *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 115 S.Ct. 1212 (1995) (holding that arbitrators may award punitive damages unless specifically excluded).

POINT IV

EMERALD'S COUNTERCLAIMS ARE WITHOUT MERIT AND SHOULD BE DISMISSED

In its amended answer, Emerald seeks a declaration that (i) Kriti has no right to exercise voting control of ARP-II and that control should be returned to respondents, (ii) the February 28, 2004 capital call was defective and (iii) that the formation of ARP-II should be rescinded or that the company's assets be sold and wound up. Each of these arguments is easily refuted.

Voting Control

As discussed in POINT I, *supra*, numerous events have occurred, each of which alone could constitute an Emerald Member Default. If an Emerald Member Default exists, there is no reason within or outside the contract for the arbitrators to disregard the remedy contained in §13.02(a) of the Operating Agreement. Accordingly, Kriti should retain voting control.

Capital Call

On February 28, 2005, Kriti issued a capital call for \$2 million to be used as set forth on the attached budget, including construction of the pier and bulkhead, the Bellingham change orders, the Phase I condominium drawings and general and administrative expenses. (JE 222) As Williams testified, these funds were needed or useful to (i) construct the pier and bulkhead to which the Bellingham floating docks waiting in Jacksonville could attach, (ii) convince Marshall that the entity had sufficient funds to complete the project so that they would extend the term of the original loan, (iii) show Morrison, the bulkhead and pier contractor, that ARP-II had sufficient funds to pay its charges, (iv) start the architectural and engineering drawings for the Phase I condominiums and (v) pay ongoing general and administrative costs (Tr. 1603-05, 1614, JE 75) As Williams further testified, and the general ledger shows, the funds were needed for these purposes and are being spent consistently with the budget. (Tr. 1603-06, RE 108)

At the hearing, respondents did not question the use of the funds raised by the capital call. Rather they merely argued that the funds were not all needed on March 31, 2005 and that the funds could have been obtained by increasing the bank loan from Marshall. There is nothing in the Operating Agreement, however, that requires voluntary capital calls to be made monthly or quarterly, and thus the capital call would be within the legitimate business discretion of Kriti. Moreover, given respondents' failure over a period of a year and half to meet their indemnity claims and replenish Emerald's capital account by paying off the pre-construction buyers (other than the \$300,000 to von Grotthuss), there is no indication that Emerald would have been able or willing to pay the capital call had it been allowed to do so over six months. Significantly, respondents never asked if they could do so.

Nor can respondents legitimately argue that Kriti was required to guarantee an increased Marshall loan rather than fund the needed work via a capital call. Kriti had no obligation in the Operating Agreement or otherwise to guarantee an increased bank loan, especially when at any moment the bank could declare a default because of claims filed by the pre-construction buyers. It is certainly rational for Kriti to obtain a greater interest in ARP-II in exchange for absorbing greater risk as contemplated by the capital call features of the Operating Agreement. The only duty it had was to notify and permit Emerald to participate in the capital call for legitimately needed funds on the same basis. This it undeniably did.

Finally, if an Emerald Member Default has occurred, and the remedy under either paragraph of §13.02(c) is afforded Kriti, the entire issue of the capital call is a moot one, since Emerald would no longer retain an interest in ARP-II.

Rescission or Winding Up

Given that respondents' conduct plunged ARP-II into its financial difficulties, respondents' demand for rescission based on its own wrongful conduct is shameful. Similarly, respondents have not shown any entitlement to an award ordering the winding up of ARP-II and its assets. The record is clear that in August 2004, Kriti could have called an Emerald Member Default and used some or all of the remedies of §13.02. Instead, respondents were given a chance to refund the money they had embezzled. (Tr. 1110, 1609-1611) In October and November 2004, instead of using the remedies of §13.02, Kriti again gave respondents a chance to discharge the debts due to the pre-construction buyers as required by the Indemnity Agreement, despite these and other misrepresentations in the Operating Agreement. (Tr. 1162-63, 1184-85, 1610, JE 152)

In January 2005, Kriti notified respondents that it had assumed voting control and, at the end of February, it issued a capital call for funds necessary to complete the marina (JE 186, 222). Again, it did not take either of the more drastic remedies available under §13.02(c), in part to allow Longman "to be left with something in this partnership." (Tr. 1595-1597) It was only in June 2005, after another financial crisis brought about by the filing of the Lussiers' *lis pendens*, that Kriti asserted the remedies in §13.02(c), reclaiming Emerald's Membership Interest. (JE 317, Tr. 1246-1249)

Even had it not exercised patience, Kriti can hardly be faulted for exercising the agreed remedies in the Operating Agreement. Although respondents may prefer otherwise, there is no legal basis to replace the contractual remedies and order dissolution, especially where, as here, Kriti's exercise of either of the remedies under §13.02(c) obviates the need for dissolution. If

Kriti is entitled to exercise its contractual remedies, Emerald no longer has a membership interest in ARP-II entitling it to a winding up of assets.

POINT V

KRITI IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES

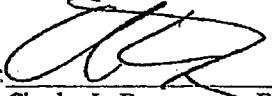
As reflected in the accompanying affidavits of Charles L. Rosenczweig, Esq. and Ben Hagood, Esq. and the invoices from expert witnesses, Kriti is entitled to recover the sum of \$347,161.63 for the "entire cost of this arbitration" as contemplated by §12.18 of the Operating Agreement.

CONCLUSION

Accordingly, the arbitrators should grant the relief requested by claimants and deny Emerald's counterclaims, and further award claimants the costs and expenses of this proceeding, including reasonable attorney's fees.

Dated: New York, New York
September 23, 2005

Rand Rosenczweig Smith
Radley & Gordon LLP

By: 

Charles L. Rosenczweig, Esq.
Attorneys for Claimants
605 Third Avenue, 24th Floor
New York, New York 10158
(212) 687-7070

Of Counsel:

Charles L. Rosenczweig
Michèle L. Kugler

EXHIBIT A

Ashley River Properties II, LLC
Calculation of Emerald's Unreturned Capital Contribution
as of September 30, 2005

Emerald Net Capital Contribution as of the date of Organization and Capitalization of ARP-2:

Date	Description	Amount	Remarks
12/31/03	Emerald Capital Contribution	2,500,000	Agreed amount for in-kind contribution
	less:		
12/31/03	undisclosed von Grotthuss claim	(295,000)	Principal amount only
12/31/03	undisclosed Cunningham claim	(265,000)	Principal amount only
12/31/03	undisclosed Lussier claim	(325,000)	Principal amount only
12/31/03	undisclosed Marler claim	(100,000)	Principal amount only
12/31/03	Missing deposit - Patterson	(31,050)	Principal amount only
12/31/03	Embezzled Kiti Funds	(1,155,000)	Funds taken by Longman
12/31/03	Value of Collins Claims	?	Fraudulent assignment of interests by Sapphire
12/31/03	Net Emerald Capital Contribution	\$ 328,950	

Adjustments for subsequent withdrawals, payments, claims and damages:

07/09/04	Embezzled Bank Funds -- 1st Draw	(245,447)	Marshall loan funds taken -- per ARP-2 bank statement
08/05/04	Embezzled Bank Funds -- 2nd Draw	(193,777)	Marshall loan funds taken -- per ARP-2 bank statement
various	Net funds returned and expenses paid by Longman parties	1,443,627	Embezzled Kiti funds (\$1,155,000) plus embezzled bank funds (\$439,224) less amount still due and owing by the Longman parties as of 12/31/04 as per ARP-2's balance sheet as compiled by P-TG & Co. (\$150,597)
04/27/05	Paid to von Grotthuss by Longman	300,000	Paid on account of deposit claim
06/30/05	Agreed interest on Cunningham claim	(91,817)	Agreed to be paid by ARP-2 per Settlement Agreement
07/22/05	Balance of von Grotthuss claim	(67,766)	Paid by ARP-2 per Settlement Agreement
08/03/05	Settlement of Acierno Claim	(1,891)	Paid by ARP-2 per Settlement Agreement
	Interest reserve on Lussier claim	(129,959)	3/1/01 -- 9/30/05 at statutory rate (8.75%)*
	Interest reserve on Marler claim	(43,313)	10/18/00 -- 9/30/05 at statutory rate (8.75%)*
	Bellingham Contract Change Orders	(120,775)	Change orders necessitated by Longman's conduct*
	Longman use of ARP-2 funds	(128,858)	12/31/03 -- present at ARP-2 blended cost of funds rate*
	Delay damages -- G&A burn	(210,000)	G&A -- 12 months delay*
	Delay damages -- loan interest	(284,477)	Marshall loan interest -- 12 months delay*
	Appeal costs -- Collins lawsuit	(40,338)	Paid for benefit of Sapphire creditors*
	Accounting Costs	(25,688)	Compilation report -- Pratt-Thomas, Gumb & Co.*
	Legal -- 3rd Party Buyer Claims	(18,578)	Defense Costs -- Hagood & Kerr *
09/30/05	Total adjustments	\$ 142,943	

Net Emerald Unreturned Capital Contribution:	\$ 471,893 As of September 30, 2005

Note: * -- Per Calculations of Expert Witness Roy Strickland

September 21, 2005

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

)

)

)

ASSIGNMENT OF MEMBERSHIP
INTEREST

For value received, Emerald Investments, LLC, a Connecticut limited liability company ("Assignor") hereby sells, assigns, transfers and conveys to Kriti Ripley, LLC, a Delaware limited liability company ("Assignee") the entirety of Assignor's right, title and interest as a Member of and in Ashley River Properties II, LLC, a South Carolina limited liability company (the "Company"), which shall include, without limitation, Assignor's seven hundred (700) Financial Membership Shares, seven hundred (700) Voting Membership Shares, Assignor's capital account balance in the Company, Assignor's distribution and liquidation rights in the Company and all of Assignor's rights and powers whatsoever in the Company.

This Assignment of Membership Interest is made, delivered and shall be effective in accordance with and in satisfaction of the requirements of Article XIII, Section 13.02 (c) of the Operating Agreement of the Company dated December 29, 2003, which Operating Agreement was amended by First Amendment to the Operating Agreement dated September 1, 2004. As required thereby and in connection with the within Assignment, Assignor makes the Standard Representations described on Schedule A attached hereto and incorporated herein by reference, as of the date hereof.

IN WITNESS WHEREOF, the undersigned have hereunto set its hands and seals this _____ day of _____, 2005.

WITNESSES:

Emerald Investments, LLC

By: _____

Stuart Longman, Managing Member

Schedule A

Standard RepresentationsREPRESENTATIONS AND WARRANTIES

In order to induce Purchaser to purchase the Transferred Interest, Seller represents and warrants to Purchaser as of the date hereof and as of the Closing Date as follows:

1. Organization and Good Standing. Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of _____ and has the requisite power and authority to own, hold, lease and operate its assets and to carry on its business as now being conducted. There are no pending actions or proceedings to dissolve Seller.

2. Capacity and Authorization. Seller has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Assignment by Seller and the performance of its obligations hereunder has been duly authorized by all requisite action on the part of Seller.

3. No Conflict with Other Instruments; No Restriction on Business Activities. Neither the execution and delivery of this Assignment, the consummation of the transactions contemplated hereby, nor compliance with the terms and conditions hereof, will (a) violate any term or provision of the Certificate of Formation or limited liability company agreement of the Seller as such documents exist immediately prior to the giving effect to this Assignment, or (b) violate or result in a breach of or constitute a default under any of the terms of any law, regulation, order, judgment, writ, injunction or decree of any court, arbitrator or governmental instrumentality to which Seller is subject. There is no agreement, judgment, injunction, order or decree binding upon the Seller, any governmental investigation or enforcement proceeding, that has or could reasonably be expected to have an adverse effect on this Agreement.

4. Validity and Binding Effect. This Assignment has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms.

5. Consents. No consent of any third party, and no approval or authorization of, or exemption by, or registration, notice or filing with, any governmental or regulatory authority is required in connection with the execution and delivery by Seller of this Assignment other than those obtained prior to the date hereof, copies of which have been delivered to Purchaser.

6. Ownership of the Transferred Interest. Seller is the legal and beneficial holder and owner of the Transferred Interest, free and clear of all liens, options, charges and encumbrances.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

EMERALD INVESTMENTS, LLC,)

Plaintiffs,)

vs.)

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS)

NINTH JUDICIAL CIRCUIT)

CASE NO. 2009-CP-10-553)

2009 SEP 17 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

**MOTION TO COMPEL ARBITRATION
AND TO STAY LAWSUIT PENDING
ARBITRATION**

2209-15022

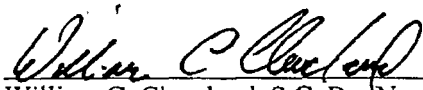
Pursuant to South Carolina Code §15-48-20(a) the Defendants move the Court for an order compelling the parties to proceed with arbitration in accordance with the arbitration provisions set forth in the Operating Agreement of Ashley River Properties II, LLC. This motion is made on the ground that the Plaintiff, Emerald Investments, LLC and the Defendant Kriti Ripley, LLC agreed to submit any dispute pertaining to the Defendant Ashley River Properties II, LLC to arbitration in the State of New York and the Plaintiff has refused to arbitrate but instead as brought this litigation in this Court in violation of the parties' agreement to arbitrate.

The Defendant also moves pursuant to South Carolina Code §15-48-20(d) for an order staying the present lawsuit pending completion of the arbitration of the parties' dispute.

This Motion is based on the Affidavit of Davidson Williams and the exhibits attached thereto that have previously been filed with the Court and on the other pleadings and records on file herein.

Respectfully submitted,

BUIST MOORE SMYTHE MCGEE P.A.



William C. Cleveland, S.C. Bar No. 1284

Five Exchange Street

P.O. Box 999

Charleston, SC 29402

Telephone: (843) 722-3400

Facsimile: (843) 723-7398

Attorneys for the Defendant

Charleston, South Carolina

Dated: September 17, 2009

CERTIFICATE OF SERVICE

09-CP-10-553

I do hereby certify that on the 17th day of September 2009, I served a copy of the within *Motion to Compel Arbitration and to Stay* on Counsel of Record in the within entitled matter by sending a copy of the same via mail addressed to:

Richard S. Rosen, Esquire
Rosen Rosen & Hagood, LLC
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29402

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2009 SEP 17 PM 4:00

FILED

BUIST MOORE SMYTHE MCGEE P.A.

Christine Eadie

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC

Plaintiff,

vs.

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-553

MOTION TO DISSOLVE STAY

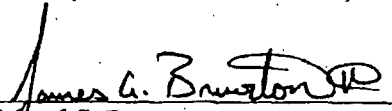
TO: WILLIAM C. CLEVELAND, ESQ., ATTORNEY FOR DEFENDANTS

Plaintiff, Emerald Investments, LLC ("Emerald"), by and through its undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas for Charleston County in Charleston, South Carolina, on the tenth (10th) day after service hereof, or as soon thereafter as the parties may be heard, for an Order dissolving the stay previously entered in this matter.

On April 19, 2010, this Court entered a Consent Order in the above-captioned action staying the judicial dissolution claim in Count I of Emerald's Complaint pending an arbitration proceeding to be conducted in New York. The arbitration has been subsequently conducted and an award was made by the Arbitrators on October 28, 2010. A copy of the Arbitrator's Award is attached hereto as **Exhibit 1** and incorporated herein by reference. Now that the pending arbitration, which served as the basis for the stay of Emerald's claim for dissolution, has been conducted and an award has been made, Emerald is entitled to have the stay dissolved and Count 1 of its Complaint resumed.

This motion is supported by the pleadings and discovery responses on file in this action, along with applicable law. This motion may be further supported by a Memorandum of Law filed at a later date and any additional evidence the Court may permit to hear and/or receive at the hearing on this Motion.

ROSEN, ROSEN & HAGOOD, LLC.


Richard S. Rosen
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Attorneys for Plaintiffs

Charleston, South Carolina
December 7, 2010

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")

and

Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS

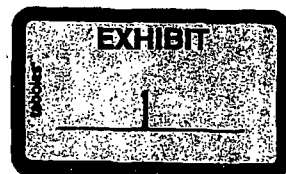
We, the undersigned arbitrators, having been designated pursuant to Article 12.18 of the operating agreement, dated as of December 29, 2003, by and among Kriti Ripley, LLC ("Kriti"), Emerald Investments, LLC ("Emerald") and Ashley River Properties II, LLC ("Company") ("hereinafter "Operating Agreement"), and, during July, 2010, the Arbitrators (hereinafter sometimes referred to as "Panel"), each having been duly sworn, held six duly noticed hearing days pertaining to the within matter, during which time the Panel heard evidence and admitted various exhibits in furtherance of the position of both Emerald and Kriti, and, the parties having submitted post hearing briefs and reply briefs, and, having read the briefs and ancillary submissions, do hereby FIND and AWARD as follows:

This arbitration arises from a dispute between the only two members of the Company which was formed to own and develop waterfront property located in Charleston, South Carolina. This dispute has its genesis in 2005 when the principal of Emerald, Stuart Longman, admittedly, diverted funds from the Company contrary to the Operating Agreement. As a consequence, Kriti commenced an arbitration to strip Emerald of its voting rights in accordance with the Operating Agreement. As a result, Emerald, which held a 70% membership interest in the Company, lost all of its voting rights, leaving Kriti, which held the remaining 30% membership in the Company, with the sole right to manage the Company and as the sole voting member of the Company.

Thereafter, the parties engaged in a continuous series of litigations and arbitrations, spanning three states, to further each of their interests. The initial arbitration affirmed Emerald's loss of voting rights and awarded Kriti certain moneys arising from the diversion of Company funds (JE 47). The initial award denied the remedy of forfeiture and held that Kriti could exercise its right to acquire the interests of Emerald for Emerald's cost as set forth on the books of the Company as provided in the Operating Agreement (JE52, Article 13.02). Due to the manner in which the Operating Agreement provided for a buy out of the interests of each member, the arbitrators did not need to address whether or not Emerald's membership interests were reduced from 70% to something less. During the initial arbitration and, consistently thereafter, Emerald took the position that it continued to own a 70% interest in the Company and Kriti took the position that Emerald's interests had been diluted.

Thereafter, Kriti commenced a second arbitration to recover moneys due from Emerald arising from its diversion of funds and for legal fees. That arbitrator, by an award, dated June 22, 2006, awarded Kriti legal fees and damages (JE 48). Kriti then moved to confirm both awards in the Supreme Court of the State of New York, New York County. In February, 2008, both awards were affirmed by the Hon. Ira Gammernan, Judicial Hearing Officer (JE 49). In a separate action, Emerald sought a judicial determination, also in the Supreme Court of the State of New York, that Kriti's right to acquire Emerald's interest in the Company had expired, which motion was granted in 2009.

In 2009, Emerald commenced an action in the Court of Common Pleas for the Ninth Judicial Circuit, sitting in Charleston, South Carolina, to dissolve the Company and to declare that Kriti owned 70% of the Company ("South Carolina Dissolution Action"). The Court, in that proceeding, explicitly held that "the suit is based on events (e.g. ...the alleged dilution of Emerald's interest...) that occurred after the New York arbitration. Therefore, the current claims are not barred by *res judicata* or collateral estoppel (JE... at 21)."



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Commercial Arbitration Tribunal

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AWARD OF ARBITRATORS CONTINUED

When the parties realized that the determination of Emerald's membership interest was properly the subject of arbitration pursuant to Article 12.18 of the Operating Agreement, they agreed to stay the South Carolina Dissolution Action and proceed with arbitration in New York on the issue of Emerald's membership interest (JE 536). The consent order of the South Carolina Court also provided:

"The parties further stipulate and agree that the findings of the above-referenced New York arbitration, upon confirmation of the award, shall be admissible in and binding upon the parties in any action (including, but not limited to, this action) seeking an order of judicial dissolution of ARP II (the Company)."

Emerald then commenced the within arbitration, seeking, in part: (i) a declaration that Emerald owns 70% of the membership interests of the Company, (ii) a finding that the amounts contributed as loans by affiliates of Kriti should be treated as equity and not debt on the books of the Company, (iii) an order expelling Kriti from the Company, (iv) an injunction preventing Kriti from violating the Operating Agreement, (v) damages, and (vi) costs of the arbitration, including legal fees. Kriti answered and denied the material allegations contained in the arbitration demand and sought relief of its own: (i) dismissal of the arbitration, (ii) forfeiture of Emerald's interests in the Company, pursuant to South Carolina law, (iii) confirmation that Emerald holds a 21.3% interest in the Company, (iv) a determination of the amount of long term liabilities on the books of the Company, and (v) costs and expenses of this proceeding, including legal fees.

Ownership Interests

Based upon the evidence adduced at the hearing, We find that the Capital Call, dated February 28, 2005 (JE 115) ("Capital Call") was defective on its face and, thus, ineffective to trigger a dilution of Emerald's membership interests. The Capital Call imposed conditions on the application of Emerald's capital contribution which were contrary to the terms of the Operating Agreement. Accordingly, We find that Emerald continues to own a 70% interest in the Company and Kriti continues to own a 30% interest. This holding does not impact, however, the finding that Kriti continues to be the sole member with voting rights as determined by the initial arbitration and affirmed by J.H.O. Gammernan (JE 47 at 11).

The Panel finds that Emerald is not precluded by either the statute of limitations or *res judicata* from seeking the relief requested herein. J.H.O. Gammernan's decision, dated February 15, 2008, was settled by a judgment, dated April 2, 2008. Sometime in 2009, Emerald commenced the South Carolina Dissolution Action to declare that it held a 70% interest in the Company, well within the three year statute of limitations for such proceedings applicable under South Carolina law. Through every litigation and arbitration, over five years, Emerald has sought to affirm its 70% ownership of the Company, thus tolling any statute of limitations.

Loans as Equity and Not Debt

The Panel finds that Kriti and its affiliates loaned to the Company the sum of \$7,493,077.35, as set forth on the Company balance sheet, dated as of March 31, 2010 (JE 104) ("Financial Statement"). These loans were not disputed by Emerald. Rather, Emerald seeks to have these loans treated as equity claiming that the loans

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AWARD OF ARBITRATORS CONTINUED

were disguised equity contributions as they were not arm's length loans and did not have the indicia of debt. We find the cases cited by Emerald unpersuasive to reclassify these loans as equity contributions.

Moreover, Article 5.2 of the Operating Agreement provides for members to loan money to the Company:

Notwithstanding anything herein to the contrary, the following major decisions shall require the written approval of the Member who own the Required Interest of the Voting Rights in the Company: ...

(i) The borrowing of money for Company purposes and, if security is required therefore, the granting of any security interest in all or any portion of Company Property.

(q) Entering into any loan agreement or execution and delivery any note, mortgage, deed of trust guaranty, indemnity or other instrument or agreement in connection with any borrowing, or any amendment, supplement, extension or modification thereto, whether in connection with any existing or future borrowing or debt.

(JE 52, Article 52.)

Thus, We find that loans to the Company from the Kriti affiliates and Davidson Williams should be treated as loans.

Dissolution of the Company and Dissociation

We find no basis to dissociate Kriti or Emerald from the Company or to dissolve the Company despite the fact that dissolution may be in the best interests of all parties. The Operating Agreement explicitly states the basis for dissolution:

9.1. Except as otherwise provided herein, the Company shall dissolve... only upon the happening of one or more the following events:

(a) written consent of the members who own the Required Interest of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality with ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate of administratively dissolving the Company...

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AWARD OF ARBITRATORS CONTINUED

(d) The expiration of the period fixed for the duration of the Company...

The Panel finds that none of these events has occurred and, thus, the parties have not provided sufficient facts for the Arbitrators to render a fact finding authorizing dissolution.

The Operating Agreement also fails to provide a basis for dissociation, as dissociation may be supported only upon the finding of three events:

"(a) Withdrawing, retiring or resigning from the Company with the consent of those Members who own the Required Voting Rights in the Company.

(b) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him or it (sic) which is not dismissed within ninety (90) days.

(c) Any event of Wrongful Dissociation set forth in 10.5 of this Agreement."

Article 10.5 of the Operating Agreement sets forth the basis for wrongful dissociation. The parties did not present sufficient evidence to justify a finding of the extreme remedies of dissociation or forfeiture of either member's membership interests in the Company.

Article 10.5(b)(iii) provides that dissociation may be found where a member engages in "conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member." While the Panel observes that Kriti and Emerald cannot work together in any constructive manner, the business of the Company is the development of the waterfront property and, should the Company elect not to dissolve, Kriti may proceed with its business operations.

Nor did the Panel hear sufficient evidence to find corporate waste by Kriti or commission of any act which would justify enjoining Kriti from violating any provision of the Operating Agreement. The decisions to construct a bulkhead, dredge the canal and construct the out building were well within the business judgment of Kriti as managing member; and the application of funds by the Company was, also, well within reasonable business efforts to manage a complex piece of waterfront property. Kriti had envisioned a luxury development and these expenditures fell within that reasonable vision. Emerald's evidence was, at best, the observations of Stuart Longman who believed that he could develop the property better; but the decisions of Kriti did not constitute waste nor 'wrongful conduct that adversely and materially affected the Company's business...' Nor did Kriti's conduct constitute "... a material breach of [the Operating Agreement] or a duty owed to the Company or the other Members under Section 22-44-409 of the Act." Operating Agreement, Article 10.5(b).

Accordingly, the Panel Awards as follows:

1. Emerald is found to continue to own 70% of the membership interests in the Company and Kriti continues to own 30% of the membership interests.

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

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Emerald Investments, LLC ("Emerald")
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AWARD OF ARBITRATORS CONTINUED

2. The loans by Kriti's affiliates to the Company shall be treated as loans to the Company and shall not be recast as equity. The amount of the loans are found to be those set forth in the Financial Statement, as the amounts of the loans were not disputed by the parties.
3. Neither Kriti nor the Company committed corporate waste or engaged in any misconduct which would support a finding of fact requiring dissociation, dissolution or an award to Emerald of damages; and, thus, to the extent that the Panel is empowered to opine on the request for dissociation, dissolution or damages against Kriti, such request is denied.
4. Emerald did not commit sufficient acts to support a finding of dissociation, and, to the extent that the Panel is empowered to opine on the request for dissociation of Emerald, such request for relief is denied.
5. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture.
6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
8. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally. Therefore, Kriti shall reimburse Emerald the sum of \$59,527.74, representing that portion of said fees in excess of the apportioned costs previously incurred by Emerald.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

10/28/2010

Date

10/29/2010

Date

E. Leo Milonas

Peter L. Altieri

Peter L. Altieri

David M. Rubin

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

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6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
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10/28/10
 Date

Date

Date


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Peter L. Altieri

David M. Rubln

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Ref: 13 115 00216 10

Emerald Investments, LLC ("Emerald")
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Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/25/10
Date

d. 
 E. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date _____

Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date _____

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
Emerald Investments, LLC ("Emerald")
and
Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, E. Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

E. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/28/2010
Date

Peter L. Altieri
Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/29/2010
Date

David M. Rubin
David M. Rubin

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC

Plaintiff,

vs.

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-553
)

**MOTION TO AMEND
COMPLAINT**

2010 DEC -7 PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT

TO: WILLIAM C. CLEVELAND, ESQ., ATTORNEY FOR DEFENDANTS

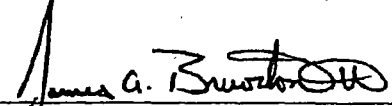
PLEASE TAKE NOTICE that Plaintiff, Emerald Investments, LLC ("Emerald") by and through its undersigned attorney will move pursuant to SCRCP 15 before the presiding Judge of the Court of Common Pleas for the Ninth Judicial Circuit, Charleston County, on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order allowing Emerald to Amend its Complaint to add additional facts and circumstances supporting Emerald's claim for dissolution of Ashley River Properties II, LLC.

The additional facts and circumstances sought to be added through the amendment of Emerald's Complaint, arise out of actions taken by members of Ashley River Properties II, LLC since the filing of the original Complaint in this matter and opinions given by a panel of Arbitrators during a 2010 arbitration between these same parties held in New York. On April 19, 2010, this Court entered an Order staying Emerald's judicial dissolution claim in Count 1 of its Complaint pending the aforementioned arbitration proceeding between these same parties, which involved some of the very issues that serve as the basis for dissolution. In that arbitration, the New York Arbitrators explicitly found that "dissolution may be in the best interests of all parties" and further observed "Kriti and Emerald cannot work together in any constructive

manner.” However, the New York Arbitrators did not address, nor did they have jurisdiction to address grounds for dissolution pursuant to the South Carolina Uniform Limited Liability Company Act.

The interests of justice will be served by granting this motion and in allowing this amendment in order to ensure that all facts and circumstances surrounding Emerald’s claim for dissolution are properly before the Court. The Defendants will suffer no prejudice arising out of the amendment. A copy of Emerald’s proposed Amended Complaint is attached hereto as Exhibit A.

ROSEN, ROSEN & HAGOOD, LLC.

By: 

Richard S. Rosen, Esq.
Daniel F. Blanchard, III, Esq.
James A. Bruorton IV, Esq.
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEY(S) FOR EMERALD
INVESTMENTS, LLC.

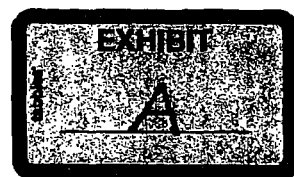
Charleston, South Carolina
December 7, 2010.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2009-CP-10-553
	)	
EMERALD INVESTMENTS, LLC	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	(Judicial Dissolution of ARP II)
ASHLEY RIVER PROPERTIES II, LLC;	)	
KRITI RIPLEY, LLC;	)	
	)	
Defendants.	)	

Plaintiff, Emerald Investments, LLC, by and through its undersigned counsel, alleges and states as follows:

PARTIES AND VENUE

1. Plaintiff Emerald Investments, LLC ("Emerald") is a Connecticut limited liability company.
2. Defendant Ashley River Properties II, LLC ("ARP II") is a South Carolina member managed limited liability company governed by the Limited Liability Company Act of South Carolina, S.C. CODE ANN. §§ 33-44-101 *et seq.*, and the Operating Agreement of Ashley River Properties II, LLC, dated December 29, 2003, as amended (the "Operating Agreement"). A true and correct copy of the Operating Agreement is attached hereto and incorporated herein by reference as "Exhibit 1."
3. At its inception, ARP II was wholly owned by Emerald.
4. Defendant Kriti Ripley, LLC ("Kriti") is a Delaware limited liability company.



5. Ashley River Properties One, LLC ("ARP I"), which is not a party to this action, is a South Carolina limited liability company. At all pertinent times, ARP I was and is wholly owned by Emerald.

6. Venue for this matter is proper in Charleston County, South Carolina.

FACTUAL BACKGROUND

7. ARP II and ARP I were initially involved in developing a marina and mixed-use residential condominiums along a riverfront site on the Ashley River in Charleston, South Carolina known as Ripley Light Yacht Club Marina & Condominiums (the "Ripley Light Project"). Emerald initiated the Ripley Light project and was the project's developer. At the project's inception, Emerald managed ARP II as well as ARP I.

8. In the fall of 2003, the Ripley Light Project needed additional development capital and ARP II turned to outside investors to provide financial assistance for the project. Emerald and Kriti subsequently entered into the above-referenced Operating Agreement dated December 29, 2003 with and pertaining to ARP II, and a separate Project Development Agreement for the Ripley Light Project dated December 30, 2003, in which they agreed to carry on the Ripley Light Project through a joint venture between the companies. A true and correct copy of the Project Development Agreement is attached hereto and incorporated herein by reference as "Exhibit 2."

9. As a result of the above-referenced agreements, on or about December 29, 2003, Emerald became a 70% financial and voting member in ARP II and Kriti became a 30% financial and voting member in ARP II.

10. Kriti paid \$1,250,000.00 for its membership interest in ARP II. Emerald's initial capital contribution to ARP II was \$2,500,000.00.

11. Emerald managed both ARP II and ARP I from their inceptions through January 14, 2005. However, a dispute arose between the members of ARP II involving the project and their respective rights under the ARP II Operating Agreement.

12. On or about January 14, 2005, Kriti terminated the Project Development Agreement, alleged default under the Operating Agreement, and assumed sole management of ARP II from Emerald.

13. On March 23, 2005, Kriti and ARP II subsequently filed for arbitration against Emerald and Stuart Longman (Emerald's managing member) in New York entitled *Kriti Ripley, LLC & Ashley River Properties II, LLC ("Claimants") and Emerald Investments, LLC and Stuart Longman ("Respondents")*, Re: 13 115 Y 00698 05 ("First New York Arbitration"), which sought damages related to alleged breach of representations within the Operating Agreement and default under the Project Development Agreement.

14. The onset of the First New York Arbitration proceeding triggered a myriad of lawsuits and litigation between the parties to this action that have been intermingled with one another for over five (5) years.

FACTS SUPPORTING DISSOLUTION

A. Kriti's failure to conduct the affairs of ARP II in the best interest of ARP II and its Members

15. Kriti has continually refused to act on opportunities which would have returned substantial value to ARP II's members, including Emerald.

16. At the time Kriti took over control of the management of ARP II, buyers had expressed interest in the Ripley Light Project, with one potential buyer, Centex Destination Properties offering \$20 million for ARP II's property. Acceptance of that offer would have yielded a return of several million dollars to both Emerald and Kriti over their initial capital

contribution and ARP II's then approximately \$4.7 million debt. Without any consultation with Emerald, Kriti rejected the \$20 million offer.

17. Other well-qualified buyers have subsequently made offers for the Ripley Light Project, including one for \$24 million. Without any consultation with Emerald, these offers have also been rejected by Kriti.

18. Kriti also has caused ARP II to substantially and unnecessarily increase its debt burden to the point that ARP II's liabilities now exceed its assets. Kriti caused ARP II to take on approximately \$9 million in debt owing to Bank of America and caused ARP II to pay Kriti more than \$2.7 million and accept promissory notes from Kriti in exchange.

19. Under Kriti's management, ARP II now has debt that exceeds \$11.7 million, some of which is owed to Kriti itself, and its operating income is insufficient to service that debt. Thus, Kriti's actions have led to the insolvency of ARP II.

20. In addition, Kriti has diverted ARP II funds to other Kriti projects that are not related to ARP II or the Ripley Light Project. For example, Kriti has caused ARP II to pay Ryan Black, its employee, while Black was living and working for Kriti in New York City. ARP II paid for Black's trips made on Kriti's behalf to New York and Greece. Those trips were unrelated to Black's ostensible position as the marina manager for the Ripley Light Project, which has no connection to New York or Greece. ARP II has also been billed for Black's apartment rental, apartment utilities, personal cell phone, health insurance premiums, a personal car, personal car repair and maintenance, daily food purchases and an apparently unlimited expense account labeled "T&E," even after Black moved to New York City and was working for Kriti on its other projects.

21. Moreover, while Black worked at the Ripley Light Marina, he was involved in a remodeling business through an entity in which he was a 50% partner, Archilite, LLC. This company had its own office, employees, vehicles and customers and was completely unrelated to ARP II or any work done on ARP II's behalf. Yet, ARP II has been billed for projects and materials undertaken or provided by Archilite LLC, and Black has misappropriated, among other things, furniture and fixtures belonging to ARP II for use at Archilite LLC, all with knowledge and consent of Kriti.

B. Kriti's fraudulent pursuit of default judgment through ARP II against ARP I

22. One of the many lawsuits involving the Ripley Light Project and the disputes between the members of ARP II included an action filed on or about June 7, 2005, in the Charleston County Court of Common Pleas, entitled *Lunar Systems, Ltd. v. Ashley River Properties One, LLC; Ashley River Properties Two, LLC, et al.*, Case No. 2005-CP-10-2434. In that action, Lunar Systems, Ltd. ("Lunar") sued several defendants, including ARP I and ARP II, alleging breach of contract and seeking the return of a \$325,000.00 payment made to the defendants towards the purchase of a condominium unit in the Ripley Light project, which was being developed by ARP I and ARP II.

23. The Summons and Complaint in the Lunar lawsuit were purportedly served upon Frank Guarino ("Guarino") on June 13, 2005, as registered agent for both ARP I and ARP II. At that time, Kriti had already removed ARP I from the Ripley Light Project pursuant to its termination of the Project Development Agreement and had previously taken over sole management of ARP II from Emerald.

24. When the Lunar lawsuit papers were purportedly served on Guarino as registered agent for ARP I, Guarino was an independent real estate broker with an office at the Ripley Light

Project provided and paid for by ARP II and was working as an independent contractor and agent for ARP II to handle condo pre-sales and slip rentals to fill up the marina as it was completed. Although Guarino was still listed as ARP I's registered agent through the South Carolina Secretary of State, he was acting as an independent contractor and agent for ARP II and was in an adverse position to and in conflict with ARP I at the time he purportedly accepted service of the Lunar lawsuit papers for both ARP I and ARP II.

25. No managing member of ARP I had been provided with notice of or a copy of the Lunar lawsuit papers after they were purportedly received by Guarino and, consequently, a timely response to the lawsuit was not filed on behalf of ARP I. However, Lunar's legal counsel did not attempt to hold ARP I in default or to pursue an entry of default against ARP I.

26. Upon information and belief, Guarino transmitted the pleadings to the principals or representatives of Kriti and/or ARP II because ARP II filed an answer in the Lunar lawsuit.

27. The obligation owed to Lunar was a subject of the above-referenced First New York Arbitration proceeding commenced by Kriti and ARP II against Emerald and Longman on March 23, 2005. On October 31, 2005, while the Lunar lawsuit was pending in Charleston, the New York arbitrators in the First New York Arbitration issued an award specifically requiring ARP II to discharge certain third party vendee claims including, *inter alia*, the debt at issue in the Lunar lawsuit. The arbitrators' award expressly required ARP II to satisfy the Lunar obligation at its own expense. A true and correct copy of the October 31, 2005 Arbitration Award is attached hereto and incorporated herein by reference as "Exhibit 3."

28. Additionally, the arbitrators awarded Kriti \$400,000.00 against Emerald as indemnification for all claims of third party contract venders (including the Lunar claim).

29. Subsequent to the arbitration award, Kriti and ARP II requested modification of the award and asserted that the amount given to Kriti and ARP II for indemnification on the third-party contract vendee claims (including the Lunar claim) was inadequate. A true and correct copy of Kriti and ARP II's Request for Modification is attached hereto and incorporated herein by reference as "Exhibit 4."

30. The Arbitration Panel denied Kriti's and ARP II's requests to modify the award and confirmed their prior ruling that Kriti and ARP II were entitled to \$400,000 in indemnity for the third-party contract vendee claims (including the Lunar claim) and that all third-party contract vendee claims were to be satisfied at the expense of ARP II. A true and correct copy of the Arbitration Panel's Disposition of the Request for Modification is attached hereto and incorporated herein by reference as "Exhibit 5."

31. After the First New York Arbitration award on October 31, 2005 ordered that Lunar's claim was to be paid at the expense of ARP II, Emerald and ARP I expected that ARP II would take the appropriate steps to resolve Lunar's third-party vendee contract claim as required by the arbitration award. However, even though the First New York Arbitration award required ARP II to satisfy Lunar's claim at its own expense, ARP I and Emerald later discovered that Kriti had caused ARP II to enter into a settlement agreement with Lunar in or about December of 2007 under which ARP II attempted to obtain an assignment of Lunar's claim and had further caused ARP II to pursue the same claim (as purported assignee of Lunar) against ARP I in the Lunar lawsuit pending in Charleston.

32. ARP I and Emerald first received knowledge of the action taken by ARP II in the Lunar lawsuit during a discovery deposition taken of Kriti's manager (Davidson Williams) on July 21, 2008 in a separate proceeding in New York involving Emerald and Kriti. ARP I and

Emerald were not privy to the settlement between Lunar and ARP II and ARP I and Emerald were unaware that ARP II had failed to satisfy Lunar's claims as required by the First New York Arbitration award. Neither Kriti nor ARP II attempted to give actual notice of the assignment and intent to obtain a default judgment to either ARP I or Emerald.

33. Following the July 21, 2008 deposition, ARP I and Emerald immediately investigated and learned that ARP II, as purported assignee of Lunar, had moved for an entry of default against ARP I on in the Lunar lawsuit pending in Charleston (even though Lunar's own legal counsel had not taken any such steps) involving the claim that ARP II had purportedly purchased from Lunar and that ARP II had obtained a default judgment against ARP I on May 23, 2008. The default judgment was for the very same claim which the New York arbitrators had previously ordered Kriti and ARP II to satisfy.

34. ARP I and Emerald also learned that ARP II purportedly served Guarino with the request for entry of default on April 2, 2008, as ARP I's registered agent. Neither Emerald nor any managing member of ARP I had been provided with notice of or a copy of the request for entry of default that was purportedly received by Guarino.

35. After learning of the default judgment, ARP I immediately moved to vacate and/or set aside the default judgment by motion filed on August 12, 2008 and incurred considerable legal expenses in prosecuting the motion.

36. ARP II vigorously opposed the motion. However, by Order filed on December 18, 2008, the Circuit Court for Charleston County entered an Order granting ARP I's motion and vacated and/or set aside the default judgment entered on May 23, 2008.

C. Kriti's unilateral dilution of Emerald's membership interest in ARP II

37. In the First New York Arbitration, the Arbitrators denied Kriti's claim for forfeiture of Emerald's membership interest because of Emerald's alleged failure to fund a capital call initiated by Kriti. The New York Arbitrators in the First New York Arbitration specifically found that Emerald had probable cause to challenge a capital call by Kriti because of the impropriety of Kriti's capital call.

38. Notwithstanding the denial of this forfeiture and finding of the impropriety of the capital call by the Arbitrators, Kriti purported to unilaterally dilute the membership interest of Emerald in ARP II from 70% to approximately 21%.

39. During the earlier referenced discovery deposition of Kriti's manager (Davidson Williams), he testified that Emerald's interest in ARP II had been diluted from 70% to approximately 21% because Kriti made a capital call in February or March, 2005, i.e. the same capital call which was disallowed by the New York Arbitrators in the First New York Arbitration.

40. Emerald received a K-1 showing that its shares had been unilaterally diluted from 70% to 21%.

41. Emerald, prior to the receipt of the K-1, had no knowledge of the alleged dilution by Kriti even though it had made repeated request to Kriti for disclosure of the financial records of ARP II. A true and correct copy of Emerald's K-1 is attached hereto and incorporated herein by reference as "Exhibit 6."

42. In January 2010, Emerald again commenced arbitration proceedings in New York against Kriti entitled, *Emerald Investments, LLC and Kriti Ripley, LLC, Re: 13 115 00216 10* ("2010 New York Arbitration"), which sought a declaration that Emerald was in fact a 70% owner of ARP II.

43. The 2010 New York Arbitration issued an Award of Arbitrators on October 28, 2010 finding Emerald to be a 70% owner of ARP II. A copy of the 2010 New York Arbitration Award is attached hereto and incorporated herein by reference as "Exhibit 7".

44. The Arbitrators in the 2010 New York Arbitration found that the February 28, 2005 Capital Call was "defective on its face" and therefore could not trigger the dilution of Emeralds' membership interest in ARP II. The Arbitrators further found that the capital call imposed conditions on the application of Emerald's capital contribution which were contrary to the terms of the Operating Agreement.

D. Kriti's failure to timely disclose ARP II's financial records to Emerald

45. Kriti repeatedly refused to produce the financial records of ARP II to Emerald in an effort to hide its own self-serving and dishonest conduct and to conceal the purported unilateral dilution of Emerald's interest and defraud Emerald of its right to contest such dilution.

46. On June 12, 2006 and July 5, 2006, Emerald made repeated requests in writing to Kriti and ARP II to be allowed to inspect and review ARP II's books and records. Emerald made these requests in response to Kriti's and/or ARP II's allegations that Emerald's 70% membership interest had been diluted. Copies of Emerald's written requests are attached hereto and incorporated herein as "Exhibit 8".

47. Emerald sought disclosure of ARP II's books and records through formal written discovery in this matter on February 24, 2009 and on April 3, 2009 in the case formerly styled *Lunar Systems, Ltd v. Ashley River Properties One, LLC et al*, 05-CP-10-2434. A copy of Emerald's discovery requests in both referenced cases are attached hereto and collectively incorporated herein as "Exhibit 9".

48. ARP II and Kriti filed objections to the Interrogatories and Requests for Production of Documents in this matter claiming that Emerald's claims were subject to mandatory arbitration and that Emerald was not entitled to engage in litigation discovery. A copy of ARP II and Kriti's objections are attached as "Exhibit 10".

49. ARP II ignored the written discovery requests in Case No. 05-CP-10-2434 forcing, Emerald, through ARP I, to file a Motion to Compel responses to its discovery requests. A copy of ARP I's Motion to Compel is attached hereto and incorporated herein as "Exhibit 11".

50. On October 1, 2009, Emerald sent another written demand pursuant to §12.1 of the ARP II Operating Agreement and § 33-44-408 of the South Carolina Limited Liability Company Act to Kriti, as Managing Member of ARP II, demanding access to the financial records of ARP II. A copy of Emerald's October 1, 2009 demand is attached hereto and incorporated herein as "Exhibit 12".

51. Kriti replied to Emerald's October 1, 2009 requests objecting to the disclosure of the information sought by Emerald and claiming that the majority of the documents sought had already been produced. A copy of Kriti's response to Emerald's October 1, 2009 letter is attached hereto and incorporated herein as "Exhibit 13".

52. Access to the books and financial records of ARP was continually refused and delayed by Kriti and/or ARP II for three (3) years. During that time, Kriti was taking action to dilute the membership interest of Emerald in ARP II and charge the membership interest of Emerald in ARP II to satisfy a judgment obtained by Kriti in the First New York Arbitration.

53. Even more alarming, Kriti has discarded some of ARP II's computers and servers, which contained much of the information sought by Emerald, and did so without any notice to Emerald and in complete disregard of Emerald's repeated requests to inspect ARP II's records.

FIRST CAUSE OF ACTION
(Judicial Dissolution of ARP II)

54. Section 33-44-801(4)(b)(c) and (e) of South Carolina's Uniform Limited Liability Company Act authorizes the dissolution and winding up of a limited liability company upon the application of a member and a judicial decree that: (b) "another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; (c) "it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;" or (e) "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner."

55. Kriti and ARP II have engaged in serious and protracted misconduct toward Emerald that has been oppressive, fraudulent and unfairly prejudicial to Emerald, making it impracticable to carry on ARP II's business.

56. Such conduct on the part of Kriti and ARP II includes the following:

- a. Kriti created financial instability and insolvency of ARP II causing ARP II to have a very poor financial record that is not likely to improve;
- b. Self-serving actions of Kriti through ARP II against ARP I and Emerald without notice to Emerald;
- c. Kriti purported to unilaterally dilute Emerald's membership interest in ARP II without Emerald's knowledge; and
- d. Kriti has concealed the financial records of ARP II from Emerald despite Emerald's repeated requests for disclosure of the same.

57. The New York Arbitrators in the 2010 New York Arbitration explicitly found that "dissolution may be in the best interests of all parties" and further observed "Kriti and Emerald cannot work together in any constructive manner," the panel nevertheless ruled that the facts did not satisfy the narrow grounds for dissolution stated in the ARP II operating agreement.

58. The New York Arbitrators in the 2010 New York Arbitration did not address or determine whether judicial dissolution of ARP II is warranted pursuant to the statutory grounds set forth in the South Carolina Uniform Limited Liability Company Act. Those statutory grounds are substantially different from and broader than the very limited grounds for dissolution set forth in the operating agreement.

59. The opinions as to dissolution or dissociation set forth by The New York Arbitrators in the 2010 Arbitration was strictly limited to an evaluation of Kriti's behavior within the requirements defined by the Operating Agreement and does not go beyond the precise provisions of that document. The New York Arbitrators did not address the merits of dissolution within the South Carolina Uniform Limited Liability Company Act. Under South Carolina law, a claim for dissolution is non-arbitrable and thus The New York Arbitrators could not make findings as to dissolution pursuant to the South Carolina Uniform Limited Liability Company Act.

60. The improper conduct by Kriti and the fact that Kriti and Emerald cannot work together in any constructive manner authorizes the dissolution of ARP II pursuant to Section 33-44-801(4)(b)(c) and (e) of the South Carolina Uniform Limited Liability Company Act.

- a. **Kriti created financial instability and insolvency of ARP II causing ARP II to have very poor financial record that is not likely to improve**

61. Kriti, as manager of ARP II, has repeatedly refused to conduct the affairs of ARP II in the best interest of ARP II and its members, and has misappropriated the funds of ARP II for Kriti's own purposes and not for the benefit of ARP II.

62. Kriti has rebuffed offers for the purchase of ARP II's only real property asset, which would have yielded a return of several million dollars to both Emerald and Kriti over their initial capital contributions and then existing debt.

63. Kriti has loaded ARP II with debt in excess of \$11.7 million with operating income insufficient to service the debt, which creates a very poor financial record for ARP II that is not likely to improve.

64. Kriti has misappropriated ARP II's funds by funding projects not related to ARP II or the Ripley Light Project.

65. Kriti has misappropriated ARP II funds by paying excessive employee benefits to ARP II's employee, Ryan Black, and supporting a nonaffiliated company in which Mr. Black is a partner, without knowledge or consent of Emerald.

66. Kriti's mismanagement, misuse, and misappropriation of ARP II's assets is solely responsible for ARP II's deterioration from an extremely valuable entity to an insolvent entity with a negative net worth to its members.

67. As a result of Kriti's oppressive, fraudulent and unfairly prejudicial conduct in rebuffing viable offers for the purchase of ARP II's only asset, loading the company with debt, and breaching its mandatory obligations pursuant to Section 33-44-801(4)(b)(c) and (e) of South Carolina's Uniform Limited Liability Company Act, Emerald is entitled to dissolution of ARP II.

b Self-serving actions of Kriti through ARP II against ARP I without notice to Emerald.

68. In its application for default judgment against ARP I, ARP II attempted to take an alleged assignment of the Lunar claim against ARP I, as an opportunity to backdoor, with no notice to ARP I, a claim for indemnity against ARP I (of which Emerald is the sole owner and member).

69. ARP II as the purported assignee of the Lunar claims, stands in the shoes of Lunar and receives the very same rights that Lunar had at the time of the purported assignment and no indemnity claim was sought by Lunar against ARP I in the underlying complaint.

70. At the time of the alleged assignment, ARP II had taken no legal action to submit a claim for indemnity against ARP I, and the issue of indemnity with respect to ARP I was litigated in New York during the First New York Arbitration and ARP II and Kriti were found by the Arbitration Panel to have unclean hands with respect to the third-party contract vendee claims, including Lunar.

71. ARP II attempted to use the default judgment it obtained as purported assignee of the Lunar claims to backdoor a claim for indemnity against ARP I in order to make ARP I, and ultimately Emerald, responsible for an obligation which ARP II was found to be responsible for in the First New York Arbitration.

72. As a result of Kriti's oppressive, fraudulent and unfairly prejudicial conduct in taking a self-serving action against another member of ARP II and breach of its mandatory obligations pursuant to Section 33-44-801(4)(b)(c) and (e) of South Carolina's Uniform Limited Liability Company Act, and its duties under the Operating Agreement, and because the members cannot work together in any constructive manner, Emerald is entitled to dissolution of ARP II.

c. Kriti attempted to unilateral dilute Emerald's interest in ARP II

72. In the First New York Arbitration, Kriti sought forfeiture of Emerald's membership interest in ARP II because of Emerald's inability to fund a capital call initiated by Kriti in or around February/March 2005.

73. The Arbitration Panel found that Emerald had probable cause to challenge the capital call by Kriti because of questions related to the propriety of Kriti's capital call and thereby obviated forfeiture pursuant to applicable South Carolina Law and the inequity of such forfeiture.

74. Ignoring the First New York Arbitration Panel's findings, Kriti purported to unilaterally dilute Emerald's membership interest in ARP II from 70% to around 21% based upon the same 2005 capital call.

75. Emerald received a K-1 from Kriti and/or ARP II showing a purported dilution in the Emerald shares from 70% to 21%.

76. Kriti has continually refused to answer questions surrounding its purported dilution of Emerald's membership interest in ARP II and concealed the purported dilution until sending the K-1 to Emerald.

77. The Arbitrators in the 2010 New York Arbitration found that the February 28, 2005 Capital Call was "defective on its face" and therefore could not trigger the dilution of Emeralds' membership interest in ARP II. Further, the New York Arbitrators found that the capital call imposed conditions on the application of Emerald's capital contribution which were contrary to the terms of the Operating Agreement.

78. As a result of Kriti's oppressive, fraudulent and unfairly prejudicial conduct in unilaterally diluting Emerald's membership interest in ARP II through an improper capital call

and breaching its mandatory obligations pursuant to Section 33-44-801(4)(b)(c) and (e) of South Carolina's Uniform Limited Liability Company Act, Emerald is entitled to dissolution of ARP II.

d. Failure of Kriti to disclose financial records of ARP II to Emerald

79. As a member of ARP II, Emerald has the right to seek and be provided access to all financial information of ARP II.

80. On June 12, 2006 and July 5, 2006, Emerald made repeated requests in writing to Kriti and ARP II to be allowed to inspect and review ARP II's books and records, of which Emerald is a 70% member. Emerald made these requests in response to Kriti's and/or ARP II's allegations that Emerald's 70% membership interest has been diluted.

81. In addition, Emerald sought access to the books and records of ARP II through formal written discovery in South Carolina litigation with Kriti and ARP II.

82. Despite the repeated requests, Kriti and ARP II refused and continually delayed Emerald's access to review the company books and financial records of ARP II.

83. Kriti and ARP II's refusal and continual delay to allow Emerald to review ARP II's company books or records, of which Emerald is the majority member, is a breach of Kriti's duty to discharge its duty of loyalty and duty of care consistent with the obligation of good faith and fair dealing.

84. Kriti's misconduct has prevented Emerald from monitoring the management, operation, and distributions of ARP II.

85. Kriti has refused to allow Emerald to inspect the books and records of ARP II because such an inspection would reveal Kriti's past and ongoing improper conduct and waste of ARP II's assets.

86. As a result of Kriti's oppressive, fraudulent and unfairly prejudicial conduct in refusing to disclose ARP II's financial information to its majority member and breach of its mandatory obligations pursuant to Section 33-44-801(4)(b)(c) and (e) of South Carolina's Uniform Limited Liability Company Act and its duties under the Operating Agreement, Emerald is entitled to dissolution of ARP II.

WHEREFORE, by reason of the foregoing, Plaintiff respectfully requests the following relief:

- (a) An Order dissolving ARP II, pursuant to Section 33-44-801 (b)(c) and (e) of South Carolina's Uniform Limited Liability Company Act, and directing the winding up of its affairs;
- (b) An Order requiring Emerald, as the 70% majority owner of ARP II, to buyout Kriti's minority interest, or vice versa.
- (c) An award of Plaintiffs' attorney's fees and costs associated with this present action; and
- (d) For such other and further relief as the Court deems just and proper.

ROSEN, ROSEN & HAGOOD, LLC.

By: _____
 Richard S. Rosen
 Daniel F. Blanchard
 James A. Bruorton IV
 134 Meeting Street, Suite 200
 Charleston, SC 29401
 (843) 577-6726

ATTORNEYS FOR PLAINTIFF

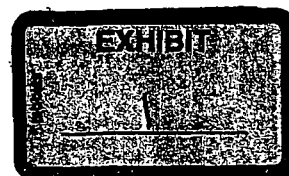
Charleston, South Carolina
 December __, 2010

December 29, 2003

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA.

OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC

MEMBERSHIP SHARES IN THIS LIMITED LIABILITY COMPANY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. MEMBERSHIP SHARES ACQUIRED BY MEMBERS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OF THE MEMBERSHIP SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. MEMBERSHIP SHARES MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED TO PERSONS WHO ARE NOT BONA FIDE RESIDENTS OF THE STATE OF SOUTH CAROLINA FOR A PERIOD OF AT LEAST NINE MONTHS FROM THE COMPLETION OF THE OFFERING IN WHICH THE TRANSFEROR ACQUIRED SUCH MEMBERSHIP SHARES. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE MEMBERSHIP SHARES ARE SET FORTH IN THIS AGREEMENT.



OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC

THIS OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC ("Agreement") is made and entered into as of the 29th day of December, 2003, by and among EMERALD INVESTMENTS, LLC, a Connecticut limited liability company (the "Emerald Member"), and KRITI RIPLEY, LLC, a Delaware limited liability company (the "Kriti Member"). The Kriti Member is referred to as the "Investor Member". The Emerald Member and the Kriti Member are collectively referred to as the "Members" and individually as a "Member" and ASHLEY RIVER PROPERTIES II, LLC (as the "Company").

WITNESSETH:

WHEREAS, the Company has been formed as a limited liability company under South Carolina law for the limited purposes hereinafter set forth; and

WHEREAS, the Members wish to adopt this Agreement as the operating agreement of the Company.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, to each paid in hand, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members and the Company covenant and agree as follows:

ARTICLE I DEFINITIONS

1.1 **Definitions.** Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) "**Act**" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) "**Agreement**" shall mean this Operating Agreement, together with any amendments hereto.

(c) "**Articles of Organization**" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, together with any amendments thereto.

(d) "**Capital Account**" shall mean the account established and maintained for each Member on the books of the Company pursuant to Article VII and Article VIII hereof.

(e) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of a Member.

(f) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(g) "Company" is defined in the preamble.

(h) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(i) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.

(j) "Control" or "Controlled" shall mean with respect to any legal entity, the actual or constructive ownership of more than fifty percent (50%) of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity, or the ability to direct the management and affairs of such entity.

(k) "Disinterested" shall mean with respect to any Member, a Member who (i) is not a party to a particular transaction or other undertaking, (ii) has no material financial interest in any organization that is a party to that undertaking, and (iii) is not a Family member of any Person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) "Dissociation" shall mean only the action of a Member deemed to be a Dissociation by the Member pursuant to Article X, and shall not have the meaning given it in the Act.

(m) "Family" shall mean (i) the spouse, lineal descendants and ancestors of an individual; (ii) any estate, trust, guardianship, conservatorship, custodianship or other fiduciary arrangement for the benefit of any one or more of the individuals described in (i) above; and (iii) any corporation, partnership, limited liability company or other business organization Controlled by any one or more individuals or entities described in (i) or (ii) above.

(n) "Financial Membership Shares" shall mean each Member's Financial Membership Shares listed on Exhibit A attached hereto.

(o) "Financial Rights" shall mean the right of each Member to share in the profits and Losses of the Company and the right to share in distributions. Each Member's Financial Rights shall be a percentage, expressed as a fraction, the

numerator of which is such Member's Financial Membership Shares and the denominator of which is the total Financial Membership Shares owned by all Members.

(p) "Losses" shall mean the losses of the Company as determined under Article VIII hereof.

(q) "Members" shall mean the parties to this Agreement from time to time.

(r) "Membership Share" shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.

(s) "Person" shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(t) "Permitted Transfer" shall mean the transfer of a Member's Membership Share to a Person who is also a Member of the Company at the time of the transfer.

(u) "Profits" shall mean the profits of the Company as determined under Article VIII hereof.

(v) "Project Manager" shall mean Ripley Light Development, LLC, or its permitted successor under the Project Management Agreement.

(w) "Project Management Agreement" shall have the meaning established in Section 5.2.1 of this Agreement.

(x) "Required Interest" shall mean those Members who own one hundred percent (100%) of the Voting Rights in the Company.

(y) "Voting Membership Shares" shall mean each Member's Voting Membership Shares listed on Exhibit A attached hereto.

(z) "Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Each Member's Voting Rights shall be a percentage, expressed as a fraction, the numerator of which is such Member's Voting Membership Shares and the denominator of which is the total Voting Membership Shares owned by all Members.

(aa) "Voting Rights in the Company" shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a

percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

ARTICLE II FORMATION, PURPOSES AND POWERS

2.1 Formation. The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

2.2 Name. The name of the Company may only be changed by an amendment to the Articles of Organization.

2.3 Articles of Organization. The Articles of Organization have been filed with the South Carolina Secretary of State, and the Company shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

2.4 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles of Organization.

2.5 Registered Agent and Address. The registered agent for service of process on the Company and the street address of the registered agent for service of process on the Company shall be the Person and address set forth in the Articles of Organization.

2.6 Term Company. The Company shall be a term company within the meaning of the Act. The Company's existence shall commence on the date the Articles of Organization were filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization, and the existence of the Company shall terminate on the date specified in the Articles of Organization, unless extended or sooner terminated by law or pursuant to the provisions of this Agreement.

2.7 Purposes. The purposes of the Company shall be to own, maintain, improve, lease, invest in and use the property described on Schedule 2.7 attached hereto ("New Parcel A"). With the written consent of all of the Members, the Company may also seek to acquire, own, maintain, improve, lease, invest in, and use the properties identified as Company Opportunity Parcels in Section 6.1 of this Agreement.

2.8 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;
- (i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;
- (j) Pay pensions and establish qualified and non-qualified retirement plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents, if otherwise permitted by law;
- (k) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(m) Perform any act and execute and deliver any documents required by any governmental authority; and

(n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

2.7 **Construction.** Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

ARTICLE III MEMBERSHIP AND CAPITALIZATION

3.1 **Members.** Each Member's Financial Membership Shares and Voting Membership Shares are shown on Exhibit A attached hereto.

3.2 **Admission of New Members.** Except as may otherwise provided in Article XI, additional Members (including transferees) may be admitted to the Company only with the consent of those Members who own one hundred percent (100%) of the Voting Rights in the Company.

Consent to the admission of a new Member shall be evidenced by the execution by both the new Member and the Company of an amendment to Exhibit A of this Agreement setting forth the names, addresses, Financial Membership Shares, and Voting Membership Shares of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person completes and executes an admission agreement with the Company in a form reasonably acceptable to the Company. The Members hereby consent to the admission of any transferee of a Membership Share pursuant to a Permitted Transfer as a full Member in the Company, provided such transferee completes and executes an admission agreement in a form reasonably acceptable to the Company.

Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, insolvency,

bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.3 Transferee of Membership Share Admitted as a Member. Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.4 Transferee of Membership Share not Admitted as a Member. If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Company, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Company may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

3.6 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be changed or revoked at any time by the Member who gave such power by giving notice of its change or revocation to the Company.

3.7 (a) Initial Capital Contribution. The Krite Member will be responsible for making an initial cash capital contribution in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the "Investor's Initial Capital Contribution"). The Emerald Member shall contribute, or cause Ripley Light Development, LLC ("Ripley") to contribute, the following tangible and intangible property rights which the Members have agreed to be valued as a capital contribution of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the "Emerald Initial Capital Contribution"):

(i) that parcel of land identified as Charleston County TMS 421-11-00-054 and consisting of approximately 5.78 acres, subject only to the following existing indebtedness: (A) One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) owed to Cosimo, LLC (the "Cosimo Debt"); and (B) Five Hundred Thousand Dollars (\$500,000.00) owed to Philip Blumenfeld (the "Blumenfeld Debt"); and (C) One Hundred Thirteen Thousand Two Hundred Sixty One Dollars and sixty-seven cents (\$113,261.67) owed to General Engineering Laboratories, Inc. (the "GEL Debt"). It is understood that the Investor member shall not be obligated to guaranty any such existing indebtedness.

(ii) all dock permits related to New Parcel A, pursuant to the Assignment of Dock Permits in the form attached hereto as Schedule 3.7(a)(ii).

(iii) all personal property, permits, contract rights, intangibles and other property rights described in the Bill of Sale and General Assignment attached hereto as Schedule 3.7(a)(iii).

(b) Voluntary Capital Calls. Those Members who own one hundred percent (100%) of the Voting Rights in the Company may request that the Members make additional Capital Contributions by delivering notice of the request to each Member. Any additional Capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

(c) Mandatory Capital Calls. Any Member who owns Voting Rights in the Company may unilaterally demand that the Members make additional Capital Contributions upon the occurrence of a Mandatory Capital Call Event, as such term is defined below. Any additional Capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to total of the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

For purposes of this Section 3.7 (c), a "Mandatory Capital Call Event" shall mean the occurrence of any one of the following events:

- (i) The failure of the Company to conclude a loan with Marshall Investments Corporation or another lender on or before March 31, 2004 upon substantially the terms and conditions as set forth in the loan proposal described in Section 3.9 (e) hereof (herein, a "Marshall Default"); or
- (ii) The commencement of legal proceedings by any party against the Company to collect payment of any of the Cosimo Debt, the Blumenfeld Debt, or the GEL Debt, and the failure of the Company to discharge the debts which are the subject of such proceedings, or to otherwise cause such legal proceedings to be withdrawn, with prejudice, within 30 days of this commencement of same (herein, a "Mortgage Default")

A Member may make a Mandatory Capital Call by delivering notice of the demand for additional Capital Contributions to each Member identifying therein the Mandatory Capital Call Event which has occurred, and stating the amount of additional Capital Contributions which must be made. In the case of a Marshall Default, a Member may demand additional Capital Contributions on a monthly basis in sufficient amounts to permit the Company to discharge its obligations and other indebtedness to third parties in the ordinary course of business as and when such obligations and other indebtedness becomes due and payable. In the case of a Mortgage Default, a Member may demand additional Capital Contributions in sufficient amount to fully discharge any such Mortgage Default.

(d) Dilution.

(i) Remedies. If a Member (a "Defaulting Member") fails to make any additional Capital Contribution within 30 days of any request or demand therefor pursuant to Section 3.7(b) and (c) above, the same shall constitute a default hereunder and the other Members ("Non-Defaulting Members") may, each in its sole discretion, without any obligation to do so and without limitation on its other rights and remedies under this Agreement, elect to exercise any of the options set forth in subparagraphs (ii) and (iii) below.

(ii) Default Contributions. The options available to the Non-Defaulting Members for failure by the Defaulting Member to make capital contributions when required under this Agreement shall include the ability to elect either to (1) withdraw the capital contribution made by the Non-Defaulting Member that corresponds to the capital contribution which the Defaulting Member failed to make (provided, if there is more than one Non-Defaulting Member, then the Non-Defaulting Members must exercise the remedy in this clause (1) jointly or not at all) or (2) in addition to its share, if any, of contributions made as required at the time of the Defaulting Member's failure to contribute, make a contribution ("Default Contribution") to the Company in an amount equal to the portion of any required additional Contribution to Capital that was not made by the Defaulting Member (and, if more than one Non-Defaulting Member contributes toward a Default Contribution and they cannot agree on the proportion in which to contribute, they shall contribute in proportion to their respective total Capital

Contributions). The making of any such contribution shall not be deemed to cure the default of the Member failing to make such additional Contribution to Capital. Each Default Contribution shall be considered to be an additional Capital Contribution.

(iii) Default Loans. The Non-Defaulting Member may elect to advance as a loan to the Company an amount equal to but in lieu of what would have been the amount of any applicable potential Default Contribution (such loan being referred to herein as a "Default Loan") (and if more than one Non-Defaulting Member makes advances as a Default Loan and they cannot agree on the proportion in which to make the advances, they shall do so in proportion to their respective total Capital Contributions). A Default Loan shall be the obligation of the Company, shall bear interest at the 12% per annum payable monthly or the maximum interest then permitted by applicable Laws (whichever is less), shall be repaid before any other payments or distributions of Company Cash pursuant to Section 8.1 and shall be due in full on the earlier of the first anniversary of its making or dissolution of the Company.

(iv) Adjustment of Membership Interests. If one or more Non-Defaulting Members makes a Default Contribution on behalf of a Defaulting Member, each such Non-Defaulting Member's Membership Share shall be increased by an amount equal to:

$$\begin{array}{l} \text{Increase to} \\ \text{Membership} \\ \text{Share of Non-Defaulting Member} \end{array} = \frac{A}{B} \times 2$$

whereby:

A = Default Contribution made by such Non-Defaulting Member at the time the Defaulting Member failed to make its Contribution (the "Required Contribution Date").

B = Total Contributions made by all Members through and including the Required Contribution Date, including the Default Contribution.

and the Membership Share of the Defaulting Member shall be decreased (but not below zero) by the aggregate amount of the increases to the Membership Interests of all Non-Defaulting Members. If the aggregate amount of increases to the Membership Shares of the Non-Defaulting Member would, pursuant to the foregoing formula, exceed the Membership Share of the Defaulting Member immediately prior to adjustment, the aggregate increases shall be limited to the amount of the Membership Share of the Defaulting Member immediately prior to adjustment (with such limitation being applied so that the ratio of each Non-Defaulting Member's increase to the total increase of all Non-Defaulting Members equals the ratio of such Non-Defaulting Member's Default Contribution to the Default Contribution of all Non-Defaulting Members).

(e) Guaranties. In the event that the Company receives a loan from a third party lender, in connection with which a Member or an affiliate of any Member delivers a guaranty or indemnity of any kind or nature (any such guaranty or indemnity being referred to herein as a "Guaranty"), and such Member or its affiliate expends any sum arising out of a demand made pursuant to a Guaranty, then the Member which expended (or whose affiliate expended) such sum shall be deemed to have made an additional Capital Contribution to the Company equal to such sum, and the respective Financial Membership Shares and Voting Membership Shares of each Member in the Company shall be readjusted in the proportion that each Member's total Capital Contributions (including deemed Capital Contributions) to the Company bears to the total Capital Contributions made or deemed made to the Company by all Members.

3.8 Representations and Warranties of Members. Each Member hereby represents and warrants to the Company and each other Member, and covenants with the Company and each other Member that:

(a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;

(b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;

(c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;

(d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;

(e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;

(f) the Member acknowledges that, to the best of the Member's knowledge, the purchase of the Member's Membership Share in the Company was not solicited by the use of general advertising or solicitation;

(g) the Member has been given sufficient opportunity to ask questions, and receive answers with respect to the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company;

(h) in the event such Member is not a natural person, the Member is duly organized, validly existing and in good standing under the laws of the state of its formation and has full power to carry on its business and to own and operate its properties and assets as presently owned and operated;

(i) such Member has taken all action necessary to approve and authorize the execution of this Agreement and to consummate the transaction contemplated hereby; and

(j) when executed and delivered, this Agreement shall constitute the valid and binding obligations of the Member, enforceable in accordance with its terms and conditions.

The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

3.9 Emerald Member's Representations. The Emerald Member and Stuart Longman, jointly and severally, hereby represent and warrant to the Company and each other Member, and covenants with the Company and each other Member that

(a) Except as disclosed in Schedule 3.9 hereto, there is no pending or threatened litigation, action, proceeding or labor controversy by, against or affecting the Emerald Member, Stuart Longman, Ripley or any entity, directly or indirectly, Controlled by the Emerald Member, Stuart Longman (or any member of his Family) and/or Ripley, or any entity, directly or indirectly, Controlling or under the common Control of the Emerald Member or Ripley, or which, regardless of the outcome, could reasonably be expected to have a material adverse effect on the (i) financial condition, operations, assets, business, properties or prospects, debt service capacity, tax position or environmental liability of the Company, the Project Member, New Parcel A or the Company Opportunity Parcels, or (ii) the licenses, authorizations, permits, waivers, certificates or approvals applicable to New Parcel A, including without limitation those described in Section 3.7(a)(ii) (collectively, the "Permits").

(b) Except as disclosed in Schedule 3.9 hereto, there are no pending or threatened claims, complaints, notices or requests for information received by the Emerald Member, Ripley or Stuart Longman with respect to any alleged violation of any applicable legal or regulatory requirement relating the regulation of the environment or hazardous substances ("Environmental Laws") or any complaints, notices or inquiries to the Emerald Member, Ripley or Stuart Longman regarding potential liability under any Environmental Law; during Ripley's ownership of New Parcel A, and to the best of the Emerald Member's and Stuart Longman's knowledge, prior thereto, there were no releases of hazardous substances at, on or under New Parcel A; to the best knowledge of the Emerald Member and Stuart Longman, there are no underground storage tanks, active or abandoned, on or under New Parcel A; and to the best knowledge of the Emerald Member and Stuart Longman, no conditions exist at, on or under New Parcel A, which, with the giving of notice or passage of time, or both, would give rise to liability under any Environmental Law.

(c) To the best knowledge of the Emerald Member, there are no Permits that are required or will become required for the ownership, construction or operation of New Parcel A as a 102-slip marina and 138-residential unit condominium, inclusive of Permits related to the Collins Underdeveloped Land, as hereinafter defined (the "Project"), other than the Permits described in Schedule 3.9. Each Permit heretofore required to be obtained is in full force and effect and is not at this time subject to any appeals or further proceedings or to any unsatisfied condition that may allow modification or revocation. Each Permit described in Schedule 3.9 but which has not yet been issued is of a type that is routinely granted on application. Neither the Emerald Member nor Stuart Longman has any reason to believe that any permit so indicated on Schedule 3.9 will not be obtained before it becomes necessary for the ownership, construction or operation of the Project or that obtaining such Permit will result in undue expense or delay (other than architectural and engineering fees in connection with any change to any existing Permit). Each heretofore issued Permit is in full force and effect, and no condition of any Permit has been violated to date, and no event or circumstance has occurred that with the giving of notice or the passage of time, or both, would give rise to such a violation. Each Permit is assignable without the consent of the issuing authority or the payment of any fee.

(d) The outstanding principal balance of the Cosimo Debt is \$1,750,000 and accrued but unpaid interest thereon, late charges and other amounts owed is \$21,875; and interest thereon has been paid through November 30, 2003. The outstanding principal balance of the Blumenfeld Debt is \$500,000 and accrued but unpaid interest thereon, late charges and other amounts owed is \$160,749.00; and no interest thereon has been paid. The outstanding principal balance of the GEL Debt is \$113,261.67 and there is no outstanding accrued interest thereon. True and correct copies of all documents entered into in connection with the Cosimo Debt, the Blumenfeld Debt, and the GEL Debt (collectively, the "Existing Loan Documents") have been delivered to the other Members, all of which are described in Schedule 3.9 hereto. Other than those set forth in Schedule 3.9, there is no default under any of the Existing Loan Documents, and no event or circumstance has occurred that with the giving of notice or passage of

time, or both, would give rise to such a default. None of the Existing Loan Documents have been modified.

(e) A true and correct copy of a loan proposal, dated September 24, 2003, from Marshall Investments Corporation ("Marshall") has been delivered to the other Members. A copy of this proposal is attached hereto as Schedule 8.1. Neither the Emerald Member nor Stuart Longman has any reason to believe that the conditions to the closing and funding of the loan described in such loan proposal will not be satisfied. All representations and warranties made by, and all documents and information provided to, New Lender are true and correct.

(f) Except as disclosed in Schedule 3.9, neither the Company nor New Parcel A is bound by any agreement (other than the Existing Loan Documents and the heretofore Issued Permits described as such in Schedule 3.9). Any agreement described in Schedule 3.9 is in full force and effect, has not been terminated, modified or assigned and a true and correct copy thereof has been delivered to the other Members.

(g) All utility services necessary for the construction and operation of the Project are or will be available at New Parcel A as and when required on commercially reasonable terms.

(h) New Parcel A is not subject to any tenancies or the rights of any occupants.

3.10 Indemnification. Each Member (and to the extent applicable Stuart Longman) shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member or Stuart Longman set forth in this Agreement.

ARTICLE IV MEMBER MEETINGS

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business or at the New York City office of any of the Members, or at such other place as shall be agreed upon by those Members who own one hundred percent (100%) of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days' in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Member Voting and Quorum. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. One hundred percent (100%) of the Voting Rights in the Company constitutes a quorum. Unless otherwise provided in this Agreement or the Articles of Organization, once a quorum is established, the affirmative vote of those Members who own the Required Interest of the Voting Rights in the Company shall constitute a valid decision of the Members.

4.4 Voting by Certain Members. Voting Rights owned by a corporation or other business entity may be voted by the officer, agent or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.

Voting Rights owned by an administrator, executor, personal representative, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.

Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.

4.5 Proxies. Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 Manner of Meetings. Members may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.

4.8 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action and sign a Consent of the Members which sets forth the action to be taken.

4.9 Personal Services. No Member shall be required to perform any services for the Company by virtue of being a Member of the Company.

ARTICLE V MANAGEMENT AND CONTROL

5.1 General Authority. The Company shall be member managed, as defined in the Act. Except as otherwise expressly provided by in Section 5.2 below or in the Project Management Agreement referenced below, any day-to-day matter relating to the business and affairs of the Company shall be decided by the Project Manager, provided that the consent of the Required Interest of the Members is required for all matters established in Section 5.2 of this Agreement or any matters that are not within the authority of the Project Manager as provided in the Project Management Agreement.

5.2 Additional Voting Requirements for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require the written approval of the Members who own the Required Interest of the Voting Rights in the Company:

- (a) Any amendment to this Agreement or the Articles of Organization.
- (b) The Company shall not purchase, sell, option, exchange, encumber or refinance any real property, or enter into or modify any agreement requiring the Company to do any of the foregoing.
- (c) The Company shall not sell, or contract to sell, or otherwise dispose of more than five percent (5%) the Company Property, except marina slips and residential condominium units sold in the ordinary course of business at arms' length on terms consistent with, and at prices no less than, those set forth in a business plan approved by Members having the Required Interest of the Voting Rights in the Company.
- (d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement.
- (e) The Company shall not hire a Member or anyone who is a member of a Member's Family.
- (f) The Company shall not agree to pay to a Member or any member of a Member's Family any management fee, guaranty fee, broker commission or any other fee or commission.

(g) The Company shall not make any expenditure that is not on the approved marina budget attached as Schedule 5.2(g) or on the budget for the future phases of the project, which will not take effect unless approved by the of the Members who own the Required Interest of Voting Rights in the Company, as contemplated by the Project Management Agreement.

(h) The dissolution and winding up of the Company, except as otherwise expressly set forth herein.

(i) The borrowing of money for Company purposes and, if security is required therefor, the granting of any security interest in all or any portion of Company Property.

(j) The opening of any bank or brokerage accounts and the authorization of signatories thereon.

(k) The commencement on behalf of the Company of a voluntary case for relief as a debtor under the United States Bankruptcy Code, or the filing on behalf of the Company of a petition to take advantage of any Federal, state or other applicable bankruptcy, reorganization, insolvency, readjustment of debts, dissolution or liquidation law or statute.

(l) The bringing or defending, paying, collecting, compromising, arbitrating, resorting to legal action, or other adjustment of claims or demands for or against the Company, in each case where the amount of such claim or demand exceeds \$10,000 or is for injunctive relief.

(m) Selection of auditors, attorneys, brokers, agents, construction managers, general contractors, architects and other design professionals and any other professionals rendering service to the Company.

(n) Enter into, modify, terminate, accept the surrender of, or grant any consent or waiver under, any lease (other than equipment leases on terms consistent with a project budget approved by Members having the Required Interest of Voting Rights in the Company and slip and boat leases on terms and at rentals consistent with those set forth in a business plan approved by Members having the Required Interest of Voting Rights in the Company) or any agreement (including without limitation any construction, trade or service agreement) involving more than \$10,000 or which may not be cancelled on 30 days' notice or less.

(o) Making any Federal or state income tax elections on behalf of the Company or enter into any settlement agreement or any other agreement that binds the Company or its Members with the Internal Revenue Service or any other foreign, state or local taxing authority.

(p) Making any distributions to Member, except in accordance with Article VIII or IX.

(q) Entering into any loan agreement or executing and delivering any note, mortgage, deed of trust, guaranty, indemnity or other instrument or agreement in connection with any borrowing, or any amendment, supplement, extension or modification thereto, whether in connection with any existing or future borrowing or debt.

(r) Designating a director to the Board of Directors of the Ripley Point Property Owners Association, Inc., a South Carolina non-profit corporation (the "Association"), which director shall comply with the joint instructions of the Required Interest of Voting Shares in the Company, and voting the interest of the Company as a member of the Association.

5.2.1 Authority Concerning Special Decisions.

(a) All Members hereby approve the Project Management Agreement between the Company and Ripley Light Development, LLC, attached hereto as Schedule 5.2.1(b) (the "Project Management Agreement").

(b) All Members hereby agree that the Company shall secure a policy of "key-man" life insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) with respect to Stuart Longman with the Company as the beneficiary of the policy. If possible, the Members agree that such insurance may be purchased by the Company by taking an assignment of a \$500,000 portion of an existing \$10 million life insurance policy for Stuart Longman. A separately issued policy shall be obtained if such assignment cannot be completed within thirty (30) days of the date of this Operating Agreement.

5.3 Delegation of Powers. From time to time, the Members may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter.

5.4 Ratification. The Members may ratify and adopt any and all acts of any Person done on behalf of the Company.

5.5 Compensation for Services. The Members shall not receive additional compensation for providing services to the Company unless approved by the Required Interest of the Members.

5.6 Officers. The Members may, from time to time, designate one or more individuals to be officers of the Company. Any officers so designated shall have such authority and perform such duties as the Members may, from time to time, delegate to them. Any number of offices may be held by the same Person. Designation of a Person as an officer shall not of itself create an employment agreement or any other contract rights. Each officer shall hold office until his successor shall be duly

designated and qualified, or until his death or until he shall resign or shall have been removed, with or without cause, by the Members.

5.7 Bank Accounts. All Company funds shall be deposited only in bank or trust company accounts in the continental United States. The funds of the Company shall not be commingled with the funds of any other party. Notwithstanding anything contained herein to the contrary, all checks, drafts and withdrawals from any Company account (other than the Operating Account, as hereinafter defined) shall require the signature of a representative of either Investment Member and the Emerald Member. On a monthly basis the Emerald Member or the Project Manager may submit to the other Members for their approval a requisition for a sum requested to be transferred to the Operating Account, on which a representative of the Emerald Member may be the sole signatory. Each requisition shall itemize each payment to be made from the Operating Account and the Emerald Member is authorized only to make payments to the payees for the sums set forth in a requisition approved by the other Members, provided that the Emerald Member without the other Members' consent may issue checks for amounts in each case not exceeding \$2,000, provided further that such checks for which the other Members' consent is not obtained do not in the aggregate exceed \$20,000 in any 12-month period. Any unspent sums shall be applied to and in accordance with the next month's approved requisition.

ARTICLE VI FIDUCIARY DUTIES; RIGHT TO RELY; INDEMNIFICATION

6.1 Duty of Loyalty. A Member's duty of loyalty to the Company and the other Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Member in the conduct or winding up of the Company's business or derived from a use by the Member of the Company's property, including the appropriation of a Company opportunity; and

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from directly competing with the Company in the conduct of the Company's business before dissolution of the Company.

Notwithstanding anything herein to the contrary, the Members and the Company acknowledge and agree that the Members and/or his or her respective Family members, either directly or indirectly through other Persons, are engaged in other business and investment activities which may be considered to indirectly compete with or be adversarial to the business conducted by the Company; however, the Members

and the Company intend and agree that they shall have no interest or rights with respect to any business, investment or other activities of the other Members or his or her Family members carried on outside the Company. The Members are sophisticated investors and are aware of the extent of the other Member's business and investment activities. There are, however, several potential investments which shall be deemed Company opportunities: (i) all real property, personal property, fixtures, intangible property, docks and dock permits, and other property rights that are the subject of an Agreement for the Purchase of Real Property and Assets, dated July 17, 2000, by and among Span USA, Inc., Ripley Light Marina, Inc. Fred Collins, and Sapphire Development, LLC ("Sapphire"), and currently the subject of pending litigation, including each of the follow parcels of real property: (A) Charleston County TMS 421-11-00-073, consisting of approximately 5.037 acres and owned by Fred Collins (B) Charleston County TMS 421-12-00-001, consisting of approximately 0.891 acres and owned by Span USA, Inc. and (C) Charleston County TMS 421-12-00-009, consisting of approximately 0.43 high acres, and owned by Span USA, Inc. (collectively, the "Collins Property"); and (ii) Charleston County TMS 421-11-00-061, consisting of approximately 2.94 acres and owned by South Carolina Electric and Gas Company (the "SCE&G Parcel"); and (iii) Charleston County TMS 421-11-00-085, consisting of approximately 1.114 acres, and owned by Ashley River Properties I, LLC (the "Phase I Parcel"); the Collins Property, the SCE&G Parcel, and the Phase I Parcel are referred to herein, (collectively, as the "Company Opportunity Parcels"). The Members agree that no Member (or Family member or affiliate of any Member) shall enter into any transaction related to a Company Opportunity Parcel without the prior written consent of the Required Interest of Voting Rights of the Company.

6.2 Duty of Care. In carrying out their duties and exercising their powers hereunder, the Members shall exercise reasonable skill and care, use their best judgment and act at all times in what they deem to be the best interests of the Company.

6.3 Fiduciary Duties. The Members shall discharge their duties and exercise any of their rights consistently with the obligation of good faith and fair dealing which they owes to the Company and the Members.

6.4 Duty of Confidentiality. Each Member hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information. Each Member agrees to return all documents which contain any confidential information and all copies of such documents upon request by the Company.

6.5 Indemnity Agreement by Emerald and Related Parties. Simultaneously with the execution of this Agreement and as a condition of the Krite Member's execution and delivery of this Agreement, the Emerald Member and certain related parties have agreed to deliver the Indemnity Agreement attached hereto as Schedule 6.5.

ARTICLE VII CAPITAL ACCOUNTS AND ACCOUNTING

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

7.2 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified in accordance with Section 9.6(d) so as to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.3 Tax Matters Partner. The Emerald Member is designated the initial tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Company may designate a new tax matters partner from time to time with the consent of the Required Interest of Voting Rights of the Company.

ARTICLE VIII INTERIM DISTRIBUTIONS AND ALLOCATIONS

8.1 Interim Distributions.

Interim distributions to the Members shall be made in accordance with the following:

The Required Interest of Voting Rights of the Company shall determine on no less frequent than a quarterly basis to what extent, if any, the Company's cash on hand of ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, and reserves against future contingent liabilities (such excess being referred to herein as "Available Company Cash"). Any Available Company Cash shall be distributed as follows:

(i) Distributions shall be made to the Members in proportion to their unreturned Capital Contributions until such time as each Member has been returned its entire Capital Contribution plus a ten percent (10%) per annum preferred return on its unreturned Capital Contribution. The ten percent (10%) preferred return shall be calculated on a per diem basis on the unreturned Capital Contribution of each Member, compounded annually. Upon any distribution to a Member, the preferred return shall only accrue on the unreturned portion of the Capital Contribution.

(ii) Upon the return of all Capital Contributions with preferred returns thereon paid in full, as provided in subparagraph (i) above, thereafter distributions shall be made, pari passu, seventy percent (70%) to the Emerald Member and thirty percent (30%) to the Kriti Member, as such percentages may be adjusted in accordance with Sections 3.7(b), (d) and (e) hereof.

All Distributions to the Members shall be made in cash unless otherwise agreed by the Required Interest of the Members.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(I)(2) and (3) (organizational

expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. Except as otherwise provided in this Article VIII:

(a) Profits of the Company in each fiscal year, shall be allocated to the Members, as follows:

(i) first, to the Members, to restore any allocations of Net Loss under Section 8.4(b) not previously restored with allocations of Net Profits under this Section 8.4(a)(i), in proportion to the aggregate amounts allocated to the Members under such Section 8.4(b);

(ii) second, to the Members as necessary to cause the Capital Account balance of each Member to equal such Member's Target Capital Account. Target Capital Account shall mean an amount equal to a Member's Capital Contributions plus an additional amount constituting a cumulative ten percent (10%) preferred return, taking into account the amount and timing of all prior Capital Contributions from and distributions to each Member;

(iii) third, pro rata to the Members as follows: seventy percent (70%) to the Emerald Member and thirty percent (30%) to Kriti Member, as such percentages may be adjusted in accordance with this Agreement.

(b) Losses of the Company in each fiscal year shall be allocated to the Members as follows:

(i) first, to the Members as necessary to cause each Member's Capital Account balance to equal to zero;

(ii) second, to the Members as necessary to cause the Target Capital Account balances of the Members to be equal to zero; and

(iii) third, pro rata to the Members as follows: seventy percent (70%) to the Emerald Member and thirty percent (30%) to the Kiti Member, as such percentages may be adjusted in accordance with this Agreement.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's nonrecourse liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company minimum gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company minimum gain. A Member's share of the net decrease in Company minimum gain is the amount of the total net decrease multiplied by the Member's percentage share of Company minimum gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net

decrease in Company minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member nonrecourse liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member nonrecourse debt minimum gain. A Member's share of the net decrease in Member nonrecourse debt minimum gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member nonrecourse debt minimum gain arises because the liability ceases to be Member nonrecourse debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the member nonrecourse minimum gain chargeback is added to the Member's share of Company minimum gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This Section will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX DISSOLUTION, WINDING UP, AND TERMINATION

9.1 Dissolution. Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

(a) The written consent of those Members who own the Required Interest of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act.

(d) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own the Required Interest of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, or his heirs, legal representatives, personal representatives, successors or permitted assigns, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Except as otherwise provided herein, following dissolution of the Company, those Members who own the Required Interest shall appoint one or more Members or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs. The liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in the Act;

(b) Publish notice of the Company's dissolution as provided in the Act;

(c) Make final liquidating distributions as provided below, and distribute any Company Property discovered after any such final liquidating distributions in the manner described below; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with the Act.

9.4 Sale of Company Property. Unless otherwise agreed by those Members who own the Required Interest of the Voting Rights in the Company, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in the manner described below.

9.5 Distribution in Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire an independent appraiser to determine the fair market value of the asset in question. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors, including the liquidator if the liquidator is not a Member, for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, to Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this Section.

9.7 Deficit Capital Account Balances. Any deficit in a Member's Capital Account shall not be an asset of the Company, and no Member or transferee of all or

any part of a Membership Share shall be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member or transferee has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this Article shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

9.9 Duties During Winding Up. The duty of loyalty, duty of care and fiduciary duties set forth in this Agreement shall apply to any Person winding up the Company's business.

9.10 Intent of Parties. The parties intend that the tax allocations of Article VIII shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final positive Capital Account balances under Section 9.6(c) to be made (after unpaid loans and interest thereon, including those owed to Members have been paid) in a manner identical to the order of priorities set forth in Section 8.1. To the extent that the allocation provisions of Article VIII would fail to produce such final Capital Account balances, (i) such provisions shall be amended by the Members if and to the extent necessary to produce such result and (ii) taxable income and taxable loss of the Company for prior open years (or items of gross income and deduction of the Company for such years) shall be reallocated by the Members among the Members to the extent it is not possible to achieve such result with allocations of items of income (including gross income) and deduction for the current year and future years. This Section 9.10 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

ARTICLE X Dissociation

10.1 Events of Dissociation. The provisions of the Act relating to dissociation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the Dissociation of such Member:

(a) Withdrawing, retiring or resigning from the Company with the consent of those Members who own the Required Interest of the Voting Rights in the Company.

(b) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him or it which is not dismissed within ninety (90) days.

(c) any event of Wrongful Disassociation set forth in Section 10.5 of this Agreement.

10.2. Effect of Member's Dissociation. Unless otherwise provided in Article IX, the Dissociation of a Member does not dissolve the Company. A Dissociating Member does not cease to be a Member by reason of his Dissociation. Subject to Section 10.5, the right of a Dissociating Member to be compensated for his Membership Share shall be governed exclusively by Article XI and not the Act. The parties waive any right they may have to assert that the Act or any other provision of law supercedes or modifies the provisions of this Agreement relating to the cessation of a Member's participation in the Company, withdrawal, or Dissociation.

10.3 Character of Payments. All payments made to any Dissociating Member shall be treated as payments described in either Section 736(a) or Section 736(b) of the Code, as determined by application of such sections of the Code and the regulations promulgated thereunder.

10.4 Statement of Dissociation. A Dissociated Member or the Company may file a Statement of Dissociation in accordance with the Act.

10.5 Wrongful Dissociation. Notwithstanding anything herein to the contrary, if a Member Dissociates by reason of the occurrence of any of the following events, then such Dissociation shall be a wrongful Dissociation by such Member in contravention of this Agreement:

(a) Withdrawing, retiring or resigning from the Company without the consent of those Members who own the Required Interest of the Voting Rights in the Company.

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(i) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(ii) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(iii) Engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member.

(c) If the Member is other than a natural person, such Member (or any Person that Controls the Member) engages in any sale, merger, share exchange, partnership, joint venture or other arrangement, including the issuance of new shares of stock or equity interests in the Member or in any Person that Controls the Member, and as a

result of said transaction a Person who is not one of the group of Persons in Control of the Member, as of the date such Member became a party to this Agreement, takes Control of the Member.

(d) If the Member is other than a natural person, the filing of a Certificate of Dissolution, or the equivalent, for a Member or the lapse of ninety (90) days after notice to such Member of revocation of its charter without a reinstatement of its charter.

(e) Any transfer, sale or conveyance (or attempt to do the same) of a Membership Share that is not permitted by the terms of this Agreement.

The provisions of this Agreement governing the rights of a Dissociating Member shall apply to a Member who wrongfully Dissociates, except that any damages sustained by the Company as a result of the Member's wrongful Dissociation shall be offset against any distributions otherwise payable to the Member, and, in addition, the purchase price (if any) to be paid to a wrongfully Dissociating Member pursuant to Article XI shall be reduced to eighty percent (80%) of the amount of the distribution that the disassociating Member would otherwise be entitled to received pursuant to the provisions of Article XI of this Agreement.

ARTICLE XI RESTRICTIONS ON TRANSFER AND BUY-SELL PROVISIONS

11.1 Restrictions on Transfer.

(a) Except as otherwise expressly provided in this Agreement, no Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own the Required Interest of the Voting Rights in the Company. If such consent is obtained or otherwise made in compliance with the terms of this Agreement, the provisions of Article III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void and without effect.

(b) Notwithstanding the foregoing, the foregoing prohibition shall not apply to Permitted Transfers, transfers that comply with the Right of First Refusal (as defined below), and transfers or assignments of Financial Rights only, provided that the Emerald Member may not transfer or assign more than 75% of its Financial Rights until the other Members have been returned their entire respective Capital Contributions.

(c) Notwithstanding anything herein to the contrary, each Member acknowledges that his Membership Share has not been registered under the Securities Act of 1933, as amended ("1933 Act"), in reliance on applicable exemptions. Therefore, the Members hereby agree that Membership Shares in the Company shall be

nontransferable, except in compliance with the 1933 Act and applicable state securities laws, and any attempted transfer not in compliance therewith shall be null, void, and without effect. As an additional condition precedent to the transfer of any Membership Share, the Company may require an opinion of counsel satisfactory to the Company that such transfer will be made in compliance with the 1933 Act and applicable state securities laws, and such transferor shall be responsible for paying any attorneys' fees incurred in connection with the opinion. The transferor may be required to indemnify the Company for any damages resulting from failure to comply with said securities laws, if the Company so requires.

11.2 Right of First Refusal. From and after the first anniversary of the date hereof, the Members shall have a right of first refusal (the "Right of First Refusal") as described as follows:

A Member (a "Selling Member") who desires to sell all or any portion of their Membership Share to a third party purchaser shall obtain from such third party purchaser ("Third Party Purchaser") a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefore ("Third Party Offer"). The Selling Member shall give written notification ("Notice of Sale") to the Company and the other Members (the "Remaining Members"), by certified mail or personal delivery, of its intention to so transfer such Membership Share (the "Offered Membership Share"). The Notice of Sale shall be accompanied by a copy of the Third Party Offer.

The Company shall have the first option, to be exercised within thirty (30) days of its receipt of the Notice of Sale, to purchase all, but not less than all, of the Offered Membership Share by written notice to the Selling Member and the Remaining Members. If the Company fails to respond within such thirty (30) day period, it shall be deemed to have declined to purchase the Offered Membership Share.

If the Company fails to exercise such purchase option, then the Remaining Members shall have thirty (30) days from the expiration of the Company's thirty (30) day option period to exercise their option to purchase all, but not less than all, of the Offered Membership Share by written notice to the Company, the Selling Member, and the other Remaining Members. If any Remaining Member fails to respond within such thirty (30) day period, such Remaining Member shall be deemed to have declined to purchase the Offered Membership Share. If only one Remaining Member elects to purchase the Offered Membership Share, such Remaining Member shall be obligated to purchase all of such Offered Membership Share. If more than one Remaining Member elects to purchase the Offered Membership Share, such Remaining Members shall purchase the Offered Membership Share on a pro-rata basis, with each such Remaining Member obligated to purchase a percentage of the Offered Membership Share, expressed as a fraction, with the numerator being the Financial Membership Shares already owned by the particular Remaining Member and the denominator being the total Financial

Membership Shares of all the Remaining Members that elect to participate in the purchase.

In the event the Right of First Refusal is exercised by either the Company or by one or more Remaining Members, the closing shall take place within sixty (60) days of the exercise of the Right of First Refusal. At the closing, the Company or Remaining Member(s) electing to purchase shall purchase, and the Selling Member shall sell, the Offered Membership Share for an amount equal to the purchase price set forth in the Third Party Offer and in accordance with such other terms and conditions set forth in the Third Party Offer.

If neither the Company nor any of the Remaining Members shall elect to exercise the Right of First Offer, the Selling Member shall be entitled to consummate the sale of the Offered Membership Share to the Third Party Purchaser or one or more of its affiliates upon terms no less favorable than are set forth in the Third Party Offer. Upon such transfer, the Company and the Remaining Members shall admit the transferee as a Member of the Company. If the Selling Member shall fail to close the transaction described in the Third Party Offer within one hundred eighty (180) days of the expiration of the Right of First Refusal on terms no less favorable to the Selling Member as contained in the Third Party Offer, then the Selling Member shall again be required to comply with the terms of this Section before entering into any transaction with a Third Party Purchaser. Notwithstanding anything contained herein to the contrary, any transaction described in the Third Party Offer shall be conditioned upon, and shall not be effective, until the Consents (as hereinafter defined) are obtained.

11.3 Right to Buy Upon Dissociation.

(a) Dissociation. If a Member Dissociates within the meaning of Article X (a) "Triggering Event", then such Member ("Dissociating Member") is deemed to have made an offer to the Company to purchase all, but not less than all, of his Membership Share (the "Dissociating Membership Share") at the price determined in accordance with Section 11.3(b) and upon the terms contained in Section 11.3(c). If the Company does not accept said offer by written notice to the Dissociating Member and the remaining Members of the Company (the "Non-Dissociating Members") within thirty (30) days after receiving written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then the offer shall be deemed rejected and the Dissociating Membership Share shall be offered in writing, at the same price and upon the same terms, to the Non-Dissociating Members.

The Non-Dissociating Members shall have thirty (30) days from the expiration of the Company's thirty (30) day option period to exercise their option to purchase all, but not less than all, of the Dissociating Membership Share by written notice to the Company and the Dissociating Member (or his estate or other legal representative, as the case may be), and the other Non-Dissociating Members. If any Non-Dissociating Member fails to respond within such thirty (30) day period, such Non-Dissociating

Member shall be deemed to have declined to purchase the Dissociating Membership Share. If only one Non-Dissociating Member elects to purchase the Dissociating Membership Share, such Non-Dissociating Member shall be obligated to purchase all of such Dissociating Membership Share. If more than one Non-Dissociating Member elects to purchase the Dissociating Membership Share, such Non-Dissociating Members shall purchase the Dissociating Membership Share on a pro-rata basis, with each such Non-Dissociating Member obligated to purchase a percentage of the Dissociating Membership Share, expressed as a fraction, with the numerator being the Financial Membership Shares already owned by the particular Non-Dissociating Member and the denominator being the total Financial Membership Shares of all the Non-Dissociating Members that elect to participate in the purchase.

If none of the Non-Dissociating Members accept the offer to purchase the Dissociating Membership Share within thirty (30) days after receipt of written notice by them, then the Dissociating Membership Share shall be transferred to the guardian, conservator or legal successors of the Dissociating Member. Upon such transfer, the Company and the Non-Dissociating Members shall admit the transferee as a Member of the Company.

(b) Purchase Price (Dissociation). Unless the Member offering or selling his Membership Share hereunder and all Remaining Members agree otherwise, the purchase price shall be determined in accordance with the following:

The purchase price shall be the Appraised Value (as defined herein) of the Membership Share. Appraised Value shall mean the Fair Market Value (as defined below) of the Membership Share obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by fifty-one percent (51%) of the Remaining Members on behalf of the Company. No discounts for minority interest, lack of marketability or other similar type discounts including but not limited to those related to undivided interests in real estate, voting versus non-voting interests, blockage, key-person, or portfolio issues, shall be taken into account. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value within thirty (30) days after the last of them is appointed, then within five (5) days, they shall appoint a third appraiser to value the Membership Share. The third appraiser shall determine the Appraised Value within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. Fair Market Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company shall each pay the costs of the appraiser appointed by them, and one-half

(1/2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

(c) Payment of Purchase Price (Dissociation). The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.

Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning on the first day of the calendar quarter that occurs after the date of the closing. The purchaser(s) shall execute and deliver to the seller a promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon ten (10) days default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon execution and delivery of the note, the Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the note is paid in full, the Membership Share shall be held by the purchaser(s), but shall be pledged to the seller as collateral security for payment of the note. The seller shall have no right to exercise any Financial Rights or Voting Rights associated with the Membership Share unless and until there is a default on the note. Further, if a selling Member has personally guaranteed payment of any debt, obligation or liability of the Company, then the purchaser(s) of the Member's Membership Share shall make reasonable efforts to have such Member (or his estate or successor(s)) released from such guarantee. If the lender or creditor refuses to release such Member, then the Company and the other Members, if the Company is purchasing the Membership Share, (or the purchasing Member(s) only if the Company is not purchasing the Membership Share), shall in writing, jointly and severally, indemnify and hold harmless such selling Member (or his estate, as the case may be) from payment of said debt, obligation or liability.

Further, if a selling Member has personally guaranteed payment of any debt, obligation or liability of the Company, then the purchaser(s) of the Member's Membership Share shall make reasonable efforts to have such Member (or his estate or successor(s)) released from such guarantee. If the lender or creditor refuses to release such Member, then the Company and the other Members, if the Company is purchasing the Membership Share, (or the purchasing Member(s) only if the Company is not purchasing the Membership Share), shall in writing, jointly and severally, indemnify and

hold harmless such selling Member (or his estate, as the case may be) from payment of said debt, obligation or liability.

11.4 "Shotgun" Buy/Sell Rights. Subject to the following provisions, if an impasse exists for more than thirty days as to any matter for which is required the consent of Members owning the Required Interest of the Voting Rights in the Company, and for which resolution is required to complete the development and/or continue the normal operation of the Property, then any Member shall have right to cause the other Member(s) to either buy his or her Membership Share or to sell his or her Membership Share. By their acceptance of their Membership Shares as Members, all Members hereby agree to the following provisions:

(a) The Members shall have the rights of purchase and sale provided by this Section, to be exercised by delivering a written notice (an "Election Notice"). The Member giving the Election Notice as provided herein is referred to as the "Electing Member," and the Member(s) receiving the Election Notice is/are referred to (whether individually or collectively) as the "Noticed Member."

(b) This buy/sell procedure may be invoked by the delivery of an Election Notice by a Member to the other Member(s). The Election Notice shall specify a valuation of the Company as a whole (the "Noticed Value").

(c) An Election Notice shall constitute an irrevocable offer by the Electing Member either to

(i) purchase all, but not less than all, of the Membership Shares owned by the Noticed Member (the "Noticed Membership Share") for a value equal to the Noticed Value multiplied by the percentage Financial Rights owned by the Noticed Member; or

(ii) sell all, but not less than all, of the Membership Share owned by the Electing Member (the "Electing Membership Share") for a value equal to the Noticed Value multiplied by the percentage Financial Rights owned by the Electing Member.

(d) For a period (the "Election Period") ending at 11:59 P.M. (local time at the Company's principal office) on the thirtieth (30th) day following the date of delivery of the Election Notice, the Noticed Member(s) shall have the right to elect to purchase all of the Electing Membership Share by giving notice thereof (the "Purchase Notice") to the Electing Member (and if there is more than one Noticed Member, then they shall have the right to purchase the Electing Membership Share on a pro-rata basis, with each such Noticed Member entitled to purchase a percentage of the Electing Membership Share, expressed as a fraction, with the numerator being the Financial Membership Shares already owned by the particular Noticed Member and the denominator being the total Financial Membership Shares of all of the Noticed Members that elect to

participate in the purchase. Otherwise, the Electing Member shall be obligated to purchase all of the Noticed Membership Share.

(e) The closing of the purchase and sale of the Membership Shares shall occur on a date and time mutually agreeable to the purchasing Member and the selling Member(s), which shall not be later than the sixtieth day following the last day of the Election Period. At the closing, the purchasing Member shall pay to each selling Member, by cash, wire transfer or cashiers check, the purchased price determined in the manner established above. At the closing, the Members shall execute documents and instruments of conveyance as may be necessary or appropriate to confirm the transactions contemplated hereby, including, without limitation, the transfer of the Membership Shares of the selling Members to the purchasing Member. In the event the selling Member(s) should fail to close, and such failure is due to the intentional act or omission or fault of the selling Member(s), the purchasing Member(s) shall be entitled to pursue specific performance, and if specific performance is not available under the circumstances, then money damages. Any closing with respect to a purchase of Membership Shares hereunder shall be subject to receipt of all "Consents", which shall mean orders, approvals and authorizations of any governmental authorities applicable, as well as any lender and other third parties who may have approval rights (other than internal entity approvals of the parties hereto), which conditions may not be waived without the consent of all parties to such transactions and which consents, orders, approvals and authorizations each Member will use its reasonable efforts to obtain. Any such closing may be adjourned for a reasonable time in order to obtain the Consents. At the closing, the selling Member(s) shall deliver documents conveying its Membership Interest(s) free and clear of any liens or encumbrances (other than liens and encumbrances relating to obligations of the Company), which documents shall contain Standard Representations (as set forth in Schedule A hereto). In connection with such a sale of Membership Shares, the selling Member(s) shall be responsible for any applicable state and local transfer taxes. If New Parcel A or any other Company Property is damaged by fire or other casualty, or if any person possessing the right of eminent domain shall give notice of an intention to take or acquire a material part of the Company Property, and such damage occurs, or such notice is given, between the last day of the Election Period and the last day in which the sale is required to close, all affected parties shall nevertheless remain obligated to close.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents, accountants and attorneys access to its records, if any, at the Company's principal office, which may not

be changed without the prior written consent of all of the Members. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect, download and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and delivered by fax, email or sent by overnight courier with a nationally-recognized company or by certified or registered mail, postage prepaid, return receipt requested, to the Company by delivery to each Member at the address on Exhibit A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents or other communications shall be deemed given when actually hand delivered or delivered by courier or, upon rejection of delivery, three business days after the date of mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

12.5 Consent to Jurisdiction. Except as otherwise required by law, the parties to this Agreement hereby agree that the courts of the State of New York shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business. Except as otherwise required by law, the parties consent to venue in New York County, New York, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the non-breaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinafter", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further document, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement, including but not limited to the filing of either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

12.15 Equitable Remedies. The rights and remedies of the Members and the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties hereto confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All

such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.17 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

12.18 Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be submitted to binding arbitration in accordance with the requirements of the American Arbitration Association (or successor thereto) (the "AAA"). All arbitration proceedings shall be conducted in New York County, New York. The arbitrators shall be selected in accordance with the Rules and Regulations of the AAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) days after the last of the arbitrators has been selected. The decision of the arbitrators shall be binding upon the parties and may be entered as a judgment with any court of competent jurisdiction. The arbitrators shall be directed to apply the governing law of this Agreement in rendering their decision. The non-prevailing party shall pay the entire cost of the arbitration, including without limitation all arbitrators' fees and expenses, transcription costs and the expert witness fees, and reimburse the reasonable attorneys' fees and disbursements of the prevailing party or parties.

ARTICLE XIII EMERALD MEMBER DEFAULT/REMEDIES

13.01 Default. The occurrence of any of the following shall constitute an "Emerald Member Default":

(a) a breach by the Emerald Member or Stuart Longman of any representation or warranty hereunder in any material respect;

(b) a monetary or material non-monetary default by Project Manager pursuant to the Project Management Agreement which default remains uncured beyond the expiration of any applicable notice or grace period (it being understood and agreed that the Investor member are hereby authorized without the consent of the Emerald Member to give a notice of default under the Project Management Agreement); or a material default by Ashley River Properties I, LLC ("Ashley I") under the Right of First Refusal of even date herewith, the ("Right of First Refusal") from Ashley I to the Kriti Member, which default remains uncured beyond the expiration of any applicable notice or grace period, or a material default by any of the Indemnitors under the Indemnity Agreement of even date herewith (the "Indemnity") from Ripley, the Emerald Member, Ashley I and Sapphire in favor of the Company and the Kriti Member, which defaults remains uncured beyond the expiration of any applicable notice and grace period.

(c) the taking of any unauthorized material action (for which the affirmative vote of the Required Interest of the Voting Rights in the Company is required) by the Emerald Member or the Project Manager or any of their respective affiliates.

13.02 Remedies. Upon the occurrence of an Emerald Member Default, the other Members may elect any one or more of the non-exclusive following remedies, in addition to any remedies that may otherwise be available at law or in equity:

(a) the Emerald Member shall thereafter forfeit all Voting Rights in the Company;

(b) the Company may terminate the Project Development Agreement, notwithstanding anything contained therein to the contrary, without penalty or premium; and

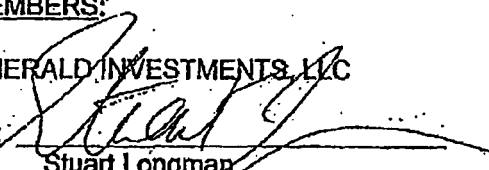
(c) the other Members may purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution to the Company, in which event: (i) the closing shall take place on a date specified in a notice given by the other Members to the Emerald Member, which shall be no earlier than 10 days after the giving of the notice and no later than 120 days after the giving of the notice, (ii) payment shall be made in all cash by wire transfer or cashier's check, (iii) the Emerald Member shall be responsible for all applicable state and local transfer taxes and (iv) the Emerald Member shall execute and deliver at closing appropriate instruments of transfer, which shall include the Standard Representations.

In the event that the Emerald Member shall contest any of the foregoing remedies and shall not prevail, then the Emerald Member shall forfeit all of its Membership Shares in the Company, and the Membership Shares in the Company shall be reallocated between or among the remaining Members on a pro-rata basis in the proportion that the Financial Rights of each remaining Member bear to the total remaining Financial Rights of all of the Remaining Members.

For good and valuable consideration, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

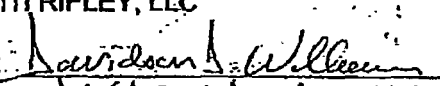
MEMBERS:

EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

KRITI RIPLEY, LLC

By: 

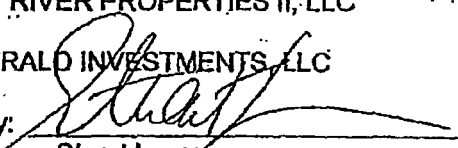
Name: DAVIDSON A. WILLIAMS

Title: Managing Member

COMPANY:

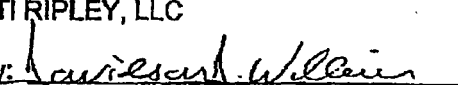
ASHLEY RIVER PROPERTIES II, LLC

By: EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

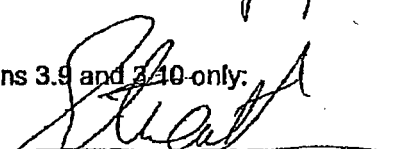
By: KRITI RIPLEY, LLC

By: 

Name: DAVIDSON A. WILLIAMS

Title: Managing Member

Limited Joinder with respect to Sections 3.9 and 3.10 only:


Stuart Longman

Legal Description of New Parcel A

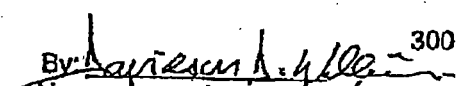
All that certain piece, parcel or lot and land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as NEW PARCEL "A", HIGHLAND 274,098.43 S.F., 5.145 AC., on that certain plat entitled "PROPERTY LINE ADJUSTMENT & COMBINATION OF PARCEL 1, 4, 5, 6B, & PORTION OF COMMON AREA 2 CREATING PARCEL "A" OWNED BY RIPLEY POINT ASSOCIATES, LLC ABOUT TO BE CONVEYED TO RIPLEY LIGHT YACHT CLUB, LLC, LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" made by General Engineering dated March 16, 2001, last revised October 24, 2002, and recorded in the RMC Office for Charleston County on October 28, 2002 in Plat Book EF, Page 972.

SCHEDULE 3.7(a)(ii)**Form of Assignment of Dock Permits****[ATTACH]**

02-10-05 03:35pm From-

T-272 P.002/002 F-716

EXHIBIT A**MEMBERS OF
ASHLEY RIVER PROPERTIES II, LLC**

<u>Member's Name and Address</u>	<u>Member's Signature</u>	<u>Initial Financial Membership Shares</u>	<u>Initial Voting Membership Shares</u>
Emerald Investments, LLC 95 Ripley Pointe Drive P.O. Box 31565 Charleston, SC 29417-1565	By:  Stuart Longman Managing Member	700	700
Attn: Stuart Longman Kriti Ripley, LLC 345 E. 37th Street Suite 312 New York, NY 10016	By:  Name: <u>DAVIDSON WILLIAMS</u> Title: <u>MANAGING MEMBER</u>	300	300
Attn: Davidson Williams			
	TOTAL:	1000	1000

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(2)

**FIRST AMENDMENT
TO THE
OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC**

This **FIRST AMENDMENT TO THE OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC** (the "First Amendment") is made and entered into this 1st day of September, 2004 by and among **EMERALD INVESTMENTS, LLC**, a Connecticut liability company (the "Emerald Member"), and **KRITI RIPLEY, LLC**, a Delaware limited liability company ("Kriti Member").

WHEREAS, on December 29, 2003, the Members entered into an Operating Agreement of Ashley River Properties II, LLC (the "ARP II Operating Agreement"); and

WHEREAS, the Members wish to amend the ARP II Operating Agreement upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members and the Company covenant and agree as follows:

1. **Definitions.** Unless otherwise specified in this First Amendment, the defined terms and conditions used in this First Amendment shall have the same meaning as set forth in the ARP II Operating Agreement.
2. **New Section 3.7(c).** Section 3.7(c) of the ARP II Operating Agreement is hereby deleted in its entirety and the following new section 3.7(c) substituted therefor:

"(c) Mandatory Capital Calls. Any Member who owns Voting Rights in the Company may unilaterally demand that the Members make additional Capital Contributions upon the occurrence of a Mandatory Capital Call Event, as such term is defined below. Any additional Capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to total of the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

For purposes of this Section 3.7 (c), a "Mandatory Capital Call Event" shall mean the occurrence of any one of the following events:

- (i) Any default by the Company under a certain Construction-Term Loan Agreement dated July __, 2004 between the Company and Marshall Investments Corporation (the "Marshall Loan Agreement")

or under any of the other Loan Documents (as such term is defined in the Marshall Loan Agreement), which default remains uncured after any applicable notice and cure period (herein, a "Marshall Default"); or

- (ii) The failure or inability of the Company to discharge its obligations and other indebtedness to third parties in the ordinary course of business as and when such obligations and other indebtedness become due and payable, and such event or condition (a) involves obligations and other indebtedness which individually or collectively exceed \$10,000 in amount, and (b) remains in effect for a period of 30 days or more (herein, a "Cash Default")

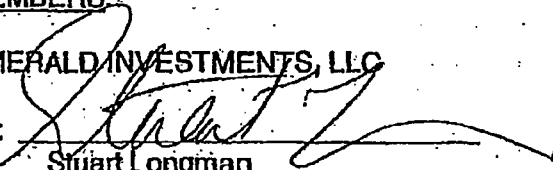
A Member may make a Mandatory Capital Call by delivering notice of the demand for additional Capital Contributions to each Member identifying therein the Mandatory Capital Call Event which has occurred, and stating the amount of additional Capital Contributions which must be made. In the case of a Marshall Default, a Member may demand additional Capital Contributions in sufficient amount to fully discharge any such Marshall Default. In the case of a Cash Default, a Member may demand additional Capital Contributions on a monthly or quarterly basis, at the sole and absolute discretion of such member, in sufficient amounts to permit the Company to discharge its obligations and other indebtedness to third parties in the ordinary course of business as and when such obligations and other indebtedness becomes due and payable."

3. **No Other Changes.** Unless otherwise specified herein, all of the terms and conditions set forth in the ARP II Operating Agreement shall remain in full force and affect and are otherwise unaffected by the First Amendment.

For good and valuable consideration, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

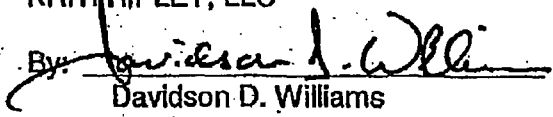
MEMBERS:

EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

KRITHRIPLEY, LLC

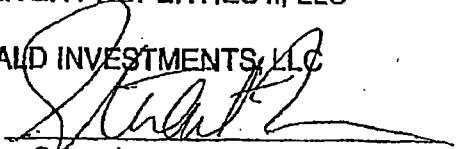
By: 

Davidson D. Williams
Managing Member

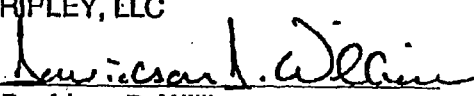
COMPANY:

ASHLEY RIVER PROPERTIES II, LLC

By: EMERALD INVESTMENTS, LLC

By: Stuart Longman
Managing Member

By: KRITI RIPLEY, LLC

By: Davidson D. Williams
Managing Member

DEVELOPMENT AND MANAGEMENT AGREEMENT

This DEVELOPMENT AND MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this 30th day of December, 2003, by and between ASHLEY RIVER PROPERTIES II, LLC, a South Carolina limited liability company ("Owner") and RIPLEY POINT DEVELOPMENT, LLC, a South Carolina limited liability company ("Developing Agent").

WITNESSETH:

WHEREAS, the Owner desires the Developing Agent to supervise the development and management of a residential condominium and marina project on property owned by Owner at Ripley Point Drive and identified as Charleston TMS 421-11-00-054, consisting of approximately 5.78 acres (the "Project"); and

WHEREAS, the Developing Agent is willing to undertake said development and management activities upon the terms and conditions set forth herein, and the Owner desires to engage the Developing Agent to undertake said development and management.

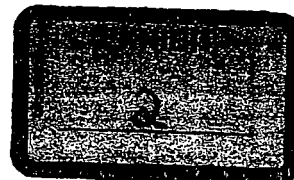
NOW, THEREFORE, the parties hereto, in consideration of the covenants and agreements herein contained, and intending to be legally bound, hereby agree as follows:

Section 1. Responsibility and Authority of Developing Agent During Construction.

(a) Marina Construction. The first phase of development of the Project shall be the construction of a marina in accordance with plans and specifications to be approved by Owner. During the construction of the marina portion of the Project, the Developing Agent shall use its diligent efforts in the development and construction of the marina for the account of the Owner so that the marina will be constructed at no greater than the cost set forth in the Development Budget attached as Schedule 1(a) to this Agreement.

(b) Condominium Construction. Upon Owner's confirmation of the scope of the condominium portion of the Project, the Developing Agent will: (i) prepare and deliver to the Owner for the Owner's approval an initial development budget for the condominium portion of the Project; and (ii) cause the preparation of proposed plans and specifications for the condominium portion of the Project. During the construction of the condominium portion of the Project, the Developing Agent shall use its diligent efforts in the development and construction of the condominiums.

(c) Development Agent Responsibilities. In the performance of its development and management services for all portions of the Project, the Developing Agent shall be Owner's independent contractor and not an employee of the Owner and shall have the following responsibilities and authority:



(i) Negotiation and Execution of Contracts. The Developing Agent shall solicit itemized bids from no fewer than three reputable general contractors with experience in developing projects similar to the Project. The Developing Agent shall disclose all bids to Owner and recommend which general contractor Owner should select. After Owner informs the Developing Agent as to the general contractor selected by Owner, the Developing Agent shall be responsible for the negotiation of the contract (the "Construction Contract") with the general contractor (the "Contractor") and of all other contracts essential or desirable to the development of the Project, including the negotiation of contracts for engineering and architectural services for the Project. The Developing Agent shall also solicit itemized bids from no fewer than three reputable contractors for each major contract. The Developing Agent shall disclose all bids to Owner and recommend which contractors Owner should select. After Owner informs the Developing Agent as to each such contractor selected by Owner. Once negotiated, all major contracts will be submitted to the Owner for approval and execution by the Owner. In addition, the Developing Agent shall have the authority and duty to negotiate, and execute on behalf of the Owner, all minor contracts related to the development of the Project without the prior approval of the Owner. As used herein, the term "major contract" shall refer to a contract requiring the payment of an amount in excess of \$25,000 or any contract with Developing Agent or an affiliate thereof, and the term "minor contract" shall refer to a contract with an unaffiliated party requiring the payment of \$25,000 or less, provided that minor contracts may not in the aggregate exceed \$100,000 per year without the prior written consent of the Owner. The Developing Agent shall send to the Owner copies of all contracts, whether major or minor, promptly after full execution thereof.

(ii) Supervision and Administration of Contracts. The Developing Agent shall supervise, coordinate and monitor the work of engineers, architects and others under contracts approved by the Owner relating to the development of the Project so as to assure that the plans, specifications and other contract documents are complete and adequate to enable the entire Project (including installation of utilities, landscaping, parking, and all Project amenities) to be completed in accordance with the budget approved by Owner. The Developing Agent shall, in coordination with the Contractor, supervise, coordinate and monitor the work of all contractors, subcontractors and others supplying labor engaged in the construction of the Project so as to reasonably assure that the Project is constructed in accordance with the plans, specifications and other contract documents. All plans and specifications, and any modifications thereof, and all change orders (other than those requested and paid for by buyers of condominium units) are subject to the Owner's approval. The Developing Agent shall promptly notify Owner upon the occurrence of any breach by the Contractor of any of its material obligations under the Construction Contract or by any contractor under a major contract of its material obligations under such major contract.

(iii) Purchases. The Developing Agent shall, in coordination with the Contractor, supervise the purchasing of all supplies and other merchandise to be

used in the construction of the Project as well as the purchase, installation, use or sale of all furniture, fixtures, equipment and other tangible personal property initially acquired for the development of the Project. To the extent that the Contractor shall not be responsible for same, the Developing Agent shall coordinate the purchasing of supplies required in the construction of the Project so as to reasonably assure that all supplies required for the construction of the Project are on site and available for use when and as required by the contractors engaged in the construction of the Project.

(iv) Permits and Approvals; Compliance with Legal Requirements. The Developing Agent shall be responsible for obtaining and maintaining, at Owner's cost and expense, all governmental approvals, licenses, permits or orders incident to the construction of the Project. The Developing Agent shall further be responsible for coordinating all inspections of the Project and all other communications with the relevant governmental authorities having jurisdiction over the construction of the Project. In its negotiation of contracts with any architect, engineer or other design professional employed in the design and/or construction of the Project, Developing Agent shall secure, in the name of Owner, a warranty that the construction plans, specifications and other contract documents will comply with all applicable statutes, laws, ordinances and other governmental requirements, including building codes, health and environmental ordinances and zoning ordinances and regulations.

(v) Project Construction Records. The Developing Agent shall cause to be maintained at its offices, and available for inspection, photocopying and downloading during business hours upon reasonable prior notice from the Owner, full and accurate records of the construction of the Project, including, without limitation, books of account and accounting records and files and indexes of all licenses, permits, contracts, agreements, purchase orders, sales orders, bills, receipts, canceled checks and other instruments, documents and correspondence relating to the development of the Project. Such records shall be so maintained for such retention periods mutually agreed upon by the Owner and the Developing Agent, and at the end of any record retention period so prescribed, shall be disposed of in a manner mutually agreed upon by Owner and the Developing Agent. The Developing Agent shall cause the books of account and accounting records relating to the construction of the Project to be maintained in accordance with U.S. generally accepted accounting principles, consistently applied. All books of account and accounting records shall be maintained in electronic and paper form.

(vi) Financial Reports and Information. Promptly after the end of each calendar quarter (not later than 30 days after the end of each calendar quarter), the Developing Agent shall, at Developing Agent's expense, prepare or cause to be prepared and shall submit to each Member of the Owner and the Owner's accountant, in a form reasonably acceptable to the Members of Owner, a project cost analysis showing the receipts and disbursements with respect to the

construction of the Project during the preceding quarter. In addition, the Developing Agent shall report to the Owner in a timely fashion any pending or threatened claims against the Owner or the Project of which it has notice, any anticipated extraordinary expenses to be paid by the Owner, any cost overruns and savings and any other matters of which the Owner should be informed in the reasonably prudent development of the Project or which would have a material effect upon the Project. The quarterly report delivered at the end of each quarter ending December 31 shall also include an annual report summarizing the financial history of the Project for the preceding 12-month period.

(vii) Payment of Contractors and Suppliers. The Developing Agent shall be responsible for working with and maintaining communication with all engineers, architects, contractors, subcontractors and suppliers. As part of that function, the Developing Agent will provide the Owner with approved invoices and requests for payment to the Contractor and any contractor or supplier by the last day of each calendar month. The Owner will review the invoices and if approved by the Owner, or its designated representative, the Owner, or its designated representative, will issue checks in payment of such invoices by the fifteenth (15th) day of the immediately following month and in no event later than the time period set forth in the contract with the Contractor. The Owner, or its representative, shall have the right to inspect all work prior to payment for any labor or material.

(viii) Marketing Materials. The Development Agent shall be responsible for working with and maintaining communication with marketing professionals to develop a marketing brochure and other marketing materials as contemplated by budgets approved by the Owner. The Development Agent shall not be responsible for the actual sale of condominium units and marina slips or for targeting marketing materials at any particular prospective purchasers.

Section 2. Scope of Development. The Developing Agent shall not commence construction of the Project until directed to do so by the Owner. The Developing Agent shall have the authority to develop the Project only in accordance with the plans and specifications provided to it by the architects, engineers and others under the supervision of the Developing Agent (the "Plans and Specifications") and the approved development budget for each phase of the project (collectively, the "Development Budget"), which Plans and Specifications shall have been approved by the Owner. The Developing Agent shall in no circumstances undertake any development activities beyond the scope of the approved Plans and Specifications and the Development Budget, except that, in the course of the authorized development of the Project in accordance with the Plans and Specifications, the Developing Agent may, without the consent of the Owner, authorize construction outside the originally agreed scope of work when such construction is dictated by good engineering practices, is financially feasible, and the costs incurred in such construction will result in a variance of not more than \$10,000 from the relevant line item in the Development Budget. In the latter event, the Development Agent agrees to notify the Owner in writing as soon as possible of the nature of any construction performed outside the agreed scope of work and the cost of the additional work.

Section 3. Owner's Duties; Owner Signature Requirements.

(a) At all times during the term of this Agreement, Owner agrees that it will respond with Developing Agent's requests within a commercially reasonable period of time.

(b) Any provision of this Agreement that requires the consent of the Owner must be evidenced by the written consent of the Required Interest of the Voting Rights of Owner (as that term is defined by the Operating Agreement of Owner).

Section 4. Insurance. The Developing Agent shall, at the Owner's expense, maintain such kinds and amounts of insurance as the Owner shall reasonably direct including builders' risk, liability, fidelity bonds, worker's compensation and any and all other types of coverage as the Owner shall reasonably direct, which insurance shall name the Owner and such other parties as the Owner shall direct as loss payees. The Developing Agent shall recommend the types and amounts of insurance, if any, the Owner should maintain in addition to the insurance specifically required above.

Section 5. Indemnification. The Developing Agent agrees to indemnify the Owner and save it harmless from and against all claims, losses and liabilities arising out of damage to the Project, or injury to, or death of persons (including the Project and persons of the parties hereto, and their agents, subcontractors, and employees) occasioned by or in connection with acts or omissions of the Developing Agent or the Developing Agent's agents, employees and subcontractors, and all costs herewith. Developing Agent agrees to indemnify Owner against any fines or penalties imposed by government authorities for violations of state or local codes or regulations.

Section 6. Developing Agent's Fees, Costs and Expenses. As compensation for the services rendered by the Developing Agent, the Owner agrees to pay the Developing Agent a development and management fee equal to two percent (2%) of all "hard costs" of the construction and development of the Project. The Owner also agrees to pay Krite Management, Inc. an oversight fee equal to one-half of one percent (0.5%) of all "hard costs" of the construction and development of the Project. For purposes of this Agreement, "hard costs" shall mean the actual value of the physical improvements constructed upon the property, less and excluding all "soft costs" such as architectural fees, engineering fees, legal fees, loan closing costs, appraisal fees, contractor and subcontractor profit, permitting costs etc.

Section 7. Term and Remedies.

(a) Termination for Cause. The term of this Agreement shall commence on the date of its execution and shall continue until the happening of any one of the following events:

(i) The Owner terminates the Agreement, by notice in writing to the Developing Agent, upon the occurrence of negligence or intentional misconduct by the Developing Agent; or

(ii) In the event that either party hereto shall, for a period of thirty (30) days after the mailing of notice by the other party specifying the nature of the default, remain in default with respect to any of its obligations under this Agreement (unless the cure of such default shall require more than thirty (30) days in which case the defaulting party shall not be in default unless it shall not have commenced the cure within thirty (30) days and be diligently pursuing such cure thereafter), then the notifying party may terminate this Agreement upon five (5) days written notice to the defaulting party; or

(iii) In the event that a petition in bankruptcy or receivership shall be filed by or against the Developing Agent or if the Developing Agent makes an assignment for the benefit of creditors or files a petition for reorganization; or

(iv) In the event the Developing Agent shall be dissolved or liquidated; or

(b) Termination Other than for Cause.

(i) Owner may terminate this Agreement upon thirty (30) days advance written notice, without cause.

(ii) This agreement shall automatically terminate in the event that the Owner shall cease to own the Project.

(b) Remedies. In the event that this Agreement is terminated under this Section for cause, then the parties shall be entitled to pursue all remedies available at law or in equity. If Owner terminates this Agreement without cause, Developing Agent shall have the right to receive payment hereunder for the period in which this Agreement was in effect but shall have no further right to compensation under this Agreement.

Section 8. Notices. Any notice, report or communication required or permitted to be given under the provisions hereof shall be in writing, and shall be deemed given if and when hand delivered or sent by a nationally recognized overnight courier, or received by

facsimile transmission stamped with the date of transmission or sent by certified mail, return receipt requested, postage prepaid, addressed to the party to receive the same at the address which such party shall have last notified the other party to use for such purposes. All notices shall be deemed given, if sent by hand or courier, upon delivery or rejection of delivery, if sent by mail, the third business day after mailing, and if sent by facsimile upon receipt. Initially, such addresses shall be as follows:

Developing Agent: Ripley Light Development, LLC
 Attn: Stuart Longman
 P.O. 31565
 Charleston, SC 29417
 Facsimile: (843) 766-4050

Owner: Emerald Investments, LLC
 Attn: Stuart Longman
 424 West Mountain Road
 Ridgefield, CT 06877
 Facsimile: (203) 431-4456

and

Kriti Ripley, LLC
 c/o Kriti Management, LLC
 345 E. 37th Street
 Ste 312
 New York, NY 10016
 Facsimile: (212) 599-5779

Section 9. No Assignment by Developing Agent. No party to this Agreement may assign its rights, duties or obligations hereunder without the prior written approval of the party.

Section 10. Relationship of Parties. The Owner is engaging the Developing Agent as an independent contractor to perform those services herein described, and nothing herein contained shall be construed to create a partnership or joint venture between the parties.

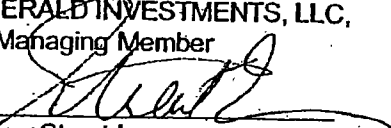
Section 11. Subordination. This Agreement and all fees and compensation due from Owner to Developing Agent pursuant hereto shall be subject and subordinate in all respects to (i) any mortgage or deed of trust upon the Project, or any portion thereof; (ii) any collateral assignment of any rents due under any leases of the Project. This provision shall be self-executing but Developing Agent shall, upon request, execute such appropriate instruments as may reasonably be requested by Owner or any such mortgagee to evidence any such subordination.

WITNESS our hands and seals the day and year first above written.

DEVELOPING AGENT:

RIPLEY LIGHT DEVELOPMENT, LLC

By: EMERALD INVESTMENTS, LLC,
its Managing Member

By: 

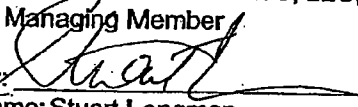
Name: Stuart Longman

Title: *Operating Manager*

OWNER:

ASHLEY RIVER PROPERTIES II, LLC

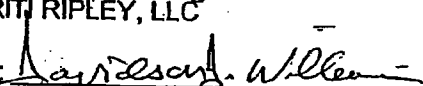
By: EMERALD INVESTMENTS, LLC,
its Managing Member

By: 

Name: Stuart Longman

Title: *Operating Manager*

By: KRITI RIPLEY, LLC

By: 

Davidson D. Williams
Managing Member

Schedule 1(a) to Development and Management Agreement

Marina Development Budget

RIPLEY 30 DAY CASH FLOW
Marina Development Budget

	Total	January	February	March	April	May	June	July	August
Kriti Investment	1,250,000	1,250,000							
Marshall Mortgage #1	4,400,000			4,400,000					
Marshall Fees/Legal	(131,000)			(131,000)					
Marshall Debt Service	(144,375)				(28,875)	(28,875)	(28,875)	(28,875)	(28,875)
ARP Closing Legal/Title	(15,000)			(15,000)					
Broker Fee	(50,000)			(50,000)					
Payables	(508,099)	(328,000)		(59,366)	(59,366)	(59,366)			
Cosimo Interest	(43,750)	(21,875)	(21,875)						
Cosimo Principal	(1,750,000)	(50,000)		(1,700,000)					
Blumenfeld	(80,000)	(25,000)	(25,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Dredging	(250,000)		(125,000)	(125,000)					
Construct Party Deck	(270,000)				(135,000)	(135,000)			
Bellingham Dock Order/Constru	(1,290,000)	(278,000)		(370,667)	(370,667)	(185,334)	(85,332)		
Marina Bank Rip Rap, Parking	(35,000)					(35,000)			
Administrative/Marketing	(242,853)	(37,362)	(37,362)	(37,362)	(37,362)	(37,362)	(37,362)	(18,681)	
0	0								
Marina Income (net)	90,000						20,000	30,000	40,000
0	0								
0	0								
0	0								
0	0								
0	0								
0	0								
Column Total	931,924	509,763	(209,237)	1,906,605	(636,270)	(485,937)	(136,569)	(22,556)	6,125
Cumulative		509,763	300,526	2,207,131	1,570,860	1,084,924	948,355	925,799	931,924

12/29/03

OCT. 31. 2005 2:20PM

NO. 356 P. 4

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 13 115 Y 00898 05

Kriti Ripley, LLC & Ashley River Properties II, LLC

"Claimants"

and

Emerald Investments, LLC and Stuart Longman

"Respondents"

AWARD OF ARBITRATORS

THE UNDERSIGNED ARBITRATORS, having been duly designated pursuant to the arbitration agreement dated December 29, 2003 and having duly executed their oaths, and having duly considered the proofs and arguments of the parties, and the parties having agreed to extend the deadline in the arbitration agreement for the rendering of the award to October 31, 2005, do hereby Find as follows:

A. Based upon our evaluation of the credibility of the witnesses and our analysis of the exhibits and evidence, we Find that Claimants Kriti Ripley, LLC ("Kriti") and Ashley River Properties II, LLC ("ARP II") have established that certain conduct of Respondents Emerald Investments, LLC ("Emerald") and Stuart Longman ("Longman") constitutes Emerald Member Defaults pursuant to Section 13.01 of the Operating Agreement of Ashley River Properties, II, LLC (the "Operating Agreement"), dated December 29, 2003. Specifically, Kriti has established that the following violations of the Operating Agreement constitute Emerald Member Defaults:

1. Emerald and Longman violated Section 5.2(g) by wrongfully making payments of ARP II which were not on the approved marina budget or on the budget for future phases of the project or otherwise approved by Kriti.
2. Emerald and Longman violated Section 5.2(p) by making payments to or for the benefit of Longman or other entities Longman controlled, which were totally unrelated to ARP II.
3. Emerald and Longman violated Sections 5.2, 6.7 and 13.01(b and c). Section 5.7 states that, "The funds of the Company shall not be commingled with the funds of any other party." From the first day Kriti sent investment funds to ARP II, Emerald and Longman commingled these funds in various non-ARP II accounts, including an account, in part, in the name of Longman's wife, Gayla Longman. Moreover, we Find that Kriti did not waive any of its claims of breach of the Operating Agreement by waiting to exercise its remedies in the hope that Emerald and/or Longman would return to ARP II all the wrongfully taken funds. (See Section 12.6 of the Operating Agreement.)
4. Emerald and Longman violated Section 3.9(a) by failing to disclose that Sapphire Development, LLC ("Sapphire") had filed a petition in bankruptcy before execution of the Operating Agreement. Sapphire, another entity controlled by Longman, was the party which entered into certain agreements regarding the neighboring Collins property and, in consideration of Kriti's investment, assigned these rights to ARP II. (See Joint Exhibit 3). Since the Sapphire bankruptcy proceeding could reasonably be expected to have a material adverse effect on the business of ARP II, the failure to disclose the proceeding was a clear material breach of Section 3.9(a). The subsequent adverse litigation results regarding the Collins property did not obviate Emerald's and Longman's duty to Kriti to disclose Sapphire's bankruptcy filing, as required by Section 3.9(a).

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Re: 13 115 Y 00688 05
 Kritt Ripley, LLC & Ashley River Properties II, LLC
 and
 Emerald Investments, LLC and Stuart Longman

5. Emerald and Longman violated Section 5.2(m) by retaining Knetzer and MacIntyre to act as broker and/or finder for premises including the ARP II property (see Claimant's Exhibit 14). The fact that Kritt may have later communicated with such broker or finder does not amount to any waiver of Kritt's claims for breach of Section 5.2(m).

6. Emerald and Longman violated Sections 3.9(a) and 3.9(f) by failing to fully disclose certain third-party contracts for the purchases of units and marina slips, and/or a proposed boat storage facility. Although there was reference to customer deposits in certain financial statements made available to Kritt prior to closing, the contracts at issue were of such magnitude and potential significance, that Emerald and Longman should have made more affirmative disclosures to comply with Sections 3.9(a) and 3.9(f).

7. Emerald and Longman violated Sections 5.2(g), 5.2(p) and 5.7 by diverting \$150,000 of Marshall loan proceeds and paying themselves instead of paying Bellingham Marine, even though the application to draw down the funds certified that the \$150,000 would be paid to Bellingham Marine. Moreover, it is undisputed that when Bellingham Marine was finally paid, ARP II was charged an additional \$84,000 because of the delay in payment occasioned by Emerald and Longman.

8. Since Kritt has established Emerald Member Defaults, Kritt is entitled to remedies under Section 13.02 of the Operating Agreement. We therefore find and confirm that Kritt validly exercised its rights to the following Section 13.02 remedies:

1. By notice dated January 14, 2005 (Joint Exhibit 186), Kritt validly exercised its remedy, pursuant to Section 13.02(a), that the Emerald Member thereafter forfeited all voting rights in ARP II.

2. By the same notice dated January 14, 2005, Kritt validly terminated the Project Development Agreement, without penalty or premium, pursuant to Section 13.02(b).

3. As more fully set forth below, Kritt's right pursuant to Section 13.02(c), to purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution is also confirmed.

4. We do not find that, pursuant to the last paragraph of Section 13.02, the Emerald Member shall forfeit all of its Membership Shares because it contested the foregoing remedies, since we believe that the Emerald Member had probable cause for such a challenge thereby obviating forfeiture pursuant to applicable South Carolina law. The portion of the claim seeking the forfeiture of the Respondent's Membership Shares is denied based on our finding that the Emerald Member had probable cause to challenge the capital call thereby obviating forfeiture pursuant to applicable South Carolina law and the inequity of such forfeiture. Probable cause existed because of question about the propriety of Kritt's capital call because (a) Kritt demanded that Emerald immediately fund a full 70% of a \$2 million capital call even though it knew that Emerald and/or Longman did not have the funds available to meet such a call; (b) Kritt demanded such a large capital call without an adequate explanation of the need for such an amount; (c) Kritt demanded that Emerald and/or Longman make a full deposit of 70% of the \$2 million capital call, even though its own deposits later proved that this was not necessary, and (d) funding might have been available from the lender, Marshall Bank, thereby obviating the need for all or part of the capital call. Kritt's insistence upon the capital call therefore provided probable cause for Emerald's challenge of Kritt's assertion of the above remedies. See Cope v.

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Re: 13 115 Y 00898 05
 Kiri Ripley, LLC & Ashley River Properties II, LLC
 and
 Emerald Investments, LLC and Stuart Longman

Jefferson Standard Life Ins. Co., 133 S.C. 532, 133 S.E. 440 (1928), Litchfield Company v. Kiriakides, 290 S.C. 220, 349 S.E.2d 344 (Cl. App. 1986) and Rouse v. Branch, 91 S.C. 112, 74 S.E. 133 (Sup. Ct 1912).

We also note the inequity of enforcing forfeiture in light of the fact that Longman initiated the development project and worked long and hard on it, including rendering significant services even after Kiri's November 4, 2004 notice of default (Joint Exhibit 152). We therefore deny the forfeiture remedy.

C. Section 3.7(a) of the Operating Agreement defines Emerald's Initial Capital Contribution as \$2.5 million. Pursuant to Section 13.02(c), we confirm that Kiri "may purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution to the Company..." Kiri has not established any clearly defined Emerald returned capital contribution. We therefore Find that Kiri has the option to purchase the Emerald Member Shares for \$2.5 million subject to no offsets or adjustments except as set forth below in this Award. The closing shall take place pursuant to the terms of Section 13.02(e) within 10 days and no later than 120 days after the date of this Award. As noted hereinafter, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting of the commingled funds as such claims and counterclaims have been severed from this proceeding.

D. We Find that ARP II is entitled to no further relief under the Bill of Sale and General Assignment (Joint Exhibit 3).

E. We confirm that Kiri remains entitled to enforce its rights under the Right of First Refusal Agreement (Joint Exhibit 6).

F. We Find that Kiri and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party contract vendees against ARP II. We question Kiri's conduct in encouraging some of these third parties to assert claims against ARP II and not accept partial reimbursement of their deposits. However, we are persuaded that Emerald or Longman or another entity controlled by Longman (a) received and kept the deposits, (b) did not use these funds for the benefit of ARP II and (c) ARP II must now resolve all these third party claims.

G. Pursuant to Section 12.18 of the Operating Agreement we find that Emerald and Longman were the "non-prevailing" parties in this matter. As such, (a) Emerald and Longman shall pay all costs and expenses of this arbitration including arbitration fees and transcript expenses, (b) Emerald and Longman shall pay Kiri the sum of \$251,000 for legal fees and disbursements, and (c) the sums set forth in this paragraph and the \$400,000 referred to in paragraph F above may be offset against the \$2.5 million to be paid to Emerald as set forth above in paragraph C in connection with Kiri's exercise of its remedy pursuant to Section 13.02(c).

Based upon the above, We Award as follows:

1. We confirm that as of January 14, 2005 the Emerald Member has forfeited all voting rights in ARP II.
2. We confirm that as of January 14, 2005, Kiri and ARP II validly terminated the Project Development Agreement, without penalty or premium.

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Re: 13 116 Y 00688 05

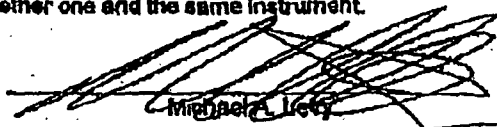
Kriti Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

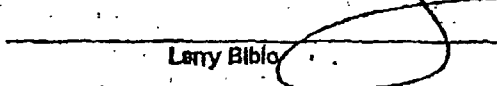
3. Kriti has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
 4. We deny the application of Kriti and ARP II for forfeiture by the Emerald Member for contesting remedies of Kriti and ARP II.
 5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
 6. We confirm Kriti's rights under the Right of First Refusal Agreement.
 7. We Find that Kriti and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
 8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Kriti the sum of \$251,000.00 for Kriti's legal fees and disbursements.
 9. The administrative fees of the American Arbitration Association totaling \$17,500.00 and the compensation of the arbitrators totaling \$86,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Kriti and ARP II the sum of \$56,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Kriti and ARP II.
 10. The amounts owed by Emerald and Longman to Kriti and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
 11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been severed from this proceeding.
- This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

10/31/05
Date

Date

Date


Michael A. Levy


Larry Biblo


Eugene I. Farber

Received Time Oct. 31. 12:34PM

10/31/05 MON 15:23 [TX/RX NO 8772] @007

OCT. 31. 2005 2:21PM

NO. 356 P. 9.

Re: 13 118 Y 00888 03
 Krid Ripley, LLC & Ashley River Properties II, LLC
 and
 Emerald Investments, LLC and Stuart Longman

3. Krid has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
4. We deny the application of Krid and ARP II for forfeiture by the Emerald Member for contesting remedies of Krid and ARP II.
5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
6. We confirm Krid's rights under the Right of First Refusal Agreement.
7. We Find that Krid and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Krid the sum of \$251,000.00 for Krid's legal fees and disbursements.
9. The administrative fees of the American Arbitration Association totaling \$17,600.00 and the compensation of the arbitrators totaling \$80,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Krid and ARP II the sum of \$55,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Krid and ARP II.
10. The amounts owed by Emerald and Longman to Krid and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been severed from this proceeding.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

10/28/05
 Date

Date

Michael A. Levy


 Larry Bliba

Eugene I. Farber

RECEIVED TIME OCT. 28. 5:05PM

10/31/05 MON 15:23 [TX/RX NO 8772] 009

OCT. 31. 2005 2:21PM

NO. 356 . P. 10

Ref: 13 118 Y00888 05
1001 Ripley, LLC & Ashley River Properties II, LLC
and
Emciah Investments, LLC and Stuart Longman

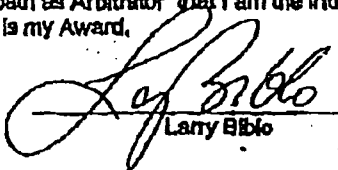
I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Michael A. Levy

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/24/05
Date


Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Eugene I. Farber

RECEIVED TIME OCT. 28. 5:05PM

10/31/05 MON 15:21 [TX/RX NO 8772] 010

OCT. 31. 2005 2:21PM

NO. 356. P. 2

NO. 13 110 1 00058 05

Kris Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/31/05
Date

Michael A. Levy

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Eugene I. Farber

Received Time Oct. 31. 12:34PM

10/31/05 MON 15:23 (TX/RX NO 8772) @008

OCT. 31. 2005 2:22PM

NO. 356 P. 11

Re: 13 116 Y 00998 06

Krid Ripley, LLC & Ashley River Properties II, LLC
and

Emerald Investments, LLC and Stuart Longman

3. Krid has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
 4. We deny the application of Krid and ARP II for forfeiture by the Emerald Member for contesting remedies of Krid and ARP II.
 5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
 6. We confirm Krid's rights under the Right of First Refusal Agreement.
 7. We find that Krid and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
 8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Krid the sum of \$251,000.00 for Krid's legal fees and disbursements.
 9. The administrative fees of the American Arbitration Association totaling \$17,500.00 and the compensation of the arbitrators totaling \$88,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Krid and ARP II the sum of \$56,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Krid and ARP II.
 10. The amounts owed by Emerald and Longman to Krid and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
 11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been reserved from this proceeding.
- This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

Date

Date

10/21/05

Michael A. Levy

Lary B. Leo

Eugene Falber

RECEIVED TIME OCT. 31. 2:31PM

10/31/05 MON 15:23 [TX/RX NO 8772] @011

OCT. 31. 2005 2:22PM

NO. 356 P. 12

Re: 13 113 Y 00888 05
Kris Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Michael A. Levy

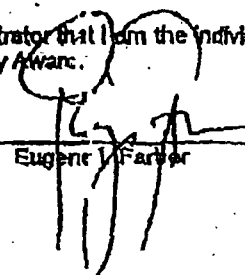
I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

11/31/15
Date


Eugene I. Farber

RECEIVED TIME OCT. 31. 2:31PM

10/31/05 MON 15:23 [TX/RX NO 8772] @012

RAND ROSENZWEIG RADLEY & GORDON LLP

BERNARD S. GORDON
E. COOKE RAND
CHARLES L. ROSENZWEIG

CATHERINE S. CAMPBELL
MICHELE L. KUGLER

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PARIS OFFICE
45 AVENUE MONTAIGNE
PARIS, FRANCE 75008
TELEPHONE: (1) 47.23.54.82
CHARLES G.G. CAMPBELL
RESIDENT COUNSEL

November 15, 2005

VIA EMAIL

VanEttenI@adr.org

Larry Biblo, Esq.
Eugene I. Farber, Esq.
Michael A. Levy, Esq.
c/o Ms. Laura E. VanEtten
American Arbitration Association
950 Warren Avenue
East Providence, RI 02914

Re: 13 115 Y 00698 05 -Kriti Ripley, LLC & Ashley River
Properties II, LLC adv. Emerald Investments, LLC and Stuart Longman

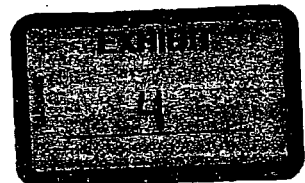
Dear Ms. VanEtten:

Claimants Kriti Ripley, LLC ("Kriti") and Ashley River Properties II, LLC ("ARP-II"), by their attorneys Rand Rosenzweig Radley & Gordon LLP, hereby request modification of the Award of Arbitrators ("Award") rendered in the above-referenced case, dated October 31, 2005, pursuant to Rule 46 of the Commercial Arbitration Rules.

We are mindful of the limitations of Rule 46 and write this letter only to request clarification and modification of what appear to be certain clerical, typographical and computational errors in the Award. It is manifestly not Claimants' intent to reargue the merits of the case. However, as will be discussed below, certain issues are unclear, others were not mentioned at all, and therefore a question exists as to intent of the arbitrators regarding those issues. Moreover, as shown by the annexed complaint, petition and application to modify or vacate the arbitration award, filed by Respondents in the courts of South Carolina, the parties and the reviewing courts would be better served if the arbitrators clarified their Award.

The Claims of Third-Party Contract Vendees

The arbitrators found that Claimants are entitled to indemnification in the amount of \$400,000 from Emerald and Longman, for all claims to date of third party contract vendees against ARP-II. (See Finding "F", at p. 3) Accordingly, in item 7 (at p. 4), the Award states that "Kriti and



RAND ROSENZWEIG RADLEY & GORDON LLP

Ms. Laura E. VanEtten
November 15, 2005
Page 3

Paragraph F of the Award states that the arbitrators "are persuaded that Emerald or Longman or another entity controlled by Longman (a) received and kept the deposits, (b) did not use these funds for the benefit of ARP-II and (c) ARP-II must now resolve all these third party claims." This finding would apply to all of the above with the possible exception of the Marler claim, for the reasons described below. The six enumerated claims -- all of which were undisputed by Emerald and Longman -- amount to \$1,012,482.74, far in excess of the \$400,000 awarded, even without adding amounts for anticipated future interest payable on the Cunningham promissory note, interest on the Patterson deposit and interest on the Marler deposit. Pursuant to §3.10 of the Operating Agreement and §2 of Indemnity Agreement (JE 1, 5), Respondents should also have reimbursed Claimants for \$18,578 in defense costs paid by ARP-II to Hagood & Kerr through September, 2005 in defending and/or settling those claims. (See Affidavit of Ben A. Hagood, sworn to September 19, 2005) Consequently, the total amount which should have been awarded on account of buyers claims should have been \$1,031,060.74, plus unliquidated interest on account of the Cunningham, Patterson and Marler claims.

With regard to the Marler claim, as was proven by Claimants, Marler paid a deposit of \$100,000 to Sapphire, a Longman controlled entity, for the right to purchase certain marina assets located on the adjacent Collins property for \$4 million, subject to Sapphire first closing on its contract with Collins to acquire his land and marina assets. This contract also granted Marler the option to acquire certain marina boat slips to be built on the parcel acquired by ARP-II. (JE 335, Tr. 1144-47). As reflected in paragraph A(6) of the Award, Respondents failed to disclose the existence of the downstream contract to sell portions of the Collins assets to Marler in violation of §3.9(a) and (f) of the Operating Agreement. As with the other buyer deposits, Respondents: "received and kept the deposits [and] did not use the funds for the benefit of ARP-II."

Marler's claim against ARP-II may be weaker than the claims of von Grotthuss, Cunningham, Lussiers (Lunar), Acierno and Patterson because ARP-II ultimately never acquired the Collins land and marina assets, and Marler's claim to recover his deposit may more properly lie against Sapphire and/or Longman, not ARP-II. However, paragraph 7 of the Award can be read to state that "all claims to date of third-party vendors [sic]" are to be resolved "at the expense of ARP-II", even though Marler may not have a provable claim against ARP-II. Thus, it must be anticipated that Respondents will now argue that ARP-II has the obligation to pay Marler for his claim, even though no offset was granted to ARP-II or Kriti for the principal and interest of Marler's claim. Consequently, responsibility for this matter must be clarified.

Accordingly, Claimants ask that paragraph 7 of the Award be corrected to provide for the amount of \$931,060.74, being the amount of the Cunningham, Von Grotthuss, Lunar Systems, Acierno and Patterson claims (including \$18,578 in Hagood & Kerr defense expenses) and that these claims be defined as the "Covered Third-Party Claims" or similar term. ARP-II would then be responsible to obtain the resolution of the Covered Third-Party Claims at its expense. Other third-

RAND ROSENZWEIG RADLEY & GORDON LLP

Ms. Laura E. VanEtten

November 15, 2005

Page 4

party claims, not within the defined term, would be outside of ARP-II's responsibility to resolve, at least to the extent the Award seeks to shift responsibility.

In the case of Marler, either the amount set forth in paragraph 7 of the Award should be raised by \$143,313 for the principal and interest (at 8.75% from 10/18/2000) of the Marler claim to \$1,074,373.74 or, at a minimum, the award should be modified to state that Respondents must hold harmless and indemnify ARP-II and Kriti for all losses and damages in accordance with the indemnity provisions of §3.10 of the Operating Agreement and §2 of the Indemnity Agreement.

Delay Damages

The Award does not expressly address Claimants' claims for delay damages despite recognizing that Claimants suffered delay damages. Thus, the arbitrators wrote, in paragraph A7, on page 2 of the Award:

[I]t is undisputed that when Bellingham Marine was finally paid, ARP-II was charged an additional \$64,000 because of the delay in payment occasioned by Emerald and Longman.

Claimants argued, in Section F of their post-hearing memorandum, that "the entry into the construction loan agreement with Marshall on a fraudulent basis and the diversion of loan funds [violated] §§5.2 (g) and (p), 5.7, 6.2 and 6.3 of the Operating Agreement And §2 of the Management Agreement." As the arbitrators found, this diversion damaged ARP-II in the amount of \$64,000. Claimants should be awarded damages in this amount.

Claimants should also be awarded its other delay damages. A redesign of the docks, in the fall of 2004, resulted in an additional and unnecessary expense of \$56,775. (JE 37) Most significantly, and although the Marshall construction loan agreement contemplated marina completion by December 31, 2004 (JE 15), Longman failed to commission final construction drawings of the pier (party deck) and bulkhead until January 2005. (JE 180) The consequences were a delay of between 12 and 13½ months (JE 334) and \$494,000 in extra and unnecessary overhead and interest costs. (JE 333) (See Claimants' posthearing memorandum Point I (G))

Longman is not an unsophisticated builder who was mistaken about how to build a marina. He should be held responsible for the \$614,775 in damages to Claimants caused by Longman's actions in derogation of his contractual and fiduciary obligations to construct the marina as agreed and contemplated.

Additional Claims

The arbitrators correctly found that Emerald and Longman's failure to disclose the existence of Sapphire's bankruptcy was a "clear material breach of Section 3.9(a)." The arbitrators failed,

RAND ROSENZWEIG RADLEY & GORDON LLP

Ms. Laura E. VanEtten

November 15, 2005

Page 5

however, to reimburse Claimants for the amount of \$40,338 in litigation expenses paid by ARP-II to Pratt-Thomas Epting & Walker, P.A. to prosecute the litigation with Collins for the benefit of Sapphire's creditors (JE 333, p 8).

As the Award reflects, the issues of whether and in what amount Respondents repaid the funds they diverted from ARP-II has been severed from this arbitration. However, the arbitrators have determined that Respondents diverted funds from ARP-II in breach of the Operating Agreement. ARP-II's costs in the amount of \$25,688 to restate the financial statements and trace the funds that were diverted are a direct consequence of Respondents' breach of the Operating Agreement and should be awarded as damages.

Claimants' Arbitration Costs

The arbitrators correctly determined, pursuant to Section 12.18 of the Operating Agreement, that Respondents, as the "non-prevailing" parties shall pay all costs and expenses of the arbitration. The application for such reimbursement consisted of the following:

- A. \$225,981.30 for the fees of Rand Rosenzweig Smith Radley & Gordon LLP (the "Rand Firm") through the post-hearing brief.
- B. \$8,967.86 for disbursements recorded by the Rand Firm.
- C. \$10,604.84 in court stenographer bills for the arbitration.
- D. \$10,000 in charges by Fortenberry Lambert (appraisal experts).
- E. \$15,527.31 in charges of Stantec Consulting (engineers).
- F. \$32,479.44 in charges of Pratt-Thomas, Gumb & Co. (forensic accountants) for testimony.
- G. Hagood & Kerr, fees of \$17,883.05 and disbursements of \$1,072.27 for a total of \$18,955.32 (these charges differ from the defense costs relating to the claims of the third-party buyers).

All of the foregoing were reflected in or annexed to my affidavit and that of Ben Hagood, Esq., and were submitted together with the posthearing memorandum. The above total \$322,516.07.

All of the items were reasonable (especially in comparison with almost triple the costs incurred by Respondents) and relevant to the claims which prevailed in the arbitration. Thus, Hagood & Kerr were essential in issues of South Carolina law (and charged far less than Respondents' South Carolina counsel). The Fortenberry Lambert report was significant in showing that ARP-II's property was more valuable than the Centex offer. The Pratt-Thomas report and testimony were significant in showing the amounts diverted by plaintiffs, although the precise amounts repaid or still

RAND ROSENZWEIG RADLEY & GORDON LLP

Ms. Laura E. VanEtten

November 15, 2005

Page 7

Very truly yours,

/s/

Charles L. Rosenzweig

cc: David Olasov, Esq.
Mr. Davidson Williams

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY

-----X
KRITI RIPLEY, LLC and ASHLEY RIVER
PROPERTIES II, LLC,

Claimants,

CASE No. 13 115 Y 00698 05

-against-

EMERALD INVESTMENTS, LLC and
STUART LONGMAN

MODIFICATION TO AWARD

Respondents.
-----X

WHEREAS, Claimants Kriti Ripley, LLC ("Kriti") and Ashley River Properties II, LLC ("ARP-II") have timely requested modification of the Award herein dated October 31, 2005, in accordance with Rule 46 of the Commercial Arbitration Rules; and

WHEREAS, it appears that the Award contains certain clerical, typographical and computational errors that should be corrected;

THE UNDERSIGNED ARBITRATORS, hereby modify the Award herein as follows:

A. Paragraph 7 on page 4 of the Award is deleted in its entirety and replaced with:

7. We find that Kriti and ARP-II are entitled to indemnification from Emerald and Longman in the total amount of \$931,060.74 [*If Marler added: \$1,031,060.74*]¹ for reimbursement of \$18,578 in Hagood & Kerr defense expenses and the following claims to date from the following third-party vendees (the "Covered Third-Party Claims"):

- a. Von Grotthuss – in the amount of \$67,765.94.
- b. Cunningham – in the amount of \$356,816.80.

¹ The italicized words are to be added if the arbitrators determine that Claimants should pay Marler as a Covered Third-Party Claim, and offset the amount otherwise payable to respondents for their interest in ARP-II.

c. Lunar Systems, Ltd. – in the amount of \$454,959 arising out of a Real Estate Purchase Agreement dated March 8, 2001 and related documents between Lunar Systems, Inc. and Ripley Light Yacht Club, LLC.

d. Acierno – in the amount of \$1,891.

e. Patterson – in the amount of \$31,050 arising out of a Reservation Agreement dated May 18, 2002.

f. *[Marler – in the amount of \$100,000 arising out of an Agreement to Buy and Sell dated October 18, 2000 with Sapphire Development, LLC.]*

In addition, Respondents shall, jointly and severally, promptly indemnify Claimants for (i) amounts paid by Claimants to Patterson, Lunar Systems, Ltd. or Cunningham *[or Marler]* in excess of the above amounts on account of additional interest² and (ii) for amounts paid by Claimants to Marler arising out of an Agreement to Buy and Sell dated October 18, 2000 with Sapphire. Upon payment of the foregoing amounts or offset pursuant to paragraph 10 below, the resolution of the Covered Third-Party Claims shall be at the expense of ARP-II.

B. The amount of \$251,000 set forth in paragraph 8 of the Award is deleted and replaced with the amount of \$322,516.07.

C. A new paragraph “9A “ shall be added as follows:

We find that Kriti and ARP-II are entitled to recover additional damages in the total amount of \$680,801 as follows: (i) \$614,775 for construction delays occasioned by Respondents’ wrongful conduct, (ii) \$40,338 in litigation expenses paid on account of a claim assigned by Sapphire, and (iii) \$25,688 in accounting charges to trace funds and restate financial statements as a consequents of Respondents’ breach.

D. Paragraph 10 of the Award is amended as follows:

a. The amount of \$400,000 is deleted and replaced with the amount of \$931,060.74

[or \$1,031,060.74 if Marler included as a Covered Third-Party Claim].

b. The following is added after “paragraph 7”: “and \$680,801 owed pursuant to paragraph 9A”.

E. The following should be added after the word “denied” in paragraph 11:

² Anticipated additional interest on the Cunningham claim (\$8,879.37 as per settlement agreement) and Marler (\$43,313 at the legal rate) amounts to \$52,192.37. No amount for

DEC. 9. 2005 1:55PM

NO. 9436 P. 2/8



American Arbitration Association
Dispute Resolution Services Worldwide

December 9, 2005

VIA FACSIMILE

Charles L. Rosenzweig, Esq.
Rand Rosenzweig Radley & Gordon, LLP
800 Third Avenue, 26th Floor
New York, NY 10022

David M. Olasov, Esq.
Brown, Raysman, Millstein, Felder & Steiner LLP
900 Third Avenue
New York, NY 10022

Scott H. Wyner, Esq.
Brown Raysman Millstein Felder & Steiner, LLP
900 Third Avenue
New York, NY 10022

Re: 13 115 Y 00698 05
Kriti Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

Dear Parties:

By direction of the arbitrators, we herewith transmit to you the duly executed Disposition of Application for Modification of Award in the above matter.

Sincerely,

Laura E. VanEtten
Case Manager
401 431 4787
VanEttenl@adr.org

Supervisor Information: Carli H. Del Solio, 401 431 4810, solioc@adr.org

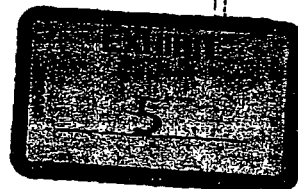
Encl.

cc: Michael A. Levy, Esq.
Larry Biblo, Esq.
Eugene I. Farber, Esq.

Northeast Case Management Center
Catherine Shanks
Vice President

Christopher Fucassa, Yvonne Nelson
Assistant Vice Presidents

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-4329
internet: <http://www.adr.org/>



1:DEC. 9. 2005.: 1:55PM 316 365 3184

LEVY & ASCHNEPS, P.C.

NO. 9436—P. 3/8

002

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 Y 00698 05

Kriti Ripley, LLC & Ashley River Properties II, LLC

"Claimants"

and

Emerald Investments, LLC and Stuart Longman

"Respondents"

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated October 31, 2005, and Claimants having filed an application for modification dated November 15, 2005, and Respondents having responded by letter dated November 28, 2005, do hereby, DECIDE, as follows:

Paragraph 7 of page 4 of the Award is amended as follows:

- (a) The word "vendors" on line 2 is deleted and the word "vendees" is substituted therefor, and
- (b) The word "to" on line 2 is omitted.

In all other respects, Claimants' motion to Modify the Award is denied.

This Modification of Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

12/9/05
 Date

 Date

 Date

 Michael A. Levy

 Larry Biblo

 Eugene I. Farber

I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

12/9/05
 Date

 Michael A. Levy

RECEIVED TIME DEC. 9 11:20AM

NO. 9436 P. 4/8

2003

1:DEC. 9. 2005. 1:56PM

516 385 3164

LEVY & ASCHNEPS, P.C.

Kristi Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Eugene I. Farber

1 DEC. 9. 2005: 1:56PM

NO. 9436 P. 5/8

DEC. 9. 2005 10:13AM

003/004

NV. 7747

117

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 Y 00698 03

Kristi Ripley, LLC & Ashley River Properties II, LLC
 and

"Claimants"

Emerald Investments, LLC and Stuart Longman

"Respondents"

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated October 31, 2005, and Claimants having filed an application for modification dated November 15, 2005, and Respondents having responded by letter dated November 28, 2005, do hereby, DECIDE, as follows:

Paragraph 7 of page 4 of the Award is amended as follows:

(a) The word "vendors" on line 2 is deleted and the word "vendees" is substituted therefor, and

(b) The word "to" on line 2 is omitted.

In all other respects, Claimants' motion to Modify the Award is denied.

This Modification of Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

Michael A. Levy

Date

Larry Biblio

Date

Eugene J. Farber

I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Michael A. Levy

RECEIVED TIME DEC. 9 12:12PM

1 DEC. 9. 2005 1:56PM

NO. 9436 P. 6/8

DEC. 9. 2005 10:13AM

004/004

Ref 13 115 Y 00671 03
Krid Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

12/1/05

Date

Eugene I. Farber

Eugene I. Farber

DEC. 9. 2005 1:56PM 8317524049

WEINER(4)IBLO

NO. 9436 P. 7/8

nv. 7929

002
3/4

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 Y 00698 05

Kriti Ripley, LLC & Ashley River Properties LLC
and

"Claimants"

Emerald Investments, LLC and Stuart Longman

"Respondents"

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated October 31, 2005, and Claimants having filed an application for modification dated November 15, 2005, and Respondents having responded by letter dated November 28, 2005, do hereby, DECIDE, as follows:

Paragraph 7 of page 4 of the Award is amended as follows:

(a) The word "vendors" on line 2 is deleted and the word "vendees" is substituted therefor, and

(b) The word "to" on line 2 is omitted.

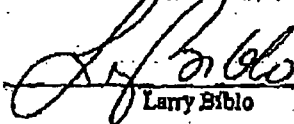
In all other respects, Claimants' motion to Modify the Award is denied.

This Modification of Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

12/9/05
Date

Michael A. Levy


Larry Biblo

Date

Eugene I. Parber

I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Michael A. Levy

RECEIVED TIME DEC. 9. 17:33PM

DEC. 9. 2005. 1:57PM 6317324048

WEINERMAIBLO

NO. 9436 P. 8/8

NO. 9424

2003
4/4

Re: 13 175 Y 00698 03
Krisi Ripley, LLC & Ashby River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

12/4/05
Date

Larry Biblo
Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Eugene I. Farber
Eugene I. Farber

1.

853107

Schedule K-1
(Form 1065)

For calendar year 2007, or year

2007

Department of the Treasury
Internal Revenue Serviceyear beginning
endingPartner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the PartnershipA Partnership's employer identification number
38-3685640B Partnership's name, address, city, state, and ZIP code
ASHLEY RIVER PROPERTIES II, LLC
C/O DAVIDSON WILLIAMS
345 EAST 37TH ST., STE. 312
NEW YORK, NY 10016C IRS Center where partnership filed return
OGDEN, UTD ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner**

E Partner's employer identification number

38-571681

F Partner's name, address, city, state, and ZIP code

EMERALD INVESTMENTS, LLC
95 HAWLEY POINTE DRIVE
CHARLESTON, SC 29417-1505 (Hwy 170, Exit 100)G ☐ General partner or LLC member-manager ☒ Limited partner or other LLC memberH ☒ Domestic partner ☐ Foreign partnerI What type of entity is this partner? **PARTNERSHIP**

J Partner's share of profit, loss, and capital

	Beginning	Ending
Profit	21,300,000.00%	21,300,000.00%
Loss	21,300,000.00%	21,300,000.00%
Capital	48,337,604.14	48,337,604.14

K Partner's share of liabilities at year-end

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0

L Partner's capital account details

Beginning capital account	\$	2,019,463
Depreciation deducted during the year	\$	
Current year increase (decrease)	\$	295,329
Withdrawals & distributions	\$	
Ending capital account	\$	1,724,134

☒ Tax basis ☐ GAAP ☐ Section 704(b) basis
☐ Other (explain)

Part K-1 Amended K-1OMB No. 1545-0049

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1 Ordinary business income (loss)	399,559	15 Credits	
2 Net rental real estate income (loss)		16 Foreign tax credits	
3 Other net rental income (loss)		17 Alternative minimum tax (AMT) items	
4 Guaranteed payments		18 Tax-exempt income and nondeductible expenses	125
5 Interest income	41,499	19 Distributions	
6a Ordinary dividends		20 Other information	41,499
6b Qualified dividends			
7 Royalties			
8 Net short-term capital gain (loss)			
9a Net long-term capital gain (loss)			
9b Collectibles (28%) gain (loss)			
9c Unrecaptured sec. 1250 gain			
10 Net section 1231 gain (loss)			
11 Other income (loss)			
12 Section 179 deduction			
13 Other deductions			
14 Self-employment earnings (loss)	0		

See attached statement for additional information

Note: For Paperwork Reduction Act Notice, see instructions for Form 1065

Schedule K-1 (Form 1065) 2007

712291
02-21-07

ASHLEY RIVER PROPERTIES II, LLC C/O DAVI

38-3685640

SCHEDULE K-1

NONDEDUCTIBLE EXPENSES, BOX 18, CODE C

DESCRIPTION	PARTNER FILING INSTRUCTIONS	AMOUNT
EXCLUDED MEALS AND ENTERTAINMENT EXPENSES	NONDEDUCTIBLE PORTION	125.
TOTAL TO SCHEDULE K-1, BOX 18, CODE C		125.

SCHEDULE K-1

CURRENT YEAR INCREASES (DECREASES)

DESCRIPTION	AMOUNT	TOTALS
ORDINARY INCOME (LOSS)	-399,559.	
INTEREST INCOME	41,499.	
SCHEDULE K-1 INCOME SUBTOTAL		-358,060.
DEPRECIATION ON RETURN AND NOT ON BOOKS	19,359.	
NONDEDUCTIBLE EXPENSES	-125.	
DEPRECIATION ADJUST	43,497.	
OTHER INCREASES OR DECREASES SUBTOTAL		62,731.
TOTAL TO SCHEDULE K-1, ITEM 1		-295,329.

PARTNER NUMBER 1

**SOUTH CAROLINA
SCHEDULE K-1
EQUIVALENT**
**Partner's South Carolina Information
For Calendar Year 2007 or Fiscal Year**
2007

Beginning _____, 2007, and Ending _____

Partner's Name, Address and ZIP Code

 EMERALD INVESTMENTS, LLC
 95 ~~STREET~~ ~~PO BOX 1100~~ 789 WEST MOUNTAIN ROAD
 CHARLESTON, SC 29417-1555 ~~PLACERVILLE, CA 95969~~

Partner Number

 Partner's Identifying Number
 06-1571681

 Resident ☒

 Nonresident ☐

 Attached K-1 ☐

 Blank ☐

Partnership's Name, Address and ZIP Code

 ASHLEY RIVER PROPERTIES II, LLC
 C/O DAVIDSON WILLIAMS
 345 EAST 37TH ST., STE 312
 NEW YORK, NY 10016

Partnership's Identifying Number

38-3685640

Partner's Percentage of

Profit and Loss Sharing 21.3000000 %

Partner's Share of South Carolina Income

	(b) STMT Plus or Minus South Carolina Adjustment	(c) Federal Schedule K Amounts After SO Adjustments	(d) Amounts Allocated to SC	(e) Amounts Subject to Apportionment
1 Ordinary business income (loss)	-24	-399,603		-399,603
2 Net real-estate income				
3 Net income from other rental				
4 Guaranteed payments				
5 Interest		41,499	41,499	0
6 Dividends				
7 Royalties				
8 Short-term capital gain (loss)				
9 Long-term capital gain (loss)				
10 Section 1231 gain (loss)				
11 Other income				
12 Section 179 expense				
13a Charitable contributions				
13b Investment interest expense				
13c Section 6602 expense				
13d Other deductions				
14 Total	41	-358,104	41,499	-399,603
15 Amount from Federal Schedule K-1 (line 14 of Form 1065, Schedule E or C)				-358,104
16 Amount allocated to South Carolina from line 14 of Form 1065			41,499	
17 Net income (loss) subject to apportionment (from line 14, Col. E)				-399,603
18 Apportionment factor				100.0000%
19 South Carolina taxable income reduction factor				
20 Net business income (loss) apportioned to SC (line 17 multiplied by line 18 minus line 19)				-399,603
21 Net business income (loss) taxable to SC (line 19 plus line 20)				-358,104
Income Tax Withheld				
Withholding From Nonresident Sale of Real Estate				
Composite Tax Paid				
Entity South Carolina Gross Income				
Entity South Carolina Taxable Income				-1,681,237
Guaranteed Payment for Use of Capital				

ASHLEY RIVER PROPERTIES II, LLC C/O DAVI

38-3685640

SC SCHEDULE K-1

SCHEDULE K-1 ADJUSTMENTS

LINE NO.	DESCRIPTION	AMOUNT
LINE 1	SOUTH CAROLINA DEPRECIATION ADJUSTMENT	-44
TOTAL OF FORM SC1065, SCHEDULE K-1, COLUMN B		-44

PARTNER NUMBER 1

1019

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
WORKSHEET 2
PASS THROUGH INCOME FROM A PARTNERSHIP
OR S CORPORATION

(Complete a separate Worksheet 2 for each SGK-1)
(Attach each Worksheet 2 to your return)

I-335B
(Rev. 9/28/97)

3422

For the year January 1, December 31, 2007, or fiscal tax year beginning		and ending
First Year Date	Spouse's first name	Your Social Security number
EMERALD INVESTMENTS, LLC		06-1571681
		Spouse's Social Security number

In order to use the flat rate on active trade or business income, an individual, estate or trust with pass-through income from one or more partnerships, S corporations, or LLCs taxed as partnerships or S corporations must complete a separate Worksheet 2 for each partnership, S corporation or LLC.

Complete a separate Worksheet 2 for each SGK-1.

Name of business	Column A Federal K-1 amounts	Column B SGK-1 amounts	Column C SC active trade or business amounts
ASHLEY RIVER PROPERTIES, INC. LLC 270 EAST BROWN WITH LANE			
1. Ordinary business income (loss)	399,559	399,603	399,603
2. Net rental real estate income (loss)	0	0	0
3. Other net rental income (loss)	0	0	0
4. Guaranteed payments	0	0	0
5. Interest income	41,499	41,499	0
6. Ordinary dividends/interest	0	0	0
7. Royalties	0	0	0
8. Net short-term capital gain (loss)	0	0	0
9a. Net long-term capital gain (loss)	0	0	0
9b. Collectibles (28%) gain (loss)	0	0	0
9c. Unrecaptured section 1250 gain	0	0	0
10. Net section 1231 gain (loss)	0	0	0
11. Other income (loss)	0	0	0
12. Section 179 deduction	0	0	0
13. Other deductions	0	0	0
14. Self-employment tax (SEI) items	0	0	0
15. Other	0	0	0
16. Foreign transactions	0	0	0
17. Alternative minimum tax (AMT) items	571	571	0
18. Tax-exempt income and nondeductible expenses	125	125	0
19. Charitable contributions	0	0	0
20. Items affecting shareholder basis	0	0	0
21. Other information	0	0	0
22. Total of Column C			399,603

Note: Worksheet 2 combines elements of federal K-1s for Forms 1065 and 1120-S.

* Identifies items on Form 1065, Schedule K-1 but not on Form 1120-S, Schedule K-1.

** Identifies items on Form 1120-S, Schedule K-1 but not on Form 1065, Schedule K-1.

Ownership Interest: 48.337%

34221028

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS

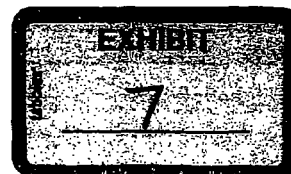
We, the undersigned arbitrators, having been designated pursuant to Article 12.18 of the operating agreement, dated as of December 29, 2003, by and among Kriti Ripley, LLC ("Kriti"), Emerald Investments, LLC ("Emerald") and Ashley River Properties II, LLC ("Company") ("hereinafter "Operating Agreement"), and, during July, 2010, the Arbitrators (hereinafter sometimes referred to as "Panel"), each having been duly sworn, held six duly noticed hearing days pertaining to the within matter, during which time the Panel heard evidence and admitted various exhibits in furtherance of the position of both Emerald and Kriti, and, the parties having submitted post hearing briefs and reply briefs, and, having read the briefs and ancillary submissions, do hereby FIND and AWARD as follows:

This arbitration arises from a dispute between the only two members of the Company which was formed to own and develop waterfront property located in Charleston, South Carolina. This dispute has its genesis in 2005 when the principal of Emerald, Stuart Longman, admittedly, diverted funds from the Company contrary to the Operating Agreement. As a consequence, Kriti commenced an arbitration to strip Emerald of its voting rights in accordance with the Operating Agreement. As a result, Emerald, which held a 70% membership interest in the Company, lost all of its voting rights, leaving Kriti, which held the remaining 30% membership in the Company, with the sole right to manage the Company and as the sole voting member of the Company.

Thereafter, the parties engaged in a continuous series of litigations and arbitrations, spanning three states, to further each of their interests. The initial arbitration affirmed Emerald's loss of voting rights and awarded Kriti certain moneys arising from the diversion of Company funds (JE 47). The initial award denied the remedy of forfeiture and held that Kriti could exercise its right to acquire the interests of Emerald for Emerald's cost as set forth on the books of the Company as provided in the Operating Agreement (JE52, Article 13.02). Due to the manner in which the Operating Agreement provided for a buy out of the interests of each member, the arbitrators did not need to address whether or not Emerald's membership interests were reduced from 70% to something less. During the initial arbitration and, consistently thereafter, Emerald took the position that it continued to own a 70% interest in the Company and Kriti took the position that Emerald's interests had been diluted.

Thereafter, Kriti commenced a second arbitration to recover moneys due from Emerald arising from its diversion of funds and for legal fees. That arbitrator, by an award, dated June 22, 2006, awarded Kriti legal fees and damages (JE 48). Kriti then moved to confirm both awards in the Supreme Court of the State of New York, New York County. In February, 2008, both awards were affirmed by the Hon. Ira Gammelman, Judicial Hearing Officer (JE 49). In a separate action, Emerald sought a judicial determination, also in the Supreme Court of the State of New York, that Kriti's right to acquire Emerald's interest in the Company had expired, which motion was granted in 2009.

In 2009, Emerald commenced an action in the Court of Common Pleas for the Ninth Judicial Circuit, sitting in Charleston, South Carolina, to dissolve the Company and to declare that Kriti owned 70% of the Company ("South Carolina Dissolution Action"). The Court, in that proceeding, explicitly held that "the suit is based on events (e.g. ...the alleged dilution of Emerald's interest...) that occurred after the New York arbitration. Therefore, the current claims are not barred by *res judicata* or collateral estoppel (JE... at 21)."



AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC	("Emerald")
and	
Kriti Ripley, LLC	("Kriti")

AWARD OF ARBITRATORS CONTINUED

When the parties realized that the determination of Emerald's membership interest was properly the subject of arbitration pursuant to Article 12.18 of the Operating Agreement, they agreed to stay the South Carolina Dissolution Action and proceed with arbitration in New York on the issue of Emerald's membership interest (JE 536). The consent order of the South Carolina Court also provided:

"The parties further stipulate and agree that the findings of the above-referenced New York arbitration, upon confirmation of the award, shall be admissible in and binding upon the parties in any action (including, but not limited to, this action) seeking an order of judicial dissolution of ARP II (the Company)."

Emerald then commenced the within arbitration, seeking, in part: (i) a declaration that Emerald owns 70% of the membership interests of the Company, (ii) a finding that the amounts contributed as loans by affiliates of Kriti should be treated as equity and not debt on the books of the Company, (iii) an order expelling Kriti from the Company, (iv) an injunction preventing Kriti from violating the Operating Agreement, (v) damages, and (vi) costs of the arbitration, including legal fees. Kriti answered and denied the material allegations contained in the arbitration demand and sought relief of its own: (i) dismissal of the arbitration, (ii) forfeiture of Emerald's interests in the Company, pursuant to South Carolina law, (iii) confirmation that Emerald holds a 21.3% interest in the Company, (iv) a determination of the amount of long term liabilities on the books of the Company, and (v) costs and expenses of this proceeding, including legal fees.

Ownership Interests

Based upon the evidence adduced at the hearing, We find that the Capital Call, dated February 28, 2008 (JE 115) ("Capital Call") was defective on its face and thus ineffective to trigger a transfer of Emerald's membership interests. The Capital Call imposed conditions on the application of Emerald's capital contribution which were contrary to the terms of the Operating Agreement. Accordingly, We find that Emerald continues to own a 70% interest in the Company and Kriti continues to own a 30% interest. This holding does not impact, however, the finding that Kriti continues to be the sole member with voting rights as determined by the initial arbitration and affirmed by J.H.O. Gammernan (JE 47 at 11).

The Panel finds that Emerald is not precluded by either the statute of limitations or *res judicata* from seeking the relief requested herein. J.H.O. Gammernan's decision, dated February 15, 2008, was settled by a judgment, dated April 2, 2008. Sometime in 2009, Emerald commenced the South Carolina Dissolution Action to declare that it held a 70% interest in the Company, well within the three year statute of limitations for such proceedings applicable under South Carolina law. Through every litigation and arbitration, over five years, Emerald has sought to affirm its 70% ownership of the Company, thus tolling any statute of limitations.

Loans as Equity and Not Debt

The Panel finds that Kriti and its affiliates loaned to the Company the sum of \$7,493,077.35, as set forth on the Company balance sheet, dated as of March 31, 2010 (JE 104) ("Financial Statement"). These loans were not disputed by Emerald. Rather, Emerald seeks to have these loans treated as equity claiming that the loans

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")

and

Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

were disguised equity contributions as they were not arm's length loans and did not have the indicia of debt. We find the cases cited by Emerald unpersuasive to reclassify these loans as equity contributions.

Moreover, Article 5.2 of the Operating Agreement provides for members to loan money to the Company:

Notwithstanding anything herein to the contrary, the following major decisions shall require the written approval of the Member who own the Required Interest of the Voting Rights in the Company: ...

(i) The borrowing of money for Company purposes and, if security is required therefore, the granting of any security interest in all or any portion of Company Property.

(q) Entering into any loan agreement or execution and delivery any note, mortgage, deed of trust guaranty, indemnity or other instrument or agreement in connection with any borrowing, or any amendment, supplement, extension or modification thereto, whether in connection with any existing or future borrowing or debt.

(JE 52, Article 52.)

Thus, We find that loans to the Company from the Kriti affiliates and Davidson Williams should be treated as loans.

Dissolution of the Company and Dissociation

~~We find no basis to dissociate Kriti or Emerald from the Company or to dissolve the Company despite the fact that dissolution may be in the best interests of all parties. The Operating Agreement explicitly states the basis for dissolution:~~

9.1. Except as otherwise provided herein, the Company shall dissolve... only upon the happening of one or more the following events:

(a) written consent of the members who own the Required Interest of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality with ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate of administratively dissolving the Company...

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")

and

Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

(d) The expiration of the period fixed for the duration of the Company...

The Panel finds that none of these events has occurred and, thus, the parties have not provided sufficient facts for the Arbitrators to render a fact finding authorizing dissolution.

The Operating Agreement also fails to provide a basis for dissociation, as dissociation may be supported only upon the finding of three events:

"(a) Withdrawing, retiring or resigning from the Company with the consent of those Members who own the Required Voting Rights in the Company.

(b) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him or it (sic) which is not dismissed within ninety (90) days.

(c) Any event of Wrongful Dissociation set forth in 10.5 of this Agreement."

Article 10.5 of the Operating Agreement sets forth the basis for wrongful dissociation. The parties did not present sufficient evidence to justify a finding of the extreme remedies of dissociation or forfeiture of either member's membership interests in the Company.

Article 10.5(b)(iii) provides that dissociation may be found where a member engages in "conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member." While the Panel observes that Kriti and Emerald cannot work together in any constructive manner, the business of the Company is the development of the waterfront property and, should the Company elect not to dissolve, Kriti may proceed with its business operations.

Nor did the Panel hear sufficient evidence to find corporate waste by Kriti or commission of any act which would justify enjoining Kriti from violating any provision of the Operating Agreement. The decisions to construct a bulkhead, dredge the canal and construct the out building were well within the business judgment of Kriti as managing member; and the application of funds by the Company was, also, well within reasonable business efforts to manage a complex piece of waterfront property. Kriti had envisioned a luxury development and these expenditures fell within that reasonable vision. Emerald's evidence was, at best, the observations of Stuart Longman who believed that he could develop the property better; but the decisions of Kriti did not constitute waste nor 'wrongful conduct that adversely and materially affected the Company's business..." Nor did Kriti's conduct constitute "... a material breach of [the Operating Agreement] or a duty owed to the Company or the other Members under Section 22-44-409 of the Act." Operating Agreement, Article 10.5(b).

Accordingly, the Panel Awards as follows:

1. Emerald is found to continue to own 70% of the membership interests in the Company and Kriti continues to own 30% of the membership interests.

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

2. The loans by Kriti's affiliates to the Company shall be treated as loans to the Company and shall not be recast as equity. The amount of the loans are found to be those set forth in the Financial Statement, as the amounts of the loans were not disputed by the parties.
3. Neither Kriti nor the Company committed corporate waste or engaged in any misconduct which would support a finding of fact requiring dissociation, dissolution or an award to Emerald of damages; and, thus, to the extent that the Panel is empowered to opine on the request for dissociation, dissolution or damages against Kriti, such request is denied.
4. Emerald did not commit sufficient acts to support a finding of dissociation, and, to the extent that the Panel is empowered to opine on the request for dissociation of Emerald, such request for relief is denied.
5. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture.
6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
8. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally. Therefore, Kriti shall reimburse Emerald the sum of \$59,527.74, representing that portion of said fees in excess of the apportioned costs previously incurred by Emerald.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

10/28/2010

Date

10/29/2010

Date

E. Leo Milonas

Peter L. Altieri

Peter L. Altieri

David M. Rubin

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

2. The loans by Kriti's affiliates to the Company shall be treated as loans to the Company and shall not be recast as equity. The amount of the loans are found to be those set forth in the Financial Statement, as the amounts of the loans were not disputed by the parties.
3. Neither Kriti nor the Company committed corporate waste or engaged in any misconduct which would support a finding of fact requiring dissociation, dissolution or an award to Emerald of damages; and, thus, to the extent that the Panel is empowered to opine on the request for dissociation, dissolution or damages against Kriti, such request is denied.
4. Emerald did not commit sufficient acts to support a finding of dissociation, and, to the extent that the Panel is empowered to opine on the request for dissociation of Emerald, such request for relief is denied.
5. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture.
6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
8. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally. Therefore, Kriti shall reimburse Emerald the sum of \$59,527.74, representing that portion of said fees in excess of the apportioned costs previously incurred by Emerald.

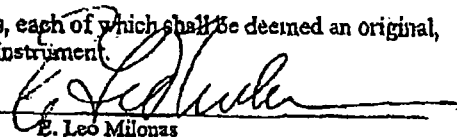
This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

10/28/10
 Date

Date

Date


 E. Leo Milonas

Peter L. Altieri

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")

and

Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, E. Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/28/10
Date


E. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")

and

Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, E. Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

E. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/28/2010
Date

Peter L. Altieri
Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/29/2010
Date

David M. Rubin
David M. Rubin

EMERALD INVESTMENTS, LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD, CT 06877

July 5, 2006

Davidson Williams
Ashley River Properties II, LLC
c/o Kriti Management, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via email and fax: 212-599-5779

Re: Demand for Books and Records of Ashley River Properties II, LLC ("ARP II")

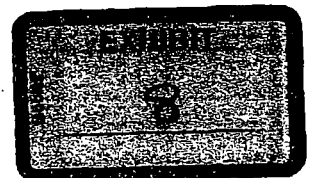
David:

Several weeks ago I sent you a demand for access to the ARP II offices to review the books and records of ARP II. At the time, you stated that you were not in a position to respond since your attorney was out of the office for personal reasons. He is obviously back. I request your immediate response to my demand.

Sincerely,



Stuart L. Longman



STUART L LONGMAN
424 WEST MOUNTAIN ROAD
RIDGEFIELD CT 06877

June 12, 2006

Davidson D. Williams
Managing Member
Kriti Ripley, LLC
345 East 37th Street
Suite 312
New York, NY 10016

Re: Review of ARP II Books

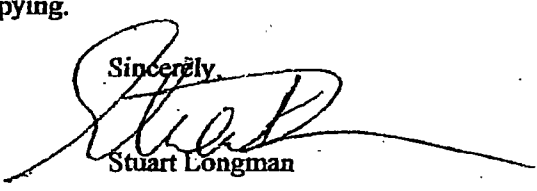
David:

As provided in the ARP II Operating Agreement and under South Carolina law, I demand access at the principal office of ARP II to all of ARP II's records, including, without limitation: account ledgers, bank records (including, checkbook registries and checks) and draft and executed contracts and correspondence or other communications of ARP II with, among others, contractors, suppliers, architects and legal counsel to the limited liability company, Marshall, prospective lenders, purchasers, investors, the Von Grotthusses, the Lussiers, Lunar Systems, the Cunninghams, Mr. Patterson, Mr. Marler (or their lawyers and/or other representatives).

Since many of these documents are in digital form, I also expect access to the computers used by ARP II.

Please make these records available within the next two weeks and advise me as to the proposed dates on which the records can be reviewed. I may ask one of our Charleston lawyers to undertake the inspection and copying.

Sincerely,


Stuart Longman

cc: Richard S. Rosen, Esq.

PHONE (203) 438-7505 FAX (203) 431-4456

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-10-2434

LUNAR SYSTEMS, LTD.,)
Plaintiff,)

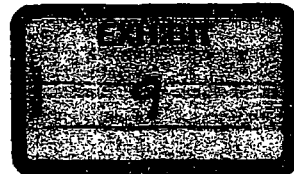
-vs-

**REQUESTS FOR PRODUCTION
OF DOCUMENTS**

ASHLEY RIVER PROPERTIES)
ONE, LLC and ASHLEY RIVER)
PROPERTIES TWO, LLC,)
Successors in the interest of)
RIPLEY LIGHT YACHT CLUB,)
LLC, RIPLEY LIGHT YACHT)
CLUB, LLC, RIPLEY LIGHT)
DEVELOPMENT, LLC, and)
ROBERT C. CUNNINGHAM,)
Defendants.)

TO: WILLIAM C. CLEVELAND, ESQUIRE, ATTORNEY FOR DEFENDANT
ASHLEY RIVER PROPERTIES TWO, LLC:

The Defendant, Ashley River Properties One, LLC ("ARP I"), pursuant to South Carolina Rule of Civil Procedure 34, hereby requests that the Plaintiff and/or its assignee produce for inspection and copying, within thirty (30) days from the date of this request, at the offices of Rosen, Rosen & Hagood, LLC, 134 Meeting Street, Suite 200, Charleston, South Carolina, 29401, and permit the attorneys for said Plaintiff to inspect, copy, or photograph the following documents or things which may be in the possession, custody, or control of Plaintiff, Plaintiff's assignee, or their agents or attorneys. Each document provided in response to these Requests should be identified according to the numbering of the Requests below. These Requests for Production of Documents are deemed to be continuing. If Plaintiff, Plaintiff's assignee, or their agents or attorneys become aware of other documents during the course of this proceeding which



are responsive to the Requests below, such documents must be made available to Defendant within 30 days after receipt of this information, but no later than 2 weeks before trial.

DEFINITIONS

The term "document(s)" shall mean all writings, including all handwritten, typed, printed, or photocopied matter, all recordings, and graphic matter of any kind, including the originals and all the duplicates, carbon copies or any other non-identical copies, whether different from the originals by reason of any notations or changes made on such copies, or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, calendars, applications, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, computations, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intra-office communications, resumes, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, emails or other electronic communications, invoices, worksheets, all drafts, alterations, modification changes and amendments of any of the foregoing, graphic or oral recordings or representations of any kind, (including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, recordings, motion pictures), and any electronic, mechanical or electrical records or representations of any kind, (including, without limitation, tapes, cassettes, disks, recordings, computer memories), or any other recorded information of any kind whatsoever, within the knowledge, possession, custody, control or subject to the control of, or accessible to Defendants or their attorneys.

DOCUMENTS NOT PRODUCED

If any document requested below is claimed by you to be privileged, trial preparation materials, or otherwise non-discoverable based on some other reason, you are requested to state

for each document the grounds upon which the privilege, trial preparation claim, or other objection or reason rests and to identify all such documents by specifying:

- (1) The type of document (for example, letter, memorandum, photograph, etc.);
- (2) The date the document was prepared;
- (3) The title of the document;
- (4) The person who prepared the document;
- (5) The person to whom the document was originally sent, if appropriate;
- (6) The present location of the document;
- (7) The present location of all copies of the document; and
- (8) The person or persons having possession, custody or control of the document and any copies of it.

If any document requested below has been destroyed or discarded, you are requested to identify the document destroyed or discarded in the same manner of identification as requested above for documents you claim are not discoverable and to explain when, how, and why the document ceases to exist.

DOCUMENTS REQUESTED

1. Any contracts, agreements, memoranda, notes, or other documents memorializing or relating to any relationship, arrangement, agreement, or understanding between Frank Guarino and Lunar Systems, Ltd., Ashley River Properties II, LLC, Kriti Ripley, LLC, Davidson Williams, and/or their agents or employees involving the matters or events referenced in the Complaint filed in this action, including, but not limited to, the Ripley Light project, Mr. Guarino's work involving the Ripley Light project, condo pre-sales, and/or slip rentals, the

claims in this lawsuit, the service or receipt of any suit papers in this lawsuit, the settlement of the claims in this lawsuit, and/or the default or default judgment entered in this lawsuit.

2. Any correspondence, e-mails, memoranda, notes, or other documents reflecting or relating to any communications with Frank Guarino involving the matters or events referenced in the Complaint filed in this action, including, but not limited to, the Ripley Light project, Mr. Guarino's work involving the Ripley Light project, condo pre-sales, and/or slip rentals, the claims in this lawsuit, the service or receipt of any suit papers in this lawsuit, the settlement of the claims in this lawsuit, and/or the default or default judgment entered in this lawsuit.

3. Any settlement offers, settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving this lawsuit.

4. Any drafts or preliminary versions of any settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving this lawsuit.

5. Any correspondence, e-mails, facsimiles, and other documents involving any settlement offers, settlement agreements, releases, covenants not to execute, assignment agreements, promissory notes, and/or dismissal of claims related to this lawsuit.

6. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Frank Cisa, Esquire, or his staff, involving this lawsuit.

7. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Thomas Lussier, or his staff, involving this lawsuit.

8. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Joe Qualey, Esquire, or his staff, involving this lawsuit.

9. Any canceled checks, check stubs, check registers, bank statements, or other documents of Ashley River Properties II, LLC, Kriti Ripley, LLC, and/or Davidson Williams reflecting or relating to any payment or exchange of consideration made to Lunar Systems, Ltd., Thomas Lussier, and/or Frank Cisa pursuant to any settlement agreement, release, covenants not to execute, assignment agreements, promissory notes, and/or dismissal involving this lawsuit.

10. The financial statements and balance sheets of Ashley River Properties II, LLC, Kriti Ripley, LLC, and/or Davidson Williams documenting or reflecting any payments made to Lunar Systems, Ltd., Thomas Lussier, and/or Frank Cisa.

11. All tax returns of Ashley River Properties II, LLC, Kriti Ripley, LLC, and/or Davidson Williams documenting or reflecting any payments made to Lunar Systems, Ltd., Thomas Lussier, and/or Frank Cisa.

12. The company books and records of Ashley River Properties II, LLC and/or Kriti Ripley, LLC, including without limitation the general ledgers, operating account ledgers, and other such records of the companies documenting or reflecting any payments made to Lunar Systems, Ltd., Thomas Lussier, and/or Frank Cisa.

13. Any documents involving or relating to the default and/or default judgment entered against Ashley River Properties I, LLC in this lawsuit.

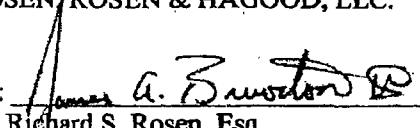
14. Any correspondence, e-mails, facsimiles, and other documents involving any communication by Ashley River Properties II, LLC, Kriti Ripley, LLC, Davidson Williams or their agents or employees with Ashley River Properties I, LLC; Emerald Investments, LLC; and/or Stuart Longman or their agents or employees involving the matters or events referenced in the Complaint filed in this action, including, but not limited to, the Ripley Light project, Mr. Guarino's work involving the Ripley Light project, condo pre-sales, and/or slip rentals, the

claims in this lawsuit, the service or receipt of any suit papers in this lawsuit, the settlement of the claims in this lawsuit, and/or the default or default judgment entered in this lawsuit.

15. Any correspondence, checks, payment records, releases, or other documents showing or relating to any payments, loans, transfers, or other transactions made by Ashley River Properties II, LLC, Kriti Ripley, LLC, or Davidson Williams to discharge or satisfy the third party vendee claims (including, *inter alia*, the claim or debt owed to Lunar at issue in this lawsuit) pursuant to the New York arbitrators' decision issued on or about October 31, 2005.

16. Any records, ledgers, or journals of Ashley River Properties II, LLC, Kriti Ripley, LLC, or Davidson Williams showing or reflecting that the third party vendee claims (including, *inter alia*, the claim or debt owed to Lunar at issue in this lawsuit) referenced in the New York arbitrators' award have been discharged or satisfied.

ROSEN, ROSEN & HAGOOD, LLC.

By: 

Richard S. Rosen, Esq.

Daniel F. Blanchard, III, Esq.

James A. Bruorton IV, Esq.

134 Meeting Street, Suite 200

P.O. Box 893

Charleston, SC 29402

(843) 577-6726

ATTORNEY(S) FOR ASHLEY RIVER
PROPERTIES ONE, LLC.

Charleston, South Carolina

April 3, 2009.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-10-2434

LUNAR SYSTEMS, LTD.,)
))
Plaintiff,)
))
- vs -)

INTERROGATORIES

ASHLEY RIVER PROPERTIES)
ONE, LLC and ASHLEY RIVER)
PROPERTIES TWO, LLC,)
Successors in the interest of)
RIPLEY LIGHT YACHT CLUB,)
LLC, RIPLEY LIGHT YACHT)
CLUB, LLC, RIPLEY LIGHT)
DEVELOPMENT, LLC, and)
ROBERT C. CUNNINGHAM,)
))
Defendants.)

TO: WILLIAM C. CLEVELAND, ESQUIRE, ATTORNEY FOR DEFENDANT
ASHLEY RIVER PROPERTIES TWO, LLC:

PLEASE TAKE NOTICE that you are hereby required to answer in writing the following
interrogatories, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

PRELIMINARY STATEMENT AND DEFINITIONS

The following directions, guidelines, and definitions are to be considered applicable to all
questions propounded in this set of interrogatories unless made expressly inapplicable by the
particular interrogatory or subpart thereof.

In answering these interrogatories, furnish all information available to the Plaintiff
including information in the possession of its attorneys, investigators, and all persons acting on
its behalf. If you cannot answer the interrogatories in full after exercising due diligence to secure
the information, so state and answer to the extent possible, specifying your inability to answer

the remainder and state whatever information or knowledge you have concerning the unanswered portions.

The interrogatories which follow are to be considered as continuing, and you are requested to provide, by way of supplementary answers thereto, such additional information as you or any persons acting on your behalf may hereafter obtain which will augment, clarify, or otherwise modify the answers now given to these interrogatories.

If the Plaintiff refuses to answer and/or object to any interrogatory in whole or in part, describe the basis for the refusal or objection in detail sufficient to permit the court to adjudicate the validity of such refusal or objection.

If you claim a privilege as to any interrogatory or any requested information, please state the nature of the privilege and provide an explanation of the document or information sufficient to identify the nature of the document or information and the identity of the person who is in possession of it or has knowledge of the information.

The following definitions apply to these Interrogatories:

(A) "You" or "Your" refers to the Plaintiff named in the Complaint and/or any assignee of the Plaintiff and shall embrace and include, in addition to the named Plaintiff and its assignee, their attorneys, agents, representatives, and others who have obtained information for or on behalf of such Plaintiff or assignee.

(B) "Plaintiff" means the Plaintiff named in the Complaint and/or any assignee of the Plaintiff or their attorneys, agents, partners, and representatives.

(C) "Defendant" means the Defendants named in the Complaint; their attorneys, agents, employees, and representatives; and any successors and/or predecessors in interest and their attorneys, agents, employees, and representatives.

(D) The "Complaint" means the Complaint filed in this action by the Plaintiff.

(E) "Person" means natural persons, corporations, partnerships, sole proprietorships, unions, associations, federations, government agencies, or any other kind of entity.

"Document" means documents and other tangible things as defined in the broadest sense permitted by the South Carolina Rules of Civil Procedure and shall include any printed, typewritten, handwritten, or otherwise recorded matter of whatever character, including without limitation: Originals or, if not available, true copies of all letters, memoranda, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, electronic or email communications, announcements, agreements, contracts, deeds, plats, studies, photographs, statements, invoices, checks, journals, ledgers, telegrams, handwritten notes, periodicals, pamphlets, reports, computer or business machine printouts, accountants' work papers, accountants' statements and writings, notations or records of meetings, printers' galleys, books, papers, calendars, diary entries, speeches, public relations issues, advertising, annual and other reports including financial statements filed with appropriate state and federal authorities, documents filed with governmental agencies, office manuals, employee manuals, company rules and regulations, reports of experts, drafts and preliminary copies of any of the foregoing where such document is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original, tape recordings or other sound or visual reproduction materials and any other written matter, tangible or physical objects however produced or reproduced upon which words or phrases are affixed or from which by appropriate transcription such written matter or tangible thing may be produced, in the possession, custody or control of the person herein served or his agents, attorneys, or employees.

The term "documents" also includes any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced.

(G) The word "identify", when used herein in reference to a natural person, means to state (1) his or her full name and present or last known address of residence, and (2) his or her present or last known business affiliation and position therewith. If any of the above information is not available to the Plaintiff, state any other available means of identifying such natural person.

The word "identify", when used in reference to a person (as defined above) other than a natural person, means to state (1) its full name, (2) nature of its organization including the name of the state under which same was organized, (3) its address(es) in South Carolina, (4) the address of its principal place of business, and (5) its principal line of business. If any of the above information is not available to the Plaintiff, state any other available means of identifying such person.

"Identify," when it is referring to documents, means the type of document; the document's author who should be identified; the document's primary recipient who should be identified; any persons receiving a copy of the document, along with their identification; the date of the document; the present location of the document; the present custodian who should be identified; and whether a privilege is claimed as to its production. If any such document was, but is no longer in the possession of Plaintiff or subject to Plaintiff's control, or it is no longer in existence, state whether it is (a) missing or lost, (b) destroyed, (c) transmitted or transferred voluntarily or involuntarily to others, identifying such others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof. If any of the above is not available to Defendants, state any available means of identifying such documents.

INTERROGATORIES

1. Identify all persons whom you know are and/or may be witnesses concerning the facts of this case (regardless of whether you intend to call or use said witness at the trial of this case) and indicate whether or not written or recorded statements have been taken from these persons and indicate who has possession of such statements.

2. For each person identified in response to Interrogatory Number 1, set forth a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

3. Identify and list all documents, e-mail or electronic communications, photographs, motion pictures, videotapes, audio cassettes, drawings, plats, sketches, diagrams, reports, statements, affidavits, records, forms, writings, notes, memoranda, written messages, contracts, or tangible things that prove, disprove, or relate to any claim or defense in this case.

4. Identify each expert witness who will testify on your behalf at the trial of this case and indicate for each such expert witness the witness' professional background including the witness' specialty, if any, within his or her profession; the substance of the opinions held by the expert relating to this case; the documents, materials, records and other data which the witness reviewed in preparing his opinion; and the substance of the facts known and authorities upon which the witness relied in forming his opinion.

5. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

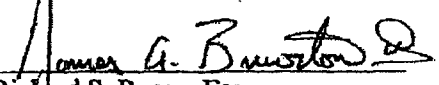
6. State whether Ashley River Properties II, LLC, Kriti Ripley, LLC, or Davidson Williams paid Lunar Systems, Ltd. in full for Lunar's claims asserted in this action. If any

payment was made towards the claim, state the total amount of compensation that was paid; when paid; to whom paid; by whom paid; the source of the funds used to make the payments; what amount of the claim was left unpaid, if any, and why the amount was left unpaid; and identify any documents relating to the payments or any amounts left unpaid.

7. State whether Ashley River Properties II, LLC, Kriti Ripley, LLC, or Davidson Williams satisfied or discharged the third-party vendee claims (including, *inter alia*, the claim or debt owed to Lunar at issue in this lawsuit) pursuant to the New York arbitrators' decision issued on or about October 31, 2005. If so, explain when, how, and by whom the claims or debts were discharged or satisfied and identify any documents relating to the discharge or satisfaction of the claims or debts. If not, explain why the claims were not satisfied or discharged.

The foregoing interrogatories are to be regarded as continuing and you are requested to provide promptly, by way of supplemental answers thereto, such additional information as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any answers now given to the foregoing interrogatories.

ROSEN, ROSEN & HAGOOD, LLC.

By: 

Richard S. Rosen, Esq.
Daniel F. Blanchard, III, Esq.
James A. Bruorton IV, Esq.
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEY(S) FOR ASHLEY RIVER
PROPERTIES ONE, LLC.

Charleston, South Carolina

April 3, 2009.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-10-2434

LUNAR SYSTEMS, LTD.,)
Plaintiff,)

-vs-

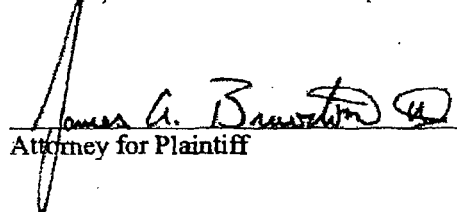
CERTIFICATE OF SERVICE

ASHLEY RIVER PROPERTIES)
ONE, LLC and ASHLEY RIVER)
PROPERTIES TWO, LLC,)
Successors in the interest of)
RIPLEY LIGHT YACHT CLUB,)
LLC, RIPLEY LIGHT YACHT)
CLUB, LLC, RIPLEY LIGHT)
DEVELOPMENT, LLC, and)
ROBERT C. CUNNINGHAM,)
Defendants.)

I hereby certify that on this date copies of the Interrogatories and Requests for Production of Documents were served on counsel of record by hand delivery in the manner prescribed by the applicable Rules of Civil Procedure addressed as follows:

William C. Cleveland, Esquire
Buist, Moore, Smythe & McGee, P.A.
5 Exchange Street
Charleston, SC 29401

ROSEN, ROSEN & HAGOOD, LLC


Attorney for Plaintiff

April 3, 2009.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMERALD INVESTMENTS, LLC

Plaintiff,

VS.

**ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;**

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-553**

REQUESTS FOR PRODUCTION OF DOCUMENTS

TO: WILLIAM C. CLEVELAND, ESQUIRE, ATTORNEY FOR DEFENDANTS:

The Plaintiff Emerald Investments, LLC, pursuant to South Carolina Rule of Civil Procedure 34, hereby requests that the Defendants produce for inspection and copying, within thirty (30) days from the date of this request, at the offices of Rosen, Rosen & Hagood, LLC, 134 Meeting Street, Suite 200, Charleston, South Carolina, 29401, and permit the attorneys for said Plaintiff to inspect, copy, or photograph the following documents or things which may be in the possession, custody, or control of Defendants or Defendants' attorneys. Each document provided in response to these Requests should be identified according to the numbering of the Requests below. These Requests for Production of Documents are deemed to be continuing. If Defendants become aware of other documents during the course of this proceeding which are responsive to the Requests below, such documents must be made available to Plaintiff within 30 days after receipt of this information, but no later than 2 weeks before trial.

DEFINITIONS

The term "document(s)" shall mean all writings, including all handwritten, typed, printed, or photocopied matter, all recordings, and graphic matter of any kind, including the originals and

all the duplicates, carbon copies or any other non-identical copies, whether different from the originals by reason of any notations or changes made on such copies, or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, calendars, applications, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, computations, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intra-office communications, resumes, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, emails or other electronic communications, invoices, worksheets, all drafts, alterations, modification changes and amendments of any of the foregoing, graphic or oral recordings or representations of any kind, (including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, recordings, motion pictures), and any electronic, mechanical or electrical records or representations of any kind, (including, without limitation, tapes, cassettes, disks, recordings, computer memories), or any other recorded information of any kind whatsoever, within the knowledge, possession, custody, control or subject to the control of, or accessible to Defendants or their attorneys.

DOCUMENTS NOT PRODUCED

If any document requested below is claimed by you to be privileged, trial preparation materials, or otherwise non-discoverable based on some other reason, you are requested to state for each document the grounds upon which the privilege, trial preparation claim, or other objection or reason rests and to identify all such documents by specifying:

- (1) The type of document (for example, letter, memorandum, photograph, etc.);
- (2) The date the document was prepared;
- (3) The title of the document;

- (4) The person who prepared the document;
- (5) The person to whom the document was originally sent, if appropriate;
- (6) The present location of the document;
- (7) The present location of all copies of the document; and
- (8) The person or persons having possession, custody or control of the document and any copies of it.

If any document requested below has been destroyed or discarded, you are requested to identify the document destroyed or discarded in the same manner of identification as requested above for documents you claim are not discoverable and to explain when, how, and why the document ceases to exist.

DOCUMENTS REQUESTED

1. The financial statements and balance sheets of Ashley River Properties II, LLC from inception to the present.
2. All bank or checking account statements, check registers, and checkbooks of Ashley River Properties II, LLC from inception to the present.
3. All tax returns of Ashley River Properties II, LLC from inception to the present.
4. All income schedules or other tax schedules or forms for the members or owners of Ashley River Properties II, LLC from its inception to the present (including, but not limited to, K-1, W-2, and W-3 forms or schedules).
5. The company books and records of Ashley Rivers Properties II, LLC, including without limitation the general ledger, operating account ledgers, and other such records of the company from inception to the present date.

6. All emails and correspondence of Ashley River Properties II, LLC's management with, to or about any the following:

A. The certified public accountants or other accountants for Ashley River Properties II, LLC;

B. The owners and members of Ashley River Properties II, LLC; and

C. The owners and members and managers of Kriti Ripley, LLC.

7. Any and all documentation or correspondence concerning the valuation of ownership or membership interests in Ashley River Properties II, LLC.

8. Any documents showing or relating to any capital calls made upon members or owners of Ashley River Properties, II, LLC from its inception to the present.

9. Any documents relating to any funds, cash, capital, loans, or assets contributed or paid by any members or owners of Ashley River Properties II, LLC from its inception to the present.

10. Any documents showing or relating to any payments, loans, transfers, or other transactions in response to or because of any capital calls made by Ashley River Properties, II, LLC and/or its members or owners.

11. All documents relating to the capital accounts for Ashley River Properties II, LLC from its inception to the present.

12. Any requests for copies of or access to the financial records or financial information of Ashley River Properties II, LLC received by the managers of said company since December 29, 2003 and any responses made to such requests.

13. The member journal, member certificates, register, or other documents showing the past and/or current members or owners of Ashley River Properties II, LLC and their percentage(s) of ownership.

14. Any documents showing or relating to Emerald Investments, LLC's and/or Stuart Longman's membership, ownership, or distributional interest in Ashley River Properties II, LLC.

15. Any documents showing or relating to any increase, dilution, or change in Emerald Investments, LLC's and/or Stuart Longman's membership, ownership, or distributional interest in Ashley River Properties II, LLC.

16. Any documents showing any disbursements or distributions of funds, cash, assets, or property made to any members of Ashley River Properties II, LLC and/or on behalf of any members since December 29, 2003.

17. Any documents showing any management fees, salaries, bonuses, or other compensation paid to any of the managers of Ashley River Properties II, LLC and/or on behalf of any managers since December 29, 2003.

18. All corporate files or records for Ashley River Properties II, LLC since December 29, 2003, including but not limited to, operating agreements; member agreements; articles of incorporation; certificate of incorporation or organization; articles of organization and amendments thereof; listing of present and/or former members, managers, and officers; member ledger books; minutes of meetings; resolutions; employment agreements with managers, members, or officers; and management agreements.

19. Any contracts, agreements, memoranda, notes, or other documents memorializing or relating to any relationship, arrangement, agreement, or understanding between Frank Guarino and any of the Defendants or their agents or employees involving the matters or events

referenced in the Complaint filed in this action, including, but not limited to, the Ripley Light project, Mr. Guarino's work involving the Ripley Light project, condo pre-sales, and/or slip rentals, the claims in the *Lunar* lawsuit, the service or receipt of any suit papers, the settlement of the claims in the *Lunar* lawsuit, and/or the default or default judgment entered in the *Lunar* lawsuit.

20. Any correspondence, e-mails, memoranda, notes, or other documents reflecting or relating to any communications with Frank Guarino involving the matters or events referenced in the Complaint filed in this action, including, but not limited to, the Ripley Light project, Mr. Guarino's work involving the Ripley Light project, condo pre-sales, and/or slip rentals, the claims in the *Lunar* lawsuit, the service or receipt of any suit papers, the settlement of the claims in the *Lunar* lawsuit, and/or the default or default judgment entered in the *Lunar* lawsuit.

21. Any appraisal reports, valuation documents, or other documents showing or relating to the value of the Ripley Light project referenced in the Complaint and/or the marina, properties, land, or other assets owned or held by Ashley River Properties II, LLC.

22. Any settlement offers, settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving the action filed on June 7, 2005, in the Charleston County Court of Common Pleas, entitled *Lunar Systems, Ltd. v. Ashley River Properties One, LLC; Ashley River Properties Two, LLC, et al.*, Case No. 2005-CP-10-2434 (hereinafter *Lunar* lawsuit).

23. Any drafts or preliminary versions of any settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving the *Lunar* lawsuit.

24. Any correspondence, e-mails, facsimiles, and other documents involving any settlement offers, settlement agreements, releases, covenants not to execute, assignment agreements, promissory notes, and/or dismissal involving the *Lunar* lawsuit.

25. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Frank Cisa, Esquire, or his staff, involving the *Lunar* lawsuit.

26. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Thomas Lussier, or his staff, involving the *Lunar* lawsuit.

27. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Joe Qualey, Esquire, or his staff, involving the *Lunar* lawsuit.

28. Any canceled checks, check stubs, check registers, bank statements, or other documents reflecting or relating to any payment or exchange of consideration made pursuant to any settlement agreement, release, covenants not to execute, assignment agreements, promissory notes, and/or dismissal involving the *Lunar* lawsuit.

29. Any documents involving or relating to the default and/or default judgment entered against Ashley River Properties I, LLC in the *Lunar* lawsuit.

30. Any correspondence, e-mails, facsimiles, and other documents involving any communication by the Defendants or their agents or employees with Ashley River Properties I, LLC; Emerald Investments, LLC; and/or Stuart Longman or their agents or employees involving the matters or events referenced in the Complaint filed in this action, including, but not limited to, capital calls for Ashley Rivers Properties II, LLC; requests for access to the financial records of Ashley Rivers Properties II, LLC; Emerald's membership interest in Ashley River Properties II, LLC; the Ripley Light project; the claims in the *Lunar* lawsuit; the service on or receipt of any papers by Frank Guarino; the settlement of the claims in the *Lunar* lawsuit; the payment of

third-party vendee claims pursuant to the New York arbitrators' award; and/or the default or default judgment entered in the *Lunar* lawsuit.

31. Any correspondence, checks, payment records, releases, or other documents showing or relating to any payments, loans, transfers, or other transactions made by Ashley River Properties II, LLC and/or Kriti Ripley, LLC to discharge or satisfy the third party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) pursuant to the New York arbitrators' decision issued on or about October 31, 2005.

32. Any records, ledgers, or journals of Ashley River Properties II, LLC and/or Kriti Ripley, LLC showing or reflecting that the third party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) referenced in the New York arbitrators' award have been discharged or satisfied.

ROSEN, ROSEN & HAGOOD, LLC

By: 

Richard S. Rosen
Daniel F. Blanchard, III
James A. Bruorton IV
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
February 24, 2009.

you or any persons acting on your behalf may hereafter obtain which will augment, clarify, or otherwise modify the answers now given to these interrogatories.

If the Defendants refuse to answer and/or object to any interrogatory in whole or in part, describe the basis for the refusal or objection in detail sufficient to permit the court to adjudicate the validity of such refusal or objection.

If you claim a privilege as to any interrogatory or any requested information, please state the nature of the privilege and provide an explanation of the document or information sufficient to identify the nature of the document or information and the identity of the person who is in possession of it or has knowledge of the information.

The following definitions apply to these Interrogatories:

(A) "You" or "Your" refers to the Defendants named in the Complaint and shall embrace and include, in addition to the named Defendants, their attorneys, agents, representatives, and others who have obtained information for or on behalf of such Defendants.

(B) "Plaintiff" means the Plaintiffs named in the Complaint or their attorneys, agents, partners, and representatives.

(C) "Defendant" means the Defendants named in the Complaint; their attorneys, agents, employees, and representatives; and any successors and/or predecessors in interest and their attorneys, agents, employees, and representatives.

(D) The "Complaint" means the Complaint filed in this action by the Plaintiffs.

(E) "Person" means natural persons, corporations, partnerships, sole proprietorships, unions, associations, federations, government agencies, or any other kind of entity.

"Document" means documents and other tangible things as defined in the broadest sense permitted by the South Carolina Rules of Civil Procedure and shall include any printed,

typewritten, handwritten, or otherwise recorded matter of whatever character, including without limitation: Originals or, if not available, true copies of all letters, memoranda, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, electronic or email communications, announcements, agreements, contracts, deeds, plats, studies, photographs, statements, invoices, checks, journals, ledgers, telegrams, handwritten notes, periodicals, pamphlets, reports, computer or business machine printouts, accountants' work papers, accountants' statements and writings, notations or records of meetings, printers' galleys, books, papers, calendars, diary entries, speeches, public relations issues, advertising, annual and other reports including financial statements filed with appropriate state and federal authorities, documents filed with governmental agencies, office manuals, employee manuals, company rules and regulations, reports of experts, drafts and preliminary copies of any of the foregoing where such document is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original, tape recordings or other sound or visual reproduction materials and any other written matter, tangible or physical objects however produced or reproduced upon which words or phrases are affixed or from which by appropriate transcription such written matter or tangible thing may be produced, in the possession, custody or control of the person herein served or his agents, attorneys, or employees.

The term "documents" also includes any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced.

(G) The word "identify", when used herein in reference to a natural person, means to state (1) his or her full name and present or last known address of residence, and (2) his or her present

or last known business affiliation and position therewith. If any of the above information is not available to the Defendants, state any other available means of identifying such natural person.

The word "identify", when used in reference to a person (as defined above) other than a natural person, means to state (1) its full name, (2) nature of its organization including the name of the state under which same was organized, (3) its address(es) in South Carolina, (4) the address of its principal place of business, and (5) its principal line of business. If any of the above information is not available to the Defendants, state any other available means of identifying such person.

"Identify," when it is referring to documents, means the type of document; the document's author who should be identified; the document's primary recipient who should be identified; any persons receiving a copy of the document, along with their identification; the date of the document; the present location of the document; the present custodian who should be identified; and whether a privilege is claimed as to its production. If any such document was, but is no longer in the possession of Defendants or subject to Defendants' control, or it is no longer in existence, state whether it is (a) missing or lost, (b) destroyed, (c) transmitted or transferred voluntarily or involuntarily to others, identifying such others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof. If any of the above is not available to Defendants, state any available means of identifying such documents.

INTERROGATORIES

1. Identify all persons whom you know are and/or may be witnesses concerning the facts of this case (regardless of whether you intend to call or use said witness at the trial of this case) and indicate whether or not written or recorded statements have been taken from these

persons and indicate who has possession of such statements.

2. For each person identified in response to Interrogatory Number 1, set forth a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

3. Identify and list all documents, e-mail or electronic communications, photographs, motion pictures, videotapes, audio cassettes, drawings, plats, sketches, diagrams, reports, statements, affidavits, records, forms, writings, notes, memoranda, written messages, contracts, or tangible things that prove, disprove, or relate to any claim or defense in this case.

4. Identify each expert witness who will testify on your behalf at the trial of this case and indicate for each such expert witness the witness' professional background including the witness' specialty, if any, within his or her profession; the substance of the opinions held by the expert relating to this case; the documents, materials, records and other data which the witness reviewed in preparing his opinion; and the substance of the facts known and authorities upon which the witness relied in forming his opinion.

5. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

6. Identify all accountants, certified public accountants, tax return preparers, bookkeepers, comptrollers, or other such persons or firms who performed any bookkeeping, accounting, consulting, tax return preparation, tax advice, or similar professional work for Ashley River Properties II, LLC.

7. State and describe Emerald Investments, LLC's current membership or ownership interest in Ashley River Properties II, LLC; the percentage of ownership held by Emerald; and

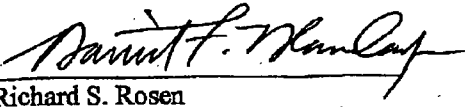
the methodology used to compute or determine the interest. If Emerald's interest or percentage has changed since December 29, 2003, please explain the nature of the change, the date on which the change occurred, and the basis for any such change.

8. State whether the Defendants paid Lunar Systems, Ltd. in full for Lunar's claims asserted in the action filed on June 7, 2005, in the Charleston County Court of Common Pleas, entitled *Lunar Systems, Ltd. v. Ashley River Properties One, LLC; Ashley River Properties Two, LLC, et al.*, Case No. 2005-CP-10-2434 (hereinafter *Lunar* lawsuit). If any payment was made towards the claim, state the total amount of compensation that was paid; when paid; to whom paid; by whom paid; the source of the funds used to make the payments; what amount of the claim was left unpaid, if any, and why the amount was left unpaid; and identify any documents relating to the payments or any amounts left unpaid.

9. State whether the Defendants satisfied or discharged the third-party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) pursuant to the New York arbitrators' decision issued on or about October 31, 2005. If so, explain when, how, and by whom the claims or debts were discharged or satisfied and identify any documents relating to the discharge or satisfaction of the claims or debts. If not, explain why the claims were not satisfied or discharged.

The foregoing interrogatories are to be regarded as continuing and you are requested to provide promptly, by way of supplemental answers thereto, such additional information as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any answers now given to the foregoing interrogatories.

ROSEN, ROSEN & HAGOOD, LLC

By: 

Richard S. Rosen
Daniel F. Blanchard, III
James A. Bruorton IV
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
February 24, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC

Plaintiff,

vs.

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;

Defendants.

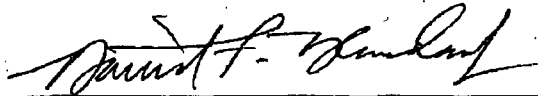
) IN THE COURT OF COMMON PLÉAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-553
)
)
)
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)

CERTIFICATE OF SERVICE

I hereby certify that on this date copies of the Interrogatories and Requests for Production of Documents were served on counsel of record by hand delivery in the manner prescribed by the applicable Rules of Civil Procedure addressed as follows:

William C. Cleveland, Esquire
Buist, Moore, Smythe & McGee, P.A.
5 Exchange Street
Charleston, SC 29401

ROSEN ROSEN & HAGOOD, LLC

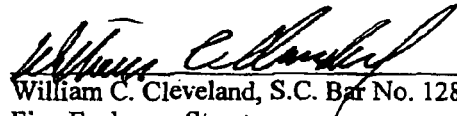


Daniel F. Blanchard, III
Attorney for Plaintiff

February 24, 2009.

3. The Court does not have jurisdiction in this proceeding to allow Defendants to engage in discovery because the Court's jurisdiction is limited to aiding in the execution or enforcement of a judgment that gives rise to this proceeding.

BUIST MOORE SMYTHE MCGEE P.A.


William C. Cleveland, S.C. Bar No. 1284
Five Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

February 13th, 2009
Charleston, SC

CERTIFICATE OF SERVICE

I do hereby certify that on the 13th day of February 2009, I served a copy of the within *PLAINTIFFS' OBJECTION TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS* to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Richard Rosen, Esq.
134 Meeting Street
Suite 200
Post Office Box 893
Charleston, SC 29402

BUIST MOORE SMYTHE MCGEE P.A.

Christine E. Solve

Buist · Moore · Smythe · McGee · P.A.

February 13, 20096

WILLIAM C. CLEVELAND
ATTORNEY AT LAW
E-Mail: wcleveland@bmsmlaw.com
DIRECT DIAL: 843-720-4606
FAX: 843-723-7398

Richard S. Rosen, Esquire
Rosen Rosen & Hagood, LLC
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29401

RE: Kriti Ripley LLC and Ashley River Properties II, LLC v. Emerald Investments
LLC and Stuart L. Longman
Case No.: 2008-CP-10-2344
BMSM No.: 12826.0002

Dear Richard:

Enclosed please find the Plaintiffs' Objection to Defendants' Request for Production of Documents in the above referenced matter.

Please contact me if you have any questions.

Very truly yours,

BUIST MOORE SMYTHE MCGEE P.A.

Christopher Eadie
William C. Cleveland *for*

WCC/eve

Enclosure

cc: Davidson D. Williams (w/enclosure)

RECEIVED
2/17/09

rsf
D73
CAB
JLK

Buist • Moore • Smythe • McGee • P.A.

February 13, 20096

WILLIAM C. CLEVELAND
ATTORNEY AT LAW
E-Mail: wcleveland@bmsmlaw.com
DIRECT DIAL: 843-720-4606
FAX: 843-723-7398

Via Hand Delivery

The Honorable Julie Armstrong
Clerk of Court
Charleston Court of Common Pleas
100 Broad Street
Charleston, SC 29401

RE: Kriti Ripley LLC and Ashley River Properties II, LLC v. Emerald Investments
LLC and Stuart L. Longman
Case No.: 2008-CP-10-2344
BMSM No.: 12826.0002

Dear Ms. Armstrong:

Enclosed please find the original and one copy of the Plaintiffs' Objection to Defendants' Request for Production of Documents in the above referenced matter. Please file the original and return the file-stamped copy to me via my courier.

Thank you for your assistance.

Very truly yours,

BUIST MOORE SMYTHE MCGEE P.A.



William C. Cleveland *WC*

WCC 

Enclosure

cc: Davidson D. Williams (w/enclosure)

Richard S. Rosen, Esquire (w/enclosure)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2009-CP-10-553
EMERALD INVESTMENTS, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	OBJECTION TO INTERROGATORIES
	)	AND REQUESTS FOR PRODUCTION OF
ASHLEY RIVER PROPERTIES II, LLC;	)	DOCUMENTS
KRITI RIPLEY, LLC,	)	
	)	
Defendants.	)	

The Defendants object to the Plaintiff's Interrogatories and Requests for Production of Documents on the ground that the Plaintiff's claims are subject to mandatory arbitration and the Plaintiff is not entitled to engage in litigation discovery.

Respectfully submitted,

BUIST MOORE SMYTHE MCGEE P.A.



William C. Cleveland, S.C. Bar No. 1284
 Five Exchange Street
 P.O. Box 999
 Charleston, SC 29402
 Telephone: (843) 722-3400
 Facsimile: (843) 723-7398

Attorneys for the Defendant

Charleston, South Carolina
 Dated: October 19, 2009

CERTIFICATE OF SERVICE

I do hereby certify that on the 19th day of October 2009, I served a copy of the within *Objection to Interrogatories and Requests for Production of Documents* on Counsel of Record in the within entitled matter by sending a copy of the same via mail addressed to:

Richard S. Rosen, Esquire
Rosen Rosen & Hagood, LLC
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29402

BUIST MOORE SMYTHE MCGEE P.A.

Arvestine Eadue

Buist • Moore • Smythe • McGee • PA.

October 19, 2009

WILLIAM C. CLEVELAND
ATTORNEY AT LAW
E-MAIL: WCLEVELAND@BMSMLAW.COM
DIRECT DIAL: 843-720-4606
FAX: 843-723-7398

Richard S. Rosen, Esquire
Rosen Rosen & Hagood, LLC
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29401

RE: Emerald Investments LLC v. Ashley River Properties II, LLC and Kriti Ripley LLC
Case No.: 2009-CP-10-0553
BMSM No.: 12826.0010

Dear Mr. Rosen:

Enclosed please find the Defendants' Objection to Interrogatories and Requests for Production of Documents which I hereby serve upon you in the above referenced matter.

Please contact Mr. Cleveland if you have any questions.

Very truly yours,

BUIST MOORE SMYTHE MCGEE P.A.



Christine Eadie, Legal Secretary to
William C. Cleveland

WCC/cve
Enclosures

RECEIVED
10/21/09

RSC
BFB
JLK
CAB

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC

Plaintiff,

vs.

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-553
)

PLAINTIFF'S
MOTION TO COMPEL

2009 OCT -2 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

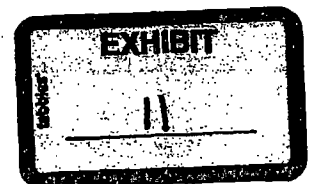
TO: WILLIAM C. CLEVELAND, ESQUIRE, ATTORNEY FOR DEFENDANTS:

The Plaintiff Emerald Investments, LLC (hereinafter "Emerald"), pursuant to South Carolina Rule of Civil Procedure 37, hereby moves the Court as follows:

1. On February 24, 2009, Emerald served upon the Defendants, in writing, Interrogatories and Requests for Production of Documents, pursuant to the applicable South Carolina Rules of Civil Procedure, copies of which are attached hereto as Exhibits "A" and "B," respectively; and are incorporated herein by reference.

2. The responses to said discovery requests became due on March 26, 2009. However, the Defendants have failed or refused to provide responses to the Interrogatories and Requests for Production of Documents and said responses are now overdue.

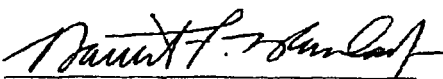
3. On June 24, 2009, Emerald's legal counsel corresponded with the Defendants' legal counsel by letter regarding the overdue discovery responses in an effort to avoid a motion to compel. A true and correct copy of said letter is attached hereto as Exhibit "C" and is incorporated herein by reference. However, the Defendants have continued to fail to provide responses to the Interrogatories or Requests for Production of Documents.



4. Emerald is informed and believes that the documents and information sought by the party are relevant to the pending lawsuit, or calculated to lead to discovery of relevant evidence, that the information is not subject to any privilege, and that the information and documents are, on information and belief, within the knowledge, custody, control, and/or possession of the Defendants or their attorneys, employees, and agents.

WHEREFORE, Plaintiff Emerald moves this Court (a) to require the Defendants to answer fully and completely under oath and/or to produce all of the documents which have been requested by Emerald as set forth in the Interrogatories and Requests for Production of Documents, and (b) together with such other and further relief as the Court may deem just and proper.

ROSEN, ROSEN & HAGOOD, LLC.

By: 

Richard S. Rosen, Esq.
Daniel F. Blanchard, III, Esq.
James A. Bruorton IV, Esq.
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
October 2, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC

Plaintiff,

VS.

**ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;**

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-553

INTERROGATORIES

TO: WILLIAM C. CLEVELAND, ESQUIRE, ATTORNEY FOR DEFENDANTS:

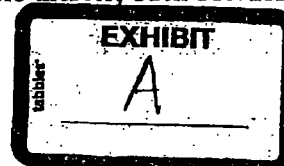
PLEASE TAKE NOTICE that you are hereby required to answer in writing the following interrogatories, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

PRELIMINARY STATEMENT AND DEFINITIONS

The following directions, guidelines, and definitions are to be considered applicable to all questions propounded in this set of interrogatories unless made expressly inapplicable by the particular interrogatory or subpart thereof.

In answering these interrogatories, furnish all information available to the Defendants including information in the possession of their attorneys, investigators, and all persons acting on their behalf. If you cannot answer the interrogatories in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying your inability to answer the remainder and state whatever information or knowledge you have concerning the unanswered portions.

The interrogatories which follow are to be considered as continuing, and you are requested to provide, by way of supplementary answers thereto, such additional information as



you or any persons acting on your behalf may hereafter obtain which will augment, clarify, or otherwise modify the answers now given to these interrogatories.

If the Defendants refuse to answer and/or object to any interrogatory in whole or in part, describe the basis for the refusal or objection in detail sufficient to permit the court to adjudicate the validity of such refusal or objection.

If you claim a privilege as to any interrogatory or any requested information, please state the nature of the privilege and provide an explanation of the document or information sufficient to identify the nature of the document or information and the identity of the person who is in possession of it or has knowledge of the information.

The following definitions apply to these Interrogatories:

(A) "You" or "Your" refers to the Defendants named in the Complaint and shall embrace and include, in addition to the named Defendants, their attorneys, agents, representatives, and others who have obtained information for or on behalf of such Defendants.

(B) "Plaintiff" means the Plaintiffs named in the Complaint or their attorneys, agents, partners, and representatives.

(C) "Defendant" means the Defendants named in the Complaint; their attorneys, agents, employees, and representatives; and any successors and/or predecessors in interest and their attorneys, agents, employees, and representatives.

(D) The "Complaint" means the Complaint filed in this action by the Plaintiffs.

(E) "Person" means natural persons, corporations, partnerships, sole proprietorships, unions, associations, federations, government agencies, or any other kind of entity.

"Document" means documents and other tangible things as defined in the broadest sense permitted by the South Carolina Rules of Civil Procedure and shall include any printed,

typewritten, handwritten, or otherwise recorded matter of whatever character, including without limitation: Originals or, if not available, true copies of all letters, memoranda, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, electronic or email communications, announcements, agreements, contracts, deeds, plats, studies, photographs, statements, invoices, checks, journals, ledgers, telegrams, handwritten notes, periodicals, pamphlets, reports, computer or business machine printouts, accountants' work papers, accountants' statements and writings, notations or records of meetings, printers' galleys, books, papers, calendars, diary entries, speeches, public relations issues, advertising, annual and other reports including financial statements filed with appropriate state and federal authorities, documents filed with governmental agencies, office manuals, employee manuals, company rules and regulations, reports of experts, drafts and preliminary copies of any of the foregoing where such document is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original, tape recordings or other sound or visual reproduction materials and any other written matter, tangible or physical objects however produced or reproduced upon which words or phrases are affixed or from which by appropriate transcription such written matter or tangible thing may be produced, in the possession, custody or control of the person herein served or his agents, attorneys, or employees.

The term "documents" also includes any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced.

(G) The word "identify", when used herein in reference to a natural person, means to state (1) his or her full name and present or last known address of residence, and (2) his or her present

or last known business affiliation and position therewith. If any of the above information is not available to the Defendants, state any other available means of identifying such natural person.

The word "identify", when used in reference to a person (as defined above) other than a natural person, means to state (1) its full name, (2) nature of its organization including the name of the state under which same was organized, (3) its address(es) in South Carolina, (4) the address of its principal place of business, and (5) its principal line of business. If any of the above information is not available to the Defendants, state any other available means of identifying such person.

"Identify," when it is referring to documents, means the type of document; the document's author who should be identified; the document's primary recipient who should be identified; any persons receiving a copy of the document, along with their identification; the date of the document; the present location of the document; the present custodian who should be identified; and whether a privilege is claimed as to its production. If any such document was, but is no longer in the possession of Defendants or subject to Defendants' control, or it is no longer in existence, state whether it is (a) missing or lost, (b) destroyed, (c) transmitted or transferred voluntarily or involuntarily to others, identifying such others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof. If any of the above is not available to Defendants, state any available means of identifying such documents.

INTERROGATORIES

1. Identify all persons whom you know are and/or may be witnesses concerning the facts of this case (regardless of whether you intend to call or use said witness at the trial of this case) and indicate whether or not written or recorded statements have been taken from these

persons and indicate who has possession of such statements.

2. For each person identified in response to Interrogatory Number 1, set forth a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

3. Identify and list all documents, e-mail or electronic communications, photographs, motion pictures, videotapes, audio cassettes, drawings, plats, sketches, diagrams, reports, statements, affidavits, records, forms, writings, notes, memoranda, written messages, contracts, or tangible things that prove, disprove, or relate to any claim or defense in this case.

4. Identify each expert witness who will testify on your behalf at the trial of this case and indicate for each such expert witness the witness' professional background including the witness' specialty, if any, within his or her profession; the substance of the opinions held by the expert relating to this case; the documents, materials, records and other data which the witness reviewed in preparing his opinion; and the substance of the facts known and authorities upon which the witness relied in forming his opinion.

5. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

6. Identify all accountants, certified public accountants, tax return preparers, bookkeepers, comptrollers, or other such persons or firms who performed any bookkeeping, accounting, consulting, tax return preparation, tax advice, or similar professional work for Ashley River Properties II, LLC.

7. State and describe Emerald Investments, LLC's current membership or ownership interest in Ashley River Properties II, LLC; the percentage of ownership held by Emerald; and

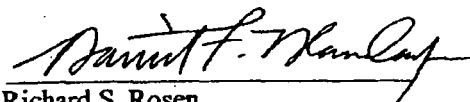
the methodology used to compute or determine the interest. If Emerald's interest or percentage has changed since December 29, 2003, please explain the nature of the change, the date on which the change occurred, and the basis for any such change.

8. State whether the Defendants paid Lunar Systems, Ltd. in full for Lunar's claims asserted in the action filed on June 7, 2005, in the Charleston County Court of Common Pleas, entitled *Lunar Systems, Ltd. v. Ashley River Properties One, LLC; Ashley River Properties Two, LLC, et al.*, Case No. 2005-CP-10-2434 (hereinafter *Lunar* lawsuit). If any payment was made towards the claim, state the total amount of compensation that was paid; when paid; to whom paid; by whom paid; the source of the funds used to make the payments; what amount of the claim was left unpaid, if any, and why the amount was left unpaid; and identify any documents relating to the payments or any amounts left unpaid.

9. State whether the Defendants satisfied or discharged the third-party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) pursuant to the New York arbitrators' decision issued on or about October 31, 2005. If so, explain when, how, and by whom the claims or debts were discharged or satisfied and identify any documents relating to the discharge or satisfaction of the claims or debts. If not, explain why the claims were not satisfied or discharged.

The foregoing interrogatories are to be regarded as continuing and you are requested to provide promptly, by way of supplemental answers thereto, such additional information as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any answers now given to the foregoing interrogatories.

ROSEN, ROSEN & HAGOOD, LLC

By: 

Richard S. Rosen
Daniel F. Blanchard, III
James A. Bruorton IV
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

Charleston, South Carolina
February 24, 2009.

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC

Plaintiff,

vs.

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-553

CERTIFICATE OF SERVICE

I hereby certify that on this date copies of the Interrogatories and Requests for Production of Documents were served on counsel of record by hand delivery in the manner prescribed by the applicable Rules of Civil Procedure addressed as follows:

William C. Cleveland, Esquire
Buist, Moore, Smythe & McGee, P.A.
5 Exchange Street
Charleston, SC 29401

ROSEN ROSEN & HAGOOD, LLC

David F. Gordon

Daniel F. Blanchard, III
Attorney for Plaintiff

February 24, 2009.

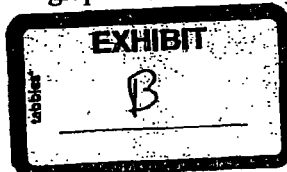
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2009-CP-10-553
	)	
EMERALD INVESTMENTS, LLC	)	
	)	
Plaintiff,	)	
	)	
vs.	)	REQUESTS FOR PRODUCTION OF
	)	DOCUMENTS
ASHLEY RIVER PROPERTIES II, LLC;	)	
KRITI RIPLEY, LLC;	)	
	)	
Defendants.	)	

TO: WILLIAM C. CLEVELAND, ESQUIRE, ATTORNEY FOR DEFENDANTS:

The Plaintiff Emerald Investments, LLC, pursuant to South Carolina Rule of Civil Procedure 34, hereby requests that the Defendants produce for inspection and copying, within thirty (30) days from the date of this request, at the offices of Rosen, Rosen & Hagood, LLC, 134 Meeting Street, Suite 200, Charleston, South Carolina, 29401, and permit the attorneys for said Plaintiff to inspect, copy, or photograph the following documents or things which may be in the possession, custody, or control of Defendants or Defendants' attorneys. Each document provided in response to these Requests should be identified according to the numbering of the Requests below. These Requests for Production of Documents are deemed to be continuing. If Defendants become aware of other documents during the course of this proceeding which are responsive to the Requests below, such documents must be made available to Plaintiff within 30 days after receipt of this information, but no later than 2 weeks before trial.

DEFINITIONS

The term "document(s)" shall mean all writings, including all handwritten, typed, printed, or photocopied matter, all recordings, and graphic matter of any kind, including the originals and



all the duplicates, carbon copies or any other non-identical copies, whether different from the originals by reason of any notations or changes made on such copies, or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, calendars, applications, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, computations, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intra-office communications, resumes, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, emails or other electronic communications, invoices, worksheets, all drafts, alterations, modification changes and amendments of any of the foregoing, graphic or oral recordings or representations of any kind, (including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, recordings, motion pictures), and any electronic, mechanical or electrical records or representations of any kind, (including, without limitation, tapes, cassettes, disks, recordings, computer memories), or any other recorded information of any kind whatsoever, within the knowledge, possession, custody, control or subject to the control of, or accessible to Defendants or their attorneys.

DOCUMENTS NOT PRODUCED

If any document requested below is claimed by you to be privileged, trial preparation materials, or otherwise non-discoverable based on some other reason, you are requested to state for each document the grounds upon which the privilege, trial preparation claim, or other objection or reason rests and to identify all such documents by specifying:

- (1) The type of document (for example, letter, memorandum, photograph, etc.);
- (2) The date the document was prepared;
- (3) The title of the document;

- (4) The person who prepared the document;
- (5) The person to whom the document was originally sent, if appropriate;
- (6) The present location of the document;
- (7) The present location of all copies of the document; and
- (8) The person or persons having possession, custody or control of the document and any copies of it.

If any document requested below has been destroyed or discarded, you are requested to identify the document destroyed or discarded in the same manner of identification as requested above for documents you claim are not discoverable and to explain when, how, and why the document ceases to exist.

DOCUMENTS REQUESTED

1. The financial statements and balance sheets of Ashley River Properties II, LLC from inception to the present.
2. All bank or checking account statements, check registers, and checkbooks of Ashley River Properties II, LLC from inception to the present.
3. All tax returns of Ashley River Properties II, LLC from inception to the present.
4. All income schedules or other tax schedules or forms for the members or owners of Ashley River Properties II, LLC from its inception to the present (including, but not limited to, K-1, W-2, and W-3 forms or schedules).
5. The company books and records of Ashley Rivers Properties II, LLC, including without limitation the general ledger, operating account ledgers, and other such records of the company from inception to the present date.

6. All emails and correspondence of Ashley River Properties II, LLC's management with, to or about any the following:

A. The certified public accountants or other accountants for Ashley River Properties II, LLC;

B. The owners and members of Ashley River Properties II, LLC; and

C. The owners and members and managers of Kriti Ripley, LLC.

7. Any and all documentation or correspondence concerning the valuation of ownership or membership interests in Ashley River Properties II, LLC.

8. Any documents showing or relating to any capital calls made upon members or owners of Ashley River Properties, II, LLC from its inception to the present.

9. Any documents relating to any funds, cash, capital, loans, or assets contributed or paid by any members or owners of Ashley River Properties II, LLC from its inception to the present.

10. Any documents showing or relating to any payments, loans, transfers, or other transactions in response to or because of any capital calls made by Ashley River Properties, II, LLC and/or its members or owners.

11. All documents relating to the capital accounts for Ashley River Properties II, LLC from its inception to the present.

12. Any requests for copies of or access to the financial records or financial information of Ashley River Properties II, LLC received by the managers of said company since December 29, 2003 and any responses made to such requests.

13. The member journal, member certificates, register, or other documents showing the past and/or current members or owners of Ashley River Properties II, LLC and their percentage(s) of ownership.

14. Any documents showing or relating to Emerald Investments, LLC's and/or Stuart Longman's membership, ownership, or distributional interest in Ashley River Properties II, LLC.

15. Any documents showing or relating to any increase, dilution, or change in Emerald Investments, LLC's and/or Stuart Longman's membership, ownership, or distributional interest in Ashley River Properties II, LLC.

16. Any documents showing any disbursements or distributions of funds, cash, assets, or property made to any members of Ashley River Properties II, LLC and/or on behalf of any members since December 29, 2003.

17. Any documents showing any management fees, salaries, bonuses, or other compensation paid to any of the managers of Ashley River Properties II, LLC and/or on behalf of any managers since December 29, 2003.

18. All corporate files or records for Ashley River Properties II, LLC since December 29, 2003, including but not limited to, operating agreements; member agreements; articles of incorporation; certificate of incorporation or organization; articles of organization and amendments thereof; listing of present and/or former members, managers, and officers; member ledger books; minutes of meetings; resolutions; employment agreements with managers, members, or officers; and management agreements.

19. Any contracts, agreements, memoranda, notes, or other documents memorializing or relating to any relationship, arrangement, agreement, or understanding between Frank Guarino and any of the Defendants or their agents or employees involving the matters or events

referenced in the Complaint filed in this action, including, but not limited to, the Ripley Light project, Mr. Guarino's work involving the Ripley Light project, condo pre-sales, and/or slip rentals, the claims in the *Lunar* lawsuit, the service or receipt of any suit papers, the settlement of the claims in the *Lunar* lawsuit, and/or the default or default judgment entered in the *Lunar* lawsuit.

20. Any correspondence, e-mails, memoranda, notes, or other documents reflecting or relating to any communications with Frank Guarino involving the matters or events referenced in the Complaint filed in this action, including, but not limited to, the Ripley Light project, Mr. Guarino's work involving the Ripley Light project, condo pre-sales, and/or slip rentals, the claims in the *Lunar* lawsuit, the service or receipt of any suit papers, the settlement of the claims in the *Lunar* lawsuit, and/or the default or default judgment entered in the *Lunar* lawsuit.

21. Any appraisal reports, valuation documents, or other documents showing or relating to the value of the Ripley Light project referenced in the Complaint and/or the marina, properties, land, or other assets owned or held by Ashley River Properties II, LLC.

22. Any settlement offers, settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving the action filed on June 7, 2005, in the Charleston County Court of Common Pleas, entitled *Lunar Systems, Ltd. v. Ashley River Properties One, LLC; Ashley River Properties Two, LLC, et al.*, Case No. 2005-CP-10-2434 (hereinafter *Lunar* lawsuit).

23. Any drafts or preliminary versions of any settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving the *Lunar* lawsuit.

24. Any correspondence, e-mails, facsimiles, and other documents involving any settlement offers, settlement agreements, releases, covenants not to execute, assignment agreements, promissory notes, and/or dismissal involving the *Lunar* lawsuit.

25. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Frank Cisa, Esquire, or his staff, involving the *Lunar* lawsuit.

26. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Thomas Lussier, or his staff, involving the *Lunar* lawsuit.

27. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Joe Qualey, Esquire, or his staff, involving the *Lunar* lawsuit.

28. Any canceled checks, check stubs, check registers, bank statements, or other documents reflecting or relating to any payment or exchange of consideration made pursuant to any settlement agreement, release, covenants not to execute, assignment agreements, promissory notes, and/or dismissal involving the *Lunar* lawsuit.

29. Any documents involving or relating to the default and/or default judgment entered against Ashley River Properties I, LLC in the *Lunar* lawsuit.

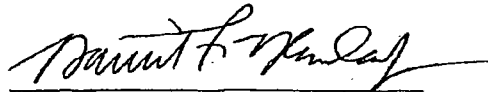
30. Any correspondence, e-mails, facsimiles, and other documents involving any communication by the Defendants or their agents or employees with Ashley River Properties I, LLC; Emerald Investments, LLC; and/or Stuart Longman or their agents or employees involving the matters or events referenced in the Complaint filed in this action, including, but not limited to, capital calls for Ashley Rivers Properties II, LLC; requests for access to the financial records of Ashley Rivers Properties II, LLC; Emerald's membership interest in Ashley River Properties II, LLC; the Ripley Light project; the claims in the *Lunar* lawsuit; the service on or receipt of any papers by Frank Guarino; the settlement of the claims in the *Lunar* lawsuit; the payment of

third-party vendee claims pursuant to the New York arbitrators' award; and/or the default or default judgment entered in the *Lunar* lawsuit.

31. Any correspondence, checks, payment records, releases, or other documents showing or relating to any payments, loans, transfers, or other transactions made by Ashley River Properties II, LLC and/or Kriti Ripley, LLC to discharge or satisfy the third party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) pursuant to the New York arbitrators' decision issued on or about October 31, 2005.

32. Any records, ledgers, or journals of Ashley River Properties II, LLC and/or Kriti Ripley, LLC showing or reflecting that the third party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) referenced in the New York arbitrators' award have been discharged or satisfied.

ROSEN, ROSEN & HAGOOD, LLC

By: 

Richard S. Rosen
Daniel F. Blanchard, III
James A. Bruorton IV
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
February 24, 2009.

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

P.O. Box 893

CHARLESTON, SOUTH CAROLINA 29402

PHONE (843) 577-6726

FAX (843) 724-8036

www.rrhlawfirm.com

DANIEL F. BLANCHARD III
dblanchard@rrhlawfirm.com

June 24, 2009

William C. Cleveland, III, Esq.
Buist Moore Smythe & McGee PA
5 Exchange St.
P.O. Box 999
Charleston, SC 29402

Re: **Emerald Investments, Inc. v. Ashley River Properties II, LLC and Kiti Ripley, LLC**
Case No.: 2009-CP-10-553

Dear Will:

We served copies of the Plaintiff's Interrogatories and Requests for Production of Documents in the above case on February 24, 2009. It would be greatly appreciated if you could please provide your clients' responses to these discovery requests as they are overdue. We will plan to file a motion to compel within 10 days if we have not received the responses by then.

With kind regards, I am

Sincerely,



Daniel F. Blanchard, III

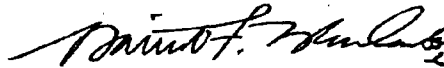
Cc: Mr. Stuart Longman



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of October, 2009, a true and correct copy of the Motion to Compel in the above captioned matter was placed in an envelope with sufficient first-class postage affixed thereto and deposited with the U.S. postal carrier and addressed to the following:

William C. Cleveland, III, Esq.
Buist Moore Smythe & McGee PA
5 Exchange St.
P.O. Box 999
Charleston, SC 29402



Daniel F. Blanchard, III
Attorney for Plaintiff

2009 OCT -2 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

P.O. BOX 893

CHARLESTON, SOUTH CAROLINA 29402

PHONE (843) 577-6726

FAX (843) 724-8036

www.rxlhlawfirm.com

October 1, 2009

DANIEL F. BLANCHARD III
dblanchard@rrhlawfirm.com**VIA CERTIFIED MAIL:**

Kriti Ripley, LLC

Managing Member of Ashley River Properties II, LLC

345 E. 37th Street

Suite 312

New York, NY 10016

ATTN: Davidson WilliamsRe: Ashley River Properties II, LLC

Dear Mr. Williams:

On behalf of Emerald Investments, LLC and Stuart Longman, please consider this letter a notice and demand pursuant to Article 12.1 of the Operating Agreement of Ashley River Properties II, LLC dated December 29, 2003, and the provisions of the South Carolina Limited Liability Company Act, S.C. CODE ANN. § 33-44-408, that you grant us access to the following records of Ashley River Properties II, LLC at the company's place of business located at 95 Ripley Point Drive, Charleston, South Carolina 29407, for the purpose of inspecting and copying or otherwise reproducing the records, information, and/or portions thereof:

1. The financial statements and balance sheets of Ashley River Properties II, LLC from inception to the present.
2. All bank or checking account statements, check registers, and checkbooks of Ashley River Properties II, LLC from inception to the present.
3. All tax returns of Ashley River Properties II, LLC from inception to the present.
4. All income schedules or other tax schedules or forms for the members or owners of Ashley River Properties II, LLC from its inception to the present (including, but not limited to, K-1, W-2, and W-3 forms or schedules).
5. The company books and records of Ashley Rivers Properties II, LLC, including without limitation the general ledger, operating account ledgers, and other such records of the company from inception to the present date.
6. All emails and correspondence of Ashley River Properties II, LLC's management with, to or about any the following:
 - A. The certified public accountants or other accountants for Ashley River Properties II, LLC;
 - B. The owners and members of Ashley River Properties II, LLC; and
 - C. The owners and members and managers of Kriti Ripley, LLC.



October 1, 2009

Page 2

7. Any and all documentation or correspondence concerning the valuation of ownership or membership interests in Ashley River Properties II, LLC.
8. Any documents showing or relating to any capital calls made upon members or owners of Ashley River Properties, II, LLC from its inception to the present.
9. Any documents relating to any funds, cash, capital, loans, or assets contributed or paid by any members or owners of Ashley River Properties II, LLC from its inception to the present.
10. Any documents showing or relating to any payments, loans, transfers, or other transactions in response to or because of any capital calls made by Ashley River Properties, II, LLC and/or its members or owners.
11. All documents relating to the capital accounts for Ashley River Properties II, LLC from its inception to the present.
12. Any requests for copies of or access to the financial records or financial information of Ashley River Properties II, LLC received by the managers of said company since December 29, 2003 and any responses made to such requests.
13. The member journal, member certificates, register, or other documents showing the past and/or current members or owners of Ashley River Properties II, LLC and their percentage(s) of ownership.
14. Any documents showing or relating to Emerald Investments, LLC's and/or Stuart Longman's membership, ownership, or distributional interest in Ashley River Properties II, LLC.
15. Any documents showing or relating to any increase, dilution, or change in Emerald Investments, LLC's and/or Stuart Longman's membership, ownership, or distributional interest in Ashley River Properties II, LLC.
16. Any documents showing any disbursements or distributions of funds, cash, assets, or property made to any members of Ashley River Properties II, LLC and/or on behalf of any members since December 29, 2003.
17. Any documents showing any management fees, salaries, bonuses, or other compensation paid to any of the managers, members, or employees of Ashley River Properties II, LLC and/or on behalf of any managers since December 29, 2003.
18. All corporate files or records for Ashley River Properties II, LLC since December 29, 2003, including but not limited to, operating agreements; member agreements; articles of incorporation; certificate of incorporation or organization; articles of organization and amendments thereof; listing of present and/or former members, managers, and officers; member ledger books; minutes of meetings; resolutions; employment agreements with managers, members, or officers; and management agreements.
19. Any contracts, agreements, memoranda, notes, or other documents memorializing or relating to any relationship, arrangement, agreement, or understanding between Frank Guarino and Ashley River Properties II, LLC; Kriti Ripley, LLC; and/or Davidson Williams involving the Ripley Light project, condo pre-sales, and/or slip rentals.

October 1, 2009

Page 3

20. Any correspondence, e-mails, memoranda, notes, or other documents reflecting or relating to any communications with Frank Guarino involving the Ripley Light project, condo pre-sales, and/or slip rentals.
21. Any appraisal reports, valuation documents, or other documents showing or relating to the value of the Ripley Light project and/or the marina, properties, land, or other assets owned or held by Ashley River Properties II, LLC.
22. Any settlement offers, settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving the action filed on June 7, 2005, in the Charleston County Court of Common Pleas, entitled *Lunar Systems, Ltd. v. Ashley River Properties One, LLC; Ashley River Properties Two, LLC, et al.*, Case No. 2005-CP-10-2434 (hereinafter *Lunar* lawsuit).
23. Any drafts or preliminary versions of any settlement agreements, releases, covenants not to execute, assignment documents, promissory notes, and/or dismissal documents involving the *Lunar* lawsuit.
24. Any correspondence, e-mails, facsimiles, and other documents involving any settlement offers, settlement agreements, releases, covenants not to execute, assignment agreements, promissory notes, and/or dismissal involving the *Lunar* lawsuit.
25. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Frank Cisa, Esquire, or his staff, involving the *Lunar* lawsuit.
26. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Thomas Lussier, or his staff, involving the *Lunar* lawsuit.
27. Any correspondence, e-mails, facsimiles, and other documents involving any communication with Joe Qualey, Esquire, or his staff, involving the *Lunar* lawsuit.
28. Any canceled checks, check stubs, check registers, bank statements, or other documents reflecting or relating to any payment or exchange of consideration made pursuant to any settlement agreement, release, covenants not to execute, assignment agreements, promissory notes, and/or dismissal involving the *Lunar* lawsuit.
29. Any documents involving or relating to the default and/or default judgment entered against Ashley River Properties I, LLC in the *Lunar* lawsuit.
30. Any correspondence, e-mails, facsimiles, and other documents involving any communication by Ashley River Properties II, LLC; Kriti Ripley, LLC; and/or Davidson Williams or their agents or employees with Ashley River Properties I, LLC; Emerald Investments, LLC; and/or Stuart Longman or their agents or employees involving the capital calls for Ashley Rivers Properties II, LLC; requests for access to the financial records of Ashley Rivers Properties II, LLC; Emerald's membership interest in Ashley River Properties II, LLC; the Ripley Light project; the claims in the *Lunar* lawsuit; the service on or receipt of any papers by Frank Guarino; the settlement of the claims in the *Lunar* lawsuit; the payment of third-party vendee claims pursuant to the New York arbitrators' award; and/or the default or default judgment entered in the *Lunar* lawsuit.
31. Any correspondence, checks, payment records, releases, or other documents showing or relating to any payments, loans, transfers, or other transactions made by Ashley

October 1, 2009

Page 4

River Properties II, LLC and/or Kriti Ripley, LLC to discharge or satisfy the third party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) pursuant to the New York arbitrators' decision issued on or about October 31, 2005.

32. Any records, ledgers, or journals showing or reflecting that the third party vendee claims (including, *inter alia*, the claim or debt at issue in the *Lunar* lawsuit) referenced in the New York arbitrators' award have been discharged or satisfied.

In order to completely obtain the records and information encompassed by the specific requests itemized above, we are also demanding that the company's network server and individual computers (those used by the employees of Ashley Rivers Properties II, LLC from 2005 until the present date to conduct company business) be made available so as to permit our computer forensic consultant to access same to connect an external blank hard drive to the network server and individual computers to review the electronic files and to make bit-stream mirror images directly from the network and hard drives of the computers onto an external hard drive (using validated forensic imaging software and write protection hardware such as Accessdata FTK Imager) in order to copy and preserve the data from the files and folders, to preserve and copy all metadata related to the files and folders, and to capture the data for deleted files and folders.

Please consider this letter notice that we wish to conduct the inspection and/or copying of the records and computers at the above-referenced offices on **Monday, October 26, 2009, beginning at 9am**, and at subsequent dates thereafter if the review is not completed on said date. Please be further advised that Stuart Longman, a computer forensic consultant, and/or a paralegal or courier from our law office may assist with or participate in this inspection and copying.

Of course, please do not hesitate to contact me at 843-577-6726 or by e-mail at dblanchard@rrhlawfirm.com if you have any questions about the above request.

With professional regards, I am

Sincerely,



Daniel F. Blanchard, III
Attorneys for Emerald Investments, LLC
and Stuart Longman

Cc: Mr. Stuart Longman
William C. Cleveland, III, Esq.

7009 0960 0000 9289 7925

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

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Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

Street, Apt. No.,
or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kriti Ripley, LLC
Managing Member of Ashley
River Properties II, LLC
345 E. 37th Street, Suite 312
New York, NY 10016
Attn: Davidson Williams

2. Article Number

(Transfer from service label)

7009 0960 0000 9289 7925

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

10-5-09

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

rec'd
Fed Ex
10/20/09

Kriti Ripley LLC
345 East 37th Street, Suite 312
New York, NY 10016

October 17, 2009

Mr. Daniel F. Blanchard III
Rosen, Rosen & Hagood LLC
134 Meeting Street, Suite 200
Charleston, SC 29402

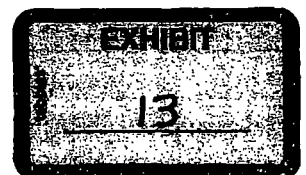
Re: Ashley River Properties II, LLC

Dear Mr. Blanchard:

I am in receipt of your October 1, 2009 letter demanding that we grant you access to the various records of Ashley River Properties II, LLC ("ARP-2") described in your letter. Please be advised that we object to your demand on the grounds that (a) most of the records you have requested have already been made available or produced to you and/or your clients on previous occasions, and (b) large portions of your demand are unreasonable and made for improper purposes. In support of our objection, we cite the following:

1. ARP-2 has provided Emerald with a federal and state K-1, a copy of the ARP-2 tax return, and an annual financial statement for ARP-2, as compiled by ARP-2's independent accountants, each and every year since inception. These were mailed to Emerald in the ordinary course of business at Mr. Longman's home address in Ridgefield, Connecticut. When Mr. Longman recently professed through his New York counsel not to have these documents, additional copies were made available. The same is true with an electronic copy of ARP-2's accounting records. See attached correspondence. I also understand that the records you have requested in the Lunar v. ARP-2 lawsuit are being produced to you this week. These records again include ARP-2's tax returns and financial statements for the period 2005-2008.

2. Your clients are judgment debtors to ARP-2 and Kriti Ripley LLC under a final, non-appealable judgment dated March 27, 2008 in the amount of \$1,184,581 plus post-judgment interest (the "Judgment"). In connection with the arbitration proceedings which resulted in the Judgment, all of ARP-2's records were produced and made available to your clients for inspection and copying in Charleston. ARP-2's network server and individual computers were also made available for inspection and downloading. Copies of almost everything were made. Thus, your clients already have had access to, inspected, and copied



Mr. Daniel F. Blanchard III
Rosen, Rosen & Hagood LLC

October 17, 2009
Page 2

much of what you have demanded. In fact, your firm served as local counsel in the dispute in arbitration and was involved in the inspection and duplication effort.

3. With respect to your request for documents that include, but are not limited to those pertaining to capital calls, distributions to members, contributions and/or other transfers by members to ARP II, there are no such documents that have not been previously produced to you except for the attached promissory notes and amendments documenting advances made to ARP-2 by affiliates of Kriti Ripley LLC.

4. With respect to valuations of ARP-2's assets, your clients have copies of all such valuations except for valuations performed by Fred H. Beck & Associates for Bank of America dated December 4, 2007. Copies of those valuations are attached. Please be advised that Bank of America has ordered a re-appraisal of ARP-2's assets in connection with the proposed renewal and extension of its loan, which matures on November 8, 2009. It is anticipated that due to changed market conditions, the valuations will be lower than the December, 2007 valuations. The new valuations may affect the bank's decision whether to renew and extend the loan and, if so, the proposed terms and conditions. We will provide more information when it becomes available.

5. Your client has filed a lawsuit against ARP-2 in which it has attempted to avoid the parties' agreement to arbitrate any dispute and in which it has served discovery to which it is not entitled because all disputes are subject to mandatory arbitration. Your client is also involved in litigation against ARP-2 in opposing ARP-2's attempt to collect on the Judgment and in opposing ARP-2's efforts to enforce its right of indemnity against ARP-1. It is not proper to attempt to circumvent the limitations on your right to litigate against ARP-2, or otherwise advance your litigation claims against ARP-2, by purporting to request documents as a member of ARP-2.

6. As you should know, pursuant to the Judgment, Emerald forfeited all voting rights in ARP-2, effective January 14, 2005. None of the records you have requested are reasonably required for the exercise of Emerald's voting rights in ARP-2, because it has none. The only duty Emerald and Mr. Longman currently have towards ARP-2 is payment of the Judgment; none of the records requested are needed to perform this duty.

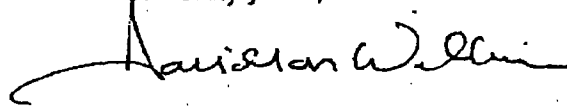
We can only conclude that your demand was made for the unreasonable and improper purpose of harassing ARP-2, disrupting its operations, and creating make-work with the goal of deflecting attention from the collection of the Judgment. If you wish to make a narrow demand which excludes records which have already been produced and which are outside the scope of the matters at issue in the on-going post-Judgment litigation described above, then please do so and we will consider it.

**Mr. Daniel F. Blanchard III
Rosen, Rosen & Hagood LLC**

**October 17, 2009
Page 3**

Once again, we demand immediate satisfaction of the Judgment by your clients. Please advise when we can expect payment.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Davidson D. Williams", with a long, sweeping horizontal stroke extending to the left.

**Davidson D. Williams
Managing Member**

Enclosures

cc: William Cleveland, Esq.

edEx. US Airbill
Express

FedEx
Package
Number

8646 4544 4830

This portion can be removed for Recipient's records.

Date 11/19/04

FedEx Tracking Number

864645444830

Sender's Name DAVIDSON D WILLIAMS

Phone 212 599-3530

Company KRITY MANAGEMENT INC

Address 345 E 37TH ST RM 312

City NEW YORK

State NY ZIP 10016

Your Internal Billing Reference

3 To

Recipient's Name DANIEL F. CLANCHARD JR

Company RICE, OLSEN & HARGROVE LLC

Recipient's Address

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address 134 MEETING STREET

To request a change be made on a specific FedEx location, please provide address here.

City CHARLESTON

State SC ZIP 29402

0376094610



8646 4544 4830

Recipient's Copy

4a. Express Package Service

☐ FedEx Priority Overnight
Next business morning. ¹Friday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

☒ FedEx Standard Overnight
Next business morning. ¹Friday
Saturday Delivery NOT available.

Packages up to 150 lbs.

☐ FedEx First Overnight
Early next business morning
only to select locations.
² Sunday Delivery NOT available.

☐ FedEx 2Day
Second business day. ¹Thursday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.
² Friday shipments will not be delivered. Weekend charges apply.

☐ FedEx Express Saver
Third business day.
Saturday Delivery NOT available.

¹ To meet instructions.

4b. Express Freight Service

☐ FedEx 1Day Freight
Next business day. ¹Monday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

☐ FedEx 2Day Freight
Second business day. ¹Thursday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

Packages over 150 lbs.

☐ FedEx 3Day Freight
Third business day.
Saturday Delivery NOT available.

² To meet instructions.

5. Packaging

☐ FedEx Envelope

☒ FedEx Pak
FedEx Priority Pak, FedEx Express Pak, and FedEx Overnight Pak.

☐ FedEx Box

☐ FedEx Tube

☐ Other
¹ Declared value limit \$500.

6. Special Handling

☐ SATURDAY Delivery
Not available for
FedEx Standard Overnight,
FedEx Priority Overnight, FedEx Express
Saver, or FedEx 2Day Freight.

☐ HOLD Weekday at FedEx Location
Holds shipments for
FedEx First Overnight.

☐ HOLD Saturday at FedEx Location
Available ONLY for FedEx Priority
Overnight and FedEx 2Day
to select locations.

Does this shipment contain dangerous goods?

One box must be checked.

☒ No ☐ Yes
Do you require
Original's Declaration
not required.

☐ Dry Ice
Dry Ice, 1 UN 1845
☐ Cargo Aircraft Only

Shipments in glass (including dry ice) cannot be shipped in FedEx packaging.

7. Payment

☒ Bill Me
Bill to: Sender, Recipient, Third Party, Credit Card, Cash/Check

Enter FedEx Acct. No. or Credit Card No. below. Obtain Receipt
Acct. No. ☐ Cash/Check

Total Packages Total Weight

¹ Our liability is limited to \$100 unless you declare a higher value. See the current FedEx Services Guide for details.

8. Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

☒ No Signature
Required
Package may be left
without obtaining a
signature for delivery.

☐ Direct Signature
Someone at the address
signs for delivery. Free application.

☐ Indirect Signature
Someone at any address
signs for delivery. Free application.

519

Rev. Date 10/08/04 FedEx Form 4100-1000 FedEx Form 4100-1000

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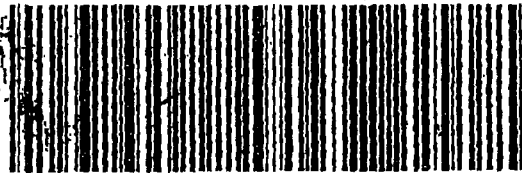
FedEx

TUE - 20 OCT A1
STANDARD OVERNIGHT

TRK#
0215 8646 4544 4830

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29402
SC-US
CHS



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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2008 -CP-10-2344

KRITI RIPLEY, LLC and ASHLEY
RIVER PROPERTIES II, LLC,

Plaintiffs,

v.

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

Defendants.

**MOTION TO FORECLOSE
JUDGMENT LIEN**

FILED
2011 FEB - 1 PM 12:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

2011-11-28

Pursuant to South Carolina Code Section 33-44-504, Plaintiffs Kriti Ripley, LLC ("Kriti") and Ashley River Properties Two, LLC ("ARP II") move the Court for an order foreclosing Plaintiffs' judgment lien and ordering the sale of Defendants' distributional interest in Ashley River Properties II, LLC. This motion is made on the ground that Plaintiffs have an unsatisfied judgment against the Defendants in the amount of \$1,184,581.72 that has been outstanding and unpaid since April 2, 2008. Plaintiffs have perfected a lien (the "Lien") upon the Defendants' interest in Ashley River Properties II, LLC (the "Membership Interest") pursuant to the charging order issued by this Court on October 17, 2008. Since the issuance of the charging order, there have been no distributions from Ashley River Properties II, LLC and there does not appear to be any likelihood that there will be distributions in the foreseeable future. The Defendants have made no effort to respond in any way to Plaintiffs' judgment.

WHEREFORE, pursuant to S.C. Code Section 33-44-504, the Plaintiffs ask this Court to issue its Order as follows:

- A. Granting Plaintiffs judgment of foreclosure of their Lien upon the Membership Interest pursuant to the charging order.
- B. Directing that the Membership Interest be sold at foreclosure in accordance with the law and practices of this Court, and that the Defendants and all other persons claiming by, through or under them be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said Membership Interest or any part thereof;
- C. Directing that out of the proceeds of the sale of the Membership Interest, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiffs be paid in full the amount due them under their judgment against Defendants, with interest thereon as set out therein;
- D. Granting Plaintiff leave, if so minded, to have a Receiver for the Membership Interest appointed upon proper application to this Court; and
- E. Granting Plaintiff such other and further relief as may be just and proper.

[Remainder of Page Left Blank Intentionally]

This motion is based on the affidavit of Davidson Williams that is filed contemporaneously with this motion and on the pleadings and records on file herein.

Respectfully submitted,

BUIST MOORE SMYTHE MCGEE P.A.



William C. Cleveland
5 Exchange Street
P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400

ATTORNEYS FOR THE PLAINTIFFS
KRITI RIPLEY, LLC AND ASHLEY RIVER
PROPERTIES II, LLC

January 21, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2008 -CP-10-2344

KRITI RIPLEY, LLC and ASHLEY
RIVER PROPERTIES II, LLC,

Plaintiffs,

v.

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

Defendants.

CERTIFICATE OF SERVICE

FILED
2011 FEB - 1 PM 12:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I do hereby certify that on the 1st day of February, 2011 I served a copy of the
Motion to Foreclose Judgment Lien and the *Affidavit of Davidson Williams in Support of*
Motion to Foreclose Judgment Lien in the within entitled matter on counsel of record via
Hand-Delivery to:

Richard S. Rosen, Esquire
Rosen, Rosen & Hagood, LLC
134 Meeting Street, Suite 200
Charleston, SC 29401

BUIST MOORE SMYTHE MCGEE P.A.


Christine Eadie, Legal Secretary
to William C. Cleveland
Five Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2008 -CP-10-2344
	)	
KRITI RIPLEY, LLC and ASHLEY	)	
RIVER PROPERTIES II, LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
EMERALD INVESTMENTS, LLC and	)	
STUART LONGMAN,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF DAVIDSON
WILLIAMS IN SUPPORT OF
MOTION TO FORECLOSE
JUDGMENT LIEN**

FILED
2011 FEB - 1 PM 12: 29
JULIE J. ARMSTRONG
CLERK OF COURT

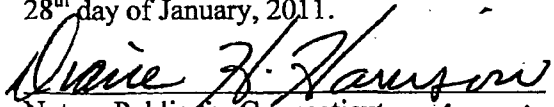
I, Davidson Williams, being first duly sworn, do say:

1. I am the managing member of Kriti Ripley, LLC ("Kriti"), a Delaware Limited Liability Company. Kriti is the managing member of Ashley River Properties II, LLC ("ARP II"). Emerald Investments, LLC ("Emerald") is the other member of ARP II. ARP II was formed to develop a marina on the Ashley River in Charleston, SC.
2. On March 27, 2008, the New York Supreme Court issued a judgment upon the decision and order in favor of Kriti and ARP II against Emerald and Longman in the amount of \$1,184,581.72 (the "Judgment"). A true and correct copy of the Judgment has previously been filed with this Court.
3. On April 29, 2008, Kriti and ARP II registered their \$1,184,581.72 Judgment against Emerald and Longman in the Charleston County Court of Common Pleas pursuant to this lawsuit.
4. On October 17, 2008 this Court issued its Charging Order charging Emerald's membership interest in ARP II and ordering that Emerald appear and show cause why the Charging Order should not continue in full force and effect.

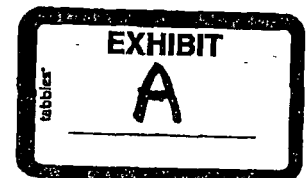
5. Neither Kriti nor ARP II have recovered anything in their efforts to satisfy their judgment against Emerald and Longman.
6. Attached as Exhibit A and B hereto are true and correct copies of ARP II's financial statements for the years 2008 and 2009, as compiled by Streetman & Jones, PC, the company's outside accountants.
7. Attached as Exhibit C hereto is a true and correct copy of ARP II's internal financial statements for 2010. It is subject to whatever adjusting journal entries as may be deemed necessary or appropriate by the company's outside accountants.
8. There have not been any distributions from ARP II to its members and it does not appear that there will be any distributions by ARP II to its members in the foreseeable future.
9. Kriti and ARP II seek to foreclose their lien upon Emerald's membership interest in ARP II.


Davidson Williams

SWORN to before me this
28th day of January, 2011.


Notary Public for Connecticut
My Commission Expires: 8/31/2011

ASHLEY RIVER PROPERTIES II, LLC
CHARLESTON, SOUTH CAROLINA
ACCOUNTANTS' REPORT
AND
FINANCIAL STATEMENTS
DECEMBER 31, 2008



ASHLEY RIVER PROPERTIES II, LLC
COMPILED FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2008

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<u>Financial Statements</u>	
Balance Sheet	2
Statement of Loss and Changes in Members' Capital	3

ACCOUNTANTS' REPORT

To the Partners
Ashley River Properties II, LLC
Charleston, South Carolina

We have compiled the accompanying balance sheet of Ashley River Properties II, LLC. (a partnership) as of December 31, 2008, and the related statement of loss and changes in members' capital for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures and the statement of cash flows required by generally accepted accounting principles. If the omitted disclosures and statement of cash flows were included in the financial statements, they might influence the user's conclusions about the Partnership's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Certain errors resulting in an understatement of previously reported interest expense for the year ended December 31, 2008, were discovered by management of the Company subsequent to the issuance of our report on those financial statements dated March 10, 2009. Accordingly, the accompanying 2008 financial statements have been restated to correct the error.

Streetman & Jones, PC

Streetman & Jones, PC
Charleston, South Carolina
May 27, 2009

**ASHLEY RIVER PROPERTIES II, LLC
BALANCE SHEET
AS OF DECEMBER 31, 2008**

ASSETS

CURRENT ASSETS

Cash	\$ 178,730
Accounts Receivable	17,977
Judgement Receivable - Principle	989,749
Judgement Receivable - Interest	<u>266,422</u>

TOTAL CURRENT ASSETS 1,452,878

FIXED ASSETS

Land	5,624,193
Marina Docks and Improvements	5,611,245
Furniture, Fixtures, and Equipment	112,537
Accumulated Depreciation	<u>(1,033,417)</u>

TOTAL FIXED ASSETS, NET 10,314,558

OTHER ASSETS

Condominium Construction in Progress	2,235,952
Deposits	38,840
Loan Fees and Costs, net of accumulated amortization of \$61,082	<u>7,918</u>

TOTAL OTHER ASSETS 2,282,710

TOTAL ASSETS \$ 14,050,146

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES

Accounts Payable and Accrued Liabilities	\$ 301,414
Deposits and Prepayments	28,850
Advances from Kriti Holdings	
Construction Term Loan Payable	8,998,060
Notes Payable - Lunar Systems	190,313
Notes Payable - Davidson Williams	27,704
Notes Payable - Kriti Holdings	<u>2,726,219</u>

TOTAL CURRENT LIABILITIES 12,272,560

MEMBERS' CAPITAL

1,777,586

TOTAL LIABILITIES AND MEMBERS' CAPITAL \$ 14,050,146

See Accountants' Compilation Report

ASHLEY RIVER PROPERTIES II, LLC
STATEMENT OF LOSS AND CHANGES IN MEMBERS' CAPITAL
FOR THE YEAR ENDED DECEMBER 31, 2008

OPERATING INCOME	
Marina Income	\$ <u>540,886</u>
TOTAL OPERATING INCOME	540,886
OPERATING EXPENSES	
Amortization Expense	64,082
Depreciation Expense	368,225
General and Administrative	<u>722,011</u>
TOTAL OPERATING EXPENSES	1,154,318
OTHER INCOME (EXPENSES)	
Interest Expense	(357,655)
Interest Income	<u>71,589</u>
TOTAL OTHER INCOME (EXPENSE)	(286,066)
NET LOSS	(899,498)
Beginning Members' Capital	<u>2,677,084</u>
Ending Member's Capital	\$ <u><u>1,777,586</u></u>

See Accountants' Compilation Report

ASHLEY RIVER PROPERTIES II, LLC
CHARLESTON, SOUTH CAROLINA
ACCOUNTANTS' REPORT
AND
FINANCIAL STATEMENTS
DECEMBER 31, 2009



ASHLEY RIVER PROPERTIES II, LLC
COMPILED FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2009

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ACCOUNTANTS' REPORT

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A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures and the statement of cash flows required by generally accepted accounting principles. If the omitted disclosures and statement of cash flows were included in the financial statements, they might influence the user's conclusions about the Partnership's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Streetman & Jones, PC

Streetman & Jones, PC
Charleston, South Carolina
May 18, 2010

**ASHLEY RIVER PROPERTIES II, LLC
BALANCE SHEET
AS OF DECEMBER 31, 2009**

ASSETS

CURRENT ASSETS

Cash	\$ 4,941
Accounts Receivable	7,640
Prepaid Expenses	105
Judgement Receivable - Principal	989,749
Judgement Receivable - Interest	<u>352,945</u>
TOTAL CURRENT ASSETS	<u>1,355,380</u>

FIXED ASSETS

Land	5,624,193
Manna Docks and Improvements	5,794,127
Furniture, Fixtures, and Equipment	54,320
Accumulated Depreciation	<u>(1,426,257)</u>
TOTAL FIXED ASSETS, NET	<u>10,046,383</u>

OTHER ASSETS

Condominium Construction in Progress	2,582,504
Deposits	62,840
Loan Fees and Costs, net of accumulated amortization of \$72,663	<u>4,837</u>
TOTAL OTHER ASSETS	2,650,181

TOTAL ASSETS	\$ <u>14,051,944</u>

LIABILITIES AND MEMBERS' CAPITAL

CURRENT LIABILITIES

Accounts Payable and Accrued Liabilities	\$ 309,091
Deposits and Prepayments	32,145
Construction Term Loan Payable	8,998,060
Notes Payable - Lunar Systems	190,313
Notes Payable - Davidson Williams	30,474
Notes Payable - Kriti Holdings	<u>3,272,291</u>

TOTAL CURRENT LIABILITIES	<u>12,832,374</u>

MEMBERS' CAPITAL	1,219,570

TOTAL LIABILITIES AND MEMBERS' CAPITAL	\$ <u>14,051,944</u>

See Accountants' Compilation Report

ASHLEY RIVER PROPERTIES II, LLC
STATEMENT OF LOSS AND CHANGES IN MEMBERS' CAPITAL
FOR THE YEAR ENDED DECEMBER 31, 2009

OPERATING REVENUE	
Marina Revenue	\$ <u>558,142</u>
TOTAL OPERATING REVENUE	558,142
OPERATING EXPENSES	
Amortization Expense	11,581
Depreciation Expense	392,840
General and Administrative	<u>592,796</u>
TOTAL OPERATING EXPENSES	997,217
OPERATING INCOME (LOSS)	(439,075)
OTHER INCOME (EXPENSES)	
Interest Expense	(205,463)
Interest Income	<u>86,522</u>
TOTAL OTHER INCOME (EXPENSE)	(118,941)
NET INCOME (LOSS)	(558,016)
Beginning Members' Capital	<u>1,777,586</u>
Ending Member's Capital	\$ <u><u>1,219,570</u></u>

See Accountants' Compilation Report

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Accrual Basis

Ashley River Properties II, LLC

Balance Sheet

As of December 31, 2010

	Dec 31, 10
ASSETS	
Current Assets	
Checking/Savings	
10000 • Bank Accounts	16,949.54
Total Checking/Savings	16,949.54
Accounts Receivable	
11000 • Accounts Receivable	7,554.69
Total Accounts Receivable	7,554.69
Other Current Assets	
12000 • Undeposited Funds	1,349.69
12100 • Petty Cash	45.00
12200 • Merchant Gift Card	74.71
12300 • Judgement Receivable Longman	1,414,283.97
12600 • Payroll Asset	-350.00
12800 • Buist Moore Retainer Escrow	1,066.53
Total Other Current Assets	1,416,469.90
Total Current Assets	1,440,974.13
Fixed Assets	
13000 • Land	5,683,193.46
14000 • Marina Development Costs	5,801,067.88
15000 • Condo Development Costs	2,582,504.29
16000 • Miscellaneous Fixed Assts	44,762.00
16100 • Accumulated Amortization	-72,663.01
16200 • Accumulated Depreciation	-1,426,256.81
Total Fixed Assets	12,612,607.91
Other Assets	
17000 • Deposits (Assets)	3,840.00
18500 • Loan Fees & Costs	77,500.00
19200 • Marine Equipment & Other	9,557.60
Total Other Assets	90,897.60
TOTAL ASSETS	14,144,479.64
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 • Accounts Payable	126,006.80
Total Accounts Payable	126,006.80
Other Current Liabilities	
22000 • Prepayments	7,553.60
24000 • Deposit Liabilities	36,371.59
26000 • Payroll Liabilities(QB Default)	-0.07
Total Other Current Liabilities	43,825.22
Total Current Liabilities	169,832.02
Long Term Liabilities	
27000 • Bank Loans	5,300,000.26
28000 • Notes Payable	7,613,077.35
Total Long Term Liabilities	12,913,077.61
Total Liabilities	13,083,009.63
Equity	
32000 • Capital	5,750,000.00
32001 • Retained Earnings	-4,531,098.17
Net Income	-157,431.82
Total Equity	1,061,470.01



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Accrual Basis

Ashley River Properties II, LLC
Balance Sheet
As of December 31, 2010

TOTAL LIABILITIES & EQUITY

Dec 31, 10

14,144,479.64

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01/31/11

Accrual Basis

Ashley River Properties II, LLC**Profit & Loss**

January through December 2010

	<u>Jan - Dec 10</u>
Ordinary Income/Expense	
Income	
Negotiated Discounts	23,480.54
40000 • Marina Income	573,699.20
48300 • Uncategorized Income	278.62
Total Income	<u>597,458.36</u>
Gross Profit	597,458.36
Expense	
60000 • Marina Operating Expenses	338,658.84
63000 • Project G&A	181,836.43
66900 • Reconciliation Discrepancies	61.28
68260 • Interest	234,333.83
Total Expense	<u>754,890.18</u>
Net Ordinary Income	<u>-157,431.82</u>
Net Income	<u><u>-157,431.82</u></u>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2008-CP-10-2344
KRITI RIPLEY, LLC and ASHLEY	)	
RIVER PROPERTIES TWO, LLC,	)	
	)	
Plaintiffs,	)	MOTION TO CONSOLIDATE
	)	
vs.	)	
	)	
EMERALD INVESTMENTS, LLC	)	
and STUART LONGMAN,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that the above named Plaintiff, Emerald Investments, LLC, through the undersigned attorneys, will move before the presiding Judge for the Court of Common Pleas for the Ninth Judicial Circuit at the Charleston County Courthouse, on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an order consolidating the above-captioned action with the action pending in the Court of Common Pleas, Charleston County, Ninth Judicial Circuit, entitled *Emerald Investments, LLC v. Ashley River Properties II, LLC and Kriti Ripley, LLC*, Case No. 2009-CP-10-553, for discovery purposes and for a joint hearing and/or trial of all matters at issue pursuant to S.C. R. CIV. PRO. 42(a).

This motion is made on the grounds that there are common questions of law and fact in both of the cases and because consolidation will avoid unnecessary costs and delays, promote judicial economy, save judicial time and resources, and best serve the ends of justice. The two cases involve similar evidence and testimony regarding the majority membership interest of Emerald Investments, LLC ("Emerald") and the minority membership interest of Kriti Ripley, LLC ("Kriti") in a company known as Ashley River Properties II, LLC ("ARP II"); the parties' business relations; the valuation

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of ARP II as a going concern and the value of ARP II's properties and assets; and the facts and circumstances surrounding the necessity for dissolution of ARP II.

ARP II is supposed to be developing a marina and mixed-use residential condominiums along a riverfront site on the Ashley River known as Ripley Light Yacht Club Marina & Condominiums (the "Ripley Light Project"). Thus far ARP II has only constructed the marina slips. No condominium units have been built. The most recent appraisals dated October 16, 2009, give "as is" valuations for ARP II's real estate holdings that total \$17.25 million.

Emerald is a 70% financial member of ARP II, although it has no voting rights or control over the management of the company. Kriti is a 30% financial member in ARP II and has 100% of the voting rights. Kriti has sole control and management of ARP II.

Since early 2005, Emerald and Kriti have been unable to work together in any constructive manner. These same parties have been involved in numerous lawsuits against one another in several states involving the Ripley Light Project.

Following an arbitration hearing involving these parties conducted in New York in 2005, ARP II and Kriti were awarded a money judgment against Emerald. Thereafter, on October 17, 2008, ARP II and Kriti filed Case No. 2008-CP-10-2344, which is an application for an *ex parte* charging order against Emerald's distributional interest in ARP II under the provisions of the South Carolina Uniform Limited Liability Company Act ("SC LLC Act"), S.C. CODE ANN. § 33-44-504. Circuit Judge Roger Young subsequently granted an *ex parte* charging order on the same day the application was filed. The charging order was later continued in effect subject to modifications by order of Circuit Judge Thomas L. Hughston, Jr. filed on February 6, 2009. The charging order requires the limited liability company (ARP II) to divert or pay over to the judgment creditors (ARP

II and Kriti) any distributions from the company that would otherwise be payable to the judgment debtor (Emerald). The charging order essentially allows ARP II and Kriti to execute on their money judgment against Emerald by diverting or turning over Emerald's share of ARP II's distributions to Kriti.

Since the charging order was issued on October 17, 2008, ARP II (which Kriti completely controls) has failed to make any distributions to its members. Such distributions would operate to reduce and/or satisfy the money judgment owed by Emerald.

On January 30, 2009, Emerald filed Case No. 2009-CP-10-553. The Complaint in that case (which Emerald has moved to amend and update) requests an Order judicially dissolving ARP II pursuant to § 33-44-801(a)-(c), and (e) of the SC LLC Act. Emerald seeks judicial dissolution of ARP II due to, *inter alia*, Kriti's persistent mismanagement of ARP II which has resulted in the company's poor financial record and the frustration of the company's economic purpose, Kriti's misconduct which has made it impracticable for Emerald and Kriti to continue to conduct business together, Kriti's attempt to unilaterally dilute Emerald's membership interest in ARP II through improper capital calls, Kriti's repeated failures to timely provide Emerald with company records and information, Kriti's failure to conduct the affairs of ARP II in the best interest of ARP II and its members, Kriti's fraudulent and unfair acts, and Kriti's failure to follow the provisions of the ARP II Operating Agreement.

Kriti's improper conduct and mismanagement of ARP II and the fact that Kriti and Emerald cannot work together in any constructive manner warrant dissolution of ARP II pursuant to § 33-44-801(4)(a)-(c) and (e) of the SC LLC Act. Those sections provide in pertinent part:

A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

....

(4) on application by a member or a dissociated member, upon entry of a judicial decree that:

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

....

or (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

See S.C. CODE ANN. § 33-44-801(4)(a)-(c) and (e); see also S.C. CODE ANN. § 33-44-801(4) cmt.

("A court has discretion to dissolve a company . . . when the company has a very poor financial record that is not likely to improve.").

Additionally, as an alternative to judicial dissolution of ARP II, Emerald seeks an order in Case No. 2009-CP-10-553 to allow it to buyout Kriti's member interest in ARP II, or vice versa, pursuant to a forced sale in accordance with the procedures in the SC LLC Act. See S.C. CODE ANN. § 33-44-801(4) cmt. ("[I]nvoluntary dissolution or some other remedy such as a buy-out might be appropriate where, for example, one or more members have (i) engaged in fraudulent or unconscionable conduct, (ii) improperly expelled a member seeking an unfair advantage of a provision in an operating agreement that provides for a significantly lower price on expulsion than would be payable in the event of voluntary dissociation, or (iii) engaged in serious misconduct and

the applicant member is a member of a term company and would not have the right to have the company purchase that member's distributional interest upon dissociation until the expiration of the company's specified term.").

On April 19, 2010, a Consent Order was entered in Case No. 2009-CP-10-553 temporarily staying that case until another arbitration hearing was conducted in New York involving these same parties. The Consent Order expressly states that the findings of the New York arbitrators shall be admissible in and binding upon the parties in any action (including Case No. 2009-CP-10-553) seeking an order of judicial dissolution of ARP II.

The arbitration hearing was subsequently conducted in New York in July of 2010. On October 28, 2010, the New York arbitration panel issued its ruling and explicitly found that "dissolution may be in the best interests of all parties" and further held that "Kriti and Emerald cannot work together in any constructive manner." Indeed, at the arbitration hearing, Davidson Williams (Kriti's own manager) testified: "I think its time we sever our interests somehow and end this nightmare."

The arbitration panel nevertheless ruled that the facts did not satisfy the narrow grounds for dissolution *stated in the ARP II operating agreement*. Paragraph 9.1 of the ARP II Operating Agreement lists the grounds for dissolution as follows:

Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the company shall terminate only upon the happening of one or more of the following events:

- (a) The written consent of those Members who own the Required Interest of the Voting rights in the Company;
- (b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days

after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act;

(d) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own the Required Interest of the Voting rights in the Company extend the term of the Company.

See ARP II Operating Agreement ¶ 9.1. The New York arbitrators found that none of the grounds for dissolution listed in paragraph 9.1 were present.

However, the arbitration panel's ruling was carefully restricted to a consideration of the grounds for dissolution set forth in the ARP II operating agreement. The award did not rule on the grounds for judicial dissolution set forth in the SC LLC Act. The arbitrators addressed only whether grounds for dissolution of ARP II had been shown under the ARP II Operating Agreement because they had jurisdiction only over matters given to them in the parties' arbitration clause. That clause simply provides for arbitration of disputes arising under the terms of the operating agreement. Kriti itself acknowledged in the arbitration that the question of whether ARP II should be judicially dissolved pursuant to the SC LLC Act was not before the arbitration panel.

As a result, the arbitration panel did not address or determine whether judicial dissolution of ARP II is warranted *pursuant to the statutory grounds set forth in § 33-44-801(4)(a)-(c) and (e) of the SC LLC Act*. That issue is now pending in Case No. 2009-CP-10-553 and needs to be decided by the Court. As set forth above, the statutory grounds are substantially different from and broader than the very limited grounds for dissolution listed in the ARP II Operating Agreement. Importantly, the grounds for dissolution listed in § 33-44-801(4) cannot be waived or varied by the parties in their

operating agreement. See S.C. CODE ANN. § 33-44-103(b)(6) (“The operating agreement may not vary the requirement to wind up the limited liability company’s business in a case specified in [§] 33-44-801(3) or (4).”).

On December 7, 2010, after the arbitrators issued their ruling in the 2010 arbitration proceeding, Emerald filed motions in Case No. 2009-CP-10-553 to dissolve the stay and to amend its Complaint in light of the arbitrator’s findings issued on October 28, 2010. Those motions are now pending before the Court. Prior to filing the motions, Emerald’s counsel had requested that counsel for ARP II and Kriti agree to a consent order lifting the stay in Case No. 2009-CP-10-553 so that the judicial dissolution claim can be adjudicated as soon as possible, but no response was received.

On February 1, 2011, after the New York arbitrators issued findings indicating that judicial dissolution of ARP II may be in the parties’ best interests and after Kriti ignored Emerald’s request to set aside the stay in Case No. 2009-CP-10-553 so that the judicial dissolution claim can be adjudicated, ARP II and Kriti then filed a Motion to Foreclose Judgment Lien in Case No. 2008-CP-10-2344. In their motion, ARP II and Kriti seek to foreclose on (*i.e.*, to sell off) Emerald’s “distributional interest” in ARP II pursuant to S.C. CODE ANN. § 33-44-504.¹ Foreclosure on a member’s distributional interest is a drastic remedy because it means that the member permanently loses all of the economic benefit of its membership interest, including the right to its share of the company’s assets and properties at liquidation. As discussed above, ARP II’s assets and properties are very valuable and were most recently appraised as being worth \$17.25 million.

¹ Pursuant to S.C. CODE ANN. § 33-44-504, ARP II and Kriti may not force a sale of Emerald’s entire membership interest, but may only force a sale of Emerald’s “distributional interest.” See S.C. CODE ANN. § 33-44-504(b). Emerald’s distributional interest “means all of a member’s interest in distributions by the limited liability company.” Id. § 33-44-101(6).

Because it is a drastic remedy, foreclosure on a member's distributional interest is discretionary, not mandatory, with the Court. See S.C. CODE ANN. § 33-44-504(b) ("The court *may* order a foreclosure of a lien on a distributional interest subject to the charging order" (emphasis added)). ARP II and Kriti argue that foreclosure of Emerald's distributional interest in ARP II is appropriate because ARP II has not made any distributions pursuant to the charging order to satisfy their money judgment. They further forecast that it does not appear likely that ARP II will make any distributions in the foreseeable future.

Kriti is attempting use the foreclosure process to defeat Emerald's action to dissolve ARP II because of Kriti's mismanagement of ARP II. Kriti now seeks to be rewarded for its mismanagement of ARP II (which it completely controls) by causing Emerald's distributional interest in ARP II to be involuntarily sold off because of ARP II's poor financial performance, which Kriti caused and has apparently rendered ARP II unable to make any distributions under the charging order. There is an inherent conflict of interest because Kriti (the beneficiary of the charging order) is able to manipulate the distributions from ARP II, which it controls. Kriti is also in exclusive custody and control of ARP II's financial information and records that are needed to determine the true financial condition of the company and to project its prospects of future success. As discussed in Emerald's pleadings in Case No. 2009-CP-10-553, Kriti has repeatedly failed or refused to produce ARP II's records and information to Emerald, despite numerous requests for same.

A judgment creditor who obtains a charging order against the debtor's distributional interest in an LLC ordinarily has no right to control or participate in the management of the company. As such, creditors usually have no say as to when, or in what amount, distributions are to be made by the company pursuant to the charging order. Because creditors usually have not control over the timing

and amount of distributions from the LLC, creditors cannot force an LLC to make distributions. In such situations, the charging order may be insufficient (and foreclosure of the debtor's distributional interest may be appropriate). For example, when the company continually reinvests its earnings instead of making distributions, foreclosure of the lien may be appropriate.

However, the present case is a unique situation. Here the judgment creditors are the LLC itself (ARP II) and the member with complete voting control of the LLC (Kriti). They have the ability to make distributions from the company when and in what amount they chose. Foreclosure is not appropriate because the previously issued charging order is sufficient to project the judgment creditors' interests and to satisfy the debt owed by Emerald.

Foreclosure on Emerald's distributional interest is also inappropriate because ARP II and Kriti are attempting to permanently divest Emerald of its share of ARP II's assets at a significantly lower price than fair value. Kriti is attempting to use the foreclosure process to sell off Emerald's 70% distributional interest in ARP II, which has assets last valued at \$17.25 million. The purchaser or transferee of a distributional interest at a foreclosure sale receives only the debtor's distributional interest and cannot exercise control over ARP II's management and business, unless Kriti consents. See S.C. CODE ANN. § 33-44-503(a) ("A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or all other members consent."); id. § 33-44-504(b) ("A purchaser at the foreclosure sale has the rights of a transferee."). Because a purchaser of Emerald's distributional interest must win Kriti's approval to have the ability to participate in the management of ARP II, there is obviously considerable risk involved for anyone (except Kriti) to acquire such an interest through a foreclosure sale. Therefore, there is no ready

market for such an interest. A foreclosure by judicial sale is, therefore, not the most appropriate way to sell Emerald's interest.

In Case No. 2009-CP-10-553, Emerald has requested the Court to dissolve ARP II. Emerald's claim for judicial dissolution of ARP II pursuant to § 33-44-801(a)-(c) and (e) of the SC LLC Act and its request for a membership interest buyout in Case No. 2009-CP-10-553 will render moot the need to foreclose on the judgment lien against Emerald's distributional interest in ARP II. ARP II and Kriti would be able to enforce their money judgment as part of the dissolution of ARP II or the buyout of either member's interest. Also, the lack of distributions from ARP II and the alleged likelihood that there will not be any distributions in the foreseeable future are directly caused by Kriti's mismanagement of ARP II and the facts and circumstances supporting Emerald's claim for judicial dissolution of ARP II.

It will be necessary for the Court to evaluate ARP II's financial condition, its assets and liabilities, and its expenditures to determine whether the company is truly unable to make distributions under the charging order as alleged by Kriti in Case No. 2008-CP-10-2344. The Court will likewise have to conduct the same analysis as part of Emerald's judicial dissolution claim in Case No. 2009-CP-10-553.

The common questions of law and similar evidence to be presented in each case makes the consolidation of these two cases imperative. This Motion will be supported by the documents on file or to be filed with this Court, the pleadings and attachments thereto, together with a memorandum of law to be filed with this Court.

WHEREFORE, Plaintiff Emerald Investments, LLC moves this Court for an Order consolidating the above-referenced actions for discovery purposes and for a joint hearing and/or trial of all matters at issue and for such further relief as the Court may deem necessary.

Respectfully submitted,

ROSEN, ROSEN & HAGOOD, LLC

By: 

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Daniel F. Blanchard, III
James A. Bruorton IV
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Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina
March 10, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

KRITI RIPLEY, LLC and ASHLEY
RIVER PROPERTIES TWO, LLC,

Plaintiffs,

vs.

EMERALD INVESTMENTS, LLC
and STUART LONGMAN,

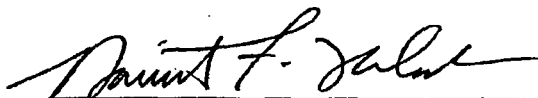
Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-10-2344**CERTIFICATE OF SERVICE**FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I hereby certify that on this date, a copy of the Motion to Consolidate was served on counsel of record by depositing same in the U.S. mail, with sufficient first class postage affixed thereto, in the manner prescribed by the applicable SC Rules of Civil Procedure, and addressed as follows:

William C. Cleveland, Esquire
Buist, Moore, Smythe & McGee, P.A.
P. O. Box 999
Charleston, SC 29402

ROSEN ROSEN & HAGOOD, LLC



Daniel F. Blanchard, III
Attorney for Defendants

March 10, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC

Plaintiff,

vs.

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;
Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-553
)
)

) **MOTION TO CONSOLIDATE**
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JULIE L. ARMSTRONG
CLERK OF COURT

PLEASE TAKE NOTICE that the above named Plaintiff, Emerald Investments, LLC, through the undersigned attorneys, will move before the presiding Judge for the Court of Common Pleas for the Ninth Judicial Circuit at the Charleston County Courthouse, on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an order consolidating the above-captioned action with the action pending in the Court of Common Pleas, Charleston County, Ninth Judicial Circuit, entitled *Kriti Ripley, LLC and Ashley River Properties II, LLC v. Emerald Investments, LLC and Stuart L. Longman*, Case No. 2008-CP-10-2344, for discovery purposes and for a joint hearing and/or trial of all matters at issue pursuant to S.C. R. CIV. PRO. 42(a).

This motion is made on the grounds that there are common questions of law and fact in both of the cases and because consolidation will avoid unnecessary costs and delays, promote judicial economy, save judicial time and resources, and best serve the ends of justice. The two cases involve similar evidence and testimony regarding the majority membership interest of Emerald Investments, LLC ("Emerald") and the minority membership interest of Kriti Ripley, LLC ("Kriti") in a company known as Ashley River Properties II, LLC ("ARP II"); the parties' business relations; the valuation

of ARP II as a going concern and the value of ARP II's properties and assets; and the facts and circumstances surrounding the necessity for dissolution of ARP II.

ARP II is supposed to be developing a marina and mixed-use residential condominiums along a riverfront site on the Ashley River known as Ripley Light Yacht Club Marina & Condominiums (the "Ripley Light Project"). Thus far ARP II has only constructed the marina slips. No condominium units have been built. The most recent appraisals dated October 16, 2009, give "as is" valuations for ARP II's real estate holdings that total \$17.25 million.

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Kriti's improper conduct and mismanagement of ARP II and the fact that Kriti and Emerald cannot work together in any constructive manner warrant dissolution of ARP II pursuant to § 33-44-801(4)(a)-(c) and (e) of the SC LLC Act. Those sections provide in pertinent part:

A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

....

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(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

....

or (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

See S.C. CODE ANN. § 33-44-801(4)(a)-(c) and (e); see also S.C. CODE ANN. § 33-44-801(4) cmt.

("A court has discretion to dissolve a company . . . when the company has a very poor financial record that is not likely to improve.").

Additionally, as an alternative to judicial dissolution of ARP II, Emerald seeks an order in Case No. 2009-CP-10-553 to allow it to buyout Kriti's member interest in ARP II, or vice versa, pursuant to a forced sale in accordance with the procedures in the SC LLC Act. See S.C. CODE ANN. § 33-44-801(4) cmt. ("[I]nvoluntary dissolution or some other remedy such as a buy-out might be appropriate where, for example, one or more members have (i) engaged in fraudulent or unconscionable conduct, (ii) improperly expelled a member seeking an unfair advantage of a provision in an operating agreement that provides for a significantly lower price on expulsion than would be payable in the event of voluntary dissociation, or (iii) engaged in serious misconduct and

the applicant member is a member of a term company and would not have the right to have the company purchase that member's distributional interest upon dissociation until the expiration of the company's specified term.").

On April 19, 2010, a Consent Order was entered in Case No. 2009-CP-10-553 temporarily staying that case until another arbitration hearing was conducted in New York involving these same parties. The Consent Order expressly states that the findings of the New York arbitrators shall be admissible in and binding upon the parties in any action (including Case No. 2009-CP-10-553) seeking an order of judicial dissolution of ARP II.

The arbitration hearing was subsequently conducted in New York in July of 2010. On October 28, 2010, the New York arbitration panel issued its ruling and explicitly found that "dissolution may be in the best interests of all parties" and further held that "Kriti and Emerald cannot work together in any constructive manner." Indeed, at the arbitration hearing, Davidson Williams (Kriti's own manager) testified: "I think its time we sever our interests somehow and end this nightmare."

The arbitration panel nevertheless ruled that the facts did not satisfy the narrow grounds for dissolution *stated in the ARP II operating agreement*. Paragraph 9.1 of the ARP II Operating Agreement lists the grounds for dissolution as follows:

Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the company shall terminate only upon the happening of one or more of the following events:

(a) The written consent of those Members who own the Required Interest of the Voting rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the

event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act;

(d) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own the Required Interest of the Voting rights in the Company extend the term of the Company.

See ARP II Operating Agreement ¶ 9.1. The New York arbitrators found that none of the grounds for dissolution listed in paragraph 9.1 were present.

However, the arbitration panel's ruling was carefully restricted to a consideration of the grounds for dissolution set forth in the ARP II operating agreement. The award did not rule on the grounds for judicial dissolution set forth in the SC LLC Act. The arbitrators addressed only whether grounds for dissolution of ARP II had been shown under the ARP II Operating Agreement because they had jurisdiction only over matters given to them in the parties' arbitration clause. That clause simply provides for arbitration of disputes arising under the terms of the operating agreement. Kriti itself acknowledged in the arbitration that the question of whether ARP II should be judicially dissolved pursuant to the SC LLC Act was not before the arbitration panel.

As a result, the arbitration panel did not address or determine whether judicial dissolution of ARP II is warranted *pursuant to the statutory grounds set forth in § 33-44-801(4)(a)-(c) and (e) of the SC LLC Act*. That issue is now pending in Case No. 2009-CP-10-553 and needs to be decided by the Court. As set forth above, the statutory grounds are substantially different from and broader than the very limited grounds for dissolution listed in the ARP II Operating Agreement. Importantly, the grounds for dissolution listed in § 33-44-801(4) cannot be waived or varied by the parties in their operating agreement. See S.C. CODE ANN. § 33-44-103(b)(6) ("The operating agreement may not

vary the requirement to wind up the limited liability company's business in a case specified in [§] 33-44-801(3) or (4).").

On December 7, 2010, after the arbitrators issued their ruling in the 2010 arbitration proceeding, Emerald filed motions in Case No. 2009-CP-10-553 to dissolve the stay and to amend its Complaint in light of the arbitrator's findings issued on October 28, 2010. Those motions are now pending before the Court. Prior to filing the motions, Emerald's counsel had requested that counsel for ARP II and Kriti agree to a consent order lifting the stay in Case No. 2009-CP-10-553 so that the judicial dissolution claim can be adjudicated as soon as possible, but no response was received.

On February 1, 2011, after the New York arbitrators issued findings indicating that judicial dissolution of ARP II may be in the parties' best interests and after Kriti ignored Emerald's request to set aside the stay in Case No. 2009-CP-10-553 so that the judicial dissolution claim can be adjudicated, ARP II and Kriti then filed a Motion to Foreclose Judgment Lien in Case No. 2008-CP-10-2344. In their motion, ARP II and Kriti seek to foreclose on (*i.e.*, to sell off) Emerald's "distributional interest" in ARP II pursuant to S.C. CODE ANN. § 33-44-504.¹ Foreclosure on a member's distributional interest is a drastic remedy because it means that the member permanently loses all of the economic benefit of its membership interest, including the right to its share of the company's assets and properties at liquidation. As discussed above, ARP II's assets and properties are very valuable and were most recently appraised as being worth \$17.25 million.

¹ Pursuant to S.C. CODE ANN. § 33-44-504, ARP II and Kriti may not force a sale of Emerald's entire membership interest, but may only force a sale of Emerald's "distributional interest." See S.C. CODE ANN. § 33-44-504(b). Emerald's distributional interest "means all of a member's interest in distributions by the limited liability company." *Id.* § 33-44-101(6).

Because it is a drastic remedy, foreclosure on a member's distributional interest is discretionary, not mandatory, with the Court. See S.C. CODE ANN. § 33-44-504(b) ("The court *may* order a foreclosure of a lien on a distributional interest subject to the charging order" (emphasis added)). ARP II and Kriti argue that foreclosure of Emerald's distributional interest in ARP II is appropriate because ARP II has not made any distributions pursuant to the charging order to satisfy their money judgment. They further forecast that it does not appear likely that ARP II will make any distributions in the foreseeable future.

Kriti is attempting use the foreclosure process to defeat Emerald's action to dissolve ARP II because of Kriti's mismanagement of ARP II. Kriti now seeks to be rewarded for its mismanagement of ARP II (which it completely controls) by causing Emerald's distributional interest in ARP II to be involuntarily sold off because of ARP II's poor financial performance, which Kriti caused and has apparently rendered ARP II unable to make any distributions under the charging order. There is an inherent conflict of interest because Kriti (the beneficiary of the charging order) is able to manipulate the distributions from ARP II, which it controls. Kriti is also in exclusive custody and control of ARP II's financial information and records that are needed to determine the true financial condition of the company and to project its prospects of future success. As discussed in Emerald's pleadings in Case No. 2009-CP-10-553, Kriti has repeatedly failed or refused to produce ARP II's records and information to Emerald, despite numerous requests for same.

A judgment creditor who obtains a charging order against the debtor's distributional interest in an LLC ordinarily has no right to control or participate in the management of the company. As such, creditors usually have no say as to when, or in what amount, distributions are to be made by the company pursuant to the charging order. Because creditors usually have not control over the timing

and amount of distributions from the LLC, creditors cannot force an LLC to make distributions. In such situations, the charging order may be insufficient (and foreclosure of the debtor's distributional interest may be appropriate). For example, when the company continually reinvests its earnings instead of making distributions, foreclosure of the lien may be appropriate.

However, the present case is a unique situation. Here the judgment creditors are the LLC itself (ARP II) and the member with complete voting control of the LLC (Kriti). They have the ability to make distributions from the company when and in what amount they chose. Foreclosure is not appropriate because the previously issued charging order is sufficient to project the judgment creditors' interests and to satisfy the debt owed by Emerald.

Foreclosure on Emerald's distributional interest is also inappropriate because ARP II and Kriti are attempting to permanently divest Emerald of its share of ARP II's assets at a significantly lower price than fair value. Kriti is attempting to use the foreclosure process to sell off Emerald's 70% distributional interest in ARP II, which has assets last valued at \$17.25 million. The purchaser or transferee of a distributional interest at a foreclosure sale receives only the debtor's distributional interest and cannot exercise control over ARP II's management and business, unless Kriti consents. See S.C. CODE ANN. § 33-44-503(a) ("A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or all other members consent."); id. § 33-44-504(b) ("A purchaser at the foreclosure sale has the rights of a transferee."). Because a purchaser of Emerald's distributional interest must win Kriti's approval to have the ability to participate in the management of ARP II, there is obviously considerable risk involved for anyone (except Kriti) to acquire such an interest through a foreclosure sale. Therefore, there is no ready

market for such an interest. A foreclosure by judicial sale is, therefore, not the most appropriate way to sell Emerald's interest.

In Case No. 2009-CP-10-553, Emerald has requested the Court to dissolve ARP II. Emerald's claim for judicial dissolution of ARP II pursuant to § 33-44-801(a)-(c) and (e) of the SC LLC Act and its request for a membership interest buyout in Case No. 2009-CP-10-553 will render moot the need to foreclose on the judgment lien against Emerald's distributional interest in ARP II. ARP II and Kriti would be able to enforce their money judgment as part of the dissolution of ARP II or the buyout of either member's interest. Also, the lack of distributions from ARP II and the alleged likelihood that there will not be any distributions in the foreseeable future are directly caused by Kriti's mismanagement of ARP II and the facts and circumstances supporting Emerald's claim for judicial dissolution of ARP II.

It will be necessary for the Court to evaluate ARP II's financial condition, its assets and liabilities, and its expenditures to determine whether the company is truly unable to make distributions under the charging order as alleged by Kriti in Case No. 2008-CP-10-2344. The Court will likewise have to conduct the same analysis as part of Emerald's judicial dissolution claim in Case No. 2009-CP-10-553.

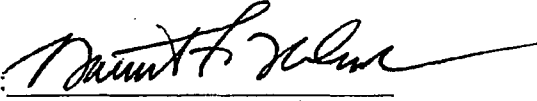
The common questions of law and similar evidence to be presented in each case makes the consolidation of these two cases imperative. This Motion will be supported by the documents on file or to be filed with this Court, the pleadings and attachments thereto, together with a memorandum of law to be filed with this Court.

WHEREFORE, Plaintiff Emerald Investments, LLC moves this Court for an Order consolidating the above-referenced actions for discovery purposes and for a joint hearing and/or trial

of all matters at issue and for such further relief as the Court may deem necessary.

Respectfully submitted,

ROSEN, ROSEN & HAGOOD, LLC

By: 

Richard S. Rosen

Daniel F. Blanchard, III

James A. Bruorton IV

134 Meeting Street, Suite 200

Post Office Box 893

Charleston, SC 29402

(843) 577-6726

ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina
March 10, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMERALD INVESTMENTS, LLC

Plaintiff,

VS.

ASHLEY RIVER PROPERTIES II, LLC;
KRITI RIPLEY, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-553

CERTIFICATE OF SERVICE

2011 MAR 10 PM 3:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I hereby certify that on this date, a copy of the Motion to Consolidate was served on counsel of record by depositing same in the U.S. mail, with sufficient first class postage affixed thereto, in the manner prescribed by the applicable SC Rules of Civil Procedure, and addressed as follows:

William C. Cleveland, Esquire
Buist, Moore, Smythe & McGee, P.A.
P. O. Box 999
Charleston, SC 29402

ROSEN ROSEN & HAGOOD, LLC

Daniel F. Blanchard, III
Attorney for Plaintiff

March 10, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KRITI RIPLEY, LLC and ASHLEY RIVER
PROPERTIES II, LLC,

Plaintiff,

v.

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008 -CP-10-2344FILED
2011 APR -4 PM 4:36
JULIE J. ARMSTRONG
CLERK OF COURTAFFIDAVIT OF DAVIDSON WILLIAMS
IN SUPPORT OF MOTION TO
FORECLOSE JUDGMENT LIEN

I, Davidson Williams, being first duly sworn, do say:

1. I am the managing member of Kriti Ripley, LLC ("Kriti"), a Delaware limited liability company. Kriti is the managing member of Ashley River Properties II, LLC ("ARP II"). Emerald Investments, LLC ("Emerald") is the other member of ARP II, and Mr. Stuart Longman ("Longman") is the managing member of Emerald. ARP II was formed to develop waterfront property in Charleston, SC.
2. In this action, Kriti and ARP II are judgment creditors seeking to collect a judgment against Emerald and Longman issued by the New York Supreme Court, New York County, on March 28, 2008 in the amount of \$1,184,581.72 plus post judgment interest (the "ARP II Judgment"). On October 17, 2008, this Court issued a Charging Order against Emerald's membership interest in ARP II. No monies have been paid by Emerald or Longman to Kriti or ARP II on the ARP II Judgment, and Kriti and ARP II have now moved to foreclose the charging order.
3. Last year, Emerald and Kriti brought various claims in arbitration against each other pursuant to the arbitration clause of the ARP II operating agreement. The arbitration

proceedings were conducted in New York. On October 28, 2010, the arbitrators issued a final award which determined, among other things, that:

- a. Emerald continues to own 70% of the membership interest of ARP II and Kriti continues to own 30% of the membership interests of ARP II;
- b. The various loans made by Kriti's affiliates to ARP II shall be treated as loans to ARP II and shall not be recast as equity; and
- c. Neither Kriti nor ARP II committed corporate waste or engaged in any misconduct which would support a finding of fact requiring dissociation, dissolution, or an award to Emerald of damages.

A copy of this award (the "Arbitration Award") is attached as Exhibit A.

4. On November 19, 2010, Kriti, through its New York counsel Mr. Charles Rosenzweig, wrote to Emerald's New York counsel, Mr. Robert Ward, and offered to confirm the Arbitration Award on consent. A copy of Mr. Rosenzweig's November 19 letter to Mr. Ward is attached as Exhibit B. Neither Mr. Ward nor Emerald have responded to this offer.

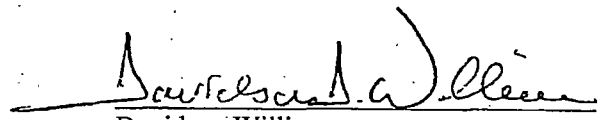
5. Late last year, I learned that another judgment creditor had commenced proceedings in Connecticut against Longman and Emerald to collect a judgment issued on July 1, 1996 by the New York Supreme Court, Albany County, in the matter of Robert J. McKay v. Stuart Longman, Index No. 6253-90 (the "1996 McKay Judgment"). The 1996 McKay Judgment, which arises out of an affirmative fraud and concealment action against Longman, orders Longman to pay damages of \$3,964,046, including actual and punitive damages, pre-judgment interest, and costs. A copy of the 1996 McKay Judgment is attached hereto as Exhibit C.

6. In his complaint dated September 30, 2010, a copy of which is attached as Exhibit D, Mr. McKay alleges that no amounts have been paid by Longman on account of the 1996 McKay Judgment and that, with post-judgment interest, the total amount due and owing under that judgment is now \$9,017,392 as of the complaint date. Mr. McKay names as party-defendants not only Longman, but also a Longman Family Trust and 20 business entities owned or

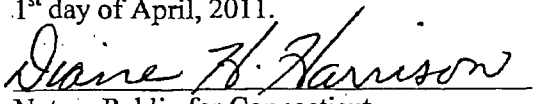
controlled by Longman, including Emerald. Mr. McKay seeks to enforce the 1996 McKay Judgment against the various defendants, including Emerald, under 8 counts of constructive trust, fraudulent transfer, and piercing of the corporate veil.

7. Emerald and/or Longman are also defendants in the following other recently filed collection actions in Connecticut: Sharpe Electronics Co. v. Solaire Development LLC et al, CV 10-5008729-S; NEFCO v. Emerald Investments LCC et al, CV 11-5035312-S; and Berkshire Bank v. Stuart Longman et al, CV 11-5008914-S. According to court records, plaintiffs in each action have applied for pre-judgment remedies against Emerald and/or Longman.

8. The pending Connecticut actions against Emerald and Longman are of great concern to Kriti and ARP II. The ARP II Judgment is now 3 years old and no monies have been paid on it. With accrued post-judgment interest, the amount due is approaching \$1.5 million. It is vital in the current business environment that ARP II liquidate this judgment as soon as possible.


Davidson Williams

SWORN to before me this
1st day of April, 2011.


Diane H. Harrison
Notary Public for Connecticut
My Commission Expires: 8/31/2011

08-2344

CERTIFICATE OF SERVICE

I do hereby certify that on the 4th day of April, 2011, I served a copy of the within *Affidavit of Davidson Williams* on Counsel of Record in the within entitled matter by hand delivering a copy of the same to:

Richard S. Rosen, Esquire
Rosen Rosen & Hagood, LLC
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29402

BUIST MOORE SMYTHE MCGEE P.A.

Christine Eadie

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 APR -4 PM 4:36

FILED

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS

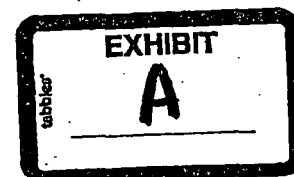
We, the undersigned arbitrators, having been designated pursuant to Article 12.18 of the operating agreement, dated as of December 29, 2003, by and among Kriti Ripley, LLC ("Kriti"), Emerald Investments, LLC ("Emerald") and Ashley River Properties II, LLC ("Company") ("hereinafter "Operating Agreement"), and, during July, 2010, the Arbitrators (hereinafter sometimes referred to as "Panel"), each having been duly sworn, held six duly noticed hearing days pertaining to the within matter, during which time the Panel heard evidence and admitted various exhibits in furtherance of the position of both Emerald and Kriti, and, the parties having submitted post hearing briefs and reply briefs, and, having read the briefs and ancillary submissions, do hereby FIND and AWARD as follows:

This arbitration arises from a dispute between the only two members of the Company which was formed to own and develop waterfront property located in Charleston, South Carolina. This dispute has its genesis in 2005 when the principal of Emerald, Stuart Longman, admittedly, diverted funds from the Company contrary to the Operating Agreement. As a consequence, Kriti commenced an arbitration to strip Emerald of its voting rights in accordance with the Operating Agreement. As a result, Emerald, which held a 70% membership interest in the Company, lost all of its voting rights, leaving Kriti, which held the remaining 30% membership in the Company, with the sole right to manage the Company and as the sole voting member of the Company.

Thereafter, the parties engaged in a continuous series of litigations and arbitrations, spanning three states, to further each of their interests. The initial arbitration affirmed Emerald's loss of voting rights and awarded Kriti certain moneys arising from the diversion of Company funds (JE 47). The initial award denied the remedy of forfeiture and held that Kriti could exercise its right to acquire the interests of Emerald for Emerald's cost as set forth on the books of the Company as provided in the Operating Agreement (JE52, Article 13.02). Due to the manner in which the Operating Agreement provided for a buy out of the interests of each member, the arbitrators did not need to address whether or not Emerald's membership interests were reduced from 70% to something less. During the initial arbitration and, consistently thereafter, Emerald took the position that it continued to own a 70% interest in the Company and Kriti took the position that Emerald's interests had been diluted.

Thereafter, Kriti commenced a second arbitration to recover moneys due from Emerald arising from its diversion of funds and for legal fees. That arbitrator, by an award, dated June 22, 2006, awarded Kriti legal fees and damages (JE 48). Kriti then moved to confirm both awards in the Supreme Court of the State of New York, New York County. In February, 2008, both awards were affirmed by the Hon. Ira Gammerman, Judicial Hearing Officer (JE 49). In a separate action, Emerald sought a judicial determination, also in the Supreme Court of the State of New York, that Kriti's right to acquire Emerald's interest in the Company had expired, which motion was granted in 2009.

In 2009, Emerald commenced an action in the Court of Common Pleas for the Ninth Judicial Circuit, sitting in Charleston, South Carolina, to dissolve the Company and to declare that Kriti owned 70% of the Company ("South Carolina Dissolution Action"). The Court, in that proceeding, explicitly held that "the suit is based on events (e.g. ...the alleged dilution of Emerald's interest...) that occurred after the New York arbitration. Therefore, the current claims are not barred by *res judicata* or collateral estoppel (JE... at 21)."



AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

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 Emerald Investments, LLC ("Emerald")
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AWARD OF ARBITRATORS CONTINUED

When the parties realized that the determination of Emerald's membership interest was properly the subject of arbitration pursuant to Article 12.18 of the Operating Agreement, they agreed to stay the South Carolina Dissolution Action and proceed with arbitration in New York on the issue of Emerald's membership interest (JE 536). The consent order of the South Carolina Court also provided:

"The parties further stipulate and agree that the findings of the above-referenced New York arbitration, upon confirmation of the award, shall be admissible in and binding upon the parties in any action (including, but not limited to, this action) seeking an order of judicial dissolution of ARP II (the Company)."

Emerald then commenced the within arbitration, seeking, in part: (i) a declaration that Emerald owns 70% of the membership interests of the Company, (ii) a finding that the amounts contributed as loans by affiliates of Kriti should be treated as equity and not debt on the books of the Company, (iii) an order expelling Kriti from the Company, (iv) an injunction preventing Kriti from violating the Operating Agreement, (v) damages, and (vi) costs of the arbitration, including legal fees. Kriti answered and denied the material allegations contained in the arbitration demand and sought relief of its own: (i) dismissal of the arbitration, (ii) forfeiture of Emerald's interests in the Company, pursuant to South Carolina law, (iii) confirmation that Emerald holds a 21.3% interest in the Company, (iv) a determination of the amount of long term liabilities on the books of the Company, and (v) costs and expenses of this proceeding, including legal fees.

Ownership Interests

Based upon the evidence adduced at the hearing, We find that the Capital Call, dated February 28, 2005 (JE 115) ("Capital Call") was defective on its face and, thus, ineffective to trigger a dilution of Emerald's membership interests. The Capital Call imposed conditions on the application of Emerald's capital contribution which were contrary to the terms of the Operating Agreement. Accordingly, We find that Emerald continues to own a 70% interest in the Company and Kriti continues to own a 30% interest. This holding does not impact, however, the finding that Kriti continues to be the sole member with voting rights as determined by the initial arbitration and affirmed by J.H.O. Gammerman (JE 47 at 11).

The Panel finds that Emerald is not precluded by either the statute of limitations or *res judicata* from seeking the relief requested herein. J.H.O. Gammerman's decision, dated February 15, 2008, was settled by a judgment, dated April 2, 2008. Sometime in 2009, Emerald commenced the South Carolina Dissolution Action to declare that it held a 70% interest in the Company, well within the three year statute of limitations for such proceedings applicable under South Carolina law. Through every litigation and arbitration, over five years, Emerald has sought to affirm its 70% owner of the Company, thus tolling any statute of limitations.

Loans as Equity and Not Debt

The Panel finds that Kriti and its affiliates loaned to the Company the sum of \$7,493,077.35, as set forth on the Company balance sheet, dated as of March 31, 2010 (JE 104) ("Financial Statement"). These loans were not disputed by Emerald. Rather, Emerald seeks to have these loans treated as equity claiming that the loans

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

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AWARD OF ARBITRATORS CONTINUED

were disguised equity contributions as they were not arm's length loans and did not have the indicia of debt. We find the cases cited by Emerald unpersuasive to reclassify these loans as equity contributions.

Moreover, Article 5.2 of the Operating Agreement provides for members to loan money to the Company:

Notwithstanding anything herein to the contrary, the following major decisions shall require the written approval of the Member who own the Required Interest of the Voting Rights in the Company: ...

(i) The borrowing of money for Company purposes and, if security is required therefore, the granting of any security interest in all or any portion of Company Property.

(q) Entering into any loan agreement or execution and delivery any note, mortgage, deed of trust guaranty, indemnity or other instrument or agreement in connection with any borrowing, or any amendment, supplement, extension or modification thereto, whether in connection with any existing or future borrowing or debt.

(JE 52, Article 52.)

Thus, We find that loans to the Company from the Kriti affiliates and Davidson Williams should be treated as loans.

Dissolution of the Company and Dissociation

We find no basis to dissociate Kriti or Emerald from the Company or to dissolve the Company despite the fact that dissolution may be in the best interests of all parties. The Operating Agreement explicitly states the basis for dissolution:

9.1. Except as otherwise provided herein, the Company shall dissolve... only upon the happening of one or more the following events:

(a) written consent of the members who own the Required Interest of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality with ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate of administratively dissolving the Company...

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
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AWARD OF ARBITRATORS CONTINUED

(d) The expiration of the period fixed for the duration of the Company...

The Panel finds that none of these events has occurred and, thus, the parties have not provided sufficient facts for the Arbitrators to render a fact finding authorizing dissolution.

The Operating Agreement also fails to provide a basis for dissociation, as dissociation may be supported only upon the finding of three events:

"(a) Withdrawing, retiring or resigning from the Company with the consent of those Members who own the Required Voting Rights in the Company.

(b) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him or it (sic) which is not dismissed within ninety (90) days.

(c) Any event of Wrongful Dissociation set forth in 10.5 of this Agreement."

Article 10.5 of the Operating Agreement sets forth the basis for wrongful dissociation. The parties did not present sufficient evidence to justify a finding of the extreme remedies of dissociation or forfeiture of either member's membership interests in the Company.

Article 10.5(b)(iii) provides that dissociation may be found where a member engages in "conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member." While the Panel observes that Kriti and Emerald cannot work together in any constructive manner, the business of the Company is the development of the waterfront property and, should the Company elect not to dissolve, Kriti may proceed with its business operations.

Nor did the Panel hear sufficient evidence to find corporate waste by Kriti or commission of any act which would justify enjoining Kriti from violating any provision of the Operating Agreement. The decisions to construct a bulkhead, dredge the canal and construct the out building were well within the business judgment of Kriti as managing member, and the application of funds by the Company was, also, well within reasonable business efforts to manage a complex piece of waterfront property. Kriti had envisioned a luxury development and these expenditures fell within that reasonable vision. Emerald's evidence was, at best, the observations of Stuart Longman who believed that he could develop the property better; but the decisions of Kriti did not constitute waste nor 'wrongful conduct that adversely and materially affected the Company's business..." Nor did Kriti's conduct constitute "... a material breach of [the Operating Agreement] or a duty owed to the Company or the other Members under Section 22-44-409 of the Act." Operating Agreement, Article 10.5(b).

Accordingly, the Panel Awards as follows:

1. Emerald is found to continue to own 70% of the membership interests in the Company and Kriti continues to own 30% of the membership interests.

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
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AWARD OF ARBITRATORS CONTINUED

2. The loans by Kriti's affiliates to the Company shall be treated as loans to the Company and shall not be recast as equity. The amount of the loans are found to be those set forth in the Financial Statement, as the amounts of the loans were not disputed by the parties.
3. Neither Kriti nor the Company committed corporate waste or engaged in any misconduct which would support a finding of fact requiring dissociation, dissolution or an award to Emerald of damages; and, thus, to the extent that the Panel is empowered to opine on the request for dissociation, dissolution or damages against Kriti, such request is denied.
4. Emerald did not commit sufficient acts to support a finding of dissociation, and, to the extent that the Panel is empowered to opine on the request for dissociation of Emerald, such request for relief is denied.
5. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture.
6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
8. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally. Therefore, Kriti shall reimburse Emerald the sum of \$59,527.74, representing that portion of said fees in excess of the apportioned costs previously incurred by Emerald.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

10/28/2010

Date

10/28/2010

Date

E. Leo Milonas

Peter L. Altieri

Peter L. Altieri

David M. Rubin

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")
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AWARD OF ARBITRATORS CONTINUED

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4. Emerald did not commit sufficient acts to support a finding of dissociation, and, to the extent that the Panel is empowered to opine on the request for dissociation of Emerald, such request for relief is denied.
5. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture.
6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
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10/28/10
 Date

Date

Date

E. Leo Milonas

Peter L. Alder

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
Emerald Investments, LLC ("Emerald")
and
Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, H. Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/28/10
Date


H. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
Emerald Investments, LLC ("Emerald")
and
Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, E. Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

E. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/28/2010
Date

Peter L. Altieri
Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/29/2010
Date

David M. Rubin
David M. Rubin

RAND ROSENZWEIG RADLEY & GORDON LLP

ATTORNEYS AT LAW

50 MAIN STREET

WHITE PLAINS, N.Y. 10606

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CHARLES O. CAMPBELL
RESIDENT COUNSEL

Writer's Extension: 202
Writer's E-Mail Address:
crosenzweig@randrose.com

November 19, 2010

VIA FACSIMILE AND MAIL

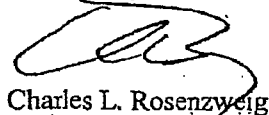
Robert J. Ward, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, N.Y. 10022

Re: *Emerald Investments, LLC and Kriti Ripley, LLC*
AAA Case No. 13 115 00216 10

Dear Bob:

As you know, on October 28, 2010, the arbitrators in the above-referenced case issued their award. By now the parties should have had sufficient time to evaluate the award and decide whether to accept or contest it. If Emerald agrees to accept the award, we should be able to arrange with you to confirm the award on consent, and thereby avoid further protracted litigation in a confirmation process. Please let us know by the end of the month whether your client intends to accept or contest the award.

Very truly yours,



Charles L. Rosenzweig

cc: Davidson D. Williams.

Exhibit B



STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

ROBERT J. MCKAY and
WHITFIELD DEVELOPMENT CORP.,

Plaintiffs,

JUDGMENT

Index No.:6253-90
RJI No.:0191-026570

- against -

STUART LONGMAN,

Defendants.

OFFICE OF
ALBANY COUNTY CLERK
ALBANY, N.Y.
JUL 10 3 19 PM '96

The issues in this action having come on for trial without a jury before the Hon. Robert C. Williams, Judicial Hearing Officer, and the case having been tried on November 16, 1995 and February 7, 1996, and the Court having heard the proof and the allegations of the parties, the plaintiff, Robert J. McKay, having appeared by Dreyer Boyajian LLP, William J. Dreyer of counsel, and the defendant, Stuart Longman, having appeared by Tate, Bishko & Wasson, Peter Bishko and James Trainor of counsel, and the Court, after due deliberation and after having signed and filed its Findings of Fact and Conclusions of Law herein dated June 13, 1996 and directing that judgment be entered in favor of the plaintiff Robert J. McKay, and the Court having found that as a result of the defendant Stuart Longman's secretly obtaining the June 13, 1990 mortgage from Home and City Savings Bank, Albany, New York, and converting \$625,000 of mortgage proceeds to his own use, and subsequently renegotiating in bad faith the terms of a shareholder's agreement between him and plaintiff Robert J. McKay, and taking other and further affirmative

EXHIBIT

C

and passive steps to conceal the mortgage from McKay, plaintiff Robert J. McKay has lost \$750,000 together with those amounts due as interest from June 13, 1990, it is hereby;

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Defendant Longman's misrepresentations to plaintiff McKay of the status of the subject mortgage constituted affirmative fraud against plaintiff McKay;
2. Defendant Longman's efforts to secretly procure and his failure to disclose to plaintiff McKay the subject mortgage and his further conversion of funds constituted fraud by concealment against plaintiff McKay;
3. Defendant Longman's conduct with respect to the subject mortgage and contract negotiations with McKay was gross, wantoned, and willful;
4. Plaintiff McKay is entitled to and shall recover from defendant Longman actual damages in the amount of \$750,000 together with interest thereon from June 13, 1990, in the amount of \$511,546.86 for the total sum of \$1,261,546.86, together with any and all disbursements or costs of plaintiff to be taxed by the Clerk of this Court and any other interest accruing on and after the date of this judgment;
5. In addition thereto, plaintiff is entitled to and shall recover from defendant Longman the sum of \$2,702,500 as and for punitive damages with interest accruing thereon from the date of entry of this judgment; and
6. Any and all claims or counterclaims by defendant Longman against plaintiffs McKay or Whitfield in the within action shall be and hereby are dismissed.

JUDGMENT signed this 13th day of July, 1996.

151 Robert C. Williams

HON. ROBERT C. WILLIAMS

Judicial Hearing Officer

28698

EXHIBIT B

Notice of Filing of
Foreign Judgment

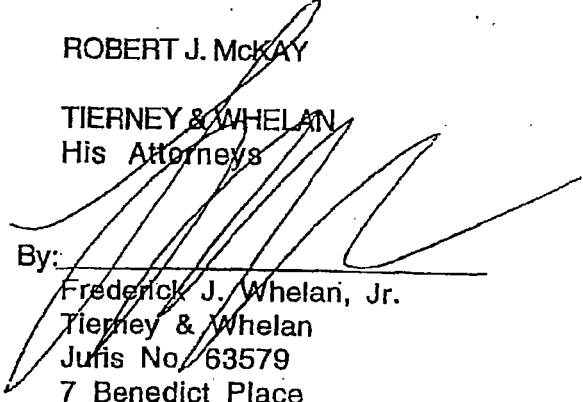
TO: Stuart Longman
424 West Mountain Road
Ridgefield, Connecticut 06877

You are hereby notified that on September 10, 1996, the undersigned judgment creditor filed the attached Certification of Foreign Judgment and Certified Copy of the Foreign Judgment in the Superior Court for the State of Connecticut, Judicial District of Stamford/Norwalk at Stamford, 123 Hoyt Street, Stamford, Connecticut 06905.

Dated at Greenwich, Connecticut, this 12th day of September, 1996.

ROBERT J. MCKAY

TIERNEY & WHELAN
His Attorneys

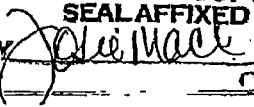
By: 

Frederick J. Whelan, Jr.
Tierney & Whelan
Jusis No. 63579
7 Benedict Place
P.O. Box 541
Greenwich, CT 06836-0541
(203) 661-9440

STATE OF CONNECTICUT
SUPERIOR COURT
JUDICIAL DISTRICT OF
STAMFORD/NORWALK

AUG 27 2010

CERTIFIED COPY
SEAL AFFIXED

BY: 

Notice

102

SEP 27 10 28 AM '96
JUDICIAL DISTRICT OF STAMFORD/NORWALK
CLERK OF COURT

DOCKET NO. CV 96 01544125

ROBERT J. McKAY and
WHITFIELD DEVELOPMENT CORP.

v.

STUART LONGMAN

SUPERIOR COURT

JUDICIAL DISTRICT OF
STAMFORD/NORWALK
AT STAMFORD

August 29 , 1996

CERTIFICATION OF FOREIGN JUDGMENT

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD

ss: Greenwich

August 29 , 1996

ROBERT J. McKAY, having been duly sworn, hereby deposes and states as follows:

1. I am over the age of eighteen (18) years, and understand and believe in the obligations of an oath.

2. Attached is a certified copy of a foreign judgment of which I am a judgment creditor.

3. I hereby certify as follows:

(a) The judgment was not obtained by default in appearance or by confession of judgment;

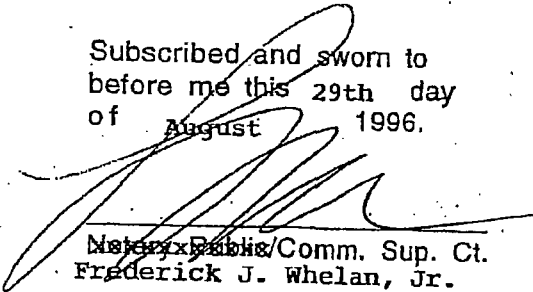
(b) The judgment is unsatisfied in whole;

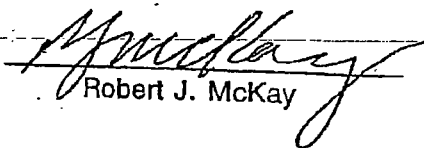
(c) The amount remaining unpaid on the judgment is \$3,964,046.86;

(d) Enforcement of the judgment has not been stayed;
and

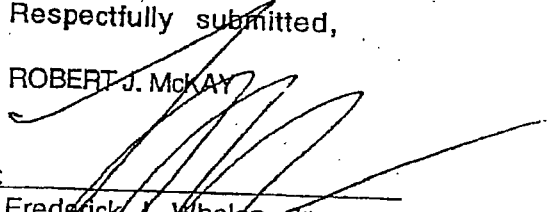
(e) The name and last-known address of the judgment debtor are: Stuart Longman, 424 West Mountain Road, Ridgefield, Connecticut; 06877.

Subscribed and sworn to
before me this 29th day
of August 1996.

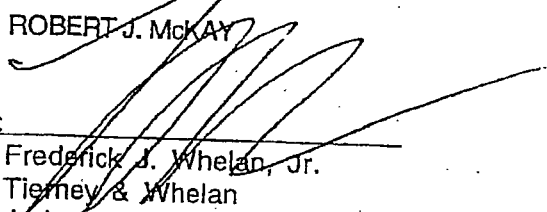

~~Notary Public~~ Comm. Sup. Ct.
Frederick J. Whelan, Jr.


Robert J. McKay

Respectfully submitted,

ROBERT J. MCKAY


By:


Frederick J. Whelan, Jr.
Tierney & Whelan
Juris No. 63579
7-Benedict Place
P.O. Box 541
Greenwich, CT 06836-0541
(203) 661-9440

SUMMONS - CIVIL

JD-CV-1 Rev. 10-09
C.G.S. §§ 51-346, 51-347, 51-349, 51-350, 52-45a,
52-48, 52-259, P.B. Secs. 3-1 through 3-21, B-1

**STATE OF CONNECTICUT
SUPERIOR COURT**

www.jud.ct.gov

See page 2 for instructions

- ☐ "X" if amount, legal interest or property in demand, not including interest and costs is less than \$2,500.
☒ "X" if amount, legal interest or property in demand, not including interest and costs is \$2,500 or more.
☐ "X" if claiming other relief in addition to or in lieu of money or damages.

TO: Any proper officer, BY AUTHORITY OF THE
STATE OF CONNECTICUT, you are hereby
commanded to make due and legal service of
this Summons and attached Complaint.

Address of court clerk where writ and other papers shall be filed (Number, street, town and zip code) (C.G.S. §§ 51-346, 51-350)		Telephone number of clerk (with area code)	Return Date (Must be a Tuesday)
123 Hoyt Street, Stamford, CT 06905		(203) 965-5307	October 26, 2010 Month Day Year
☒ Judicial District	☐ G.A. Number	At (Town in which writ is returnable) (C.G.S. §§ 51-346, 51-349)	Case type code (See list on page 2)
☐ Housing Session		Stamford	Major: M Minor: 50

For the Plaintiff(s) please enter the appearance of:

Name and address of attorney, law firm or plaintiff if self-represented (Number, street, town and zip code)	Juris number (to be entered by attorney only)
James R. Fogarty, Fogarty Cohen Selby & Nemiroff, LLC, 88 Field Point Road, Greenwich, CT 06830	018292
Telephone number (with area code)	Signature of Plaintiff (if self-represented)
(203) 629-7351	

Number of Plaintiffs: 1 Number of Defendants: 23 ☒ Form JD-CV-2 attached for additional parties

Parties	Name (Last, First, Middle Initial) and Address of Each party (Number, Street, P.O. Box, Town, State, Zip, Country, if not USA)	
First Plaintiff	Name: Robert J. McKay, 73 Weaver Street, Greenwich, CT 06830	P-01
Additional Plaintiff	Name: Address:	P-02
First Defendant	Name: Address: Stuart L. Longman, 424 West Mountain Road, Ridgefield, CT 06877	D-50
Additional Defendant	Name: Address: Sapphire Development, LLC, 424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT 06877	D-51
Additional Defendant	Name: Address: Emerald Investments, LLC, 424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT 06877	D-52
Additional Defendant	Name: Address: 55 Post Road West Management Company, Inc., 424 West Mountain Road, Ridgefield, CT Agent for Service: Stuart L. Longman, 424 West Mountain Road, Ridgefield, CT 06877	D-53

Notice to Each Defendant

- YOU ARE BEING SUED. This paper is a Summons in a lawsuit. The complaint attached to these papers states the claims that each plaintiff is making against you in this lawsuit.
- To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address on or before the second day after the above Return Date. The Return Date is not a hearing date. You do not have to come to court on the Return Date unless you receive a separate notice telling you to come to court.
- If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default. The "Appearance" form may be obtained at the Court address above or at www.jud.ct.gov under "Court Forms."
- If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately contact your insurance representative. Other action you may have to take is described in the Connecticut Practice Book which may be found in a superior court law library or on-line at www.jud.ct.gov under "Court Rules."
- If you have questions about the Summons and Complaint, you should talk to an attorney quickly. The Clerk of Court is not allowed to give advice on legal questions.

Signed (Sign and "X" proper box)	☒ Commissioner of the Superior Court ☐ Assistant Clerk	Name of Person Signing at Left James R. Fogarty	Date signed 9/29/10
If this Summons is signed by a Clerk: a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts. b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law. c. The Clerk is not permitted to give any legal advice in connection with any lawsuit. d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service of the Summons or Complaint.			For Court Use Only
I certify I have read and understand the above:	Signed (Self-Represented Plaintiff)	Date	File Date
Name and address of person recognized to prosecute in the amount of \$250 Frances Fogarty, 2 Cardinal Road, Greenwich, CT 06830			Docket Number
Signed (Official taking recognition; "X" proper box)	☒ Commissioner of the Superior Court ☐ Assistant Clerk	Date 9/29/10	

(Page 1 of 3)



**CIVIL SUMMONS
CONTINUATION OF PARTIES**

JD-CV-2 Rev. 12-89

FIRST NAMED PLAINTIFF (Last, First, Middle Initial)

McKay, Robert J.

FIRST NAMED DEFENDANT (Last, First, Middle Initial)

Longman, Stuart L.

ADDITIONAL DEFENDANTS

NAME (Last, First, Middle Initial, if individual)

ADDRESS

R.I.P.P. Corp.	424 West Mountain Road, Ridgefield, CT c/o Agent for Service: Stuart L. Longman, 424 West Mountain Road, Ridgefield, CT
Chatham Haste LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Stuart L. Longman, Trustee of Stuart Longman Family Trust	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Trustee, 424 West Mountain Road, Ridgefield, CT
60 SRA Management, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Shelter Rock Enterprises I, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
60 Shelter Rock Associates, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Shelter Rock Development Associates, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
2 Great Pasture Road Associates, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Lurie Investments, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Parcelle Development, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Solaire Development, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Solaire Tenant, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT
Solaire Management, LLC	424 West Mountain Road, Ridgefield, CT c/o Stuart L. Longman, Manager, 424 West Mountain Road, Ridgefield, CT

RET. DATE: OCTOBER 26, 2010 : SUPERIOR COURT
 ROBERT J. McKAY : JUDICIAL DISTRICT OF
 : NORWALK/STAMFORD
 v. _____

STUART L. LONGMAN, INDIVIDUALLY AND : AT STAMFORD
 AS TRUSTEE OF THE LONGMAN FAMILY :
 TRUST DATED JANUARY 15, 2000; ET. AL : SEPTEMBER 30, 2010

COMPLAINT

FACTS:

A. The Individual Parties

1. The Plaintiff Robert J. McKay ("McKay") is an individual residing at 73 Weaver Street, Greenwich, Connecticut.
2. The Defendant Stuart L. Longman ("Longman") is an individual residing at 424 West Mountain Road, Ridgefield, Connecticut (the "Longman Residence").

B. The Plaintiff's Judgment Against Longman, Based Upon Longman's Affirmative Fraud and Concealment

3. In or about 1990, McKay commenced an action against Longman in the Supreme Court of the State of New York, County of Albany captioned *Robert J. McKay and Whitfield Development Corp. v. Stuart Longman*, No. 6253-90 (the "Lawsuit") seeking actual and punitive damages in connection with, among other things, Longman's illegal conversion of \$625,000 in mortgage proceeds which he obtained by secretly procuring a mortgage for his own use in the name of Whitfield Development Corporation, a company formed and owned by McKay and Longman.

4. After a bench trial, the trial court found that Longman's conduct constituted an affirmative fraud against McKay, fraud by concealment, and that certain of Longman's conduct was gross, wanton and willful. On or about July 1, 1996, the court rendered a judgment in the Lawsuit in McKay's favor (and against Longman), ordering Longman to pay damages in the amount of \$3,964,046.86, including prejudgment interest and punitive damages, plus post-judgment interest (the "Judgment"). A true and accurate copy of the Judgment is incorporated as Exhibit A.

5. Notice of Entry of the Judgment was served on Longman on or about July 10, 1996.

6. On or about September 10, 1996, McKay, as judgment creditor, filed a Certification of Foreign Judgment and Certified Copy of the Foreign Judgment in the Connecticut Superior Court, Judicial District of Stamford/Norwalk, a copy of which was served on Longman at the Longman Residence. A true and accurate copy of such document is incorporated as Exhibit B.

7. Again, on or about September 25, 2006, McKay as judgment creditor, filed a Certification of Foreign Judgment and Certified Copy of the Foreign Judgment in the Connecticut Superior Court Judicial District of Stamford/Norwalk, a copy of which was served on Longman at the Longman Residence. A true and accurate copy of such document is incorporated as Exhibit C.

8. To date, the Judgment is totally unpaid and unsatisfied, and Longman owes McKay \$9,017,392.30 as of September 29, 2010, plus \$977.44 interest per

diem thereafter, in accordance with New York Civil Practice Law and Rules §§ 5002-5004 and Connecticut General Statutes § 52-604 *et seq.*

C. The Longman Entities

9. Shortly after entry and certification of the Judgment, Longman embarked upon a pattern of creating limited liability companies, corporations and a trust, each of which he has completely dominated and controlled, not only of finances but of policy and business practices, so that they have had and continue to have no separate mind, will or existence, for the fraudulent purpose of hiding his assets and income (collectively, the "Longman Entities").

10. The Longman Entities have such a unity of interest and ownership with Longman that their independence ceased or never began, and adherence to the fiction of maintaining a separate entity would defeat justice and equity by permitting Longman to escape payment of the Judgment out of the operation of the entities for the benefit of Longman's whole enterprise.

11. Through his creation, control of and complete domination over the Longman Entities, Longman, directly or indirectly, has received and continues to receive income through the Longman Entities and has received and controlled and continues to receive and control assets in the names of the Longman Entities, evading creditors such as McKay and legal obligations such as the Judgment.

12. Longman controls the Longman Entities and, directly or indirectly, uses or utilizes their assets and/or income for his own purposes to evade creditors, such as the Plaintiff.

1. The Westport Management Company

13. The Defendant 55 Post Road West Management Company, Inc. (the "Westport Management Company") is a corporation incorporated under the laws of the State of Connecticut in or about December 1996 which has maintained its business address at the Longman Residence.

14. At all relevant times, Longman and his wife, Gayla G. Longman, have been Officers and/or Directors of the Westport Management Company.

15. At all relevant times, Longman, directly or indirectly, has been a majority shareholder of the Westport Management Company.

16. At all relevant times, Longman, directly or indirectly, has controlled the Westport Management Company.

2. RIPP

17. The Defendant R.I.P.P. Corp. ("RIPP") is a corporation incorporated under the laws of the State of Connecticut in or about December 1996 which has maintained its business address at the Longman Residence.

18. At all relevant times, Longman and his wife, Gayla G. Longman, have been Officers and/or Directors of RIPP.

19. At all relevant times, Longman, directly or indirectly, has been a majority shareholder of RIPP.

20. At all relevant times, Longman, directly or indirectly, has controlled RIPP.

3. Chatham Haste

21. The Defendant Chatham Haste LLC ("Chatham Haste") is a limited liability company organized under the laws of the State of Connecticut in or about 1997 which has maintained its business address at the Longman Residence.

22. At all relevant times, Longman has been the Manager of Chatham Haste.

23. At all relevant times, Longman, directly or indirectly, has been a Member of Chatham Haste with a majority ownership interest therein.

24. At all relevant times, the only member(s) of Chatham Haste other than Longman has been a member of his family or one or more of the other Longman Entities.

25. At all relevant times, Longman, directly or indirectly, has controlled Chatham Haste.

4. Longman Trust

26. The Defendant Stuart L. Longman, Trustee purports to be Trustee of the Stuart Longman Family Trust dated January 15, 2000 (the "Longman Trust").

27. All assets held by the Longman Trust were transferred to it by Longman, directly or indirectly.

5. Sapphire

28. The Defendant Sapphire Development, LLC ("Sapphire") is a limited liability company organized under the laws of the State of Connecticut in or about 2000 which has maintained its business address at the Longman Residence.

29. At all relevant times, Longman has been the Manager of Sapphire.

30. At all relevant times, Longman, directly or indirectly, has been a Member of Sapphire with a majority ownership interest therein.

31. At all relevant times, the only member of Sapphire other than Longman has been Defendant Emerald Investments, LLC ("Emerald").

32. At all relevant times, Longman, directly or indirectly, has controlled Sapphire.

33. Sapphire is the successor by Plan of Merger consummated in 2006 between itself and Highland Connecticut Investment, LLC ("Highland").

34. Highland was a limited liability company organized under the laws of the State of Connecticut in or about 2001 which maintained an address at the Longman Residence.

35. Until consummation of the Plan of Merger, Longman had been the Manager of Highland.

36. Until consummation of the Plan of Merger, Longman, directly or indirectly, had been a Member of Highland with a majority ownership interest therein.

37. Until consummation of the Plan of Merger, the only member of Highland other than Longman had been Emerald.

38. Until consummation of the Plan of Merger, Longman, directly or indirectly, had controlled Highland.

39. Highland has ceased to exist and all property, assets, powers, privileges and obligations of Highland now belong to Sapphire.

6. Emerald

40. Emerald is a limited liability company organized under the laws of the State of Connecticut in or about 2000 which has maintained its business address at the Longman Residence.

41. At all relevant times, Longman has been the Manager of Emerald.

42. At all relevant times, Longman directly or indirectly, has been a Member of Emerald with a majority ownership interest therein.

43. At all relevant times, Longman, directly or indirectly, has controlled Emerald.

7. 60 SRA

44. The Defendant 60 SRA Management, LLC ("60 SRA") is a limited liability company organized under the laws of the State of Connecticut in or about 2004 which has maintained its business address at the Longman Residence.

45. At all relevant times, Longman has been the Manager of 60 SRA.

46. At all relevant times, Longman, directly or indirectly, has been a Member of 60 SRA with a majority ownership interest therein.

47. . At all relevant times, the only member(s) of 60 SRA other than Longman has been a member of his family or one or more of the other Longman Entities.

48. At all relevant times, Longman, directly or indirectly, has controlled 60 SRA.

8. Shelter Rock Enterprises

49. The Defendant Shelter Rock Enterprises I, LLC ("Shelter Rock Enterprises") is a limited liability company organized under the laws of the State of Connecticut in or about 2006 which has maintained its business address at the Longman Residence.

50. At all relevant times, Longman has been the Manager of Shelter Rock Enterprises.

51. At all relevant times, Longman, directly or indirectly, has been a Member of Shelter Rock Enterprises with a majority ownership interest therein.

52. At all relevant times, the only member(s) of Shelter Rock Enterprises other than Longman has been a member of his family or one or more of the other Longman Entities.

53. At all relevant times, Longman, directly or indirectly, has controlled Shelter Rock Enterprises.

54. On or about July 25, 2006, for consideration in the amount of \$3,001,000, Shelter Rock Enterprises acquired fee simple title to certain real property known as 60 Shelter Rock Road in the City of Danbury, County of Fairfield and State

of Connecticut by Warranty Deed recorded in the Danbury Land Records in Book 1870, page 116.

55. On the same date, July 25, 2006, Longman, purporting to act as Manager/Member of Shelter Rock Enterprises, transferred title to 60 Shelter Rock Road to 60 Shelter Rock Associates, LLC ("Shelter Rock Associates") by Quit Claim Deed recorded in the Danbury Land Records in Book 1870, page 120.

56. No conveyance tax was paid on behalf of Shelter Rock Enterprises in connection with said transfer.

9. Shelter Rock Associates

57. The Defendant 60 Shelter Rock Associates, LLC is a limited liability company organized under the laws of the State of Connecticut in or about 2006 which has maintained its business address at the Longman Residence.

58. At all relevant times, Longman has been the Manager of Shelter Rock Associates.

59. At all relevant times, Longman, directly or indirectly, has been a Member of Shelter Rock Associates with a majority ownership interest therein.

60. At all relevant times, the only member(s) of Shelter Rock Associates other than Longman has been a member of his family or one or more of the other Longman Entities.

61. At all relevant times, Longman, directly or indirectly, has controlled Shelter Rock Associates.

10. Shelter Rock Development

62. The Defendant Shelter Rock Development Associates, LLC ("Shelter Rock Development") is a limited liability company organized under the laws of the State of Connecticut in or about 2006 which has maintained its business address at the Longman Residence.

63. At all relevant times, Longman has been the Manager of Shelter Rock Development.

64. At all relevant times, Longman, directly or indirectly, has been a Member of Shelter Rock Development with a majority ownership interest therein.

65. At all relevant times, the only member(s) of Shelter Rock Development other than Longman has been a member of his family or one or more of the other Longman Entities.

66. At all relevant times, Longman, directly or indirectly, has controlled Shelter Rock Development.

11. Great Pasture Associates

67. The Defendant 2 Great Pasture Road Associates, LLC ("Great Pasture Associates") is a limited liability company organized under the laws of the State of Connecticut in or about 2006 which has maintained its business address at the Longman Residence.

68. At all relevant times, Longman has been the Manager of Great Pasture Associates.

69. At all relevant times, Longman, directly or indirectly, has been a Member of Great Pasture Associates with a majority ownership interest therein.

70. At all relevant times, the only member(s) of Great Pasture Associates other than Longman has been a member of his family or one or more of the other Longman Entities.

71. At all relevant times, Longman, directly or indirectly, has controlled Great Pasture Associates.

72. On or about May 4, 2000, Sapphire acquired fee simple title to certain real property known as 2 Great Pasture Road in the City of Danbury, County of Fairfield and State of Connecticut by Warranty Deed recorded in the Danbury Land Records in Book 1317, page 659.

73. On or about November 7, 2006, Longman, purporting to act as Operating Manager of Sapphire, transferred title to said real property to Great Pasture Associates by Quit Claim Deed recorded in the Danbury Land Records in Book 1893, page 253.

74. No conveyance tax was paid on behalf of Sapphire in connection with said transfer.

12. Lurie

75. The Defendant Lurie Investments, LLC ("Lurie") is a limited liability company organized under the laws of the State of Connecticut in or about 2007 which has maintained its business address at the Longman Residence.

76. At all relevant times, Longman has been the Manager of Lurie.

77. At all relevant times, Longman, directly or indirectly, has been a Member of Lurie with a majority ownership interest therein.

78. At all relevant times, the only member(s) of Lurie other than Longman has been a member of his family or one or more of the other Longman Entities.

79. At all relevant times, Longman, directly or indirectly, has controlled Lurie.

13. Parcelle

80. The Defendant Parcelle Development, LLC ("Parcelle") is a limited liability company organized under the laws of the State of Connecticut in or about 2007 which has maintained its business address at the Longman Residence.

81. At all relevant times, Longman has been the Manager of Parcelle.

82. At all relevant times, Longman, directly or indirectly, has been a Member of Parcelle with a majority ownership interest therein.

83. At all relevant times, the only member(s) of Parcelle other than Longman has been a member of his family or one or more of the other Longman Entities.

84. At all relevant times, Longman, directly or indirectly, has controlled Parcelle.

14. Solaire Development

85. The Defendant Solaire Development, LLC ("Solaire Development") is a limited liability company organized under the laws of the State of Connecticut in or about 2007 which has maintained its business address at the Longman Residence.

86. At all relevant times, Longman has been the Manager of Solaire Development.

87. At all relevant times, Longman, directly or indirectly, has been a Member of Solaire Development with a majority ownership interest therein.

88. At all relevant times, the only member(s) of Solaire Development other than Longman has been a member of his family or one or more of the other Longman Entities.

89. At all relevant times, Longman, directly or indirectly, has controlled Solaire Development.

15. Solaire Tenant

90. The Defendant Solaire Tenant, LLC ("Solaire Tenant") is a limited liability company organized under the laws of the State of Connecticut in or about 2008 which has maintained its business address at the Longman Residence.

91. At all relevant times, Longman has been the Manager of Solaire Tenant.

92. At all relevant times, Longman, directly or indirectly, has been a Member of Solaire Tenant with a majority ownership interest therein.

93. At all relevant times, the only member(s) of Solaire Tenant other than Longman has been a member of his family or one or more of the other Longman Entities.

94. At all relevant times, Longman, directly or indirectly, has controlled Solaire Tenant.

16. Solaire Management

95. The Defendant Solaire Management, LLC ("Solaire Management") is a limited liability company organized under the laws of the State of Connecticut in or about 2008 which has maintained its business address at the Longman Residence.

96. At all relevant times, Longman has been the Manager of Solaire Management.

97. At all relevant times, Longman, directly or indirectly, has been a Member of Solaire Management with a majority ownership interest therein.

98. At all relevant times, the only member(s) of Solaire Management other than Longman has been a member of his family or one or more of the other Longman Entities.

99. At all relevant times, Longman, directly or indirectly, has controlled Solaire Management.

17. Solaire Funding

100. The Defendant Solaire Funding, Inc. ("Solaire Funding") is a corporation incorporated under the laws of the State of Connecticut in or about 2008 which has maintained its business address at the Longman Residence.

101. At all relevant times, Longman has been an Officer and Director of Solaire Funding.

102. At all relevant times, Longman, directly or indirectly, has been a majority shareholder of Solaire Funding.

103. At all relevant times, Longman, directly or indirectly, has controlled Solaire Funding.

18. 31 Pecks Lane

104. The Defendant 31 Pecks Lane Associates, LLC ("31 Pecks Lane") is a limited liability company organized under the laws of the State of Connecticut in or about 2008 which has maintained its business address at the Longman Residence.

105. At all relevant times, Longman has been the Manager of 31 Pecks Lane.

106. At all relevant times, Longman, directly or indirectly, has been a Member of 31 Pecks Lane with a majority ownership interest therein.

107. At all relevant times, the only member(s) of 31 Pecks Lane other than Longman has been a member of his family or one or more of the other Longman Entities.

108. At all relevant times, Longman, directly or indirectly, has controlled 31 Pecks Lane.

19. Dreamfields

109. The Defendant Dreamfields, LLC ("Dreamfields") is a limited liability company organized by Longman under the laws of the State of Florida in or about 2005 which has maintained its principal office at the Longman Residence, from which it has transacted business.

110. At all relevant times, Longman has been the Manager of Dreamfields.

111. At all relevant times, Longman, directly or indirectly, has been a Member of Dreamfields with a majority ownership interest therein.

112. At all relevant times, the only member(s) of Dreamfields other than Longman has been a member of his family or one or more of the other Longman Entities.

113. At all relevant times, Longman, directly or indirectly, has controlled Dreamfields.

114. At all relevant times, Longman has been the agent for service of process of Dreamfields.

20. W.W. Land Company

115. The Defendant W.W. Land Company, LLC ("W.W. Land Company") is a limited liability company organized by Longman under the laws of the State of Florida in or about 2005 which has maintained its principal office at the Longman Residence, from which it has transacted business.

116. At all relevant times, Longman has been the Manager of W.W. Land Company.

117. At all relevant times, Longman, directly or indirectly, has been a Member of W. W. Land Company with a majority ownership interest therein.

118. At all relevant times, the only member(s) of W.W. Land Company other than Longman has been a member of his family or one or more of the other Longman Entities.

119. At all relevant times, Longman, directly or indirectly, has controlled W.W. Land Company.

120. At all relevant times, Longman has been the agent for service of process of W.W. Land Company.

D. Longman's Fraudulent Transfers:

1. The Longman Residence

121. The Longman Residence comprises more than 25 acres of land, including a 15-room house with approximately six thousand square feet of living space.

122. Longman first acquired fee simple title to the Longman Residence, or a substantial part of it, in or about 1985.

123. From 1985 to the present, Longman and his family have occupied, used and enjoyed the Longman Residence as their principal place of residence.

124. On various occasions in and prior to November 2007, Longman and some of the Longman Entities purported to have transferred fee simple title to the Longman Residence back-and-forth, without consideration, some of which transfers are described herein.

a. Sapphire to Longman Trust

125. On or about August 28, 2007, purporting to act in his capacity as Operating Manager of Sapphire, Longman transferred fee simple title to the Longman Residence to the Longman Trust, for nominal consideration, by Quit Claim Deed,

recorded in the Ridgefield Land Records in Book 860, page 943, a true and accurate copy of which is incorporated herein as Exhibit D.

b. Longman Trust to Sapphire

126. On or about August 31, 2007, purporting to act in his capacity as Trustee of the Longman Trust, Longman transferred fee simple title to the Longman Residence to Sapphire, for nominal consideration, by Quit Claim Deed, recorded in the Ridgefield Land Records on October 31, 2007 at 1:26 p.m., in Book 862, page 754, a true and accurate copy of which is incorporated herein as Exhibit E.

c. Sapphire to Longman

127. On or about October 26, 2007, purporting to act in his capacity as Member of Sapphire, Longman transferred fee simple title to Longman, individually, to the Longman Residence by Quit Claim Deed, recorded in the Ridgefield Land Records on October 31, 2007 at 1:29 p.m., in Book 862, page 770, a true and accurate copy of which is incorporated herein as Exhibit F. This Deed correctly reflects the fact that, at all relevant times, Longman has been and is the true owner of the Longman Residence.

d. Longman to Sapphire

128. On or about November 16, 2007, Longman purported to transfer fee simple title to the Longman Residence to Sapphire, for nominal consideration, by Quit Claim Deed, recorded in the Ridgefield Land Records in Book 864, page 491, a true and accurate copy of which is incorporated herein as Exhibit G (the "Fraudulent Ridgefield Deed").

129. No conveyance tax was paid on behalf of Longman in connection with the Fraudulent Ridgefield Deed to the Town of Ridgefield or State of Connecticut.

130. At all relevant times, Longman, individually, effectively has owned and controlled the Longman Residence. By virtue of the Fraudulent Ridgefield Deed, title to the Longman Residence is in the name of Sapphire, subject to a constructive trust for the benefit of the Plaintiff.

131. The Defendant Hudson City Savings Bank claims, or may claim, an interest in the Longman Residence by virtue of a certain Open-End Mortgage Deed purportedly granted to it by Sapphire on or about October 26, 2007, recorded in the Ridgefield Land Records in Book 862, page 756, on October 31, 2007, less than three minutes after the Quit Claim Deed from the Longman Trust to Sapphire, described in para. 126 hereinabove, and less than two minutes before the Quit Claim Deed from Sapphire to Longman, described in para. 127 hereinabove.

132. When Hudson City Savings Bank received the mortgage from Sapphire, it knew or should have known that Longman was the true owner of the Longman Residence; that Longman had Judgment Creditors, including the Plaintiff; and that Longman was using Sapphire as a means of evading his creditors.

133. In October 2007, the fair market value of the Longman Residence was in excess of the amount of the Hudson City Savings Bank mortgage.

134. JPMorgan Chase Bank, N.A. claims, or may claim, an interest in the Longman Residence by virtue of a certain Open-End Mortgage Deed purportedly

granted to it by Longman on or about November 20, 2007, recorded in the Ridgefield Land Records in Book 865, page 384.

135. When JPMorgan Chase Bank, N.A. received the mortgage from Longman, title to the Longman Residence was purportedly in the name of Sapphire. It was not in the name of Longman.

136. The Defendant Savings Bank of Danbury claims, or may claim, an interest in the Longman Residence by virtue of a certain Open-End Guaranty Mortgage and Security Agreement purportedly granted to it by Sapphire on or about May 12, 2008, recorded in the Ridgefield Land Records in Book 872, page 318. This mortgage purports to provide additional security for a loan made to Solaire Development, LLC; Solaire Funding, Inc. and Solaire Tenant, LLC.

137. When Savings Bank of Danbury received the mortgage from Sapphire, it knew or should have known that Longman was the true owner of the Longman Residence; that Longman had Judgment Creditors, including the Plaintiff; and that Longman was using Sapphire as a means of evading his creditors.

2. The Greenwich Property

138. On or about February 9, 2010, in consideration of \$1,049,000, Longman acquired fee simple title to certain real property known as 3 Prescott Lane, Greenwich, Connecticut, more particularly described in a Warranty Deed from David A. Thomas, recorded in the Greenwich Land Records in Book 5905, page 119, a copy of which is incorporated herein as Exhibit H (the "Greenwich Property").

139. On or about February 9, 2010, Longman granted a certain Commercial Mortgage Deed on the Greenwich Property in the face amount of \$600,000 to Mortgage In-Vest Group, LLC, recorded in the Greenwich Land Records in Book 5905, page 122.

140. On or about February 12, 2010, for nominal consideration, Longman purported to transfer fee simple title to the Greenwich Property to Lurie by Quit Claim Deed recorded in the Greenwich Land Records in Book 5907, page 347, a copy of which is incorporated as Exhibit I (the "Fraudulent Greenwich Deed").

141. No conveyance tax was paid on behalf of Longman in connection with the Fraudulent Greenwich Deed to the Town of Greenwich or State of Connecticut.

142. On or about April 29, 2010, purporting to act as Manager of Lurie, Longman transferred fee simple title to the Greenwich Property to one Anthony Jan Lipp Defaoite, of P.O. Box 231328, New York, NY, in consideration of \$1,850,000 by Warranty Deed, recorded in the Greenwich Land Records in Book 5941, page 66, a copy of which is incorporated herein as Exhibit J.

143. As of April 29, 2010, Longman, individually, effectively owned and controlled the Greenwich Property. By virtue of the Fraudulent Greenwich Deed, the proceeds of the sale of the Greenwich Property were received in the name of Lurie, subject to a constructive trust for the benefit of the Plaintiff.

FIRST COUNT (Constructive Trust Imposed on Longman Residence):

1-137. Paragraphs 1-137 of the Facts are hereby incorporated as paragraphs 1-137 of the First Count.

138. By virtue of the fraud, actual or constructive, of Longman and Sapphire, as described hereinabove, Sapphire has held title to the Longman Residence improperly, and contrary to equity and good conscience, since November 2007.

139. Sapphire holds title to the Longman Residence subject to a constructive trust for the benefit of the Plaintiff.

140. Sapphire holds title to the Longman Residence subject to an equitable duty to convey it to Longman on the ground that Sapphire would be unjustly enriched if it were permitted to retain title to the Longman Residence.

**SECOND COUNT (Constructive Trust Imposed on Proceeds
of the Greenwich Property):**

1-120. Paragraphs 1-120 of the Facts are hereby incorporated as paragraphs 1-120 of the Second Count.

121-126. Paragraphs 138-143 of the Facts are hereby incorporated as paragraphs 121-126 of the Second Count.

127. By virtue of the fraud, actual or constructive, of Longman and Lurie, as described hereinabove, Lurie has received and holds the proceeds of the sale of the Greenwich Property improperly, and contrary to equity and good conscience, since April 2010.

128. Lurie holds the proceeds of the sale of the Greenwich Property subject to a constructive trust for the benefit of the Plaintiff.

129. Lurie holds the proceeds of the sale of the Greenwich Property subject to an equitable duty to transfer these proceeds to Longman on the ground that Lurie

would be unjustly enriched if it were permitted to retain these proceeds of the sale of the Greenwich Residence.

THIRD COUNT (Fraudulent Transfer of the Longman Residence in Violation of General Statutes § 52-552e(a)(1)):

1-137. Paragraphs 1-137 of the Facts are incorporated as paragraphs 1-137 of the Third Count.

138. Longman made the transfer of the Longman Residence in the Fraudulent Ridgefield Deed in November 2007 with the actual intent to hinder, delay or defraud the Plaintiff who has been entitled to satisfaction of the Judgment since 1996.

139. Longman made the transfer of the Longman Residence in violation of General Statutes § 52-552e(a)(1).

140. Sapphire accepted the Fraudulent Ridgefield Deed with knowledge of fraudulent intent on Longman's part for the purpose of assisting Longman in such fraud.

141. By reason of the foregoing, Longman's attempt to transfer the Longman Residence to Sapphire in the Fraudulent Ridgefield Deed is voidable.

142. By reason of the foregoing, McKay has been damaged in the amount due on the Judgment or the extent of the value of the Longman Residence, whichever is less.

FOURTH COUNT (Fraudulent Transfer of the Longman Residence in Violation of General Statutes §§ 52-552e(a)(2) and/or 52-552f):

1-137. Paragraphs 1-137 of the Facts are incorporated as paragraphs 1-137 of the Fourth Count.

138. Longman made the transfer of the Longman Residence in the Fraudulent Ridgefield Deed in November 2007 without receiving a reasonably equivalent value in exchange for the transfer.

139. As of the time of the Fraudulent Ridgefield Deed, Longman (a) was insolvent; (b) became insolvent as a result of the transfer; (c) was engaged or was about to engage in a business or transaction; or (d) intended to incur, or believed or reasonably should have believed, that he would incur debts beyond his ability to pay as they became due.

140. Longman's transfer of the Longman Residence rendered him unable to meet his obligation to McKay to satisfy the Judgment, in whole or in part.

141. Longman made the transfer of the Longman Residence in violation of General Statutes §§ 52-552e(a)(2) and/or 52-552f.

142-144. Paragraphs 140-142 of the Third Count are hereby incorporated as paragraphs 142-144 of the Fourth Count.

FIFTH COUNT (Fraudulent Transfer of the Greenwich Property in Violation of General Statutes § 52-552e(a)(1):

1-120. Paragraphs 1-120 of the Facts are incorporated as paragraphs 1-120 of the Fifth Count.

121-126. Paragraphs 138-143 of the Facts are hereby incorporated as paragraphs 121-126 of the Fifth Count.

127. Longman made the transfer of the Greenwich Property in the Fraudulent Greenwich Deed in April 2010 with the actual intent to hinder, delay or defraud the Plaintiff, who has been entitled to satisfaction of the Judgment since 1996.

128. Longman made the transfer of the Greenwich Property in violation of General Statutes § 52-552e(a)(1).

129. Lurie accepted the Fraudulent Greenwich Deed with knowledge of fraudulent intent on Longman's part for the purpose of assisting Longman in such fraud and received the proceeds of sale of the Greenwich Property in its name when Longman was and is the true owner thereof.

130. By reason of the foregoing, Longman's attempt to transfer the Greenwich Property to Lurie in the Fraudulent Greenwich Deed is voidable.

131. By reason of the foregoing, McKay has been damaged in the amount due on the Judgment or to the extent of the value of the Greenwich property, whichever is less.

SIXTH COUNT (Fraudulent Transfer of the Greenwich Property in Violation of General Statutes §§ 52-552e(a)(2) and/or 52-552f):

1-120. Paragraphs 1-120 of the Facts are incorporated as paragraphs 1-120 of the Sixth Count.

121-126. Paragraphs 138-143 of the Facts are hereby incorporated as paragraphs 121-126 of the Sixth Count.

127. Longman made the transfer of the Greenwich Property in the Fraudulent Greenwich Deed in April 2010 without receiving a reasonably equivalent value in exchange for the transfer.

128. As of the time of the Fraudulent Greenwich Deed, Longman (a) was insolvent; (b) became insolvent as a result of the transfer; (c) was engaged or was about to become engaged in a business or transaction; or (d) intended to incur, or believed, or reasonably should have believed, that he would incur debts beyond his ability to pay as they became due.

129. Longman's transfer of the Greenwich Property rendered him unable to meet his obligation to McKay to satisfy the Judgment, in whole or in part.

130. Longman made the transfer of the Greenwich Property in violation of General Statutes §§ 52-552e(a)(2) and/or 52-552f.

131-133. Paragraphs 129-131 of the Fifth Count are hereby incorporated as paragraphs 131-133 of the Sixth Count.

**SEVENTH COUNT (Reverse Piercing of Longman Entities
Based Upon Instrumentality Rule):**

1-120. Paragraph 1-120 of the Facts are incorporated as paragraphs 1-120 of the Seventh Count.

121. Longman's total domination and control of each of the Longman Entities, as described in paragraph 9 hereinabove, has occurred in one or more of the following ways:

- a. the formal requirements of the entities have not been properly observed;

- b. there has been inadequate capitalization;
- c. funds have been put in and taken out of the entities for Longman's personal purposes, rather than for the purposes of the entities;
- d. there has been overlapping ownership,
- e. there has been common office space, address and phones shared by the entities in the Longman Residence;
- f. the entities have had little or no discretion, independent of Longman;
- g. the entities have not dealt with each other at arm's length;
- h. the entities have not been treated as independent profit centers;
- i. the entities have pledged collateral for each or other and/or guaranteed debts of each other; and/or
- j. the income and/or assets of the entities have been comingled.

122. Longman maintained exclusive control, and was fully involved in the business transactions, of the Longman Entities so that Longman could perpetuate the fraud that was the basis of the Judgment, dishonestly and unjustly, in contravention to McKay's right to satisfaction of the Judgment.

123. By virtue of his total domination and control of the Longman Entities, Longman has hid and concealed his assets and income, as a result of which the Judgment is totally unsatisfied.

**EIGHTH COUNT (Reverse Piercing of Longman Entities
Based Upon Identity Rule):**

1-120. Paragraphs 1-120 of the Facts are incorporated as paragraphs 1-120 of the Eighth Count.

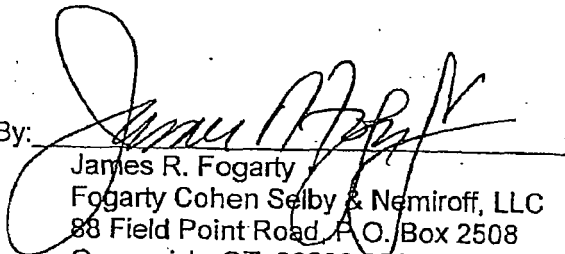
121. The unity of interest between Longman and each of the Longman Entities, as described in paragraph 10 hereinabove, has occurred in one or more of the following ways:

- a. the formal requirements of the entities have not been properly observed;
- b. there has been inadequate capitalization;
- c. funds have been put in and taken out of the entities for Longman's personal purposes, rather than for the purposes of the entities;
- d. there has been overlapping ownership,
- e. there has been common office space, address and phones shared by the entities in the Longman Residence;
- f. the entities have had little or no discretion, independent of Longman;
- g. the entities have not dealt with each other at arm's length;
- h. the entities have not been treated as independent profit centers;
- i. the entities have pledged collateral for each or other and/or guaranteed debts of each other; and/or
- j. the income and/or assets of the entities have been comingled.

122. By virtue of this unity of interest, an adherence to the fiction of separate identity for each of the Longman entities would serve only to defeat justice and equity by permitting the Longman Entities to escape liability arising out of an operation conducted by each of the Longman Entities for the benefit of Longman and his whole enterprise.

123. Through this unity of interest, Longman has hid and concealed his assets and income by holding the same in the names of the Longman Entities, as a result of which the Judgment is totally unsatisfied.

THE PLAINTIFF
ROBERT McKAY

By: 

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RET. DATE: OCTOBER 26, 2010 : SUPERIOR COURT
 ROBERT J. McKAY : JUDICIAL DISTRICT OF
 : NORWALK/STAMFORD
 v. :

STUART L. LONGMAN, INDIVIDUALLY AND : AT STAMFORD
 AS TRUSTEE OF THE LONGMAN FAMILY :
 TRUST DATED JANUARY 15, 2000; ET AL : SEPTEMBER 30, 2010

REQUESTS FOR RELIEF

The Plaintiff claims:

1. A Declaratory Judgment, imposing a constructive trust upon the Longman Residence for the benefit of the Plaintiff.
2. A Declaratory Judgment avoiding and setting aside the Fraudulent Ridgefield Deed to the extent necessary to satisfy the Judgment.
3. A Declaratory Judgment, declaring that the Longman Residence is subject to enforcement of the Judgment in favor of the Plaintiff, including levy, execution and sale.
4. A Declaratory Judgment, declaring that the Longman Residence is subject to enforcement of the Judgment in favor of the Plaintiff, including levy, execution and sale, unencumbered by the Mortgages to Hudson City Savings Bank and Savings Bank of Danbury.
5. A temporary and permanent injunction against Longman, Sapphire and the Longman Entities, and their respective members, managers, officers, directors, employees, agents, trustees, representatives, successors and assigns from any further disposition, or attempted disposition, of the Longman Residence.

6. The appointment of a Receiver to take charge of the Longman Residence;
7. A Declaratory Judgment, imposing a constructive trust upon the proceeds of the sale of the Greenwich Property for the benefit of the Plaintiff.
8. A Declaratory Judgment, avoiding and setting aside the Fraudulent Greenwich Deed to the extent necessary to satisfy the Judgment.
9. A Declaratory Judgment, declaring that the proceeds of the sale of the Greenwich Property are subject to enforcement of the Judgment in favor of the Plaintiff, including levy and execution.
10. A temporary and permanent injunction against Longman, Lurie and the Longman Entities, and their respective members, managers, officers, directors, employees, agents, trustees, representatives, successors and assigns from any disposition, or attempted disposition of the proceeds of the sale of the Greenwich Property.
11. The appointment of a Receiver to take charge of the proceeds of the sale of the Greenwich Property;
12. A Declaratory Judgment, declaring that the assets and income of each of the Longman Entities is subject to enforcement of the Judgment in favor of the Plaintiff, including levy, execution and sale.
13. A Declaratory Judgment, declaring that each of the Longman Entities is an instrumentality of Longman and disregarding the fiction of each such entity to the extent necessary to satisfy the Judgment.

14. A Declaratory Judgment declaring that each of the Longman Entities is identical to Longman and disregarding the fiction of each such entity to the extent necessary to satisfy the Judgment.

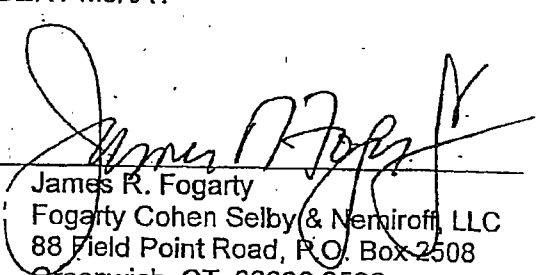
15. A temporary and permanent injunction against Longman and each of the Longman Entities and their respective members, managers, officers, directors, employees, agents, trustees, representatives, successors and assigns from any disposition, or attempted disposition, of the assets and income of each of the Longman Entities.

16. The appointment of a Receiver to take charge of the assets and income of each of the Longman Entities.

17. Such additional relief as the Court deems necessary or appropriate under the circumstances.

18. Damages in excess of \$15,000, exclusive of interest and costs against each of the Longman Entities, jointly and severally.

THE PLAINTIFF
ROBERT McKAY

By: 

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-10-2344

KRITI RIPLEY, LLC and ASHLEY
RIVER PROPERTIES TWO, LLC,

Plaintiffs,

vs.

EMERALD INVESTMENTS, LLC
and STUART LONGMAN,

Defendants.

**AFFIDAVIT OF
STUART LONGMAN**

2011 APR -5 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED before me, STUART LONGMAN, who being duly sworn
does state as follows:

1. I am an adult citizen and resident of the State of Connecticut. I am the Managing Member of Emerald Investments, LLC ("Emerald"), which is a Connecticut limited liability company. I am also a manager of Ashley River Properties I, LLC ("ARP I"), a South Carolina limited liability company.

2. Ashley River Properties II, LLC ("ARP II") is another South Carolina member managed limited liability company. ARP II is supposed to be developing a marina and mixed-use residential condominiums along a riverfront site on the Ashley River known as Ripley Light Yacht Club Marina & Condominiums (the "Ripley Light Project"). Thus far ARP II has only constructed the marina slips. No condominium units have been built.

3. At its inception, ARP II was wholly owned by Emerald. ARP II and ARP I were initially jointly involved in developing the Ripley Light project. Emerald initiated the project and was the project's developer. At the project's inception, Emerald managed ARP II as well as ARP I.

4. In the fall of 2003, the Ripley Light Project encountered financial problems and ARP II turned to an outside investor to provide financial assistance for the project. Kriti Ripley, LLC ("Kriti") was that investor. At all pertinent times, Kriti is and was managed by Davidson Williams ("Williams").

5. Emerald and Kriti subsequently entered into a written Operating Agreement dated December 29, 2003 (the "Operating Agreement") and a separate Project Development Agreement dated December 20, 2003 ("Development Agreement") for the Ripley Light Project, in which they agreed to carry on the project through a joint venture between the companies. Kriti's attorneys drafted the agreements. Neither I nor Emerald was represented by counsel. True and correct copies of the Operating Agreement and Development Agreement are attached hereto and incorporated herein by reference as "Exhibit 1" and "Exhibit 2," respectively.

6. As a result of the above-referenced agreements, Emerald became a 70% financial and voting member in ARP II and Kriti became a 30% financial and voting member in ARP II. Kriti paid \$1,250,000.00 for its membership interest in ARP II. Emerald's initial capital contribution to ARP II was \$2,500,000.00. The ARP II Operating Agreement indicates that Emerald owns seven hundred (700) financial membership shares and seven hundred (700) voting membership shares while Kriti owns three hundred (300) initial membership shares and three hundred (300) initial voting shares.

7. Emerald initially managed both ARP II and ARP I. However, a dispute later arose between Emerald and Kriti involving the project and their respective rights under the ARP II Operating Agreement. On January 14, 2005, Kriti terminated the Project Development Agreement, alleged default under the Operating Agreement, and seized exclusive management and operational control of ARP II from Emerald. Kriti and Williams have had complete control over the management and

operations of ARP II since January 14, 2005, and Emerald has been completely shut out of management of ARP II since that time.

8. In 2005, Kriti and ARP II (controlled by Kriti) filed for arbitration in New York and sought a ruling that Emerald had completely forfeited its financial and voting interests in ARP II. Applying the provisions of the ARP II Operating Agreement, which were one-sided in favor of Kriti, the New York arbitration panel issued an award on October 31, 2005 (hereinafter "2005 arbitration award"). A true and correct copy of the 2005 arbitration award is attached hereto as "Exhibit 3." The 2005 arbitration award concluded that Emerald had defaulted under the terms of the Operating Agreement and that it had forfeited its "voting rights" in ARP II. However, the panel refused to order the forfeiture of Emerald's financial interest in ARP II. As a result of the 2005 arbitration award, Emerald currently has no voting rights in ARP II, but has remained a 70% financial owner of ARP II.

9. The 2005 arbitration award also made findings that were very critical of Kriti's conduct towards Emerald. For example, the panel specifically found that Emerald had probable or just cause to challenge a capital call which Kriti had made in 2005 in an improper attempt to "squeeze down" or dilute Emerald's 70% interest in ARP II.

10. In disregard of the findings made in the 2005 arbitration award, Williams and Kriti have thereafter operated ARP II as though Emerald's interest in ARP II was diluted because of the very same 2005 capital call that the arbitration panel criticized. For example, over my objections, Kriti and Williams began issuing K-1 forms to Emerald and filed tax returns on behalf of ARP II asserting that Emerald's shares had been diluted from 70% to approximately 21%. I repeatedly and consistently notified Kriti and Williams that the K-1 forms were incorrect, that the 2005 capital call was invalid, and that Emerald's interest had not been diluted. I also repeatedly demanded that Kriti

and Williams file corrected tax returns and K-1 forms for the relevant tax years. For example, attached hereto as "Exhibit 4" is a true and correct copy of a letter that I wrote to Williams on September 24, 2006, notifying him that the K-1 form issued to Emerald was incorrect and needed to be amended. Kriti and Williams simply ignored the letter and my requests.

11. As a result of the 2005 arbitration award and a subsequent but related award issued by the New York arbitration panel in 2006, a money judgment totaling \$1,184,581.72 was eventually entered against Emerald on April 2, 2008. That total amount consists of the following:

\$543,340.00	principal amount
\$384,653.14	legal fees and litigation expenses assessed
\$60,856.00	arbitrator's fees and administrative expenses assessed
\$194,832.58	prejudgment interest assessed
<u>\$900.00</u>	costs taxed by court
\$1,184,581.72	total

The principal amount awarded by the arbitrators is less than half of the total judgment amount.

12. On October 17, 2008, after the money judgment was entered against Emerald, this Court granted Kriti's *ex parte* application for a charging order against Emerald's distributional interest in ARP II pursuant to § 33-44-504 of the SC LLC Act. The charging order issued in this current action constitutes a lien against Emerald's distributional interest in ARP II (and thus impairs Emerald's ability to borrow money while using the interest as collateral) and authorizes ARP II (which is completely controlled by Kriti) to divert or pay over to Kriti any distributions from the company that would otherwise be payable to Emerald. Despite having sole control over ARP II's operations, Kriti alleges that no distributions have been made under the charging order.

13. In July of 2010, following continued disputes between Emerald and Kriti, yet another arbitration hearing was conducted in New York involving these same parties. Thereafter, on October

28, 2010, the arbitrators issued their written award (hereinafter "2010 arbitration award"). A true and correct copy of the 2010 arbitration award is attached hereto as "Exhibit 5." The 2010 arbitration award expressly confirmed or reconfirmed that Emerald still owns 70% of ARP II, found that Kriti's 2005 capital call was defective and did not operate to dilute Emerald's interest in the company, and ordered Kriti to pay \$59,527.74 to Emerald.

14. The 2010 arbitration award also explicitly found that "dissolution may be in the best interests of all parties" and further observed that "Kriti and Emerald cannot work together in any constructive manner." Nevertheless, the arbitration panel ruled that the facts did not satisfy the relatively narrow grounds for dissolution of ARP II as stated in the Operating Agreement. However, the arbitration panel did not address or determine whether judicial dissolution of ARP II is warranted pursuant to the statutory grounds contained in § 33-44-801(4)(a)-(c) and (e) of the SC LLC Act. That issue is currently pending before this Court in another lawsuit involving these same parties entitled *Emerald Investments, LLC v. Ashley River Properties II, LLC and Kriti Ripley, LLC*, Case No. 09-CP-10-553 (hereinafter "2009 Dissolution case").

15. Emerald had filed the 2009 Dissolution case with this Court on January 30, 2009 because of Kriti's mismanagement of ARP II and other misconduct. The Complaint in that case (which Emerald has since moved to amend and update in light of the 2010 arbitration award) requests an Order judicially dissolving ARP II pursuant to § 33-44-801(a)-(c), and (e) of the SC LLC Act. Emerald seeks judicial dissolution of ARP II due to Kriti's persistent mismanagement of ARP II which has resulted in the company's poor financial record and the frustration of the company's economic purpose, Kriti's misconduct which has made it impracticable for Emerald and Kriti to continue to conduct business together, Kriti's attempt to unilaterally dilute Emerald's membership

interest in ARP II through improper capital calls, Kriti's repeated failures to timely provide Emerald with company records and information, Kriti's failure to conduct the affairs of ARP II in the best interest of ARP II and its members, Kriti's fraudulent and unfair acts, and Kriti's failure to follow the provisions of the ARP II Operating Agreement.

16. Additionally, as an alternative to judicial dissolution of ARP II, Emerald seeks an order in the 2009 Dissolution case to allow it to buyout Kriti's member interest in ARP II, or vice versa, pursuant to a forced sale in accordance with the procedures in the SC LLC Act.

17. On February 1, 2011, despite the 2010 arbitration award's findings that judicial dissolution of ARP II may be in the parties' best interests and the fact that an action is currently pending in this Court to judicially dissolve ARP II, ARP II and Kriti recently filed a Motion to Foreclose Judgment Lien in this current action. I am aware that Kriti alleges in its motion that it should be allowed to foreclose on (*i.e.*, to sell off) Emerald's "distributional interest" in ARP II because the company (which Kriti has completely controlled for over 6 years) has apparently not made any distributions pursuant to the charging order to satisfy Kriti's money judgment and apparently will not be able to make any such distributions in the foreseeable future. Kriti argues in its motion that it should be allowed to sell off Emerald's interest in ARP II because Kriti has been unsuccessful in generating any profits for ARP II despite its exclusive management of the company.

18. In support of its argument that ARP II is financially unable to make distributions, Kriti's motion attaches what purport to be ARP II's financial statements for 2008 and 2009. Those financial statements appear to seriously underreport the value of ARP II's real estate holdings. For example, the 2009 financial statement estimates the value of ARP II's real estate holdings as being approximately \$14 million. However, in October of 2009, on behalf of ARP II's lender, a professional

appraisal firm (Fred H. Beck & Associates, LLC) conducted updated appraisals of the value of ARP II's real estate holdings. The combined appraisals dated October 16, 2009, give "as is" valuations for ARP II's real estate holdings that total \$17.25 million. Thus the 2009 financial statement underreports the value of ARP II's real estate holdings by approximately \$3.25 million. True and correct copies of the Beck Appraisals dated October 16, 2009, are attached hereto and incorporated herein by reference as "Exhibit 6" and "Exhibit 7."

19. Moreover, to the extent that ARP II is in poor financial shape, Kriti's mismanagement of the company directly caused this condition. Since taking over control of ARP II in January of 2005, Kriti and Williams have failed to act in the best interests of *all* of ARP II's members (including Emerald), have mismanaged the company to such an extent that it has financially crippled the company, and have squandered several opportunities for ARP II to realize on its assets by failing to consummate any of multiple offers that were made by third parties to purchase ARP II's assets. Any of those potential sales would have netted ARP II in excess of \$10 million in profit and would have resulted in considerable distributions to ARP II's members.

20. When Williams and Kriti assumed control of ARP II from Emerald in January of 2005, they took over a project in which Emerald had already acquired the property; obtained the necessary dredge permits and secured a disposal site at The Citadel; designed the marina and obtained the necessary permits; arranged for construction of the marina docks; developed the concept design and obtained zoning and regulatory approval for condominium development; dredged the canal; secured initial financing and a subsequent modification to finance the marina construction; and secured an offer from a Fortune 250 company (Centex) interested in buying ARP II's assets. In short, Williams and Kriti inherited a shovel-ready marina, a condo project ready for pre-selling, and a property ready to sell. Yet, over the past six years, Williams and Kriti have squandered all of

those opportunities.

21. The Ripley Light Project was designed to be a condominium project, with a marina as a complementary asset. Williams and Kriti had every opportunity to develop the project as conceived. Emerald received regulatory and zoning approval from the Board of Architectural Review in December of 2004, which allowed pre-sales of condos. Two real estate agents (Frank Guarino and Clay Cunningham) were on site attempting to sell the condos. Kriti and Williams assumed control of ARP II in early 2005 at the apex of the housing market. Nevertheless, Kriti and Williams have failed to sell a *single* condominium unit. In fact, ARP II has now effectively abandoned the condominium development portion of the project.

22. Williams and Kriti have also failed to tap the marina's value. As noted above, the Beck appraisals dated October 16, 2009, give "as is" valuations for ARP II's real estate holdings that total \$17.25 million. Those appraisals also make clear that the maximum value is in dockominiums—*i.e.*, selling the boat slips. For example, the appraisals value "as is" rental slips at \$2.34 million and "as is" dockominium units at \$9.530 million. However, Williams and Kriti have not sold any boat slips and, indeed, have not been trying to sell boat slips separate from condominium units (none of which have been built). Instead, under Kriti's and Williams's management of the company, ARP II is merely renting boat slips, which does not generate even enough income to cover the interest expense or debt service currently owed by the project.

23. As a result of Kriti's mismanagement of the project and inability to materially improve ARP II's property, it is obvious that the only means available for ARP II (and its members) to realize any value on the project is to sell it. However, Kriti and Williams have squandered every opportunity to sell the project that has come ARP II's way.

24. For example, in April of 2005, at the very beginning of Kriti's control of the Ripley Light Project, I presented Williams and Kriti with an offer from Centex, a well-respected home

builder and real estate developer, to acquire ARP II's real estate for \$14.5 million on an "as is" basis, meaning that it would not have required any additional outlay of money by ARP II. Over my objections, Kriti and Williams caused ARP II to reject the Centex offer. A true and correct copy of the Centex offer is attached hereto and incorporated herein by reference as "Exhibit 8." The offer from Centex was made before the project had incurred substantial debt to construct the marina slips on the property. If the Centex offer had been accepted, ARP II would have made a profit in 2005 of nearly \$10.5 million.

25. Instead of accepting the Centex offer to purchase ARP II's property, on May 9, 2006, Kriti and Williams caused ARP II to procure a multi-million dollar construction loan from Bank of America (hereinafter "BofA") for the purpose of constructing marina slips on the ARP II property. As part of the loan, ARP II executed a promissory note in favor of BofA for \$9 million and a related mortgage on the marina property and assets. A true and correct copy of the note is attached hereto and incorporated herein by reference as "Exhibit 9."

26. As a result of the BofA construction loan, the project is now overly burdened with enormous bank debt, is desperate for cash, and is unable to cover the tremendous interest or debt service payments without obtaining significant loans from Kriti, Williams, or their affiliated entities. I have only recently learned that Kriti has had to cause ARP II to obtain loans of almost \$7 million from Kriti's affiliated companies (including KHI) in order for ARP II to remain current on the BofA loans. Without substantial loans from Kriti or its affiliated entities, ARP II lacks sufficient cash or funds to repay the BofA loan or to satisfy the note and is in jeopardy of losing the Ripley Light marina, which is ARP II's sole asset. If the BofA loan and note are allowed to go into default, the marina property and assets will be subject to foreclosure by the bank, ARP II will be at serious risk of losing its only

asset, and Emerald will be at serious risk of losing its \$2.5 million capital contribution to and investment in ARP II.

27. After Williams killed the Centex deal, ARP II did not receive another opportunity to sell the property until 2007. On May 18, 2007, East Coast Horizon, LLC ("East Coast") made an offer to ARP II, Kriti, and Williams to purchase the Ripley Light marina (including land and assets) from ARP II in exchange for \$20 million. A true and correct copy of the East Coast offer is attached hereto and incorporated herein by reference as "Exhibit 10." Even though Emerald was a 70% financial owner of ARP II, Kriti and Williams failed to notify Emerald or me of this offer. I did not become aware of the East Coast offer until November 2, 2009. In May of 2007, as a result of Kriti's poor management decisions, it was clear that it had become necessary—not optional—for ARP II to sell the Ripley Light Project because of the company's dire financial situation. However, before I was even made aware of the offer from East Coast, Kriti and Williams had already caused the deal to be scuttled. Had the transaction been consummated, it would have resulted in a net profit to ARP II of approximately \$10 million (after satisfying the outstanding bank debt owed on the project). The transaction was not consummated because Williams, through a very strict confidentiality agreement, prevented East Coast from being able to talk to anyone about the proposed purchase of the property, including funding sources. Consequently, the deal did not happen, costing ARP II a profit of \$10 million.

28. Finally, after Williams had caused the Centex and East Coast deals to fail, ARP II only had one more potential buyer before the bottom fell completely out of the real estate market. In January of 2008, Lucorp (through its principal Luis Moreno) submitted a signed contract to Williams offering the same pricing terms as the East Coast offer. A true and correct copy of the Lucorp offer is attached hereto and incorporated herein by reference as "Exhibit 11." However, Williams refused to do a deal with Lucorp for

\$20 million. As was the case with the offer from East Coast, Kriti and Williams had already caused the Lucorp deal to be scuttled before I was even made aware of the offer. I have since learned that, rather than selling the property to Lucorp for the offering price of \$20 million, on August 14, 2008, after the housing market had collapsed, Williams *increased* the price for the property to \$27 million. The potential sale thereafter fell through. Had the transaction been consummated, it would have resulted in a net profit to ARP II of approximately \$10 million (after satisfying the outstanding bank debt owed on the project).

29. I have tried unsuccessfully for several years to obtain complete and accurate business records and financial information from Kriti and Williams to ascertain ARP II's true financial condition and to monitor ARP II's business operations, but have been continuously thwarted by Williams and Kriti. Despite the fact that Emerald is a 70% member of ARP II, Kriti and Williams have persistently failed or refused to provide ARP II's financial information and records to me.

30. As a member of ARP II, Emerald has an absolute statutory right to access, inspect, download, and copy ARP II's company records pursuant to the provisions of the SC LLC Act. See S.C. CODE ANN. § 33-44-408. Further, under Section 12.1 of the ARP II Operating Agreement, Emerald has a right to access, inspect, download, and copy ARP-II's books and records and has a right to be kept informed of ARP-II's business and affairs to the extent reasonably required for the proper exercise of its rights.

31. Despite these obligations, Kriti has systematically deprived Emerald of any ability to know of or monitor ARP II's business activities. For example, Kriti never informed Emerald or me about the offers that were made by Lucorp and East Coast to purchase the ARP II property for \$20 million until well after the opportunities to sell the project had been lost. Moreover, Kriti never informed Emerald or me that it had caused ARP II to take on almost \$7 million in debt to Kriti's affiliated companies (including KHI) or that the reason for this massive indebtedness was that ARP II was insolvent and could not pay its obligations when due.

32. Kriti also failed to inform Emerald or me about its plans to expand ARP II's marina, even though this would mean tripling the marina's current size. Kriti also undertook a \$1 million dredge event in 2008 and never told me about it, even though I (unlike Williams) actually have experience with dredging. Williams still did not inform or consult with me about the dredging even after Kriti experienced problems with the project and had to start a dredging company in ARP II's name to finish the job.

33. Kriti and Williams have been no better in keeping me informed about ARP II's financial information. For example, on June 12, 2006 and July 5, 2006, I made repeated requests to Williams in writing to be allowed to inspect and examine the books and records of ARP II. True and correct copies of my letters are attached hereto as "Exhibits 12 and 13," respectively, and are incorporated herein by reference. However, by letter dated July 7, 2006, Williams flatly refused to allow me to review the company's books or records. A true and correct copy of Williams's letter is attached hereto as "Exhibit 14" and is incorporated herein by reference.

34. Additionally, on February 24, 2009, because Kriti had ignored Emerald's requests (as a member of ARP II) for ARP II's business records, I was forced to serve interrogatories and requests for production of documents upon ARP II and Kriti in the 2009 Dissolution case seeking copies of ARP II's business records and financial information. True and correct copies of these discovery requests are attached hereto as "Exhibits 15 and 16," respectively, and are incorporated herein by reference. On October 2, 2009, because Kriti still refused to produce the requested records and information, Emerald had to file a motion to compel in the 2009 Dissolution case seeking a Court Order requiring their production. On October 19, 2009, after the motion to compel was filed, ARP II and Kriti then filed objections and refused to produce the records or information even though Emerald is a 70% financial member of ARP II. A true and correct copy of the objection is attached

hereto as "Exhibit 17" and is incorporated herein by reference. Emerald's motion to compel has not yet been heard by the Court. On April 19, 2010, an Order was filed in the 2009 Dissolution case staying that action until the 2010 arbitration hearing was conducted in New York. However, once the New York arbitration panel issued its award on October 28, 2010, Emerald requested Kriti to consent to an order immediately dissolving the stay in the 2009 Dissolution case so that Emerald's claim for judicial dissolution of ARP II could be prosecuted. Kriti simply ignored the request. On December 7, 2010, Emerald filed a motion to dissolve the stay in the 2009 Dissolution case, which is currently pending before the Court.

35. On November 6, 2009, after Emerald had unsuccessfully tried on repeated occasions to obtain access to ARP II's business records by virtue of its status as a member of ARP II and through discovery requests in litigation, Emerald also filed a separate lawsuit in this Court entitled *Emerald Investments, LLC v. Ashley River Properties II, LLC, Kriti Ripley, LLC, and Davidson D. Williams*, Case No. 09-CP-10-7025 (hereinafter "2009 Corporate Records case"). In that lawsuit, Emerald sought an order granting it the right to immediately examine, inspect, download, and copy ARP II's books, company records, and computers. Kriti responded to the lawsuit by filing a motion to compel arbitration of the matter in New York. Kriti refused to produce its business records and computers to Emerald (a 70% member) unless Emerald first obtained an order from a New York arbitration panel authorizing it to review the records. In short, Kriti and Williams have created one hurdle after another with the clear objective of depriving Emerald of complete, accurate, and up-to-date information about ARP II's financial condition and operations.

36. On December 13, 2010, after the New York arbitration panel issued its October 28, 2010 award confirming that Emerald is a 70% financial member of ARP II, I again wrote to

Williams and requested copies of ARP II's financial records, specifically copies of ARP II's general ledgers for all of 2009 and 2010. The general ledger is simply a computer file (updated regularly in the normal course of business as checks are written or deposits are made) that ARP II should be able to produce very quickly and easily. I sent the letter to Williams because I had received no financial or other information from Kriti or Williams since the limited information that Kriti produced in the months prior to the arbitration hearing conducted in New York in July of 2010. A true and correct copy of my letter is attached hereto as "Exhibit 18," and is incorporated herein by reference.

37. On January 8, 2011, because I had received absolutely no response from Williams, I wrote a follow up letter to him again requesting copies of ARP II's general ledgers for all of 2009 and 2010. A true and correct copy of my letter is attached hereto as "Exhibit 19," and is incorporated herein by reference.

38. On or about January 10, 2011, I received a letter from Williams advising that a copy of ARP II's general ledger for 2010 would be provided. Williams further stated in his letter that he would not produce ARP II's general ledger for 2009 because I allegedly "already have it." However, Williams's assertion is incorrect and false. Kriti had only produced ARP II's general ledger for a portion of 2009 (the records that were provided end in June or July of that year). ARP II's complete general ledger for all of 2009 was never provided to me. A true and correct copy of Williams's letter is attached hereto as "Exhibit 20" and is incorporated herein by reference.

39. On January 10, 2011, upon receiving Williams's letter, I immediately wrote a response letter to him clarifying that only the general ledger for a portion of 2009 had been provided to me and, therefore, I was requesting copies of ARP II's general ledger for all of 2009. A true and correct copy of my letter is attached hereto as "Exhibit 21," and is incorporated herein by reference.

40. I subsequently received a disk from Williams containing what purports to be ARP II's general ledger for 2010. However, Williams failed or refused to produce ARP II's complete general ledger for all of 2009. As a result, on January 22, 2011, I wrote another letter to Williams again requesting a copy of ARP II's complete general ledger for all of 2009. A true and correct copy of my letter is attached hereto as "Exhibit 22," and is incorporated herein by reference. In my January 22, 2011 letter, I also requested that Williams amend ARP II's tax returns and K-1 forms for the years 2004 through 2009 to reflect the correct ownership of the company—*i.e.*, to show that Emerald owns 70% of ARP II. ARP II had previously filed tax returns for the years 2004 through 2009 that falsely reported to the government that Emerald owns approximately only 21% of ARP II.

41. I did not receive any response from Williams for several weeks. Therefore, on February 14, 2011, I wrote yet another letter to Williams again requesting a copy of ARP II's general ledgers for all of 2009. I also reiterated in my letter that ARP II needs to file amended tax returns and K-1 forms for the years 2004 through 2009 to reflect the correct ownership of the company. The letter also advised Williams that the matter would be taken up with the Court if a satisfactory response was not received. A true and correct copy of my letter is attached hereto as "Exhibit 23," and is incorporated herein by reference.

42. By letter dated February 18, 2011, Williams finally responded and advised me that he will not produce ARP II's complete general ledger for 2009. He also refused to amend ARP II's income tax returns or K-1 forms even though they admittedly misreported Emerald's ownership interest in ARP II. A true and correct copy of Williams's letter is attached hereto as "Exhibit 24" and is incorporated herein by reference. Williams again falsely maintains in his letter that ARP II's 2009 general ledger for all of 2009 was previously produced to me in connection with the 2010

arbitration conducted in New York. However, to this day, Kriti and Williams have failed to provide me with ARP II's complete general ledger for all of 2009 despite my numerous requests for these records. I certainly would not have requested the 2009 general ledger if it had already been provided to me. Because of Williams's refusal to amend ARP II's income tax returns and K-1 forms to reflect Emerald's correct ownership interest, he has caused ARP II to file and to continue to file incorrect and false tax returns.

43. On February 19, 2011, I wrote a final response letter to Williams notifying him that ARP II had continued to fail to provide me with copies of business records to which Emerald is entitled to receive. A true and correct copy of my letter is attached hereto as "Exhibit 25," and is incorporated herein by reference. I've since received no response from Williams.

44. To the extent that Kriti and Williams have produced any information regarding ARP II's financial condition, it has generally occurred only in response to litigation. Moreover, on those few occasions when Kriti has provided some information involving ARP II, the information it has produced was virtually useless and sometimes false. For instance, acting through counsel, Williams provided me on June 29, 2009 with ARP II's financial statements for 2005 through 2008. Unlike the detailed financial statements provided by Kriti to BofA, the financial statements given to me contain virtually no detail. They lump the marina's information together into one line item and do the same for the condominium development. Because of the lack of detail, it is impossible to determine important information about the company's operations. The financial statements also were designed to give me the false impression that condominium development was ongoing, as the 2006 through 2008 balance sheets entitle the condominium line item as "Condominium Construction in Progress." As I discovered years later, condominium construction was *never* in progress and nothing at all had

been done with respect to the condominiums since the end of 2006. Kriti has consistently given Emerald belated, vague, and false financial statements for the past six years.

45. Kriti is in exclusive custody and control of ARP II's financial information and records that are needed to determine the true financial condition of the company and to project its prospects of future success. Kriti has repeatedly failed or refused to produce ARP II's records and information to Emerald, despite numerous requests for same. By reason of Kriti's and Williams's refusals to grant Emerald complete access to all of ARP II's business records, computers, and information, the company's true financial condition is still unknown.

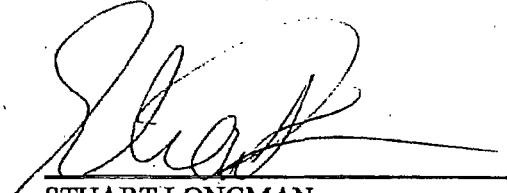
46. Although Kriti and Williams have repeatedly refused to produce complete records and information giving an accurate picture of ARP II's financial condition, they now ask this Court to grant them the drastic remedy of selling off Emerald's interest in ARP II because the company is allegedly in dire financial straits. If Kriti is allowed to foreclose on Emerald's interest in ARP II, it will defeat Emerald's right as a 70% member to seek dissolution of ARP II based on Kriti's mismanagement of the company. As discussed above, the 2009 Dissolution Action is pending before this Court. Emerald has filed motions to consolidate the 2009 Dissolution Action with this action so that this Court can conduct a single trial and make rulings on all issues, including whether ARP II should be dissolved, whether Emerald should be required to buy out Kriti's interest in ARP II, or vice versa, and whether Emerald's interest in ARP II should be sold at a foreclosure sale.

47. I respectfully submit that Kriti is attempting use the foreclosure process to defeat Emerald's action to dissolve ARP II based on Kriti's mismanagement of ARP II. Kriti now seeks to be rewarded for its mismanagement of ARP II (which it completely controls) by causing Emerald's

distributional interest in ARP II to be involuntarily sold off because of ARP II's poor financial performance, which Kriti directly caused.

48. In this particular case, the judgment creditors are the LLC itself (ARP II) and the member with complete voting control of the LLC (Kriti). Kriti (through its exclusive control of ARP II) has the ability to make distributions from the company when and in what amount it chooses. Foreclosure of Emerald's interest in ARP II is unnecessary because this Court's charging order is sufficient to protect Kriti's interests.

FURTHER AFFIANT SAYETH NOT.


STUART LONGMAN

SWORN to before me this
28th day of March, 2011

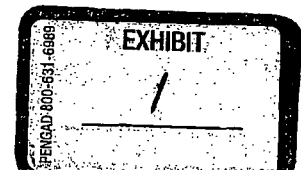

Notary Public for South Carolina ~~Connecticut~~
My commission expires: June 30, 2013

December 29, 2003

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA.

OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC

MEMBERSHIP SHARES IN THIS LIMITED LIABILITY COMPANY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. MEMBERSHIP SHARES ACQUIRED BY MEMBERS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OF THE MEMBERSHIP SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. MEMBERSHIP SHARES MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED TO PERSONS WHO ARE NOT BONA FIDE RESIDENTS OF THE STATE OF SOUTH CAROLINA FOR A PERIOD OF AT LEAST NINE MONTHS FROM THE COMPLETION OF THE OFFERING IN WHICH THE TRANSFEROR ACQUIRED SUCH MEMBERSHIP SHARES. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE MEMBERSHIP SHARES ARE SET FORTH IN THIS AGREEMENT.



OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC

This **OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC** ("**Agreement**") is made and entered into as of the 29th day of December, 2003, by and among **EMERALD INVESTMENTS, LLC**, a Connecticut limited liability company (the "**Emerald Member**"), and **KRITI RIPLEY, LLC**, a Delaware limited liability company (the "**Kriti Member**"). The Kriti Member is referred to as the "**Investor Member**". The Emerald Member and the Kriti Member are collectively referred to as the "**Members**" and individually as a "**Member**") and **ASHLEY RIVER PROPERTIES II, LLC** (as the "**Company**").

WITNESSETH:

WHEREAS, the Company has been formed as a limited liability company under South Carolina law for the limited purposes hereinafter set forth; and

WHEREAS, the Members wish to adopt this Agreement as the operating agreement of the Company.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, to each paid in hand, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members and the Company covenant and agree as follows:

ARTICLE I DEFINITIONS

1.1 **Definitions.** Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) "**Act**" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) "**Agreement**" shall mean this Operating Agreement, together with any amendments hereto.

(c) "**Articles of Organization**" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, together with any amendments thereto.

(d) "**Capital Account**" shall mean the account established and maintained for each Member on the books of the Company pursuant to **Article VII** and **Article VIII** hereof.

(e) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of a Member.

(f) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(g) "Company" is defined in the preamble.

(h) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(i) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.

(j) "Control" or "Controlled" shall mean with respect to any legal entity, the actual or constructive ownership of more than fifty percent (50%) of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity, or the ability to direct the management and affairs of such entity.

(k) "Disinterested" shall mean with respect to any Member, a Member who (i) is not a party to a particular transaction or other undertaking, (ii) has no material financial interest in any organization that is a party to that undertaking, and (iii) is not a Family member of any Person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) "Dissociation" shall mean only the action of a Member deemed to be a Dissociation by the Member pursuant to Article X, and shall not have the meaning given it in the Act.

(m) "Family" shall mean (i) the spouse, lineal descendants and ancestors of an individual; (ii) any estate, trust, guardianship, conservatorship, custodianship or other fiduciary arrangement for the benefit of any one or more of the individuals described in (i) above; and (iii) any corporation, partnership, limited liability company or other business organization Controlled by any one or more individuals or entities described in (i) or (ii) above.

(n) "Financial Membership Shares" shall mean each Member's Financial Membership Shares listed on Exhibit A attached hereto.

(o) "Financial Rights" shall mean the right of each Member to share in the profits and Losses of the Company and the right to share in distributions. Each Member's Financial Rights shall be a percentage, expressed as a fraction, the

numerator of which is such Member's Financial Membership Shares and the denominator of which is the total Financial Membership Shares owned by all Members.

(p) "Losses" shall mean the losses of the Company as determined under Article VIII hereof.

(q) "Members" shall mean the parties to this Agreement from time to time.

(r) "Membership Share" shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.

(s) "Person" shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(t) "Permitted Transfer" shall mean the transfer of a Member's Membership Share to a Person who is also a Member of the Company at the time of the transfer.

(u) "Profits" shall mean the profits of the Company as determined under Article VIII hereof.

(v) "Project Manager" shall mean Ripley Light Development, LLC, or its permitted successor under the Project Management Agreement.

(w) "Project Management Agreement" shall have the meaning established in Section 5.2.1 of this Agreement.

(x) "Required Interest" shall mean those Members who own one hundred percent (100%) of the Voting Rights in the Company.

(y) "Voting Membership Shares" shall mean each Member's Voting Membership Shares listed on Exhibit A attached hereto.

(z) "Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Each Member's Voting Rights shall be a percentage, expressed as a fraction, the numerator of which is such Member's Voting Membership Shares and the denominator of which is the total Voting Membership Shares owned by all Members.

(aa) "Voting Rights in the Company" shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a

percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

ARTICLE II FORMATION, PURPOSES AND POWERS

2.1 Formation. The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

2.2 Name. The name of the Company may only be changed by an amendment to the Articles of Organization.

2.3 Articles of Organization. The Articles of Organization have been filed with the South Carolina Secretary of State, and the Company shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

2.4 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles of Organization.

2.5 Registered Agent and Address. The registered agent for service of process on the Company and the street address of the registered agent for service of process on the Company shall be the Person and address set forth in the Articles of Organization.

2.6 Term Company. The Company shall be a term company within the meaning of the Act. The Company's existence shall commence on the date the Articles of Organization were filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization, and the existence of the Company shall terminate on the date specified in the Articles of Organization, unless extended or sooner terminated by law or pursuant to the provisions of this Agreement.

2.7 Purposes. The purposes of the Company shall be to own, maintain, improve, lease, invest in and use the property described on Schedule 2.7 attached hereto ("New Parcel A"). With the written consent of all of the Members, the Company may also seek to acquire, own, maintain, improve, lease, invest in, and use the properties identified as Company Opportunity Parcels in Section 6.1 of this Agreement.

2.8 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees; incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;
- (i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;
- (j) Pay pensions and establish qualified and non-qualified retirement plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents, if otherwise permitted by law;
- (k) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(m) Perform any act and execute and deliver any documents required by any governmental authority; and

(n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

2.7 Construction. Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

ARTICLE III MEMBERSHIP AND CAPITALIZATION

3.1 Members. Each Member's Financial Membership Shares and Voting Membership Shares are shown on Exhibit A attached hereto.

3.2 Admission of New Members. Except as may otherwise provided in Article XI, additional Members (including transferees) may be admitted to the Company only with the consent of those Members who own one hundred percent (100%) of the Voting Rights in the Company.

Consent to the admission of a new Member shall be evidenced by the execution by both the new Member and the Company of an amendment to Exhibit A of this Agreement setting forth the names, addresses, Financial Membership Shares, and Voting Membership Shares of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person completes and executes an admission agreement with the Company in a form reasonably acceptable to the Company. The Members hereby consent to the admission of any transferee of a Membership Share pursuant to a Permitted Transfer as a full Member in the Company, provided such transferee completes and executes an admission agreement in a form reasonably acceptable to the Company.

Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, insolvency,

bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.3 Transferee of Membership Share Admitted as a Member. Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.4 Transferee of Membership Share not Admitted as a Member. If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Company, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Company may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

3.6 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be changed or revoked at any time by the Member who gave such power by giving notice of its change or revocation to the Company.

3.7 (a) Initial Capital Contribution. The Kritt Member will be responsible for making an initial cash capital contribution in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the "Investor's Initial Capital Contribution"). The Emerald Member shall contribute, or cause Ripley Light Development, LLC ("Ripley") to contribute, the following tangible and intangible property rights which the Members have agreed to be valued as a capital contribution of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the "Emerald Initial Capital Contribution"):

(i) that parcel of land identified as Charleston County TMS 421-11-00-054 and consisting of approximately 5.78 acres, subject only to the following existing indebtedness: (A) One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) owed to Cosimo, LLC (the "Cosimo Debt"); and (B) Five Hundred Thousand Dollars (\$500,000.00) owed to Philip Blumenfeld (the "Blumenfeld Debt"); and (C) One Hundred Thirteen Thousand Two Hundred Sixty One Dollars and sixty-seven cents (\$113,261.67) owed to General Engineering Laboratories, Inc. (the "GEL Debt"). It is understood that the Investor member shall not be obligated to guaranty any such existing indebtedness.

(ii) all dock permits related to New Parcel A, pursuant to the Assignment of Dock Permits in the form attached hereto as Schedule 3.7(a)(ii).

(iii) all personal property, permits, contract rights, intangibles and other property rights described in the Bill of Sale and General Assignment attached hereto as Schedule 3.7(a)(iii).

(b) Voluntary Capital Calls. Those Members who own one hundred percent (100%) of the Voting Rights in the Company may request that the Members make additional Capital Contributions by delivering notice of the request to each Member. Any additional Capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

(c) Mandatory Capital Calls. Any Member who owns Voting Rights in the Company may unilaterally demand that the Members make additional Capital Contributions upon the occurrence of a Mandatory Capital Call Event, as such term is defined below. Any additional Capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to total of the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

For purposes of this Section 3.7 (c), a "Mandatory Capital Call Event" shall mean the occurrence of any one of the following events:

- (i) The failure of the Company to conclude a loan with Marshall Investments Corporation or another lender on or before March 31, 2004 upon substantially the terms and conditions as set forth in the loan proposal described in Section 3.9 (e) hereof (herein, a "Marshall Default"); or
- (ii) The commencement of legal proceedings by any party against the Company to collect payment of any of the Cosimo Debt, the Blumenfeld Debt, or the GEL Debt, and the failure of the Company to discharge the debts which are the subject of such proceedings, or to otherwise cause such legal proceedings to be withdrawn, with prejudice, within 30 days of this commencement of same (herein, a "Mortgage Default")

A Member may make a Mandatory Capital Call by delivering notice of the demand for additional Capital Contributions to each Member identifying therein the Mandatory Capital Call Event which has occurred, and stating the amount of additional Capital Contributions which must be made. In the case of a Marshall Default, a Member may demand additional Capital Contributions on a monthly basis in sufficient amounts to permit the Company to discharge its obligations and other indebtedness to third parties in the ordinary course of business as and when such obligations and other indebtedness becomes due and payable. In the case of a Mortgage Default, a Member may demand additional Capital Contributions in sufficient amount to fully discharge any such Mortgage Default.

(d) Dilution.

(i) Remedies. If a Member (a "Defaulting Member") fails to make any additional Capital Contribution within 30 days of any request or demand therefor pursuant to Section 3.7(b) and (c) above, the same shall constitute a default hereunder and the other Members ("Non-Defaulting Members") may, each in its sole discretion, without any obligation to do so and without limitation on its other rights and remedies under this Agreement, elect to exercise any of the options set forth in subparagraphs (ii) and (iii) below.

(ii) Default Contributions. The options available to the Non-Defaulting Members for failure by the Defaulting Member to make capital contributions when required under this Agreement shall include the ability to elect either to (1) withdraw the capital contribution made by the Non-Defaulting Member that corresponds to the capital contribution which the Defaulting Member failed to make (provided, if there is more than one Non-Defaulting Member, then the Non-Defaulting Members must exercise the remedy in this clause (1) jointly or not at all) or (2) in addition to its share, if any, of contributions made as required at the time of the Defaulting Member's failure to contribute, make a contribution ("Default Contribution") to the Company in an amount equal to the portion of any required additional Contribution to Capital that was not made by the Defaulting Member (and, if more than one Non-Defaulting Member contributes toward a Default Contribution and they cannot agree on the proportion in which to contribute, they shall contribute in proportion to their respective total Capital

Contributions). The making of any such contribution shall not be deemed to cure the default of the Member failing to make such additional Contribution to Capital. Each Default Contribution shall be considered to be an additional Capital Contribution.

(iii) **Default Loans.** The Non-Defaulting Member may elect to advance as a loan to the Company an amount equal to but in lieu of what would have been the amount of any applicable potential Default Contribution (such loan being referred to herein as a "Default Loan") (and if more than one Non-Defaulting Member makes advances as a Default Loan and they cannot agree on the proportion in which to make the advances, they shall do so in proportion to their respective total Capital Contributions). A Default Loan shall be the obligation of the Company, shall bear interest at the 12% per annum payable monthly or the maximum interest then permitted by applicable Laws (whichever is less), shall be repaid before any other payments or distributions of Company Cash pursuant to Section 8.1 and shall be due in full on the earlier of the first anniversary of its making or dissolution of the Company.

(iv) **Adjustment of Membership Interests.** If one or more Non-Defaulting Members makes a Default Contribution on behalf of a Defaulting Member, each such Non-Defaulting Member's Membership Share shall be increased by an amount equal to:

$$\begin{array}{l} \text{Increase to} \\ \text{Membership} \\ \text{Share of Non-Defaulting Member} \end{array} = \frac{A}{B} \times 2$$

whereby:

A = Default Contribution made by such Non-Defaulting Member at the time the Defaulting Member failed to make its Contribution (the "Required Contribution Date").

B = Total Contributions made by all Members through and including the Required Contribution Date, including the Default Contribution.

and the Membership Share of the Defaulting Member shall be decreased (but not below zero) by the aggregate amount of the increases to the Membership Interests of all Non-Defaulting Members. If the aggregate amount of increases to the Membership Shares of the Non-Defaulting Member would, pursuant to the foregoing formula, exceed the Membership Share of the Defaulting Member immediately prior to adjustment, the aggregate increases shall be limited to the amount of the Membership Share of the Defaulting Member immediately prior to adjustment (with such limitation being applied so that the ratio of each Non-Defaulting Member's increase to the total increase of all Non-Defaulting Members equals the ratio of such Non-Defaulting Member's Default Contribution to the Default Contribution of all Non-Defaulting Members).

(e) Guaranties. In the event that the Company receives a loan from a third party lender, in connection with which a Member or an affiliate of any Member delivers a guaranty or indemnity of any kind or nature (any such guaranty or indemnity being referred to herein as a "Guaranty"); and such Member or its affiliate expends any sum arising out of a demand made pursuant to a Guaranty, then the Member which expended (or whose affiliate expended) such sum shall be deemed to have made an additional Capital Contribution to the Company equal to such sum, and the respective Financial Membership Shares and Voting Membership Shares of each Member in the Company shall be readjusted in the proportion that each Member's total Capital Contributions (including deemed Capital Contributions) to the Company bears to the total Capital Contributions made or deemed made to the Company by all Members.

3.8 Representations and Warranties of Members. Each Member hereby represents and warrants to the Company and each other Member, and covenants with the Company and each other Member that:

(a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;

(b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;

(c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;

(d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;

(e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;

(f) the Member acknowledges that, to the best of the Member's knowledge, the purchase of the Member's Membership Share in the Company was not solicited by the use of general advertising or solicitation;

(g) the Member has been given sufficient opportunity to ask questions, and receive answers with respect to the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company;

(h) in the event such Member is not a natural person, the Member is duly organized, validly existing and in good standing under the laws of the state of its formation and has full power to carry on its business and to own and operate its properties and assets as presently owned and operated;

(i) such Member has taken all action necessary to approve and authorize the execution of this Agreement and to consummate the transaction contemplated hereby; and

(j) when executed and delivered, this Agreement shall constitute the valid and binding obligations of the Member, enforceable in accordance with its terms and conditions.

The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

3.9 Emerald Member's Representations. The Emerald Member and Stuart Longman, jointly and severally, hereby represent and warrant to the Company and each other Member, and covenants with the Company and each other Member that:

(a) Except as disclosed in Schedule 3.9 hereto, there is no pending or threatened litigation, action, proceeding or labor controversy by, against or affecting the Emerald Member, Stuart Longman, Ripley or any entity, directly or indirectly, Controlled by the Emerald Member, Stuart Longman (or any member of his Family) and/or Ripley, or any entity, directly or indirectly, Controlling or under the common Control of the Emerald Member or Ripley, or which, regardless of the outcome, could reasonably be expected to have a material adverse effect on the (i) financial condition, operations, assets, business, properties or prospects, debt service capacity, tax position or environmental liability of the Company, the Project Member, New Parcel A or the Company Opportunity Parcels, or (ii) the licenses, authorizations, permits, waivers, certificates or approvals applicable to New Parcel A, including without limitation those described in Section 3.7(a)(ii) (collectively, the "Permits").

(b) Except as disclosed in Schedule 3.9 hereto, there are no pending or threatened claims, complaints, notices or requests for information received by the Emerald Member, Ripley or Stuart Longman with respect to any alleged violation of any applicable legal or regulatory requirement relating the regulation of the environment or hazardous substances ("Environmental Laws") or any complaints, notices or inquiries to the Emerald Member, Ripley or Stuart Longman regarding potential liability under any Environmental Law; during Ripley's ownership of New Parcel A, and to the best of the Emerald Member's and Stuart Longman's knowledge, prior thereto, there were no releases of hazardous substances at, on or under New Parcel A; to the best knowledge of the Emerald Member and Stuart Longman, there are no underground storage tanks, active or abandoned, on or under New Parcel A; and to the best knowledge of the Emerald Member and Stuart Longman, no conditions exist at, on or under New Parcel A, which, with the giving of notice or passage of time, or both, would give rise to liability under any Environmental Law.

(c) To the best knowledge of the Emerald Member, there are no Permits that are required or will become required for the ownership, construction or operation of New Parcel A as a 102-slip marina and 138-residential unit condominium, inclusive of Permits related to the Collins Underdeveloped Land, as hereinafter defined (the "Project"), other than the Permits described in Schedule 3.9. Each Permit heretofore required to be obtained is in full force and effect and is not at this time subject to any appeals or further proceedings or to any unsatisfied condition that may allow modification or revocation. Each Permit described in Schedule 3.9 but which has not yet been issued is of a type that is routinely granted on application. Neither the Emerald Member nor Stuart Longman has any reason to believe that any permit so indicated on Schedule 3.9 will not be obtained before it becomes necessary for the ownership, construction or operation of the Project or that obtaining such Permit will result in undue expense or delay (other than architectural and engineering fees in connection with any change to any existing Permit). Each heretofore issued Permit is in full force and effect, and no condition of any Permit has been violated to date, and no event or circumstance has occurred that with the giving of notice or the passage of time, or both, would give rise to such a violation. Each Permit is assignable without the consent of the issuing authority or the payment of any fee.

(d) The outstanding principal balance of the Cosimo Debt is \$1,750,000 and accrued but unpaid interest thereon, late charges and other amounts owed is \$21,875; and interest thereon has been paid through November 30, 2003. The outstanding principal balance of the Blumenfeld Debt is \$500,000 and accrued but unpaid interest thereon, late charges and other amounts owed is \$160,749.00; and no interest thereon has been paid. The outstanding principal balance of the GEL Debt is \$113,261.67 and there is no outstanding accrued interest thereon. True and correct copies of all documents entered into in connection with the Cosimo Debt, the Blumenfeld Debt, and the GEL Debt (collectively, the "Existing Loan Documents") have been delivered to the other Members, all of which are described in Schedule 3.9 hereto. Other than those set forth in Schedule 3.9, there is no default under any of the Existing Loan Documents, and no event or circumstance has occurred that with the giving of notice or passage of

time, or both, would give rise to such a default. None of the Existing Loan Documents have been modified.

(e) A true and correct copy of a loan proposal, dated September 24, 2003, from Marshall Investments Corporation ("Marshall") has been delivered to the other Members. A copy of this proposal is attached hereto as Schedule 8.1. Neither the Emerald Member nor Stuart Longman has any reason to believe that the conditions to the closing and funding of the loan described in such loan proposal will not be satisfied. All representations and warranties made by, and all documents and information provided to, New Lender are true and correct.

(f) Except as disclosed in Schedule 3.9, neither the Company nor New Parcel A is bound by any agreement (other than the Existing Loan Documents and the heretofore issued Permits described as such in Schedule 3.9). Any agreement described in Schedule 3.9 is in full force and effect, has not been terminated, modified or assigned and a true and correct copy thereof has been delivered to the other Members.

(g) All utility services necessary for the construction and operation of the Project are or will be available at New Parcel A as and when required on commercially reasonable terms.

(h) New Parcel A is not subject to any tenancies or the rights of any occupants.

3.10 Indemnification. Each Member (and to the extent applicable Stuart Longman) shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member or Stuart Longman set forth in this Agreement.

ARTICLE IV MEMBER MEETINGS

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business or at the New York City office of any of the Members, or at such other place as shall be agreed upon by those Members who own one hundred percent (100%) of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days' in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Member Voting and Quorum. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. One hundred percent (100%) of the Voting Rights in the Company constitutes a quorum. Unless otherwise provided in this Agreement or the Articles of Organization, once a quorum is established, the affirmative vote of those Members who own the Required Interest of the Voting Rights in the Company shall constitute a valid decision of the Members.

4.4 Voting by Certain Members. Voting Rights owned by a corporation or other business entity may be voted by the officer, agent or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.

Voting Rights owned by an administrator, executor, personal representative, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.

Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.

4.5 Proxies. Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 Manner of Meetings. Members may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.

4.8 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action and sign a Consent of the Members which sets forth the action to be taken.

4.9 Personal Services. No Member shall be required to perform any services for the Company by virtue of being a Member of the Company.

ARTICLE V MANAGEMENT AND CONTROL

5.1 General Authority. The Company shall be member managed, as defined in the Act. Except as otherwise expressly provided by in Section 5.2 below or in the Project Management Agreement referenced below, any day-to-day matter relating to the business and affairs of the Company shall be decided by the Project Manager, provided that the consent of the Required Interest of the Members is required for all matters established in Section 5.2 of this Agreement or any matters that are not within the authority of the Project Manager as provided in the Project Management Agreement.

5.2 Additional Voting Requirements for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require the written approval of the Members who own the Required Interest of the Voting Rights in the Company:

- (a) Any amendment to this Agreement or the Articles of Organization.
- (b) The Company shall not purchase, sell, option, exchange, encumber or refinance any real property, or enter into or modify any agreement requiring the Company to do any of the foregoing.
- (c) The Company shall not sell, or contract to sell, or otherwise dispose of more than five percent (5%) the Company Property, except marina slips and residential condominium units sold in the ordinary course of business at arms' length on terms consistent with, and at prices no less than, those set forth in a business plan approved by Members having the Required Interest of the Voting Rights in the Company.
- (d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement.
- (e) The Company shall not hire a Member or anyone who is a member of a Member's Family.
- (f) The Company shall not agree to pay to a Member or any member of a Member's Family any management fee, guaranty fee, broker commission or any other fee or commission.

(g) The Company shall not make any expenditure that is not on the approved marina budget attached as Schedule 5.2(g) or on the budget for the future phases of the project, which will not take effect unless approved by the of the Members who own the Required Interest of Voting Rights in the Company, as contemplated by the Project Management Agreement.

(h) The dissolution and winding up of the Company, except as otherwise expressly set forth herein.

(i) The borrowing of money for Company purposes and, if security is required therefor, the granting of any security interest in all or any portion of Company Property.

(j) The opening of any bank or brokerage accounts and the authorization of signatories thereon.

(k) The commencement on behalf of the Company of a voluntary case for relief as a debtor under the United States Bankruptcy Code, or the filing on behalf of the Company of a petition to take advantage of any Federal, state or other applicable bankruptcy, reorganization, insolvency, readjustment of debts, dissolution or liquidation law or statute.

(l) The bringing or defending, paying, collecting, compromising, arbitrating, resorting to legal action, or other adjustment of claims or demands for or against the Company, in each case where the amount of such claim or demand exceeds \$10,000 or is for injunctive relief.

(m) Selection of auditors, attorneys, brokers, agents, construction managers, general contractors, architects and other design professionals and any other professionals rendering service to the Company.

(n) Enter into, modify, terminate, accept the surrender of, or grant any consent or waiver under, any lease (other than equipment leases on terms consistent with a project budget approved by Members having the Required Interest of Voting Rights in the Company and slip and boat leases on terms and at rentals consistent with those set forth in a business plan approved by Members having the Required Interest of Voting Rights in the Company) or any agreement (including without limitation any construction, trade or service agreement) involving more than \$10,000 or which may not cancelled on 30 days' notice or less.

(o) Making any Federal or state income tax elections on behalf of the Company or enter into any settlement agreement or any other agreement that binds the Company or its Members with the Internal Revenue Service or any other foreign, state or local taxing authority.

(p) Making any distributions to Member, except in accordance with Article VIII or IX.

(q) Entering into any loan agreement or executing and delivering any note, mortgage, deed of trust, guaranty, indemnity or other instrument or agreement in connection with any borrowing, or any amendment, supplement, extension or modification thereto, whether in connection with any existing or future borrowing or debt.

(r) Designating a director to the Board of Directors of the Ripley Point Property Owners Association, Inc., a South Carolina non-profit corporation (the "Association"), which director shall comply with the joint instructions of the Required Interest of Voting Shares in the Company, and voting the interest of the Company as a member of the Association.

5.2.1 Authority Concerning Special Decisions.

(a) All Members hereby approve the Project Management Agreement between the Company and Ripley Light Development, LLC, attached hereto as Schedule 5.2.1(b) (the "Project Management Agreement").

(b) All Members hereby agree that the Company shall secure a policy of "key-man" life insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) with respect to Stuart Longman with the Company as the beneficiary of the policy. If possible, the Members agree that such insurance may be purchased by the Company by taking an assignment of a \$500,000 portion of an existing \$10 million life insurance policy for Stuart Longman. A separately issued policy shall be obtained if such assignment cannot be completed within thirty (30) days of the date of this Operating Agreement.

5.3 Delegation of Powers. From time to time, the Members may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter.

5.4 Ratification. The Members may ratify and adopt any and all acts of any Person done on behalf of the Company.

5.5 Compensation for Services. The Members shall not receive additional compensation for providing services to the Company unless approved by the Required Interest of the Members.

5.6 Officers. The Members may, from time to time, designate one or more individuals to be officers of the Company. Any officers so designated shall have such authority and perform such duties as the Members may, from time to time, delegate to them. Any number of offices may be held by the same Person. Designation of a Person as an officer shall not of itself create an employment agreement or any other contract rights. Each officer shall hold office until his successor shall be duly

designated and qualified, or until his death or until he shall resign or shall have been removed, with or without cause, by the Members.

5.7 Bank Accounts. All Company funds shall be deposited only in bank or trust company accounts in the continental United States. The funds of the Company shall not be commingled with the funds of any other party. Notwithstanding anything contained herein to the contrary, all checks, drafts and withdrawals from any Company account (other than the Operating Account, as hereinafter defined) shall require the signature of a representative of either Investment Member and the Emerald Member. On a monthly basis the Emerald Member or the Project Manager may submit to the other Members for their approval a requisition for a sum requested to be transferred to the Operating Account, on which a representative of the Emerald Member may be the sole signatory. Each requisition shall itemize each payment to be made from the Operating Account and the Emerald Member is authorized only to make payments to the payees for the sums set forth in a requisition approved by the other Members, provided that the Emerald Member without the other Members' consent may issue checks for amounts in each case not exceeding \$2,000, provided further that such checks for which the other Members' consent is not obtained do not in the aggregate exceed \$20,000 in any 12-month period. Any unspent sums shall be applied to and in accordance with the next month's approved requisition.

ARTICLE VI FIDUCIARY DUTIES; RIGHT TO RELY; INDEMNIFICATION

6.1 Duty of Loyalty. A Member's duty of loyalty to the Company and the other Members is limited to the following:

- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Member in the conduct or winding up of the Company's business or derived from a use by the Member of the Company's property, including the appropriation of a Company opportunity; and
- (b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and
- (c) To refrain from directly competing with the Company in the conduct of the Company's business before dissolution of the Company.

Notwithstanding anything herein to the contrary, the Members and the Company acknowledge and agree that the Members and/or his or her respective Family members, either directly or indirectly through other Persons, are engaged in other business and investment activities which may be considered to indirectly compete with or be adversarial to the business conducted by the Company; however, the Members

and the Company intend and agree that they shall have no interest or rights with respect to any business, investment or other activities of the other Members or his or her Family members carried on outside the Company. The Members are sophisticated investors and are aware of the extent of the other Member's business and investment activities. There are, however, several potential investments which shall be deemed Company opportunities: (i) all real property, personal property, fixtures, intangible property, docks and dock permits, and other property rights that are the subject of an Agreement for the Purchase of Real Property and Assets, dated July 17, 2000, by and among Span USA, Inc., Ripley Light Marina, Inc. Fred Collins, and Sapphire Development, LLC ("Sapphire"), and currently the subject of pending litigation, including each of the follow parcels of real property: (A) Charleston County TMS 421-11-00-073, consisting of approximately 5.037 acres and owned by Fred Collins (B) Charleston County TMS 421-12-00-001, consisting of approximately 0.891 acres and owned by Span USA, Inc. and (C) Charleston County TMS 421-12-00-009, consisting of approximately 0.43 high acres, and owned by Span USA, Inc. (collectively, the "Collins Property"); and (ii) Charleston County TMS 421-11-00-061, consisting of approximately 2.94 acres and owned by South Carolina Electric and Gas Company (the "SCE&G Parcel"); and (iii) Charleston County TMS 421-11-00-085, consisting of approximately 1.114 acres, and owned by Ashley River Properties I, LLC (the "Phase I Parcel"; the Collins Property, the SCE&G Parcel, and the Phase I Parcel are referred to herein, (collectively, as the "Company Opportunity Parcels"). The Members agree that no Member (or Family member or affiliate of any Member) shall enter into any transaction related to a Company Opportunity Parcel without the prior written consent of the Required Interest of Voting Rights of the Company.

6.2 Duty of Care. In carrying out their duties and exercising their powers hereunder, the Members shall exercise reasonable skill and care, use their best judgment and act at all times in what they deem to be the best interests of the Company.

6.3 Fiduciary Duties. The Members shall discharge their duties and exercise any of their rights consistently with the obligation of good faith and fair dealing which they owes to the Company and the Members.

6.4 Duty of Confidentiality. Each Member hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information. Each Member agrees to return all documents which contain any confidential information and all copies of such documents upon request by the Company.

6.5 Indemnity Agreement by Emerald and Related Parties. Simultaneously with the execution of this Agreement and as a condition of the Kriti Member's execution and delivery of this Agreement, the Emerald Member and certain related parties have agreed to deliver the Indemnity Agreement attached hereto as Schedule 6.5.

ARTICLE VII CAPITAL ACCOUNTS AND ACCOUNTING

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

7.2 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified in accordance with Section 9.6(d) so as to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.3 Tax Matters Partner. The Emerald Member is designated the initial tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Company may designate a new tax matters partner from time to time with the consent of the Required Interest of Voting Rights of the Company.

ARTICLE VIII INTERIM DISTRIBUTIONS AND ALLOCATIONS

8.1 Interim Distributions.

Interim distributions to the Members shall be made in accordance with the following:

The Required Interest of Voting Rights of the Company shall determine on no less frequent than a quarterly basis to what extent, if any, the Company's cash on hand of ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, and reserves against future contingent liabilities (such excess being referred to herein as "Available Company Cash"). Any Available Company Cash shall be distributed as follows:

(i) Distributions shall be made to the Members in proportion to their unreturned Capital Contributions until such time as each Member has been returned its entire Capital Contribution plus a ten percent (10%) per annum preferred return on its unreturned Capital Contribution. The ten percent (10%) preferred return shall be calculated on a per diem basis on the unreturned Capital Contribution of each Member, compounded annually. Upon any distribution to a Member, the preferred return shall only accrue on the unreturned portion of the Capital Contribution.

(ii) Upon the return of all Capital Contributions with preferred returns thereon paid in full, as provided in subparagraph (i) above, thereafter distributions shall be made, pari passu, seventy percent (70%) to the Emerald Member and thirty percent (30%) to the Kiti Member, as such percentages may be adjusted in accordance with Sections 3.7(b), (d) and (e) hereof.

All Distributions to the Members shall be made in cash unless otherwise agreed by the Required Interest of the Members.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)(2) and (3) (organizational

expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. Except as otherwise provided in this Article VIII:

(a) Profits of the Company in each fiscal year, shall be allocated to the Members, as follows:

(i) first, to the Members, to restore any allocations of Net Loss under Section 8.4(b) not previously restored with allocations of Net Profits under this Section 8.4(a)(i), in proportion to the aggregate amounts allocated to the Members under such Section 8.4(b);

(ii) second, to the Members as necessary to cause the Capital Account balance of each Member to equal such Member's Target Capital Account: Target Capital Account shall mean an amount equal to a Member's Capital Contributions plus an additional amount constituting a cumulative ten percent (10%) preferred return, taking into account the amount and timing of all prior Capital Contributions from and distributions to each Member;

(iii) third, pro rata to the Members as follows: seventy percent (70%) to the Emerald Member and thirty percent (30%) to Kiti Member, as such percentages may be adjusted in accordance with this Agreement.

(b) Losses of the Company in each fiscal year shall be allocated to the Members as follows:

(i) first, to the Members as necessary to cause each Member's Capital Account balance to equal to zero;

(ii) second, to the Members as necessary to cause the Target Capital Account balances of the Members to be equal to zero; and

(iii) third, pro rata to the Members as follows: seventy percent (70%) to the Emerald Member and thirty percent (30%) to the Kriti Member, as such percentages may be adjusted in accordance with this Agreement.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's nonrecourse liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company minimum gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company minimum gain. A Member's share of the net decrease in Company minimum gain is the amount of the total net decrease multiplied by the Member's percentage share of Company minimum gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net

decrease in Company minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member nonrecourse liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member nonrecourse debt minimum gain. A Member's share of the net decrease in Member nonrecourse debt minimum gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member nonrecourse debt minimum gain arises because the liability ceases to be Member nonrecourse debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the member nonrecourse minimum gain chargeback is added to the Member's share of Company minimum gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This Section will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX DISSOLUTION, WINDING UP, AND TERMINATION

9.1 Dissolution. Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

(a) The written consent of those Members who own the Required Interest of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act.

(d) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own the Required Interest of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, or his heirs, legal representatives, personal representatives, successors or permitted assigns, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Except as otherwise provided herein, following dissolution of the Company, those Members who own the Required Interest shall appoint one or more Members or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs. The liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in the Act;

(b) Publish notice of the Company's dissolution as provided in the Act;

(c) Make final liquidating distributions as provided below, and distribute any Company Property discovered after any such final liquidating distributions in the manner described below; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with the Act.

9.4 Sale of Company Property. Unless otherwise agreed by those Members who own the Required Interest of the Voting Rights in the Company, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in the manner described below.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire an independent appraiser to determine the fair market value of the asset in question. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors, including the liquidator if the liquidator is not a Member, for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, to Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this Section.

9.7 Deficit Capital Account Balances. Any deficit in a Member's Capital Account shall not be an asset of the Company, and no Member or transferee of all or

any part of a Membership Share shall be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member or transferee has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this Article shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

9.9 Duties During Winding Up. The duty of loyalty, duty of care and fiduciary duties set forth in this Agreement shall apply to any Person winding up the Company's business.

9.10 Intent of Parties. The parties intend that the tax allocations of Article VIII shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final positive Capital Account balances under Section 9.6(c) to be made (after unpaid loans and interest thereon, including those owed to Members have been paid) in a manner identical to the order of priorities set forth in Section 8.1. To the extent that the allocation provisions of Article VIII would fail to produce such final Capital Account balances, (i) such provisions shall be amended by the Members if and to the extent necessary to produce such result and (ii) taxable income and taxable loss of the Company for prior open years (or items of gross income and deduction of the Company for such years) shall be reallocated by the Members among the Members to the extent it is not possible to achieve such result with allocations of items of income (including gross income) and deduction for the current year and future years. This Section 9.10 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

ARTICLE X Dissociation

10.1 Events of Dissociation. The provisions of the Act relating to dissociation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the Dissociation of such Member:

(a) Withdrawing, retiring or resigning from the Company with the consent of those Members who own the Required Interest of the Voting Rights in the Company.

(b) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him or it which is not dismissed within ninety (90) days.

(c) any event of Wrongful Disassociation set forth in Section 10.5 of this Agreement.

10.2 Effect of Member's Dissociation. Unless otherwise provided in Article IX, the Dissociation of a Member does not dissolve the Company. A Dissociating Member does not cease to be a Member by reason of his Dissociation. Subject to Section 10.5, the right of a Dissociating Member to be compensated for his Membership Share shall be governed exclusively by Article XI and not the Act. The parties waive any right they may have to assert that the Act or any other provision of law supercedes or modifies the provisions of this Agreement relating to the cessation of a Member's participation in the Company, withdrawal, or Dissociation.

10.3 Character of Payments. All payments made to any Dissociating Member shall be treated as payments described in either Section 736(a) or Section 736(b) of the Code, as determined by application of such sections of the Code and the regulations promulgated thereunder.

10.4 Statement of Dissociation. A Dissociated Member or the Company may file a Statement of Dissociation in accordance with the Act.

10.5 Wrongful Dissociation. Notwithstanding anything herein to the contrary, if a Member Dissociates by reason of the occurrence of any of the following events, then such Dissociation shall be a wrongful Dissociation by such Member in contravention of this Agreement:

(a) Withdrawing, retiring or resigning from the Company without the consent of those Members who own the Required Interest of the Voting Rights in the Company.

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(i) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(ii) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(iii) Engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member.

(c) If the Member is other than a natural person, such Member (or any Person that Controls the Member) engages in any sale, merger, share exchange, partnership, joint venture or other arrangement, including the issuance of new shares of stock or equity interests in the Member or in any Person that Controls the Member, and as a

result of said transaction a Person who is not one of the group of Persons in Control of the Member, as of the date such Member became a party to this Agreement, takes Control of the Member.

(d) If the Member is other than a natural person, the filing of a Certificate of Dissolution, or the equivalent, for a Member or the lapse of ninety (90) days after notice to such Member of revocation of its charter without a reinstatement of its charter.

(e) Any transfer, sale or conveyance (or attempt to do the same) of a Membership Share that is not permitted by the terms of this Agreement.

The provisions of this Agreement governing the rights of a Dissociating Member shall apply to a Member who wrongfully Dissociates, except that any damages sustained by the Company as a result of the Member's wrongful Dissociation shall be offset against any distributions otherwise payable to the Member, and, in addition, the purchase price (if any) to be paid to a wrongfully Dissociating Member pursuant to Article XI shall be reduced to eighty percent (80%) of the amount of the distribution that the disassociating Member would otherwise be entitled to received pursuant to the provisions of Article XI of this Agreement.

ARTICLE XI RESTRICTIONS ON TRANSFER AND BUY-SELL PROVISIONS

11.1 Restrictions on Transfer.

(a) Except as otherwise expressly provided in this Agreement, no Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own the Required Interest of the Voting Rights in the Company. If such consent is obtained or otherwise made in compliance with the terms of this Agreement, the provisions of Article III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void and without effect.

(b) Notwithstanding the foregoing, the foregoing prohibition shall not apply to Permitted Transfers, transfers that comply with the Right of First Refusal (as defined below), and transfers or assignments of Financial Rights only, provided that the Emerald Member may not transfer or assign more than 75% of its Financial Rights until the other Members have been returned their entire respective Capital Contributions.

(c) Notwithstanding anything herein to the contrary, each Member acknowledges that his Membership Share has not been registered under the Securities Act of 1933, as amended ("1933 Act"), in reliance on applicable exemptions. Therefore, the Members hereby agree that Membership Shares in the Company shall be

nontransferable, except in compliance with the 1933 Act and applicable state securities laws, and any attempted transfer not in compliance therewith shall be null, void, and without effect. As an additional condition precedent to the transfer of any Membership Share, the Company may require an opinion of counsel satisfactory to the Company that such transfer will be made in compliance with the 1933 Act and applicable state securities laws, and such transferor shall be responsible for paying any attorneys' fees incurred in connection with the opinion. The transferor may be required to indemnify the Company for any damages resulting from failure to comply with said securities laws, if the Company so requires.

11.2 Right of First Refusal. From and after the first anniversary of the date hereof, the Members shall have a right of first refusal (the "Right of First Refusal") as described as follows:

A Member (a "Selling Member") who desires to sell all or any portion of their Membership Share to a third party purchaser shall obtain from such third party purchaser ("Third Party Purchaser") a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefore ("Third Party Offer"). The Selling Member shall give written notification ("Notice of Sale") to the Company and the other Members (the "Remaining Members"), by certified mail or personal delivery, of its intention to so transfer such Membership Share (the "Offered Membership Share"). The Notice of Sale shall be accompanied by a copy of the Third Party Offer.

The Company shall have the first option, to be exercised within thirty (30) days of its receipt of the Notice of Sale, to purchase all, but not less than all, of the Offered Membership Share by written notice to the Selling Member and the Remaining Members. If the Company fails to respond within such thirty (30) day period, it shall be deemed to have declined to purchase the Offered Membership Share.

If the Company fails to exercise such purchase option, then the Remaining Members shall have thirty (30) days from the expiration of the Company's thirty (30) day option period to exercise their option to purchase all, but not less than all, of the Offered Membership Share by written notice to the Company, the Selling Member, and the other Remaining Members. If any Remaining Member fails to respond within such thirty (30) day period, such Remaining Member shall be deemed to have declined to purchase the Offered Membership Share. If only one Remaining Member elects to purchase the Offered Membership Share, such Remaining Member shall be obligated to purchase all of such Offered Membership Share. If more than one Remaining Member elects to purchase the Offered Membership Share, such Remaining Members shall purchase the Offered Membership Share on a pro-rata basis, with each such Remaining Member obligated to purchase a percentage of the Offered Membership Share, expressed as a fraction, with the numerator being the Financial Membership Shares already owned by the particular Remaining Member and the denominator being the total Financial

Membership Shares of all the Remaining Members that elect to participate in the purchase.

In the event the Right of First Refusal is exercised by either the Company or by one or more Remaining Members, the closing shall take place within sixty (60) days of the exercise of the Right of First Refusal. At the closing, the Company or Remaining Member(s) electing to purchase shall purchase, and the Selling Member shall sell, the Offered Membership Share for an amount equal to the purchase price set forth in the Third Party Offer and in accordance with such other terms and conditions set forth in the Third Party Offer.

If neither the Company nor any of the Remaining Members shall elect to exercise the Right of First Offer, the Selling Member shall be entitled to consummate the sale of the Offered Membership Share to the Third Party Purchaser or one or more of its affiliates upon terms no less favorable than are set forth in the Third Party Offer. Upon such transfer, the Company and the Remaining Members shall admit the transferee as a Member of the Company. If the Selling Member shall fail to close the transaction described in the Third Party Offer within one hundred eighty (180) days of the expiration of the Right of First Refusal on terms no less favorable to the Selling Member as contained in the Third Party Offer, then the Selling Member shall again be required to comply with the terms of this Section before entering into any transaction with a Third Party Purchaser. Notwithstanding anything contained herein to the contrary, any transaction described in the Third Party Offer shall be conditioned upon, and shall not be effective, until the Consents (as hereinafter defined) are obtained.

11.3 Right to Buy Upon Dissociation.

(a) Dissociation. If a Member Dissociates within the meaning of Article X (a "Triggering Event"), then such Member ("Dissociating Member") is deemed to have made an offer to the Company to purchase all, but not less than all, of his Membership Share (the "Dissociating Membership Share") at the price determined in accordance with Section 11.3(b) and upon the terms contained in Section 11.3(c). If the Company does not accept said offer by written notice to the Dissociating Member and the remaining Members of the Company (the "Non-Dissociating Members") within thirty (30) days after receiving written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then the offer shall be deemed rejected and the Dissociating Membership Share shall be offered in writing, at the same price and upon the same terms, to the Non-Dissociating Members.

The Non-Dissociating Members shall have thirty (30) days from the expiration of the Company's thirty (30) day option period to exercise their option to purchase all, but not less than all, of the Dissociating Membership Share by written notice to the Company and the Dissociating Member (or his estate or other legal representative, as the case may be), and the other Non-Dissociating Members. If any Non-Dissociating Member fails to respond within such thirty (30) day period, such Non-Dissociating

Member shall be deemed to have declined to purchase the Dissociating Membership Share. If only one Non-Dissociating Member elects to purchase the Dissociating Membership Share, such Non-Dissociating Member shall be obligated to purchase all of such Dissociating Membership Share. If more than one Non-Dissociating Member elects to purchase the Dissociating Membership Share, such Non-Dissociating Members shall purchase the Dissociating Membership Share on a pro-rata basis, with each such Non-Dissociating Member obligated to purchase a percentage of the Dissociating Membership Share, expressed as a fraction, with the numerator being the Financial Membership Shares already owned by the particular Non-Dissociating Member and the denominator being the total Financial Membership Shares of all the Non-Dissociating Members that elect to participate in the purchase.

If none of the Non-Dissociating Members accept the offer to purchase the Dissociating Membership Share within thirty (30) days after receipt of written notice by them, then the Dissociating Membership Share shall be transferred to the guardian, conservator or legal successors of the Dissociating Member. Upon such transfer, the Company and the Non-Dissociating Members shall admit the transferee as a Member of the Company.

(b) Purchase Price (Dissociation). Unless the Member offering or selling his Membership Share hereunder and all Remaining Members agree otherwise, the purchase price shall be determined in accordance with the following:

The purchase price shall be the Appraised Value (as defined herein) of the Membership Share. Appraised Value shall mean the Fair Market Value (as defined below) of the Membership Share obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by fifty-one percent (51%) of the Remaining Members on behalf of the Company. No discounts for minority interest, lack of marketability or other similar type discounts including but not limited to those related to undivided interests in real estate, voting versus non-voting interests, blockage, key-person, or portfolio issues, shall be taken into account. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value within thirty (30) days after the last of them is appointed, then within five (5) days, they shall appoint a third appraiser to value the Membership Share. The third appraiser shall determine the Appraised Value within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. Fair Market Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company shall each pay the costs of the appraiser appointed by them, and one-half

(1/2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

(c) Payment of Purchase Price (Dissociation). The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.

Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning on the first day of the calendar quarter that occurs after the date of the closing. The purchaser(s) shall execute and deliver to the seller a promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon ten (10) days default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon execution and delivery of the note, the Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the note is paid in full, the Membership Share shall be held by the purchaser(s), but shall be pledged to the seller as collateral security for payment of the note. The seller shall have no right to exercise any Financial Rights or Voting Rights associated with the Membership Share unless and until there is a default on the note. Further, if a selling Member has personally guaranteed payment of any debt, obligation or liability of the Company, then the purchaser(s) of the Member's Membership Share shall make reasonable efforts to have such Member (or his estate or successor(s)) released from such guarantee. If the lender or creditor refuses to release such Member, then the Company and the other Members, if the Company is purchasing the Membership Share, (or the purchasing Member(s) only if the Company is not purchasing the Membership Share), shall in writing, jointly and severally, indemnify and hold harmless such selling Member (or his estate, as the case may be) from payment of said debt, obligation or liability.

Further, if a selling Member has personally guaranteed payment of any debt, obligation or liability of the Company, then the purchaser(s) of the Member's Membership Share shall make reasonable efforts to have such Member (or his estate or successor(s)) released from such guarantee. If the lender or creditor refuses to release such Member, then the Company and the other Members, if the Company is purchasing the Membership Share, (or the purchasing Member(s) only if the Company is not purchasing the Membership Share), shall in writing, jointly and severally, indemnify and

hold harmless such selling Member (or his estate, as the case may be) from payment of said debt, obligation or liability.

11.4 "Shotgun" Buy/Sell Rights. Subject to the following provisions, if an impasse exists for more than thirty days as to any matter for which is required the consent of Members owning the Required Interest of the Voting Rights in the Company, and for which resolution is required to complete the development and/or continue the normal operation of the Property, then any Member shall have right to cause the other Member(s) to either buy his or her Membership Share or to sell his or her Membership Share. By their acceptance of their Membership Shares as Members, all Members hereby agree to the following provisions:

(a) The Members shall have the rights of purchase and sale provided by this Section, to be exercised by delivering a written notice (an "Election Notice"). The Member giving the Election Notice as provided herein is referred to as the "Electing Member," and the Member(s) receiving the Election Notice is/are referred to (whether individually or collectively) as the "Noticed Member."

(b) This buy/sell procedure may be invoked by the delivery of an Election Notice by a Member to the other Member(s). The Election Notice shall specify a valuation of the Company as a whole (the "Noticed Value").

(c) An Election Notice shall constitute an irrevocable offer by the Electing Member either to

(i) purchase all, but not less than all, of the Membership Shares owned by the Noticed Member (the "Noticed Membership Share") for a value equal to the Noticed Value multiplied by the percentage Financial Rights owned by the Noticed Member; or

(ii) sell all, but not less than all, of the Membership Share owned by the Electing Member (the "Electing Membership Share") for a value equal to the Noticed Value multiplied by the percentage Financial Rights owned by the Electing Member.

(d) For a period (the "Election Period") ending at 11:59 P.M. (local time at the Company's principal office) on the thirtieth (30th) day following the date of delivery of the Election Notice, the Noticed Member(s) shall have the right to elect to purchase all of the Electing Membership Share by giving notice thereof (the "Purchase Notice") to the Electing Member (and if there is more than one Noticed Member, then they shall have the right to purchase the Electing Membership Share on a pro-rata basis, with each such Noticed Member entitled to purchase a percentage of the Electing Membership Share, expressed as a fraction, with the numerator being the Financial Membership Shares already owned by the particular Noticed Member and the denominator being the total Financial Membership Shares of all of the Noticed Members that elect to

participate in the purchase. Otherwise, the Electing Member shall be obligated to purchase all of the Noticed Membership Share.

(e) The closing of the purchase and sale of the Membership Shares shall occur on a date and time mutually agreeable to the purchasing Member and the selling Member(s), which shall not be later than the sixtieth day following the last day of the Election Period. At the closing, the purchasing Member shall pay to each selling Member, by cash, wire transfer or cashiers check, the purchased price determined in the manner established above. At the closing, the Members shall execute documents and instruments of conveyance as may be necessary or appropriate to confirm the transactions contemplated hereby, including, without limitation, the transfer of the Membership Shares of the selling Members to the purchasing Member. In the event the selling Member(s) should fail to close, and such failure is due to the intentional act or omission or fault of the selling Member(s), the purchasing Member(s) shall be entitled to pursue specific performance, and if specific performance is not available under the circumstances, then money damages. Any closing with respect to a purchase of Membership Shares hereunder shall be subject to receipt of all "Consents", which shall mean orders, approvals and authorizations of any governmental authorities applicable, as well as any lender and other third parties who may have approval rights (other than internal entity approvals of the parties hereto), which conditions may not be waived without the consent of all parties to such transactions and which consents, orders, approvals and authorizations each Member will use its reasonable efforts to obtain. Any such closing may be adjourned for a reasonable time in order to obtain the Consents. At the closing, the selling Member(s) shall deliver documents conveying its Membership Interest(s) free and clear of any liens or encumbrances (other than liens and encumbrances relating to obligations of the Company), which documents shall contain Standard Representations (as set forth in Schedule A hereto). In connection with such a sale of Membership Shares, the selling Member(s) shall be responsible for any applicable state and local transfer taxes. If New Parcel A or any other Company Property is damaged by fire or other casualty, or if any person possessing the right of eminent domain shall give notice of an intention to take or acquire a material part of the Company Property, and such damage occurs, or such notice is given, between the last day of the Election Period and the last day in which the sale is required to close, all affected parties shall nevertheless remain obligated to close.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents, accountants and attorneys access to its records, if any, at the Company's principal office, which may not

be changed without the prior written consent of all of the Members. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect, download and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and delivered by fax, email or sent by overnight courier with a nationally-recognized company or by certified or registered mail, postage prepaid, return receipt requested, to the Company by delivery to each Member at the address on Exhibit A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents or other communications shall be deemed given when actually hand delivered or delivered by courier or, upon rejection of delivery, three business days after the date of mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

12.5 Consent to Jurisdiction. Except as otherwise required by law, the parties to this Agreement hereby agree that the courts of the State of New York shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business. Except as otherwise required by law, the parties consent to venue in New York County, New York, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the non-breaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further document, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement, including but not limited to the filing of either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

12.15 Equitable Remedies. The rights and remedies of the Members and the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties hereto confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All

such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.17 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

12.18 Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be submitted to binding arbitration in accordance with the requirements of the American Arbitration Association (or successor thereto) (the "AAA"). All arbitration proceedings shall be conducted in New York County, New York. The arbitrators shall be selected in accordance with the Rules and Regulations of the AAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) days after the last of the arbitrators has been selected. The decision of the arbitrators shall be binding upon the parties and may be entered as a judgment with any court of competent jurisdiction. The arbitrators shall be directed to apply the governing law of this Agreement in rendering their decision. The non-prevailing party shall pay the entire cost of the arbitration, including without limitation all arbitrators' fees and expenses, transcription costs and the expert witness fees, and reimburse the reasonable attorneys' fees and disbursements of the prevailing party or parties.

ARTICLE XIII EMERALD MEMBER DEFAULT/REMEDIES

13.01 Default. The occurrence of any of the following shall constitute an "Emerald Member Default":

- (a) a breach by the Emerald Member or Stuart Longman of any representation or warranty hereunder in any material respect;
- (b) a monetary or material non-monetary default by Project Manager pursuant to the Project Management Agreement which default remains uncured beyond the expiration of any applicable notice or grace period (it being understood and agreed that the Investor member are hereby authorized without the consent of the Emerald Member to give a notice of default under the Project Management Agreement); or a material default by Ashley River Properties I, LLC ("Ashley I") under the Right of First Refusal of even date herewith, the ("Right of First Refusal") from Ashley I to the Kriti Member, which default remains uncured beyond the expiration of any applicable notice or grace period, or a material default by any of the Indemnitors under the Indemnity Agreement of even date herewith (the "Indemnity") from Ripley, the Emerald Member, Ashley I and Sapphire in favor of the Company and the Kriti Member, which defaults remains uncured beyond the expiration of any applicable notice and grace period.

(c) the taking of any unauthorized material action (for which the affirmative vote of the Required Interest of the Voting Rights in the Company is required) by the Emerald Member or the Project Manager or any of their respective affiliates.

13.02 Remedies. Upon the occurrence of an Emerald Member Default, the other Members may elect any one or more of the non-exclusive following remedies, in addition to any remedies that may otherwise be available at law or in equity:

(a) the Emerald Member shall thereafter forfeit all Voting Rights in the Company;

(b) the Company may terminate the Project Development Agreement, notwithstanding anything contained therein to the contrary, without penalty or premium; and

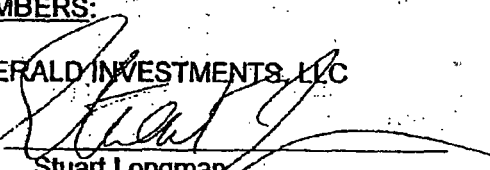
(c) the other Members may purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution to the Company, in which event: (i) the closing shall take place on a date specified in a notice given by the other Members to the Emerald Member, which shall be no earlier than 10 days after the giving of the notice and no later than 120 days after the giving of the notice, (ii) payment shall be made in all cash by wire transfer or cashier's check, (iii) the Emerald Member shall be responsible for all applicable state and local transfer taxes and (iv) the Emerald Member shall execute and deliver at closing appropriate instruments of transfer, which shall include the Standard Representations.

In the event that the Emerald Member shall contest any of the foregoing remedies and shall not prevail, then the Emerald Member shall forfeit all of its Membership Shares in the Company, and the Membership Shares in the Company shall be reallocated between or among the remaining Members on a pro-rata basis in the proportion that the Financial Rights of each remaining Member bear to the total remaining Financial Rights of all of the Remaining Members.

For good and valuable consideration, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

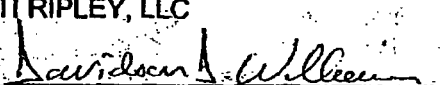
MEMBERS:

EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

KRITI RIPLEY, LLC

By: 

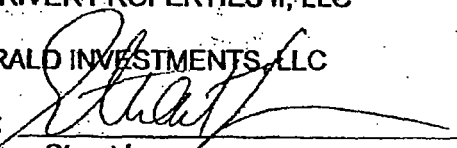
Name: DAVIDSON A. WILLIAMS

Title: Managing Member

COMPANY:

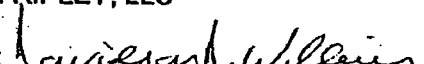
ASHLEY RIVER PROPERTIES II, LLC

By: EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

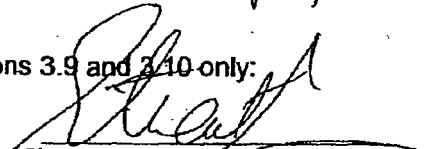
By: KRITI RIPLEY, LLC

By: 

Name: DAVIDSON A. WILLIAMS

Title: Managing Member

Limited Joinder with respect to Sections 3.9 and 3.10 only:


Stuart Longman

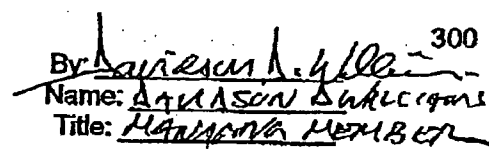
Legal Description of New Parcel A

All that certain piece, parcel or lot and land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as NEW PARCEL "A", HIGHLAND 274,098.43 S.F., 5.145 AC., on that certain plat entitled "PROPERTY LINE ADJUSTMENT & COMBINATION OF PARCEL 1, 4, 5, 6B, & PORTION OF COMMON AREA 2 CREATING PARCEL "A" OWNED BY RIPLEY POINT ASSOCIATES, LLC ABOUT TO BE CONVEYED TO RIPLEY LIGHT YACHT CLUB, LLC, LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" made by General Engineering dated March 16, 2001, last revised October 24, 2002, and recorded in the RMC Office for Charleston County on October 28, 2002 in Plat Book EF, Page 972.

SCHEDULE 3.7(a)(ii)**Form of Assignment of Dock Permits****[ATTACH]**

EXHIBIT A

**MEMBERS OF
ASHLEY RIVER PROPERTIES II, LLC**

<u>Member's Name and Address</u>	<u>Member's Signature</u>	<u>Initial Financial Membership Shares</u>	<u>Initial Voting Membership Shares</u>
Emerald Investments, LLC 95 Ripley Pointe Drive P.O. Box 31565 Charleston, SC 29417-1565	By:  Stuart Longman Managing Member	700	700
Attn: Stuart Longman Kriti Ripley, LLC 345 E. 37th Street Suite 312 New York, NY 10016	By:  Name: DAVIDSON WILLIAMS Title: MANAGING MEMBER	300	300
Attn: Davidson Williams			
	TOTAL:	1000	1000

**FIRST AMENDMENT
TO THE
OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC**

This **FIRST AMENDMENT TO THE OPERATING AGREEMENT OF ASHLEY RIVER PROPERTIES II, LLC** (the "First Amendment") is made and entered into this 1st day of September, 2004 by and among **EMERALD INVESTMENTS, LLC**, a Connecticut liability company (the "Emerald Member"), and **KRITI RIPLEY, LLC**, a Delaware limited liability company ("Kriti Member").

WHEREAS, on December 29, 2003, the Members entered into an Operating Agreement of Ashley River Properties II, LLC (the "ARP II Operating Agreement"); and

WHEREAS, the Members wish to amend the ARP II Operating Agreement upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members and the Company covenant and agree as follows:

1. **Definitions.** Unless otherwise specified in this First Amendment, the defined terms and conditions used in this First Amendment shall have the same meaning as set forth in the ARP II Operating Agreement.
2. **New Section 3.7(c).** Section 3.7(c) of the ARP II Operating Agreement is hereby deleted in its entirety and the following new section 3.7(c) substituted therefor:

"(c) **Mandatory Capital Calls.** Any Member who owns Voting Rights in the Company may unilaterally demand that the Members make additional Capital Contributions upon the occurrence of a Mandatory Capital Call Event, as such term is defined below. Any additional Capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to total of the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

For purposes of this Section 3.7 (c), a "Mandatory Capital Call Event" shall mean the occurrence of any one of the following events:

- (i) Any default by the Company under a certain Construction-Term Loan Agreement dated July __, 2004 between the Company and Marshall Investments Corporation (the "Marshall Loan Agreement")

or under any of the other Loan Documents (as such term is defined in the Marshall Loan Agreement), which default remains uncured after any applicable notice and cure period (herein, a "Marshall Default"); or

- (ii) The failure or inability of the Company to discharge its obligations and other indebtedness to third parties in the ordinary course of business as and when such obligations and other indebtedness become due and payable, and such event or condition (a) involves obligations and other indebtedness which individually or collectively exceed \$10,000 in amount, and (b) remains in effect for a period of 30 days or more (herein, a "Cash Default")

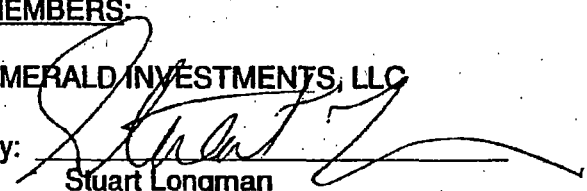
A Member may make a Mandatory Capital Call by delivering notice of the demand for additional Capital Contributions to each Member identifying therein the Mandatory Capital Call Event which has occurred, and stating the amount of additional Capital Contributions which must be made. In the case of a Marshall Default, a Member may demand additional Capital Contributions in sufficient amount to fully discharge any such Marshall Default. In the case of a Cash Default, a Member may demand additional Capital Contributions on a monthly or quarterly basis, at the sole and absolute discretion of such member, in sufficient amounts to permit the Company to discharge its obligations and other indebtedness to third parties in the ordinary course of business as and when such obligations and other indebtedness becomes due and payable."

3. No Other Changes. Unless otherwise specified herein, all of the terms and conditions set forth in the ARP II Operating Agreement shall remain in full force and affect and are otherwise unaffected by the First Amendment.

For good and valuable consideration, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

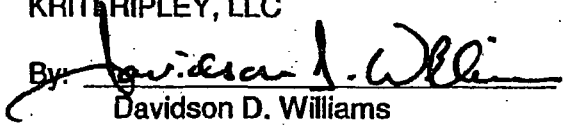
MEMBERS:

EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

KRITH RIPLEY, LLC

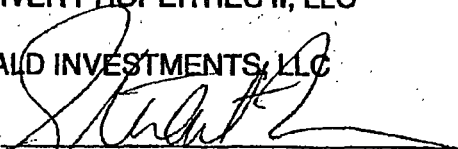
By: 

Davidson D. Williams
Managing Member

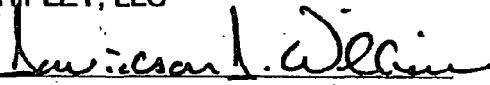
COMPANY:

ASHLEY RIVER PROPERTIES II, LLC

By: EMERALD INVESTMENTS, LLC

By: Stuart Longman
Managing Member

By: KRITI RIPLEY, LLC

By: Davidson D. Williams
Managing Member

DEVELOPMENT AND MANAGEMENT AGREEMENT

This DEVELOPMENT AND MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this 30th day of December, 2003, by and between ASHLEY RIVER PROPERTIES II, LLC, a South Carolina limited liability company ("Owner") and RIPLEY POINT DEVELOPMENT, LLC, a South Carolina limited liability company ("Developing Agent").

WITNESSETH:

WHEREAS, the Owner desires the Developing Agent to supervise the development and management of a residential condominium and marina project on property owned by Owner at Ripley Point Drive and identified as Charleston TMS 421-11-00-054, consisting of approximately 5.78 acres (the "Project"); and

WHEREAS, the Developing Agent is willing to undertake said development and management activities upon the terms and conditions set forth herein, and the Owner desires to engage the Developing Agent to undertake said development and management.

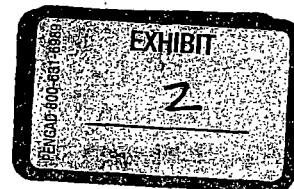
NOW, THEREFORE, the parties hereto, in consideration of the covenants and agreements herein contained, and intending to be legally bound, hereby agree as follows:

Section 1. Responsibility and Authority of Developing Agent During Construction.

(a) Marina Construction. The first phase of development of the Project shall be the construction of a marina in accordance with plans and specifications to be approved by Owner. During the construction of the marina portion of the Project, the Developing Agent shall use its diligent efforts in the development and construction of the marina for the account of the Owner so that the marina will be constructed at no greater than the cost set forth in the Development Budget attached as Schedule 1(a) to this Agreement.

(b) Condominium Construction. Upon Owner's confirmation of the scope of the condominium portion of the Project, the Developing Agent will: (i) prepare and deliver to the Owner for the Owner's approval an initial development budget for the condominium portion of the Project; and (ii) cause the preparation of proposed plans and specifications for the condominium portion of the Project. During the construction of the condominium portion of the Project, the Developing Agent shall use its diligent efforts in the development and construction of the condominiums.

(c) Development Agent Responsibilities. In the performance of its development and management services for all portions of the Project, the Developing Agent shall be Owner's independent contractor and not an employee of the Owner and shall have the following responsibilities and authority:



(i) Negotiation and Execution of Contracts. The Developing Agent shall solicit itemized bids from no fewer than three reputable general contractors with experience in developing projects similar to the Project. The Developing Agent shall disclose all bids to Owner and recommend which general contractor Owner should select. After Owner informs the Developing Agent as to the general contractor selected by Owner, the Developing Agent shall be responsible for the negotiation of the contract (the "Construction Contract") with the general contractor (the "Contractor") and of all other contracts essential or desirable to the development of the Project, including the negotiation of contracts for engineering and architectural services for the Project. The Developing Agent shall also solicit itemized bids from no fewer than three reputable contractors for each major contract. The Developing Agent shall disclose all bids to Owner and recommend which contractors Owner should select. After Owner informs the Developing Agent as to each such contractor selected by Owner. Once negotiated, all major contracts will be submitted to the Owner for approval and execution by the Owner. In addition, the Developing Agent shall have the authority and duty to negotiate, and execute on behalf of the Owner, all minor contracts related to the development of the Project without the prior approval of the Owner. As used herein, the term "major contract" shall refer to a contract requiring the payment of an amount in excess of \$25,000 or any contract with Developing Agent or an affiliate thereof, and the term "minor contract" shall refer to a contract with an unaffiliated party requiring the payment of \$25,000 or less, provided that minor contracts may not in the aggregate exceed \$100,000 per year without the prior written consent of the Owner. The Developing Agent shall send to the Owner copies of all contracts, whether major or minor, promptly after full execution thereof.

(ii) Supervision and Administration of Contracts. The Developing Agent shall supervise, coordinate and monitor the work of engineers, architects and others under contracts approved by the Owner relating to the development of the Project so as to assure that the plans, specifications and other contract documents are complete and adequate to enable the entire Project (including installation of utilities, landscaping, parking, and all Project amenities) to be completed in accordance with the budget approved by Owner. The Developing Agent shall, in coordination with the Contractor, supervise, coordinate and monitor the work of all contractors, subcontractors and others supplying labor engaged in the construction of the Project so as to reasonably assure that the Project is constructed in accordance with the plans, specifications and other contract documents. All plans and specifications, and any modifications thereof, and all change orders (other than those requested and paid for by buyers of condominium units) are subject to the Owner's approval. The Developing Agent shall promptly notify Owner upon the occurrence of any breach by the Contractor of any of its material obligations under the Construction Contract or by any contractor under a major contract of its material obligations under such major contract.

(iii) Purchases. The Developing Agent shall, in coordination with the Contractor, supervise the purchasing of all supplies and other merchandise to be

used in the construction of the Project as well as the purchase, installation, use or sale of all furniture, fixtures, equipment and other tangible personal property initially acquired for the development of the Project. To the extent that the Contractor shall not be responsible for same, the Developing Agent shall coordinate the purchasing of supplies required in the construction of the Project so as to reasonably assure that all supplies required for the construction of the Project are on site and available for use when and as required by the contractors engaged in the construction of the Project.

(iv) Permits and Approvals; Compliance with Legal Requirements. The Developing Agent shall be responsible for obtaining and maintaining, at Owner's cost and expense, all governmental approvals, licenses, permits or orders incident to the construction of the Project. The Developing Agent shall further be responsible for coordinating all inspections of the Project and all other communications with the relevant governmental authorities having jurisdiction over the construction of the Project. In its negotiation of contracts with any architect, engineer or other design professional employed in the design and/or construction of the Project, Developing Agent shall secure, in the name of Owner, a warranty that the construction plans, specifications and other contract documents will comply with all applicable statutes, laws, ordinances and other governmental requirements, including building codes, health and environmental ordinances and zoning ordinances and regulations.

(v) Project Construction Records. The Developing Agent shall cause to be maintained at its offices, and available for inspection, photocopying and downloading during business hours upon reasonable prior notice from the Owner, full and accurate records of the construction of the Project, including, without limitation, books of account and accounting records and files and indexes of all licenses, permits, contracts, agreements, purchase orders, sales orders, bills, receipts, canceled checks and other instruments, documents and correspondence relating to the development of the Project. Such records shall be so maintained for such retention periods mutually agreed upon by the Owner and the Developing Agent, and at the end of any record retention period so prescribed, shall be disposed of in a manner mutually agreed upon by Owner and the Developing Agent. The Developing Agent shall cause the books of account and accounting records relating to the construction of the Project to be maintained in accordance with U.S. generally accepted accounting principles, consistently applied. All books of account and accounting records shall be maintained in electronic and paper form.

(vi) Financial Reports and Information. Promptly after the end of each calendar quarter (not later than 30 days after the end of each calendar quarter), the Developing Agent shall, at Developing Agent's expense, prepare or cause to be prepared and shall submit to each Member of the Owner and the Owner's accountant, in a form reasonably acceptable to the Members of Owner, a project cost analysis showing the receipts and disbursements with respect to the

construction of the Project during the preceding quarter. In addition, the Developing Agent shall report to the Owner in a timely fashion any pending or threatened claims against the Owner or the Project of which it has notice, any anticipated extraordinary expenses to be paid by the Owner, any cost overruns and savings and any other matters of which the Owner should be informed in the reasonably prudent development of the Project or which would have a material effect upon the Project. The quarterly report delivered at the end of each quarter ending December 31 shall also include an annual report summarizing the financial history of the Project for the preceding 12-month period.

(vii) Payment of Contractors and Suppliers. The Developing Agent shall be responsible for working with and maintaining communication with all engineers, architects, contractors, subcontractors and suppliers. As part of that function, the Developing Agent will provide the Owner with approved invoices and requests for payment to the Contractor and any contractor or supplier by the last day of each calendar month. The Owner will review the invoices and if approved by the Owner, or its designated representative, the Owner, or its designated representative, will issue checks in payment of such invoices by the fifteenth (15th) day of the immediately following month and in no event later than the time period set forth in the contract with the Contractor. The Owner, or its representative, shall have the right to inspect all work prior to payment for any labor or material.

(viii) Marketing Materials. The Development Agent shall be responsible for working with and maintaining communication with marketing professionals to develop a marketing brochure and other marketing materials as contemplated by budgets approved by the Owner. The Development Agent shall not be responsible for the actual sale of condominium units and marina slips or for targeting marketing materials at any particular prospective purchasers.

Section 2. Scope of Development. The Developing Agent shall not commence construction of the Project until directed to do so by the Owner. The Developing Agent shall have the authority to develop the Project only in accordance with the plans and specifications provided to it by the architects, engineers and others under the supervision of the Developing Agent (the "Plans and Specifications") and the approved development budget for each phase of the project (collectively, the "Development Budget"), which Plans and Specifications shall have been approved by the Owner. The Developing Agent shall in no circumstances undertake any development activities beyond the scope of the approved Plans and Specifications and the Development Budget, except that, in the course of the authorized development of the Project in accordance with the Plans and Specifications, the Developing Agent may, without the consent of the Owner, authorize construction outside the originally agreed scope of work when such construction is dictated by good engineering practices, is financially feasible, and the costs incurred in such construction will result in a variance of not more than \$10,000 from the relevant line item in the Development Budget. In the latter event, the Development Agent agrees to notify the Owner in writing as soon as possible of the nature of any construction performed outside the agreed scope of work and the cost of the additional work.

Section 3. Owner's Duties; Owner Signature Requirements.

(a) At all times during the term of this Agreement, Owner agrees that it will respond with Developing Agent's requests within a commercially reasonable period of time.

(b) Any provision of this Agreement that requires the consent of the Owner must be evidenced by the written consent of the Required Interest of the Voting Rights of Owner (as that term is defined by the Operating Agreement of Owner).

Section 4. Insurance. The Developing Agent shall, at the Owner's expense, maintain such kinds and amounts of insurance as the Owner shall reasonably direct including builders' risk, liability, fidelity bonds, worker's compensation and any and all other types of coverage as the Owner shall reasonably direct, which insurance shall name the Owner and such other parties as the Owner shall direct as loss payees. The Developing Agent shall recommend the types and amounts of insurance, if any, the Owner should maintain in addition to the insurance specifically required above.

Section 5. Indemnification. The Developing Agent agrees to indemnify the Owner and save it harmless from and against all claims, losses and liabilities arising out of damage to the Project, or injury to, or death of persons (including the Project and persons of the parties hereto, and their agents, subcontractors, and employees) occasioned by or in connection with acts or omissions of the Developing Agent or the Developing Agent's agents, employees and subcontractors, and all costs herewith. Developing Agent agrees to indemnify Owner against any fines or penalties imposed by government authorities for violations of state or local codes or regulations.

Section 6. Developing Agent's Fees, Costs and Expenses. As compensation for the services rendered by the Developing Agent, the Owner agrees to pay the Developing Agent a development and management fee equal to two percent (2%) of all "hard costs" of the construction and development of the Project. The Owner also agrees to pay Kiti Management, Inc. an oversight fee equal to one-half of one percent (0.5%) of all "hard costs" of the construction and development of the Project. For purposes of this Agreement, "hard costs" shall mean the actual value of the physical improvements constructed upon the property, less and excluding all "soft costs" such as architectural fees, engineering fees, legal fees, loan closing costs, appraisal fees, contractor and subcontractor profit, permitting costs etc.

Section 7. Term and Remedies.

(a) Termination for Cause. The term of this Agreement shall commence on the date of its execution and shall continue until the happening of any one of the following events:

(i) The Owner terminates the Agreement, by notice in writing to the Developing Agent, upon the occurrence of negligence or intentional misconduct by the Developing Agent; or

(ii) In the event that either party hereto shall, for a period of thirty (30) days after the mailing of notice by the other party specifying the nature of the default, remain in default with respect to any of its obligations under this Agreement (unless the cure of such default shall require more than thirty (30) days in which case the defaulting party shall not be in default unless it shall not have commenced the cure within thirty (30) days and be diligently pursuing such cure thereafter), then the notifying party may terminate this Agreement upon five (5) days written notice to the defaulting party; or

(iii) In the event that a petition in bankruptcy or receivership shall be filed by or against the Developing Agent or if the Developing Agent makes an assignment for the benefit of creditors or files a petition for reorganization; or

(iv) In the event the Developing Agent shall be dissolved or liquidated; or

(b) Termination Other than for Cause.

(i) Owner may terminate this Agreement upon thirty (30) days advance written notice, without cause.

(ii) This agreement shall automatically terminate in the event that the Owner shall cease to own the Project.

(b) Remedies. In the event that this Agreement is terminated under this Section for cause, then the parties shall be entitled to pursue all remedies available at law or in equity. If Owner terminates this Agreement without cause, Developing Agent shall have the right to receive payment hereunder for the period in which this Agreement was in effect but shall have no further right to compensation under this Agreement.

Section 8. Notices. Any notice, report or communication required or permitted to be given under the provisions hereof shall be in writing, and shall be deemed given if and when hand delivered or sent by a nationally recognized overnight courier, or received by

facsimile transmission stamped with the date of transmission or sent by certified mail, return receipt requested, postage prepaid, addressed to the party to receive the same at the address which such party shall have last notified the other party to use for such purposes. All notices shall be deemed given, if sent by hand or courier, upon delivery or rejection of delivery, if sent by mail, the third business day after mailing, and if sent by facsimile upon receipt. Initially, such addresses shall be as follows:

Developing Agent: Ripley Light Development, LLC
Attn: Stuart Longman
P.O. 31565
Charleston, SC 29417
Facsimile: (843) 766-4050

Owner: Emerald Investments, LLC
Attn: Stuart Longman
424 West Mountain Road
Ridgefield, CT 06877
Facsimile: (203) 431-4456

and

Kriti Ripley, LLC
c/o Kriti Management, LLC
345 E. 37th Street
Ste 312
New York, NY 10016
Facsimile: (212) 599-5779

Section 9. No Assignment by Developing Agent. No party to this Agreement may assign its rights, duties or obligations hereunder without the prior written approval of the party.

Section 10. Relationship of Parties. The Owner is engaging the Developing Agent as an independent contractor to perform those services herein described, and nothing herein contained shall be construed to create a partnership or joint venture between the parties.

Section 11. Subordination. This Agreement and all fees and compensation due from Owner to Developing Agent pursuant hereto shall be subject and subordinate in all respects to (i) any mortgage or deed of trust upon the Project, or any portion thereof; (ii) any collateral assignment of any rents due under any leases of the Project. This provision shall be self-executing but Developing Agent shall, upon request, execute such appropriate instruments as may reasonably be requested by Owner or any such mortgagee to evidence any such subordination.

WITNESS our hands and seals the day and year first above written.

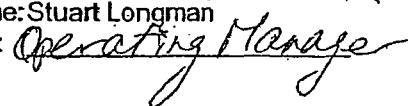
DEVELOPING AGENT:

RIPLEY LIGHT DEVELOPMENT, LLC

By: EMERALD INVESTMENTS, LLC,
its Managing Member

By: 

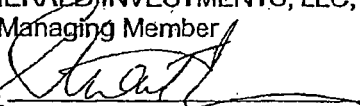
Name: Stuart Longman

Title: 

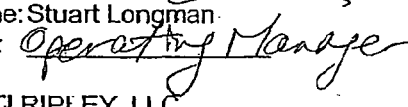
OWNER:

ASHLEY RIVER PROPERTIES II, LLC

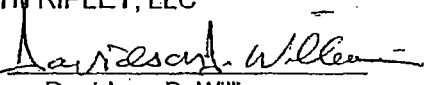
By: EMERALD INVESTMENTS, LLC,
its Managing Member

By: 

Name: Stuart Longman

Title: 

By: KRITI RIPLEY, LLC

By: 

Davidson D. Williams
Managing Member

Schedule 1(a) to Development and Management Agreement

Marina Development Budget

RIPLEY 30 DAY CASH FLOW
Marina Development Budget

	Total	January	February	March	April	May	June	July	August
Kriti Investment	1,250,000	1,250,000							
Marshall Mortgage #1	4,400,000			4,400,000					
Marshall Fees/Legal	(131,000)			(131,000)					
Marshall Debt Service	(144,375)				(28,875)	(28,875)	(28,875)	(28,875)	(28,875)
ARP Closing Legal/Title	(15,000)			(15,000)					
Broker Fee	(50,000)			(50,000)					
Payables	(506,099)	(328,000)		(59,366)	(59,366)	(59,366)			
Cosimo Interest	(43,750)	(21,875)	(21,875)						
Cosimo Principal	(1,750,000)	(50,000)		(1,700,000)					
Blumenfeld	(80,000)	(25,000)	(25,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Dredging	(250,000)		(125,000)	(125,000)					
Construct Party Deck	(270,000)				(135,000)	(135,000)			
Bellingham Dock Order/Constru	(1,290,000)	(278,000)		(370,667)	(370,667)	(185,334)	(85,332)		
Marina Bank Rip Rap, Parking	(35,000)					(35,000)			
Administrative/Marketing	(242,853)	(37,362)	(37,362)	(37,362)	(37,362)	(37,362)	(37,362)	(18,681)	
0	0								
Marina Income (net)	90,000						20,000	30,000	40,000
0	0								
0	0								
0	0								
0	0								
0	0								
Column Total	931,924	509,763	(209,237)	1,906,605	(636,270)	(485,937)	(136,569)	(22,556)	6,125
Cumulative		509,763	300,526	2,207,131	1,570,860	1,084,924	948,355	925,799	931,924

12/29/03

OCT 31 2005 2:20PM

NO. 356 P. 4

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 13 115 Y 00698 05

Kriti Ripley, LLC & Ashley River Properties II, LLC

"Claimants"

and

Emerald Investments, LLC and Stuart Longman

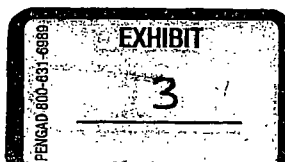
"Respondents"

AWARD OF ARBITRATORS

THE UNDERSIGNED ARBITRATORS, having been duly designated pursuant to the arbitration agreement dated December 29, 2003 and having duly executed their oaths, and having duly considered the proofs and arguments of the parties, and the parties having agreed to extend the deadline in the arbitration agreement for the rendering of the award to October 31, 2005, do hereby Find as follows:

A. Based upon our evaluation of the credibility of the witnesses and our analysis of the exhibits and evidence, we Find that Claimants Kriti Ripley, LLC ("Kriti") and Ashley River Properties II, LLC ("ARP II") have established that certain conduct of Respondents Emerald Investments, LLC ("Emerald") and Stuart Longman ("Longman") constitutes Emerald Member Defaults pursuant to Section 13.01 of the Operating Agreement of Ashley River Properties, II, LLC (the "Operating Agreement"), dated December 29, 2003. Specifically, Kriti has established that the following violations of the Operating Agreement constitute Emerald Member Defaults:

1. Emerald and Longman violated Section 5.2(g) by wrongfully making payments of ARP II which were not on the approved marina budget or on the budget for future phases of the project or otherwise approved by Kriti.
2. Emerald and Longman violated Section 5.2(p) by making payments to or for the benefit of Longman or other entities Longman controlled, which were totally unrelated to ARP II.
3. Emerald and Longman violated Sections 5.2, 5.7 and 13.01(b and c). Section 5.7 states that, "The funds of the Company shall not be commingled with the funds of any other party." From the first day Kriti sent investment funds to ARP II, Emerald and Longman commingled these funds in various non-ARP II accounts, including an account, in part, in the name of Longman's wife, Gayla Longman. Moreover, we Find that Kriti did not waive any of its claims of breach of the Operating Agreement by waiting to exercise its remedies in the hope that Emerald and/or Longman would return to ARP II all the wrongfully taken funds. (See Section 12.6 of the Operating Agreement.)
4. Emerald and Longman violated Section 3.9(a) by failing to disclose that Sapphire Development, LLC ("Sapphire") had filed a petition in bankruptcy before execution of the Operating Agreement. Sapphire, another entity controlled by Longman, was the party which entered into certain agreements regarding the neighboring Collins property and, in consideration of Kriti's investment, assigned these rights to ARP II. (See Joint Exhibit 3). Since the Sapphire bankruptcy proceeding could reasonably be expected to have a material adverse effect on the business of ARP II, the failure to disclose the proceeding was a clear material breach of Section 3.9(a). The subsequent adverse litigation results regarding the Collins property did not obviate Emerald's and Longman's duty to Kriti to disclose Sapphire's bankruptcy filing, as required by Section 3.9(a).



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NO. 356 P. 5

Re: 13 115 Y 00698 05
Kriti Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

5. Emerald and Longman violated Section 5.2(m) by retaining Knetzer and Macintyre to act as broker and/or finder for premises including the ARP II property (see Claimant's Exhibit 14). The fact that Kriti may have later communicated with such broker or finder does not amount to any waiver of Kriti's claims for breach of Section 5.2(m).

6. Emerald and Longman violated Sections 3.9(a) and 3.9(f) by failing to fully disclose certain third-party contracts for the purchases of units and marina slips, and/or a proposed boat storage facility. Although there was reference to customer deposits in certain financial statements made available to Kriti prior to closing, the contracts at issue were of such magnitude and potential significance, that Emerald and Longman should have made more affirmative disclosures to comply with Sections 3.9(a) and 3.9(f).

7. Emerald and Longman violated Sections 5.2(g), 5.2(p) and 5.7 by diverting \$150,000 of Marshall loan proceeds and paying themselves instead of paying Bellingham Marine, even though the application to draw down the funds certified that the \$150,000 would be paid to Bellingham Marine. Moreover, it is undisputed that when Bellingham Marine was finally paid, ARP II was charged an additional \$64,000 because of the delay in payment occasioned by Emerald and Longman.

B. Since Kriti has established Emerald Member Defaults, Kriti is entitled to remedies under Section 13.02 of the Operating Agreement. We therefore find and confirm that Kriti validly exercised its rights to the following Section 13.02 remedies:

1. By notice dated January 14, 2005 (Joint Exhibit 188), Kriti validly exercised its remedy, pursuant to Section 13.02(a), that the Emerald Member thereafter forfeited all voting rights in ARP II.

2. By the same notice dated January 14, 2005, Kriti validly terminated the Project Development Agreement, without penalty or premium, pursuant to Section 13.02(b).

3. As more fully set forth below, Kriti's right pursuant to Section 13.02(c), to purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution is also confirmed.

4. We do not Find that, pursuant to the last paragraph of Section 13.02, the Emerald Member shall forfeit all of its Membership Shares because it contested the foregoing remedies, since we believe that the Emerald Member had probable cause for such a challenge thereby obviating forfeiture pursuant to applicable South Carolina law. The portion of the claim seeking the forfeiture of the Respondent's Membership Shares is denied based on our finding that the Emerald Member had probable cause to challenge the capital call thereby obviating forfeiture pursuant to applicable South Carolina law and the inequity of such forfeiture. Probable cause existed because of question about the propriety of Kriti's capital call because (a) Kriti demanded that Emerald immediately fund a full 70% of a \$2 million capital call even though it knew that Emerald and/or Longman did not have the funds available to meet such a call; (b) Kriti demanded such a large capital call without an adequate explanation of the need for such an amount; (c) Kriti demanded that Emerald and/or Longman make a full deposit of 70% of the \$2 million capital call, even though its own deposits later proved that this was not necessary, and (d) funding might have been available from the lender, Marshall Bank, thereby obviating the need for all or part of the capital call. Kriti's insistence upon the capital call therefore provided probable cause for Emerald's challenge of Kriti's assertion of the above remedies. See Cope v.

OCT. 31. 2005 2:21PM

NO. 356 P. 6

Re: 13 115 Y 00698 05
 Kriti Ripley, LLC & Ashley River Properties II, LLC
 and
 Emerald Investments, LLC and Stuart Longman

Jefferson Standard Life Ins. Co., 133 S.C. 532, 133 S.E. 440 (1926), Litchfield Company v. Kiriakides, 290 S.C. 220, 349 S.E.2d 344 (Ct. App. 1986) and Rouse v. Branch, 91 S.C. 112, 74 S.E. 133 (Sup. Ct 1912).

We also note the inequity of enforcing forfeiture in light of the fact that Longman initiated the development project and worked long and hard on it, including rendering significant services even after Kriti's November 4, 2004 notice of default (Joint Exhibit 152). We therefore deny the forfeiture remedy.

C. Section 3.7(a) of the Operating Agreement defines Emerald's Initial Capital Contribution as \$2.5 million. Pursuant to Section 13.02(c), we confirm that Kriti "may purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution to the Company..." Kriti has not established any clearly defined Emerald returned capital contribution. We therefore Find that Kriti has the option to purchase the Emerald Member Shares for \$2.5 million subject to no offsets or adjustments except as set forth below in this Award. The closing shall take place pursuant to the terms of Section 13.02(c) within 10 days and no later than 120 days after the date of this Award. As noted hereinafter, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting of the commingled funds as such claims and counterclaims have been severed from this proceeding.

D. We Find that ARP II is entitled to no further relief under the Bill of Sale and General Assignment (Joint Exhibit 3).

E. We confirm that Kriti remains entitled to enforce its rights under the Right of First Refusal Agreement (Joint Exhibit 6).

F. We Find that Kriti and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party contract vendees against ARP II. We question Kriti's conduct in encouraging some of these third parties to assert claims against ARP II and not accept partial reimbursement of their deposits. However, we are persuaded that Emerald or Longman or another entity controlled by Longman (a) received and kept the deposits, (b) did not use these funds for the benefit of ARP II and (c) ARP II must now resolve all these third party claims.

G. Pursuant to Section 12.18 of the Operating Agreement we find that Emerald and Longman were the "non-prevailing" parties in this matter. As such, (a) Emerald and Longman shall pay all costs and expenses of this arbitration including arbitration fees and transcript expenses, (b) Emerald and Longman shall pay Kriti the sum of \$251,000 for legal fees and disbursements, and (c) the sums set forth in this paragraph and the \$400,000 referred to in paragraph F above may be offset against the \$2.5 million to be paid to Emerald as set forth above in paragraph C in connection with Kriti's exercise of its remedy pursuant to Section 13.02(c).

Based upon the above, We Award as follows:

1. We confirm that as of January 14, 2005 the Emerald Member has forfeited all voting rights in ARP II.
2. We confirm that as of January 14, 2005, Kriti and ARP II validly terminated the Project Development Agreement, without penalty or premium.

OCT. 31. 2005 2:21PM

NO. 356 P. 7

Re: 13 116 Y 00688 05

Kriti Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

3. Kriti has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
4. We deny the application of Kriti and ARP II for forfeiture by the Emerald Member for contesting remedies of Kriti and ARP II.
5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
6. We confirm Kriti's rights under the Right of First Refusal Agreement.
7. We Find that Kriti and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Kriti the sum of \$251,000.00 for Kriti's legal fees and disbursements.
9. The administrative fees of the American Arbitration Association totalling \$17,500.00 and the compensation of the arbitrators totalling \$86,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Kriti and ARP II the sum of \$55,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Kriti and ARP II.
10. The amounts owed by Emerald and Longman to Kriti and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been severed from this proceeding.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

10/31/05
Date

Date

Date


Michael A. Levy

Larry Biblo

Eugene I. Farber

Received Time Oct. 31. 12:34PM

OCT. 31. 2005 2:21PM

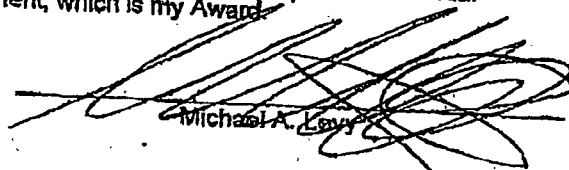
NO. 356. P. 6

NO. 13 110 1 00698 05

Kristi Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/31/05
Date


Michael A. Levy

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Eugene I. Farber

5

Received Time Oct.31. 12:34PM

OCT. 31. 2005 2:21PM

NO. 356 P. 9.

Re: 13 118 Y 00688 03
 Krid Ripley, LLC & Ashley River Properties II, LLC
 and
 Emerald Investments, LLC and Stuart Longman

3. Krid has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
4. We deny the application of Krid and ARP II for forfeiture by the Emerald Member for contesting remedies of Krid and ARP II.
5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
6. We confirm Krid's rights under the Right of First Refusal Agreement.
7. We Find that Krid and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Krid the sum of \$261,000.00 for Krid's legal fees and disbursements.
9. The administrative fees of the American Arbitration Association totaling \$17,600.00 and the compensation of the arbitrators totaling \$86,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Krid and ARP II the sum of \$55,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Krid and ARP II.
10. The amounts owed by Emerald and Longman to Krid and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been severed from this proceeding.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

10/28/05
Date

Date

Michael A. Levy

Larry Biblo

Eugene I. Farber

RECEIVED TIME OCT. 28. 5:05PM

OCT. 31. 2005 2:21PM

NO. 356 P. 10

Re: 13 115 Y 00888 05
Krit Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

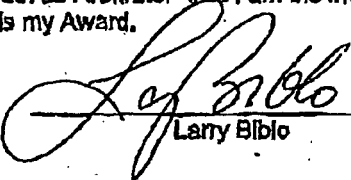
I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Michael A. Levy

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/28/05
Date


Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Eugene I. Farber

5

RECEIVED TIME OCT. 28. 5:05PM

10/31/05 MON 15:23 [TX/RX NO 8772] 010

OCT. 31. 2005 2:22PM

NO. 356 P. 11

Re: 13 116 Y 00898 06
 Kriti Ripley, LLC & Ashley River Properties II, LLC
 and
 Emerald Investments, LLC and Stuart Longman

3. Kriti has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
4. We deny the application of Kriti and ARP II for forfeiture by the Emerald Member for contesting remedies of Kriti and ARP II.
5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
6. We confirm Kriti's rights under the Right of First Refusal Agreement.
7. We Find that Kriti and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Kriti the sum of \$251,000.00 for Kriti's legal fees and disbursements.
9. The administrative fees of the American Arbitration Association totaling \$17,500.00 and the compensation of the arbitrators totaling \$88,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Kriti and ARP II the sum of \$55,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Kriti and ARP II.
10. The amounts owed by Emerald and Longman to Kriti and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been reserved from this proceeding.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

Date

10/21/05

Date

Michael A. Lewy

Larry E. Bello

Eugene J. Farber

RECEIVED TIME OCT. 31. 2:31PM

10/31/05 MON 15:23 [TX/RX NO 8772] 011

OCT. 31. 2005 2:22PM

NO. 356 P. 12

Re: 13 115 Y 00698 05
Kris Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

I, Michael A. Levy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Michael A. Levy

I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Larry Biblo

I, Eugene I. Farber, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

11/30/05

Date

Eugene I. Farber

5

RECEIVED TIME OCT. 31. 2:31PM

10/31/05 MON 15:23 [TX/RX NO 8772] 012

OCT. 31. 2005 2:22PM

NO. 356 P. 13

10/28/2005

Kriti Ripley, LLC & Ashley River Properties II,
LLC

and

Emerald Investments, LLC and Stuart Longman

Case Manager: LAURA VANETTEN
Case Number: 13 115 Y 00698 05
Close Type: Awarded

Total Administrative Fees
and Expenses \$ 17,500.00

Total Neutral Compensation
and Expenses \$ 86,200.00

*Note that the financial reconciliation reflects costs as they were incurred during the course of the proceeding. Any apportionment of these costs by the arbitrator, per section R-43 of the rules, will be addressed in the award and will be stated as one party's obligation to reimburse the other party for costs incurred. Any outstanding balances the parties may have with the AAA for the costs incurred during the arbitration proceedings remain due and payable to the AAA even after the award is issued, and regardless of the arbitrator's apportionment of these costs between the parties in the award.

OCT. 31. 2005 2:22PM

NO. 356 P. 14

KRITI RIPLEY, LLC & ASHLEY RIVER PROPERTIES II, LLCAdministrative Fees and Expenses:

Filing Fees: \$	<u>8,000.00</u>
Case Service Fees: \$	<u>3,250.00</u>
Hearing Room Expenses: \$	<u>0.00</u>
AAA Hearing Room Rental: \$	<u>875.00</u>

Your Share of Administrative Fees and Expenses: \$ 12,125.00Amounts Paid for Administrative Fees and Expenses: \$ 12,125.00Balance Administrative Fees and Expenses: \$ 0.00Neutral Compensation and Expenses:

Eugene Farber: \$	<u>39,725.00</u>
Larry Biblo: \$	<u>19,775.00</u>
Michael A. Levy: \$	<u>26,700.00</u>
: \$	<u>0.00</u>

Your Share of Neutral Compensation and Expenses: \$ 43,100.00Amounts Paid for Neutral Compensation and Expenses: \$ 45,000.00Balance Neutral Compensation and Expenses: \$ (1,900.00)Party Balance: \$ (1,900.00)

OCT. 31. 2005 2:22PM

NO. 356 P. 15

EMERALD INVESTMENTS, LLC AND STUART LONGMANAdministrative Fees and Expenses:

Filing Fees: \$	<u>3,250.00</u>
Case Service Fees: \$	<u>1,250.00</u>
Hearing Room Expenses: \$	<u>0.00</u>
AAA Hearing Room Rental: \$	<u>875.00</u>

Your Share of Administrative Fees and Expenses: \$ 5,375.00Amounts Paid for Administrative Fees and Expenses: \$ 4,125.00Balance Administrative Fees and Expenses: \$ 1,250.00Neutral Compensation and Expenses:

Eugene Farber: \$	<u>39,725.00</u>
Larry Biblo: \$	<u>19,775.00</u>
Michael A. Levy: \$	<u>26,700.00</u>
: \$	<u>0.00</u>

Your Share of Neutral Compensation and Expenses: \$ 43,100.00Amounts Paid for Neutral Compensation and Expenses: \$ 45,000.00Balance Neutral Compensation and Expenses: \$ (1,900.00)Party Balance: \$ (650.00)

STUART L LONGMAN
424 WEST MOUNTAIN ROAD
RIDGEFIELD CT 06877

September 24, 2006

David Williams
Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via mail and facsimile

Re: Ashley River Properties II, LLC
2005 Tax Return

David:

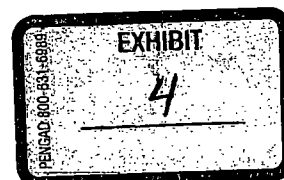
The K-1 you sent me listed my share of ARP II at 70% at the beginning of the year and 21.3% at the end. As you well know, this is not the case. I request that you correct the reporting, generating a new K-1, and send me a copy of the full return.

Sincerely,

COPY

Stuart L. Longman

Cc: Robert Ward, Esq.
Richard Rosen, Esq.



AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS

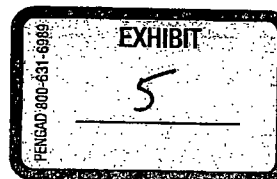
We, the undersigned arbitrators, having been designated pursuant to Article 12.18 of the operating agreement, dated as of December 29, 2003, by and among Kriti Ripley, LLC ("Kriti"), Emerald Investments, LLC ("Emerald") and Ashley River Properties II, LLC ("Company") ("hereinafter "Operating Agreement"), and, during July, 2010, the Arbitrators (hereinafter sometimes referred to as "Panel"), each having been duly sworn, held six duly noticed hearing days pertaining to the within matter, during which time the Panel heard evidence and admitted various exhibits in furtherance of the position of both Emerald and Kriti, and, the parties having submitted post hearing briefs and reply briefs, and, having read the briefs and ancillary submissions, do hereby FIND and AWARD as follows:

This arbitration arises from a dispute between the only two members of the Company which was formed to own and develop waterfront property located in Charleston, South Carolina. This dispute has its genesis in 2005 when the principal of Emerald, Stuart Longman, admittedly, diverted funds from the Company contrary to the Operating Agreement. As a consequence, Kriti commenced an arbitration to strip Emerald of its voting rights in accordance with the Operating Agreement. As a result, Emerald, which held a 70% membership interest in the Company, lost all of its voting rights, leaving Kriti, which held the remaining 30% membership in the Company, with the sole right to manage the Company and as the sole voting member of the Company.

Thereafter, the parties engaged in a continuous series of litigations and arbitrations, spanning three states, to further each of their interests. The initial arbitration affirmed Emerald's loss of voting rights and awarded Kriti certain moneys arising from the diversion of Company funds (JE 47). The initial award denied the remedy of forfeiture and held that Kriti could exercise its right to acquire the interests of Emerald for Emerald's cost as set forth on the books of the Company as provided in the Operating Agreement (JE 52, Article 13.02). Due to the manner in which the Operating Agreement provided for a buy out of the interests of each member, the arbitrators did not need to address whether or not Emerald's membership interests were reduced from 70% to something less. During the initial arbitration and, consistently thereafter, Emerald took the position that it continued to own a 70% interest in the Company and Kriti took the position that Emerald's interests had been diluted.

Thereafter, Kriti commenced a second arbitration to recover moneys due from Emerald arising from its diversion of funds and for legal fees. That arbitrator, by an award, dated June 22, 2006, awarded Kriti legal fees and damages (JE 48). Kriti then moved to confirm both awards in the Supreme Court of the State of New York, New York County. In February, 2008, both awards were affirmed by the Hon. Ira Gammernan, Judicial Hearing Officer (JE 49). In a separate action, Emerald sought a judicial determination, also in the Supreme Court of the State of New York, that Kriti's right to acquire Emerald's interest in the Company had expired, which motion was granted in 2009.

In 2009, Emerald commenced an action in the Court of Common Pleas for the Ninth Judicial Circuit, sitting in Charleston, South Carolina, to dissolve the Company and to declare that Kriti owned 70% of the Company ("South Carolina Dissolution Action"). The Court, in that proceeding, explicitly held that "the suit is based on events (e.g. ...the alleged dilution of Emerald's interest...) that occurred after the New York arbitration. Therefore, the current claims are not barred by *res judicata* or collateral estoppel (JE... at 21)."



AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

When the parties realized that the determination of Emerald's membership interest was properly the subject of arbitration pursuant to Article 12.18 of the Operating Agreement, they agreed to stay the South Carolina Dissolution Action and proceed with arbitration in New York on the issue of Emerald's membership interest (JE 536). The consent order of the South Carolina Court also provided:

"The parties further stipulate and agree that the findings of the above-referenced New York arbitration, upon confirmation of the award, shall be admissible in and binding upon the parties in any action (including, but not limited to, this action) seeking an order of judicial dissolution of ARP II (the Company)."

Emerald then commenced the within arbitration, seeking, in part: (i) a declaration that Emerald owns 70% of the membership interests of the Company, (ii) a finding that the amounts contributed as loans by affiliates of Kriti should be treated as equity and not debt on the books of the Company, (iii) an order expelling Kriti from the Company, (iv) an injunction preventing Kriti from violating the Operating Agreement, (v) damages, and (vi) costs of the arbitration, including legal fees. Kriti answered and denied the material allegations contained in the arbitration demand and sought relief of its own: (i) dismissal of the arbitration, (ii) forfeiture of Emerald's interests in the Company, pursuant to South Carolina law, (iii) confirmation that Emerald holds a 21.3% interest in the Company, (iv) a determination of the amount of long term liabilities on the books of the Company, and (v) costs and expenses of this proceeding, including legal fees.

Ownership Interests

Based upon the evidence adduced at the hearing, We find that the Capital Call, dated February 28, 2005 (JE 115) ("Capital Call") was defective on its face and, thus, ineffective to trigger a dilution of Emerald's membership interests. The Capital Call imposed conditions on the application of Emerald's capital contribution which were contrary to the terms of the Operating Agreement. Accordingly, We find that Emerald continues to own a 70% interest in the Company and Kriti continues to own a 30% interest. This holding does not impact, however, the finding that Kriti continues to be the sole member with voting rights as determined by the initial arbitration and affirmed by J.H.O. Gammernan (JE 47 at 11).

The Panel finds that Emerald is not precluded by either the statute of limitations or *res judicata* from seeking the relief requested herein. J.H.O. Gammernan's decision, dated February 15, 2008, was settled by a judgment, dated April 2, 2008. Sometime in 2009, Emerald commenced the South Carolina Dissolution Action to declare that it held a 70% interest in the Company, well within the three year statute of limitations for such proceedings applicable under South Carolina law. Through every litigation and arbitration, over five years, Emerald has sought to affirm its 70% owner of the Company, thus tolling any statute of limitations.

Loans as Equity and Not Debt

The Panel finds that Kriti and its affiliates loaned to the Company the sum of \$7,493,077.35, as set forth on the Company balance sheet, dated as of March 31, 2010 (JE 104) ("Financial Statement"). These loans were not disputed by Emerald. Rather, Emerald seeks to have these loans treated as equity claiming that the loans

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")

and

Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

were disguised equity contributions as they were not arm's length loans and did not have the indicia of debt. We find the cases cited by Emerald unpersuasive to reclassify these loans as equity contributions.

Moreover, Article 5.2 of the Operating Agreement provides for members to loan money to the Company:

Notwithstanding anything herein to the contrary, the following major decisions shall require the written approval of the Member who own the Required Interest of the Voting Rights in the Company: ...

(i) The borrowing of money for Company purposes and, if security is required therefore, the granting of any security interest in all or any portion of Company Property.

(q) Entering into any loan agreement or execution and delivery any note, mortgage, deed of trust guaranty, indemnity or other instrument or agreement in connection with any borrowing, or any amendment, supplement, extension or modification thereto, whether in connection with any existing or future borrowing or debt.

(JE 52, Article 52.)

Thus, We find that loans to the Company from the Kriti affiliates and Davidson Williams should be treated as loans.

Dissolution of the Company and Dissociation

We find no basis to dissociate Kriti or Emerald from the Company or to dissolve the Company despite the fact that dissolution may be in the best interests of all parties. The Operating Agreement explicitly states the basis for dissolution:

9.1. Except as otherwise provided herein, the Company shall dissolve... only upon the happening of one or more the following events:

(a) written consent of the members who own the Required Interest of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality with ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate of administratively dissolving the Company...

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

(d) The expiration of the period fixed for the duration of the Company...

The Panel finds that none of these events has occurred and, thus, the parties have not provided sufficient facts for the Arbitrators to render a fact finding authorizing dissolution.

The Operating Agreement also fails to provide a basis for dissociation, as dissociation may be supported only upon the finding of three events:

"(a) Withdrawing, retiring or resigning from the Company with the consent of those Members who own the Required Voting Rights in the Company.

(b) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him or it (sic) which is not dismissed within ninety (90) days.

(c) Any event of Wrongful Dissociation set forth in 10.5 of this Agreement."

Article 10.5 of the Operating Agreement sets forth the basis for wrongful dissociation. The parties did not present sufficient evidence to justify a finding of the extreme remedies of dissociation or forfeiture of either member's membership interests in the Company.

Article 10.5(b)(iii) provides that dissociation may be found where a member engages in "conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member." While the Panel observes that Kriti and Emerald cannot work together in any constructive manner, the business of the Company is the development of the waterfront property and, should the Company elect not to dissolve, Kriti may proceed with its business operations.

Nor did the Panel hear sufficient evidence to find corporate waste by Kriti or commission of any act which would justify enjoining Kriti from violating any provision of the Operating Agreement. The decisions to construct a bulkhead, dredge the canal and construct the out building were well within the business judgment of Kriti as managing member; and the application of funds by the Company was, also, well within reasonable business efforts to manage a complex piece of waterfront property. Kriti had envisioned a luxury development and these expenditures fell within that reasonable vision. Emerald's evidence was, at best, the observations of Stuart Longman who believed that he could develop the property better; but the decisions of Kriti did not constitute waste nor "wrongful conduct that adversely and materially affected the Company's business..." Nor did Kriti's conduct constitute "... a material breach of [the Operating Agreement] or a duty owed to the Company or the other Members under Section 22-44-409 of the Act." Operating Agreement, Article 10.5(b).

Accordingly, the Panel Awards as follows:

1. Emerald is found to continue to own 70% of the membership interests in the Company and Kriti continues to own 30% of the membership interests.

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

2. The loans by Kriti's affiliates to the Company shall be treated as loans to the Company and shall not be recast as equity. The amount of the loans are found to be those set forth in the Financial Statement, as the amounts of the loans were not disputed by the parties.
3. Neither Kriti nor the Company committed corporate waste or engaged in any misconduct which would support a finding of fact requiring dissociation, dissolution or an award to Emerald of damages; and, thus, to the extent that the Panel is empowered to opine on the request for dissociation, dissolution or damages against Kriti, such request is denied.
4. Emerald did not commit sufficient acts to support a finding of dissociation, and, to the extent that the Panel is empowered to opine on the request for dissociation of Emerald, such request for relief is denied.
5. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture.
6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
8. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally. Therefore, Kriti shall reimburse Emerald the sum of \$59,527.74, representing that portion of said fees in excess of the apportioned costs previously incurred by Emerald.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

10/28/2010

Date

10/28/2010

Date

E. Leo Milonas

Peter L. Altieri

Peter L. Altieri

David M. Rubin

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
 Emerald Investments, LLC ("Emerald")
 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

2. The loans by Kriti's affiliates to the Company shall be treated as loans to the Company and shall not be recast as equity. The amount of the loans are found to be those set forth in the Financial Statement, as the amounts of the loans were not disputed by the parties.
3. Neither Kriti nor the Company committed corporate waste or engaged in any misconduct which would support a finding of fact requiring dissociation, dissolution or an award to Emerald of damages; and, thus, to the extent that the Panel is empowered to opine on the request for dissociation, dissolution or damages against Kriti, such request is denied.
4. Emerald did not commit sufficient acts to support a finding of dissociation, and, to the extent that the Panel is empowered to opine on the request for dissociation of Emerald, such request for relief is denied.
5. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture.
6. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request for relief is denied.
7. Each of the parties hereto shall bear its own costs and expenses incurred in connection with this proceeding, subject to the payments set forth below; and, to the extent that each party hereto seeks an award of legal fees or costs and disbursements of this proceeding from the other party to this proceeding, such request is denied.
8. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally. Therefore, Kriti shall reimburse Emerald the sum of \$59,527.74, representing that portion of said fees in excess of the apportioned costs previously incurred by Emerald.

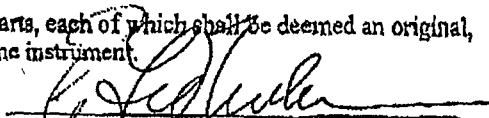
This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

10/28/10
 Date

Date

Date


 E. Leo Milonas

Peter L. Alneri

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
Emerald Investments, LLC ("Emerald")
and
Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, E. Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/28/10
Date


E. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10
Emerald Investments, LLC ("Emerald")
and
Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

I, E. Leo Milonas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

E. Leo Milonas

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/20/2010
Date

Peter L. Altieri
Peter L. Altieri

I, David M. Rubin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

10/20/2010
Date

David M. Rubin
David M. Rubin