

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 IV**

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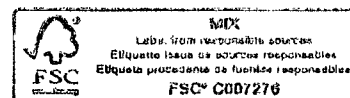
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Resto de Sud América

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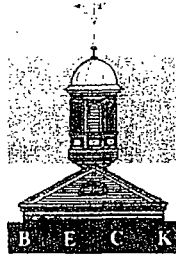
**AMENDED RECORD ON APPEAL
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FRED H. BECK AND ASSOCIATES
*Real Estate Appraisers
& Consultants*

APPRAISAL REPORT

3.73 Net Acres of Vacant Land
South side of Ripley Point Drive
Charleston, Charleston County, South Carolina 29407
(Bank of America Project ID #09-009978-APR01-02)

PREPARED FOR

Bank of America, N.A.
Real Estate Risk Assessment
Attn: Debbie Pauza, Market Manager
Mail Code: FL2-399-02-03
100 North Westshore Boulevard
Tampa, FL 33609

"Bank of America makes no warranties or representations regarding this document or the conclusions contained herein."

DATE OF REPORT

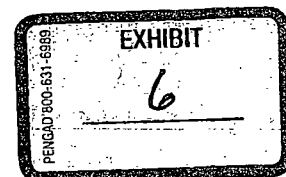
October 16, 2009

EFFECTIVE DATE OF APPRAISAL

"As Is" September 25, 2009

APPRAISED BY

FRED H. BECK & ASSOCIATES, LLC
Mark A. Morgan
Edward M. Parler, III





October 16, 2009

Bank of America, N.A.
Real Estate Risk Assessment
Attn: Debbie Pauza, Market Manager
Mail Code: FL2-399-02-03
100 North Westshore Boulevard
Tampa, FL 33609

Reference: 3.73 Net Acres of Vacant Land
South Side of Ripley Point Drive
Charleston, Charleston County, South Carolina 29407
(Bank of America Project ID #09-009978-APR01-02)

Dear Ms. Pauza:

As requested, we have inspected the above referenced property for the purpose of providing an opinion of its market value. Based on our inspection and analysis of the information obtained, it is our opinion that the market value of the Fee Simple interest in the subject property is as follows:

	AS IS September 25, 2009
Property Rights	Fee Simple
Value Opinion	\$7,720,000

This value opinion is supported by the data and reasoning set forth in the attached narrative. Your attention is invited to the Assumptions and Limiting Conditions attached and made a part of this report. We certify that we have no present or contemplated future interest in the property appraised and that our fee for this assignment is in no way contingent upon the value opinion supplied.

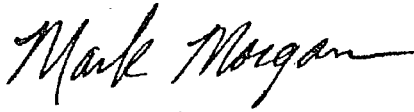
We previously appraised this property on December 4, 2007 and concluded the market value to be \$14,000,000. Since that time, the real estate market in the Charleston MSA, like the majority of the State of South Carolina and the nation as a whole, has experienced decreasing property values. The housing boom for this market peaked in 2006 and 2007. A poor economy and a financial crisis which hit Wall Street, financial institutions, etc. aided in the rapid decline in property values as the financial institutions stopped lending new money for a period of time and tightened lending requirements as well. The overall effect on the subject property was the lack of demand for properties similar to the subject as well as no one willing to lend money for speculative land. Therefore the value of the subject property as well as the majority of similar properties has declined significantly over the past 18 to 24 months.

The following report complies with the standards and regulations outlined in Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In addition, the report conforms to the Office of the Comptroller of the Currency's (OCC) appraisal standards. This includes compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute as promulgated by the Appraisal Standards Board of the Appraisal Foundation; compliance with USPAP including the ethics and competency provisions.

The undersigned hereby acknowledges considerable input, investigation, and analysis by Edward M. Parler, III, who contributed to the information set forth in the attached narrative. Thank you for the opportunity to be of service and please let us know if you have any questions.

Respectfully Submitted,

Fred H. Beck & Associates, LLC



Mark A. Morgan
State-Certified General Real Estate Appraiser
S.C. Certificate No. CG3890



Edward M. Parler, III
State-Certified General Real Estate Appraiser
S.C. Certificate No. CG3064

CERTIFICATE OF THE APPRAISER

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
 2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
 3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
 4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
 5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
 6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
 7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the ***Uniform Standards of Professional Appraisal Practice***.
 8. The use of this report is subject to the requirements of the Appraisal Institute relating to the review by its duly authorized representatives.
 9. I have made a personal inspection of the property that is the subject of this report.
 10. No one provided significant real property appraisal assistance to the person signing this report, other than **Edward M. Parler, III**.
- **The appraisal was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.**



MARK A. MORGAN

State-Certified General Real Estate Appraiser
S.C. Certificate No. CG3890

CERTIFICATE OF THE APPRAISER

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
 2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
 3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
 4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
 5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
 6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
 7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the **Uniform Standards of Professional Appraisal Practice**.
 8. The use of this report is subject to the requirements of the Appraisal Institute relating to the review by its duly authorized representatives.
 9. I have made a personal inspection of the property that is the subject of this report.
 10. No one provided significant real property appraisal assistance to the person signing this report.
- **The appraisal was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.**



EDWARD M. PARLER, III

State-Certified General Real Estate Appraiser
S.C. Certificate No. CG3064

SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS
3.73 NET ACRES OF VACANT LAND
(Bank of America Project ID #09-009978-APR01-02)

Property Location	South side of Ripley Point Drive in Charleston, Charleston County, South Carolina 29407
Property Owner	Ashley River Properties II, LLC
Date of Report	October 16, 2009
Effective Date of Appraisal	September 25, 2009
Property Rights Appraised	Fee Simple Estate
Zoning	GB-A, General Business - Accommodations
Tax Map Reference	421-11-00-054 and 421-11-00-274 pt.
Land Area	Total site contains 3.73 acres and approved for 80 residential condominium units. This equates to a density of 21.45 unit per acre.
Improvements	Vacant Land
Present Use	Vacant Land
Highest and Best Use	Speculative Holding
Appraisal Procedures	Sales Comparison Approach
Value By Sales Comparison Approach	\$7,720,000
FINAL OPINION OF MARKET VALUE "AS IS" September 25, 2009	\$7,720,000

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SUBJECT PROPERTY

The property being appraised in this report consists of two contiguous parcels of vacant land. The properties are owned by Ashley River Properties II, LLC and are located along Ripley Point Drive near Ripley Point Yacht Club Marina. The properties have been permitted for development of 80 luxury residential condominium units and can be identified in the Charleston County Tax Assessor's Office as tax parcel 421-11-00-054 (Parcel A containing 2.28 net acres), and tax parcel 421-11-00-274 (Parcel B containing 1.45 net acres). The tract sizes were determined by plats provided by the owner. We have been asked to appraise the properties "As Is". A copy of the tax cards and plat maps are included in the Addenda. According to officials with the City of Charleston Zoning Department, more than 80 condominium units are allowed on the property but the current owners have requested fewer units to be approved because they want to build condominium units of larger size, thus appealing to high-end buyers.

APPRAISAL PROBLEM & PROPOSED SOLUTION

The property being appraised in this report contains 4.08 acres of land area. We have allocated 0.35 acres of the 4.08 acres to an adjoining parcel of land (under the same ownership) to support parking for another appraisal we have prepared for the client. This leaves us a remainder for the subject property of 3.73 acres (4.08 acres - 0.35 acres). Since we are valuing the subject property on a per unit basis, using 80 units before and after deducting for these 0.35 acres, there is no change in the number of allowable units.

APPRAISER COMPETENCY

Mark A. Morgan and Edward M. Parler, III, both Certified General Real Estate Appraisers, have been appraising commercial properties and vacant land for more than 10 years. We have therefore met the requirements of the USPAP Competency Provision.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

DEFINITION OF "MARKET VALUE"

The following definition of market value is approved by the Office of the Comptroller of the Currency of the United States of America and by the Office of Thrift Supervision in compliance with Title XI of the Financial Institutions Reform Recovery and Enforcement Act (FIRREA). Market Value is defined as follows:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) Buyer and seller are typically motivated;
- 2) Both parties are well informed or well advised, and acting in what they consider their own best interests;
- 3) A reasonable time is allowed for exposure in the open market;
- 4) Payment is made in terms of cash, in U.S. dollars or in terms of financial arrangements comparable thereto; and
- 5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."¹

PROPERTY RIGHTS APPRAISED

There are three primary types of property rights that may be appraised. They are Fee Simple Estate, Leased Fee Estate, and Leasehold Estate. They are defined as follows:

FEE SIMPLE ESTATE

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the government powers of taxation, eminent domain, police power, and escheat.

LEASED FEE ESTATE

An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.

LEASEHOLD ESTATE

The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.

In this report, we have been asked to provide an opinion of value of the **FEE SIMPLE ESTATE** in the subject property.

¹ Code of Federal Regulations (CFR), Title 12, §34.42(g), 55 *Federal Register* 34696, August 24, 1990, as amended at 57 *Federal Register* 12202, April 9, 1992; 59 *Federal Register* 29499, June 7, 1994.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

VALUE REPORTED

Values are typically estimated on the basis of one or more of the following situation.

Market Value "As Is" on the Appraisal Date: Market Value "As Is" on the appraisal date is an opinion of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions or qualifications as of the date the appraisal is prepared.

Prospective Future Value Upon Completion of Construction: Prospective future value "upon completion" of construction is the prospective future value of a property on the date that construction, conversion or rehabilitation is completed, based upon market conditions forecast to exist as of that completion date. The value opinion at this stage of value should be stated in current dollars as of a current date.

Prospective Future Value Upon Reaching Stabilized Occupancy: Prospective future value "upon reaching stabilized occupancy" is the prospective future value of a property when all improvements have been physically constructed and the property has been leased to its optimum level of long-term occupancy at the market rent level. The value opinion at this stage of value should be stated in current dollars as of a current date.

In this report, we will provide an opinion of value **"AS IS"** in the Fee Simple Estate for the property as of September 25, 2009.

SPECIAL APPRAISAL INSTRUCTIONS

There have been no special appraisal instructions for this assignment.

SCOPE OF THE APPRAISAL

The 2006 edition of Uniform Standards of Professional Appraisal Practice (USPAP) reflects extensive changes resulting from the Appraisal Standards Board's examination of the proper role of the scope of work and departure concepts in the appraisal process. The primary changes from previous practice are the elimination of the Departure Rule and the introduction of the Scope of Work Rule. By eliminating the Departure Rule, related terms such as related terms Binding Requirement, Specific Requirement, Complete Appraisal, and Limited Appraisal were also eliminated. The most visible change in appraisal practice is the discontinued use of "Complete" and "Limited" to describe the appraisal process.

The term **SCOPE OF WORK** is defined as "the type and extent of research and analyses in an assignment."² The Scope of Work Rule does not introduce new requirements. The change is instead a matter of emphasis. The process of problem identification and development of an appropriate scope of work, both previously existing USPAP requirements, are more heavily emphasized in the Scope of Work Rule. The intent is to simplify the understanding of the development process. Greater emphasis is placed on scope of work disclosure to provide the intended users with an understanding of the actions of the appraiser to arrive at the assignment conclusions. The **SCOPE OF WORK RULE** states that for each assignment, the appraiser must (1) identify the problem to be solved; (2) determine and perform the scope of work necessary to develop credible assignment results; and (3) disclose the scope of work in the report.³

The first step is to **identify the problem to be solved**. Proper identification of the appraisal problem, which is necessary to determine the appropriate scope of work, requires the appraiser to identify the following assignment elements:

- ☐ client and any other intended users;
- ☐ intended use of the appraiser's opinions and conclusions;
- ☐ type and definition of value;
- ☐ effective date of the appraiser's opinions and conclusions;
- ☐ subject of the assignment and its relevant characteristics; and
- ☐ assignment conditions (assumptions, extraordinary assumptions, hypothetical conditions, etc.)

This information provides the appraiser with the basis for determining the type and extent of research and analyses to include in the development of an appraisal.

² *Uniform Standards of Professional Appraisal Practice and Advisory Opinions* (2006 ed.). Washington, DC: The Appraisal Foundation. 2006. Page 4, Line 144.

³ *Uniform Standards of Professional Appraisal Practice and Advisory Opinions* (2006 ed.). Washington, DC: The Appraisal Foundation. 2006. Page 12, Lines 382-387.

Based on the appraisal problem to be solved, the next step is to **determine and perform the scope of work necessary to develop credible assignment results**. The scope of work must include the research and analyses that are necessary to develop credible assignment results. Scope of work includes, but is not limited to:

- ☐ the extent to which the property is identified;
- ☐ the extent to which tangible property is inspected;
- ☐ the type and extent of data researched; and
- ☐ the type and extent of analyses applied to arrive at opinions or conclusions.

The credibility of assignment results is always measured in the context of the intended use. Credible results require support by relevant evidence and logic; assignment conditions may not limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use. Furthermore, the act of determining the scope of work is an ongoing process in an assignment and information or conditions discovered during the assignment might require that the appraiser reconsider the scope of work.

The final step is to **disclose the scope of work in the report**. The appraisal report must contain sufficient information to allow intended users to understand the scope of work performed. Sufficient information includes disclosure of research and analyses performed and may include disclosure of research and analyses not performed. Again, USPAP places greater emphasis on scope of work disclosure to provide the intended users with an understanding of the specific actions taken to arrive at the assignment conclusions.

GENERAL SCOPE OF WORK

The following steps were completed for this assignment:

1. We identified the subject;
2. We understood and clearly stated the intended use and user of the report;
3. We applied appropriate appraisal methodology in accordance with USPAP;
4. We analyzed the comparable data to arrive at a probable range of value via each approach utilized;
5. We reconciled the results of each approach into a credible final opinion of value, as defined herein; and
6. We estimated a reasonable exposure time and marketing time associated with the value opinion.

INTENDED USE

This appraisal will be used for the purpose of rendering a decision relative to a financial transaction.

INTENDED USER OF REPORT

This report is intended to aid **BANK OF AMERICA, N.A. – REAL ESTATE RISK ASSESSMENT** and its successors and assigns for mortgage underwriting purposes.

DATE OF REPORT

FRED H. BECK & ASSOCIATES, LLC

The date of this report is October 16, 2007.

DATE OF INSPECTION

The subject property was inspected on Friday, September 25, 2009.

EFFECTIVE DATE OF VALUE

The effective date of the "As Is" value is September 25, 2009.

TYPE OF VALUE OPINION SOUGHT

The client has requested the property be appraised "As Is". As part of this appraisal, a number of independent investigations and analyses were conducted. In addition to data compiled by Fred H. Beck & Associates, LLC on a regular basis, the investigations undertaken and major data sources used are listed below:

AREA AND NEIGHBORHOOD ANALYSIS

An inspection of the surrounding area and neighborhood was conducted on September 25, 2009. Information on the surrounding area was obtained from various publications, our files, and discussions with real estate professionals familiar with the area.

SITE DESCRIPTION AND ANALYSIS

The site was inspected on September 25, 2009, at which time photographs were taken. We reviewed site plats provided to us by the owner for the two parcels. We compared the plats with tax records and a legal description, which were researched at the time of inspection.

SALES COMPARISON APPROACH

We researched area neighborhood for sales of similar sites that have occurred within the last three years. The same sources utilized in the Area and Neighborhood Analysis was utilized to obtain comparable land sales. We included only the most comparable sales in this report.

OWNERSHIP AND PROPERTY HISTORY

According to our research of public records, the subject properties are currently held in the ownership name of ASHLEY RIVER PROPERTIES II, LLC. The current owners acquired the properties on July 24, 2003 from RIPLEY LIGHT DEVELOPMENT, LLC. This transaction is recorded in Deed Book E480, Page 16 of the Charleston County RMC office. The transaction was between related parties. We are unaware of any other transfers of ownership within the previous three years. To the best of our knowledge, the subject properties are not currently

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

under contract. At the time of inspection, the two parcels were vacant land and were being used for overflow parking for the adjacent Ripley Yacht Club Marina which ASHLEY RIVER PROPERTIES II, LLC also own.

We learned that there were eleven pre-sold condominium units ranging from \$1,650,000 to \$2,000,000. Since the presales, the market began to retract in 2006 for condominium units in Charleston and subsequently, the owners decided not to go forward with plans to develop the condominium units at the present time.

EXTRAORDINARY ASSUMPTIONS

Please refer to the typical Assumptions and Limiting Conditions in the Addenda for further clarification of the conditions significant to this assignment.

HYPOTHETICAL CONDITIONS

There are no hypothetical conditions in this assignment.

SUPPLEMENTAL STANDARDS

Our firm has an executed engagement letter from the client, a copy of which is provided in the addenda of this report.

JURISDICTIONAL EXCEPTIONS

There are no jurisdictional exceptions in this assignment.

MARKETING TIME AND EXPOSURE TIME

Our marketability analysis will focus on the estimated time the subject site would be on the market to secure a sales contract. The subject property consists of two contiguous vacant parcels containing 1.45 net acres and 2.28 net acres, respectively. The most likely purchaser would be either an owner-user or a land developer, both of whom would most likely seek to improve the property with a high density residential condominium development or luxury hotel development.

Several sources of information were reviewed in order to determine a typical marketing time for the property. The sources considered were real estate brokers familiar with selling residential condominium land, and national investor survey data. The brokers we interviewed are active in selling properties in this part of Charleston. The consensus was a marketing time of twelve to eighteen months to dispose of the subject property. Pricing would be based primarily on a sales comparison approach. Additionally we are required to identify the exposure time associated with the estimated value. Exposure time, unlike marketing time, is considered to immediately preceding the effective date of the appraisal. Exposure time may be defined as follows:

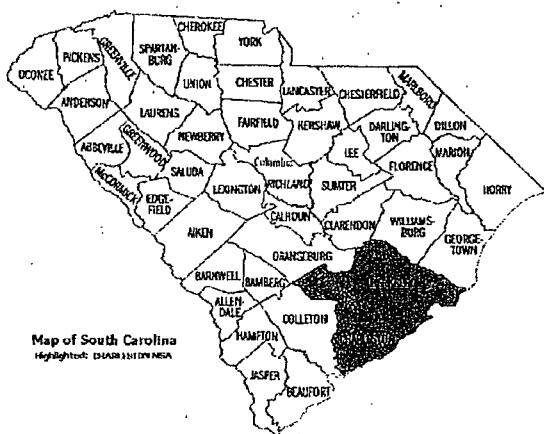
"The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market."⁴

We are of the opinion that the above discussion relative to the marketing expectation is also applicable to market conditions immediately preceding the date of this appraisal, and therefore, estimate an exposure time of twelve to eighteen months for the fee simple interest. Based on conversations with commercial real estate brokers typical sales costs on properties such as the subject would be approximately three to five percent.

⁴Uniform Standards of Professional Appraisal Practice (Washington D.C.: The Appraisal Foundation, 1996), p 75.

METROPOLITAN PROFILE CHARLESTON METROPOLITAN REGION

The constantly changing nature of economic relationships within a given area, as shaped by the forces controlling future growth and development, will have a direct bearing on the whole spectrum of economic activity; including the long term value of real estate investments. The purpose of this section of the report is to isolate and examine those economic trends and forces prevalent in the Charleston market that influence and create value. Since real estate is an immobile asset, the economic trends and forces that affect the subject's quality of location in relation to other competing facilities within its market area, are to be fully evaluated. Past and probable future trends affecting the economic structure of the market area are studied, including the analysis of foreseeable changes.



LOCATION

The Charleston Trident Metropolitan Region is comprised of Berkeley, Charleston and Dorchester Counties. The Trident area stretches along the central and southern South Carolina coast with 90 miles of Atlantic coastline in an inland depth that extends 50 miles inland. The Trident area consists of approximately 26 incorporated communities ranging in population from 88 (Jamestown) to nearly 98,000 (Charleston). The Trident metropolitan area contains approximately 3,163 square miles. This area is primarily influenced by four major economic sectors - the Military, the Port of Charleston, the visitor industry and the medical community.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

Charleston has long been an important seaport in the center of a rich agricultural region. It is also a nationally known resort and convention city. Progress has been made in recent years in industrial development due to the sea port facilities and the favorable business climate. The following are two examples of the increasing economic development of the Trident area.

- Charleston is home to the largest containerized port on the Southeast and Gulf coasts, second only to the combined ports of New York and New Jersey.
- Seventeen International operate in the Trident region and produce more than 25 percent of the manufacturing jobs in the region.

The impact of the closing of the Charleston Naval Shipyard, which was accepted by Congress in 1993, led to some economic uncertainty. The base was physically closed in October 1995 and completely closed in April 1996. The impact of the shipyard closure will be addressed in detail later in this section. Charleston is the largest business and financial center for southeastern section of South Carolina. The economy of the tri-county area has expanded steadily over the past couple of years. Manufacturing, the military, the State Ports Authority, and tourism combined to enhance the Trident area's economy.

More than eight million tons of cargo passes through the Port of Charleston each year. As the largest containerized cargo port on the Southeast Atlantic and Gulf coasts and the seventh largest nationwide, the port annually handles over 6.8 million tons of cargo and employs an estimated 17,000 people. Confidence in the port's expanding future is evident in BMW Corporation's decision to import/export from these docks. The Port of Charleston is expected to be a cornerstone of the Trident area's economic growth.

POPULATION TRENDS AND PROJECTIONS

The Trident area has seen steady population growth over the past seventeen years. Please refer to the chart below for population statistics for the City of Charleston, Charleston County, and the Charleston MSA.

AREA POPULATION STATISTICS							
Area	Census 1990	Census 2000	Annual Chg 1990-2000	Estimate 2009	Annual Chg 2000-2009	Projection 2014	Annual Chg 2008-2014
City of Charleston	96,102	96,650	0.1%	106,890	1.1%	112,858	1.1%
Charleston County	295,039	309,969	0.5%	336,819	0.9%	353,151	1.0%
Charleston MSA	506,875	549,033	0.8%	617,882	1.3%	662,617	1.4%

Source: Claritas, Inc.

The City of Charleston has experienced very slight growth since 1990 through 2000 which continued with a slightly higher growth factor of 1.1% for the period 2000-2009.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

This growth factor is also projected for the years 2009 through 2014. Charleston County and the Charleston MSA have experienced similar type growth rates over the past two decades and are projected to have similar growth rates as the city through the year 2014. The historical and projected household statistics for Charleston, Charleston County, and Charleston MSA are presented in the following table:

AREA HOUSEHOLD STATISTICS							
Area	Census 1990	Census 2000	Annual Chg 1990-2000	Estimate 2009	Annual Chg 2000-2009	Projection 2014	Annual Chg 2008-2014
City of Charleston	36,669	40,791	1.1%	46,649	1.5%	49,831	1.3%
Charleston County	107,069	123,326	1.4%	139,777	1.4%	150,738	1.5%
Charleston MSA	177,668	207,957	1.6%	243,772	1.8%	267,730	1.9%

Source: Claritas, Inc.

The household statistics are basically similar to and mirror the population growth figures for the City of Charleston, Charleston County and the Charleston MSA.

AREA INCOME STATISTICS

The Trident area has seen steady income growth over the past five years. Please refer to the chart below for the 2009 income statistics for comparisons of the City of Charleston, Charleston County, and the Charleston MSA.

2009 INCOME STATISTICS			
Area	Average Household	Median Household	Per Capita
City of Charleston	\$64,432	\$44,520	\$28,518
Charleston County	\$66,857	\$47,558	\$27,905
Charleston MSA	\$64,628	\$49,370	\$25,566

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

MAJOR EMPLOYERS

The 25 largest employers in the Charleston MSA are detailed in the following table:

LARGEST EMPLOYERS CHARLESTON MSA		
Company	Product/Service	Employees
US Navy	Various Naval Commands	16,219
Medical University of South Carolina	Healthcare	8,200
Charleston Airforce Base	United States Air Force	5,594
Charleston County School District	Primary & Secondary Education	5,000
Roper St. Francis Healthcare	Healthcare	4,000
Berkeley County School District	Primary & Secondary Education	3,414
Piggly Wiggly Carolina Co. Inc.	Grocery headquarters & 23 area stores	2,500
Charleston County	County Government	2,243
Robert Bosch Corporation	Fuel Injection & braking systems	2,243
Wal Mart Stores	Retail general merchandise (8 area stores)	2,153
Trident Health System	Trident and Summerville Medical Centers	2,082
Dorchester County School District II	Primary & Secondary Education	2,000
Santee Cooper	Electric Utility	1,725
Mead Westvaco	Specialty paper, packaging, chemicals, etc.	1,596
City of Charleston	Municipal government	1,470
Bi-Lo Inc.	15 area grocery stores	1,300
U.S. Postal Service	Postal Service	1,200
R.H. Johnson Dept. of Veterans Affairs Hospital	Healthcare	1,100
Cummins Engine Divisions & Joint Ventures	Automotive products	1,062
OSI	Billing & accounts receivable services	1,000
SCANA/SC Electric & Gas Company	Electric & gas utility	1,000
College of Charleston	Post secondary education	990
City of North Charleston	Municipal government	850
Nucor Steel	Steel roll and beam manufacturing complex	831
Berkeley County	County Government	750

Source: Charleston County Chamber of Commerce

The four largest employers in the Charleston region are the US Navy, The Medical University of SC, The U.S. Air Force, and The Charleston County School District. Historically, Charleston's largest employer has been the United States Navy; however, this changed with the 1993 announcement that the Charleston Naval Base and Shipyard would be closed, resulting in the imminent loss of 33,000 active, civilian and contract military jobs. The payroll for the armed forces community in the Trident area is \$1 billion dollars. In the last five years, total Navy employment has declined by 41 percent. From 1991-1993, Navy employment declined by 9,000. By phasing the jobs out gradually and not all at one time, the damage to the employment base and the overall economy was greatly reduced. It has been estimated that 21,000 jobs have been lost in the past 6 years.

The Building Economics Solutions Together committee (BEST) was formed to pursue alternative uses for the Charleston Naval Base in the areas of job creation and business development. The naval base and shipyard contain 2.3 million square feet of industrial space, 1.8 million square feet of warehouse space, and 2.2 million square feet of office space. The success of the committee's efforts to find an alternative use for the naval base

can considerably lessen the base closure's impact on the Trident area economy. It has been learned that the Naval Electronics Systems Engineering Center (NAVALEX) facility will not be closed, and will undergo expansion. The three Naval Electronic Divisions are being consolidated to form the new NISE East Complex. The Charleston Naval Weapons Station will also remain in operation and a new army depot will replace POMFLANT. Other military users in the Trident area include the United States Air Force and the Coast Guard, which have major bases in the area, and are not being phased out.

One of the largest industries in the Trident area is tourism, which attracts over 3,700,000 visitors annually. The total estimated annual impact of the visitor industry is over \$3.2 billion, providing around 34,000 jobs. Popular visitor attractions in the Trident area include the Maritime Museum at Patriot's Point, which features the aircraft carrier, Yorktown. Other sites include Fort Sumter, Charlestown Landing, as well as the downtown market area. An event in the area that attracts visitors is the Spoleto Festival, a three-week festival at the end of May and the beginning of June. The Spoleto Festival has been held in Charleston since 1977 and is a nationally recognized festival of the performing arts. Charleston has both a Spring Festival of House and Gardens and a Fall Tour of Homes. Both of these events are a month long and offer tours of antebellum homes not normally open to the public. Another major event is the Southeastern Wildlife Exposition, which is considered to be the largest Wildlife exposition in the country. The Wildlife Exposition is held for one weekend in February and attracts over 40,000 visitors.

The largest manufacturers in the Trident area are Westvaco Corporation; The Robert Bosch Corporation; Bayer; Cummins Engine Company, inc.; Alcoa, Mt Holly; and Williams Technologies. This industry, especially defense-related contractors, experienced the negative effects of the Charleston Naval Base closure, as well as reduced military spending; however, after September 11, 2001, military spending has resumed. It should be noted, however, that the Trident Economic Development Authority has reported strong interest from national as well as international manufacturing firms wishing to locate in the Trident area.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

LABOR FORCE

The chart below illustrates the most recent employment figures for the City of Charleston, Charleston County, Charleston MSA as well as the State and National Unemployment Rates.

LABOR FORCE STATISTICS						
Annual Average of Year:	2004	2005	2006	2007	2008	Jul-09
City of Charleston						
Total Civilian Labor Force	52,202	53,194	57,377	58,368	58,343	60,505
Total Employment	49,321	50,241	54,203	55,356	54,991	54,201
Total Unemployment	2,883	2,953	3,174	3,012	3,352	6,304
Unemployment Rate	5.5%	5.6%	5.5%	5.1%	5.7%	10.4%
Charleston County						
Total Civilian Labor Force	165,081	168,190	172,913	176,205	176,873	182,514
Total Employment	156,191	159,084	164,178	167,671	167,505	165,100
Total Unemployment	8,890	9,106	8,735	8,534	9,368	17,414
Unemployment Rate	5.4%	5.4%	5.1%	4.8%	5.3%	9.5%
Charleston MSA						
Total Civilian Labor Force	288,815	297,228	306,292	312,168	320,000	331,738
Total Employment	273,340	281,301	290,308	296,485	302,080	297,742
Total Unemployment	15,475	15,927	15,984	15,683	17,920	33,996
Unemployment Rate	5.4%	5.4%	5.2%	5.0%	5.6%	10.2%
State and National Rates						
South Carolina	6.4%	5.5%	5.2%	4.8%	6.9%	11.8%
United States	6.0%	5.5%	5.1%	4.6%	7.2%	9.4%
Source: US Bureau of Labor Statistics						

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

The following chart illustrates the employment sector breakdown in Charleston, Charleston County and the Charleston MSA:

ESTIMATED 2009 EMPLOYMENT STATISTICS						
Description	City of Charleston		County		MSA	
	Total	% Total	Total	% Total	Total	% Total
OVERALL CLASSIFICATION						
For Profit Private Workers	33,418	66.0%	109,443	67.5%	208,567	69.2%
Non-Profit Private Workers	3,146	6.2%	8,529	5.3%	13,912	4.6%
Local Government Workers	3,332	6.6%	10,073	6.2%	19,017	6.3%
State Government Workers	6,051	11.9%	16,084	9.9%	27,077	9.0%
Federal Government Workers	1,569	3.1%	6,566	4.1%	13,895	4.6%
Self-Employed Workers	3,022	6.0%	10,782	6.7%	17,893	5.9%
Unpaid Family Workers	127	0.3%	563	0.3%	848	0.3%
Total Employment	50,655	100.0%	162,040	100.0%	301,209	100.0%
INDUSTRY CLASSIFICATION						
Management, Business, & Financial Operations	6,978	13.8%	21,794	13.4%	37,127	12.3%
Professional and Related Occupations	13,859	27.4%	37,631	23.2%	62,333	20.7%
Service Industries	9,569	18.9%	28,563	17.6%	47,808	15.9%
Sales and Office	12,901	25.5%	42,212	26.1%	79,078	26.3%
Farming, Fishing, and Forestry	224	0.4%	713	0.4%	1,334	0.4%
Construction, Extraction, and Maintenance	3,338	6.6%	15,110	9.3%	33,986	11.3%
Production, Transportation, & Material Moving	3,796	7.5%	16,017	9.9%	39,543	13.1%
Total Employment	50,655	100.0%	162,040	100.0%	301,209	100.0%

Source: Claritas, Inc.

TRANSPORTATION

The Charleston International Airport currently serves over 1.4 million passengers annually, with seven major airlines offering over 90 flights per day to national and international destinations. The major airlines serving the airport include Continental, Delta, USAir, and Midway. The Trident area has six private airports in addition to the international airport, to accommodate both corporate and private aircraft. There are approximately 100 motor freight carriers serving the Trident area. Also serving the Trident region is the Norfolk Southern, the CSX system, as well as the South Carolina Railroad Commission. The interstate highways serving the Trident area are Interstate 26, which is an east/west interstate which intersects with Interstate 95 (a north/south interstate) about 50 miles northwest of Charleston. Interstate 26 also intersects Interstate 77 (a north/south interstate) in Columbia, South Carolina. In addition to Interstate service, five major U.S. highways and eleven major state highways also serve this area. Forming a semi-circle across the region is Interstate 526, the Mark Clark Expressway, which is a 19-mile freeway connecting Mt. Pleasant, North Charleston, and the West Ashley area of Charleston.

TOURISM

Tourism is the second largest industry in the Trident area, attracting around 4,000,000 visitors annually and pumping an estimated \$3.7 billion into the local economy. Charleston

promotes itself as "America's Most Historical City" and attracts affluent tourists who appreciate the historic architecture and character of the downtown area. Charleston consistently ranks in the top 10 most popular tourist destinations in the United States, and in the top 20 in the world. Charleston has a wide array of hotels, motels, and inns for the pleasure and business traveler. The average daily rate increased significantly in 1998, from \$88.65 to \$93.95. The hotel occupancy rate for 1998 was 71.1%, up from 70.1% in 1997. Primary visitor attractions in the Charleston area include Fort Sumter, Charlestowne Landing, and the Maritime Museum at Patriot's Point which features the aircraft carrier Yorktown, which is the state's number one paid destination for tourists. Since 1977, Charleston has been the home to Spoleto Festival USA. The success of this three-week festival held in May/June has established Charleston as the site of the nation's premiere festival of performing arts. The Southeastern Wildlife Exposition, held in February, is the largest wildlife art exposition in the country and is the busiest tourist weekend of the year with over 40,000 upscale visitors attracted annually.

SHIPPING

The Port of Charleston is the largest containerized port on the South Atlantic and Gulf Coasts and is second only to the combined ports of New York and New Jersey on the entire east coast. According to port officials, over 12.6 million tons of cargo was handled through Charleston's terminals in 1998. This was more than a 14% increase from the 11 million ton total for 1996. A recent study estimates there are over 14,000 port related jobs in the Trident region generating over \$1 billion annually in the local economy. The Port has four inter-modal facilities, which handle container, bulk, and break-bulk cargo. These facilities have been operating at capacity levels, which have resulted in relatively flat tonnage growth. The Port spent \$100 million in 1994 to expand the Wando Terminal facility in Mount Pleasant. This expansion helped solve the existing capacity problem at the other terminals. In addition, the Port is proceeding with its plans to construct a new container terminal facility opposite the naval base on Daniel Island. These expansion plans will allow the Port of Charleston to continue to grow and compete effectively with other ports.

HEALTH CARE

With a combined employment of nearly 16,000 and an economic impact in excess of \$1 billion annually, the regions' hospital and health care community are of increasing importance to the area's overall economy. There are 10 full service hospitals with a total of 2,161 beds in the Trident region. Two new hospitals were built in Charleston during the 1990s. St. Francis Hospital opened a 160 bed full service hospital in West Ashley in December 1996, and Roper Hospital opened the Roper North in West Ashley in the summer of 1995, offering emergency and outpatient services with 104 beds. Additional medical services for the area are provided by the Ronald McDonald House, several nursing homes,

convalescent homes, children's hospitals, psychiatric hospitals, and a private alcoholism/drug dependency treatment facility.

COLLEGES AND SCHOOL SYSTEM

The Trident area has an excellent array of public/private schools, colleges, and universities. There are four colleges/universities, a medical university, a culinary arts college, two technical colleges, a good public school system, and 25 private and parochial schools. The College of Charleston is a four-year, state-assisted, liberal arts institution offering 34 undergraduate degree programs. In conjunction with the college, the University of Charleston offers 10 graduate degree programs. The College of Charleston was founded in 1770, and is the oldest institution of higher learning in South Carolina and the 13th oldest in the nation. The Citadel, founded in 1842, is a state-assisted military college which until recently was all male. The Citadel philosophy combines classroom requirements with a military environment, which emphasizes discipline, responsiveness and leadership. Charleston Southern University opened in 1964 as the only church-affiliated college in the area. Today it is the second largest private university in the state, with 28 undergraduate degrees along with masters in business administration, education, and teaching. The Medical University of South Carolina (MUSC) is the oldest medical school in the South, and forms the core of the state's largest medical complex. Established in 1824, it is located in historic downtown Charleston. Trident Technical College is a public two-year institution founded in 1964 to provide accessible, practical, high-quality education. The college emphasizes practical, marketable job skills through comprehensive and updated technical programs. Other colleges and universities in the Charleston area include Johnson and Wales Culinary University, Webster University and Limestone College.

GOVERNMENT SERVICES

Management of local government varies between city and county governments in the Trident area. Charleston County has a county-administrator form of government. The City of Charleston is governed by an elected mayor and 12 city council members. Municipal water and sewer is provided by the Commissioners of Public Works of the City of Charleston. Both the water and sewer systems are modern and have been adequately planned for expansion. South Carolina Electric and Gas Company provide the electricity and natural gas for the majority of Charleston County and Southern Bell provides the primary telephone service. Their rates are competitive compared to other cities in the state. The Trident area's various municipalities have zoning departments, land use plans, and building codes, which govern how a property can be developed. These controls have created a general conformity of development in the Trident area.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

DISTANCE TO MAJOR CITIES

City, State	Distance
Atlanta, GA	291 miles
Chicago, IL	906 miles
Miami, FL	590 miles
New York, NY	768 miles
Washington, DC	532 miles

CONCLUSION

The social, economic, governmental, and environmental forces that influence real estate values appear to be in balance in the Trident area. Despite the closure of the Charleston Naval Base and Shipyard in 1996 and the subsequent BRAC re-alignments of 2005, the Charleston area has and continues to show signs of improvement. The expansion of the port is likely to create a significant number of new jobs during the next several years as more and more companies relocate to Charleston. Because the region is not dependent on any one single industry or business sector, the area is poised to weather the latest economic downturn much better than other areas dominated by one particular industry. The anticipated growth in population, increased tourism, and expanded port operations should lessen the economic repercussions of the recession.

DESCRIPTION OF THE NEIGHBORHOOD

DEFINITION

Within a community, there is a marked tendency toward the grouping of land uses. The areas devoted to these various uses are termed "physical neighborhoods". Neighborhood use in this context is further defined as follows:

"A portion of a larger community, or an entire community, in which there is a homogenous grouping of inhabitants, buildings or business enterprises. Inhabitants of a neighborhood usually have a more than casual community of interests and a similarity of economic level or cultural background. Neighborhood boundaries may consist of well defined, natural or man-made barriers or they may be, more or less, well defined by distinct change in land use or in the character of the inhabitants."

LOCATION/BOUNDARIES

The subject neighborhood is situated along the Ashley River to the west of downtown Charleston. The subject is less than 1 mile west of the Central Business District and main attractions of Charleston. For purposes of this analysis, neighborhood boundaries include US Highway 17 to the north; the Intracoastal Waterway to the south; the Ashley River to the east; and State Highway 171 to the west. For further information and an understanding of the neighborhood boundaries, please refer to the maps included in this report.

LAND USE PATTERNS

The land use patterns within the neighborhood consist of residential, commercial and recreational uses. The subject property is part of a larger planned development that includes an existing 87-wet slip private marina (Ripley Light Yacht Club). While land uses differ, we believe they are complementary of the area and buffered by natural land breaks. Commercial development includes the following:

Albemarle Road Porter Gaud School Surgical Associates Golds Gym	Ashley Point Road California Dreaming Restaurant LaQuinta Hotel Ripley Light Marina & Dry Storage	Ripley Point Drive Springhill Suites Residence Inn Vue at Ripley Point

ACCESS/TRAFFIC CORRIDORS

Primarily access into the community is via US Highway 17, a four-lane highway, which runs in a north/south direction and provides the neighborhood with access to the central business district and main attractions of Charleston to the northeast and State Route 30 which provides access to James Island to the south.

UTILITIES

The subject neighborhood is situated in an area served by the Charleston City Utilities Department. Our conversations with representatives of this agency indicate that the neighborhood is served by public water and sewer service.

ZONING

Zoning in the neighborhood is under the jurisdiction of the City of Charleston. The primary zoning is GB-A – General Business - Accommodations District. The specifics of the GB-A District are discussed later in this report.

ENVIRONMENTAL CHARACTERISTICS

The primary environmental characteristics to be considered are any nuisances or hazards as a result of the land uses within the subject neighborhood. At the time of inspection no nuisances or hazards were noted.

DEMOGRAPHICS

Population growth and new household formations have been on a downward trend within the subject neighborhood, but on the rise in the three- and five-mile radii. Selected neighborhood demographics in a one-, three-, and five-mile radii from the subject are shown in the table below:

SELECTED NEIGHBORHOOD DEMOGRAPHICS			
Radius (miles)	1 Mile	3 Miles	5 Miles
Population			
2014 Projection	2,620	65,711	120,561
2009 Estimate	2,622	64,228	117,447
2000 Census	2,552	62,859	113,599
% Change (2000-2009)	2.74%	2.18%	3.39%
% Change (2009-2014)	-0.08%	2.31%	2.65%
Households			
2014 Projection	1,293	29,610	53,349
2009 Estimate	1,280	28,482	51,155
2000 Census	1,203	26,723	47,427
% Change (2000-2009)	6.40%	6.58%	7.86%
% Change (2009-2014)	1.02%	3.96%	4.29%
Additional Demographics			
2009 Est. Average Household Income	\$77,898	\$59,463	\$62,217
2009 Est. Median Household Income	\$51,166	\$37,803	\$43,351
2009 Est. Per Capita Income	\$38,147	\$26,863	\$27,553
2009 Est. Median Home Value	\$356,429	\$246,604	\$227,326
2009 Est. College Graduates	58.7%	42.5%	41.1%
Source: Claritas, Inc.			

As the chart above indicates, population and households are projected to decrease with the one mile radius of the property in the next five years.

SUMMARY

The subject neighborhood is situated just west of Charleston's central business district and main attractions, where demographic and economic characteristics favor a developing area. Strong employment figures in the region, a good transportation network and a traditionally strong real estate market for residential development suggests that the subject neighborhood will continue to be a desirable location once current economic conditions improve. In considering the four life cycles that neighborhoods generally have (growth, stability, decline and revitalization), the neighborhood is considered to be in the **stable** stage. In the past, the area has continued to have increasing property values due to the location of the neighborhood. However, the downturn in the economy and the real estate market conditions that started in early 2007 have continued to this date and have exerted downward pressure on all types of real estate and their values. These downward trends are projected to further slightly decline through the end of 2009 and then are projected to begin to rebound in late 2010 with continued recovery projected through the remainder of 2010 and beyond. During the projected rebounding/recovery periods of 2009 and 2010 and beyond, we are of the opinion that the real estate values will begin to increase in value in correlation with the recovery.

SITE DESCRIPTION

INTRODUCTION

For presentation purposes, we will analyze the two vacant parcels separately since they have varying size characteristics. The parcels will be identified as Parcel A and Parcel B. Plat maps are provided in the Addenda.

PARCEL A

Parcel A contains 2.28 net acres and is located nearest the corner of Ripley Point Drive and SC Highway 61. This property has 175.85 linear feet of road frontage on Highway 61 and 631.93 linear feet of road frontage on Ripley Point Drive. The property also has 606.10 linear feet of frontage on its' southerly boundary line. This property does not have significant frontage on the canal which is used by the marina, but does have some canal views to the southeast.

This parcel is rectangular in shape and has a level topography. We reviewed the Federal Emergency Management Agency's Flood Insurance Rate Map Community Panel Numbers 45019C0514 J, revised November 17, 2004. According to this source, the subject property appears to be located in Zones AE & VE Elevation 13, A7 Elevation 14, and Velocity Level V7 Elevation 14.

We have performed neither soil nor subsoil analyses; therefore, no warranty should be assumed by the reader as to the suitability of the soil for proposed or existing development. A Phase I Environmental Site Assessment (ESA) prepared by Albrecht Environmental, Inc., dated April 13, 2004 reviewed was reviewed. The Phase I ESA revealed no adverse environmental or soil conditions. During the inspection, we conducted a visual survey of the subject property for environmental hazards, at which time no obvious environmental hazards were noted. However, due to the fact that we are not soil scientists, the values rendered herein are predicated upon the assumption that no adverse soil conditions exist, and should further testing prove otherwise, we reserve the right to amend those values.

Parcel A is zoned GB-A by the City of Charleston Zoning Ordinance. Easements affecting the property include typical utility easements granted to public utilities and municipalities for service lines. We are not aware of any other legal constraints that would be detrimental to the site's value or marketability. As of the date of inspection, the property had access to all available public utilities. The utilities are considered adequate to serve the subject site.

PARCEL B

Parcel B contains 1.45 net acres of land area and is located east of Parcel A. Parcel B shares a boundary line with Parcel A, a distance of 141.72 linear feet. This parcel is not visible from SC Highway 61. The property is bounded to the south by the canal that serves Ripley Light Yacht Club Marina and has 424.49 linear feet on the canal. The northern boundary is the right-of-way of Ripley Point Drive and the subject parcel has 464.13 linear feet on this roadway. This parcel also abuts the land utilized as Ripley Point Yacht Club Marina a distance of 60.84 linear feet. The property has significant immediate views of the canal and marina, and beyond the marina, the waters of the Ashley River, the James Island Connector Bridge and to a lesser extent, Charleston Harbor.

This parcel has an irregular shape, is somewhat rectangular and has a level topography. We reviewed the Federal Emergency Management Agency's Flood Insurance Rate Map Community Panel Numbers 45019C0514 J, revised November 17, 2004. According to this source, the subject property appears to be located in Zones AE & VE Elevation 13, A7 Elevation 14, and Velocity Level V7 Elevation 14.

We have performed neither soil nor subsoil analyses; therefore, no warranty should be assumed by the reader as to the suitability of the soil for proposed or existing development. A Phase I Environmental Site Assessment (ESA) prepared by Albrecht Environmental, Inc., dated April 13, 2004 reviewed was reviewed. The Phase I ESA revealed no adverse environmental or soil conditions. During the inspection, we conducted a visual survey of the subject property for environmental hazards, at which time no obvious environmental hazards were noted. However, due to the fact that we are not soil scientists, the values rendered herein are predicated upon the assumption that no adverse soil conditions exist, and should further testing prove otherwise, we reserve the right to amend those values.

Parcel B is zoned GB-A by the City of Charleston Zoning Ordinance. Easements affecting the property include typical utility easements granted to public utilities and municipalities for service lines. We are not aware of any other legal constraints that would be detrimental to the site's value or marketability. As of the date of inspection, the property had access to all available public and private utilities lines. The utilities are considered adequate to serve the subject site.

SUMMARY

The subject parcels are well suited for development. They are centrally located and immediately convenient to Ripley Light Yacht Club Marina, as well as entertainment venues, shopping, local hospitals, schools and numerous places of employment. Access to all of these areas is less than five miles. There are no known detrimental uses in the immediate vicinity. It is our opinion that the parcels do not have any characteristics that would impede its development potential to its highest and best use, as if vacant. Based on our inspection, the parcels comprising the subject property are functionally adequate in each of the categories discussed above.

ASSESSMENTS AND TAXES

The real estate tax rates for Charleston County are determined separately by the different city and county governments. These rates are based on 6% of the market value as of the date of assessment. By law, countywide reassessments in South Carolina must occur every five years with the last revaluation becoming effective January 1, 2005. According to Mr. Russ Campbell, Deputy Auditor for Charleston County, the subject parcels are part of property that is presently a part of land covered in a "Multi-County Park" agreement. Ad Valorem taxes are assessed and collected as with any real property, however the distribution of such revenues is shared between Charleston County, Colleton County and the Charleston County Economic Development Department.

The 2008 tax rate for tax district 63 is 256.1 mills. Properties within the subject's tax district are provided two tax discounts, which reduce the total tax burden; these discounts are as follows:

- 2008 County Government Tax Credit in the amount of 0.00086% Market Value
- 2008 City of Charleston Tax Credit in the amount of 0.00080% Market Value

The 2009 millage rates had not been released as of the date of this appraisal. These are typically finalized in September or October of each year. According to the county tax office, the subject parcels identified in this report are tax map reference number 421-11-00-054 (Parcel A of 2.28 net acres), and 421-11-00-274 (Parcel B of 1.45 net acres). All totaled, the parcels comprise 3.73 acres of land area. Based on the above information, the projected tax burden 'As Is' for the subject in the coming year, is estimated as follows:

TAX BURDEN - "AS IS"

Site Values	
Parcel A #421-11-00-054	\$853,000
Parcel B #421-11-00-274	\$1,201,083
TOTAL TAX VALUE	\$2,054,083
Assessment Ratio	6%
Assessment	\$123,245
Millage Rate (2008)	0.2561
Tax Burden Prior to Credits	\$31,563
Less: County Tax Credit	(\$1,767)
Less: City Tax Credit	(\$1,643)
Tax Burden "As Is"	\$28,153

ZONING/LAND USE CONTROL

The subject property is comprised of two contiguous vacant parcels totaling 3.73 acres. The properties are situated inside the city limits of Charleston and are subject to the City of Charleston Zoning Department Regulations. The properties are zoned **GB-A, General Business - Accommodations District**. According to the Charleston Zoning Ordinance, the intent and permitted uses within this district are as follows:

"The **GB district** is intended to provide for a broad range of commercial uses and activities. It is the most intensive commercial zoning district. Prohibited uses include junk and salvage yards, storage yards (except for vehicles and boats), and warehouses including self-storage mini-warehouses. Automotive repair shops, gasoline service stations, veterinary clinics, and stables are permitted only as special exceptions subject to approval of the Board of Zoning Appeals. Accommodations Overlay Zone is intended to identify those areas within the city limits where hotel, motel and inn accommodation uses, and timesharing uses are allowed. The accommodation uses are prohibited except within the A Overlay Zone."

The present zoning classification allows for different types of commercial and retail use. Residential use is another allowable use. A representative list of permitted and conditional uses is presented here:

Uses Permitted by Right		Conditional Uses
Horticulture	Auto Dealers	Amusement Parks
Farming	Department Stores	Communications Towers
Lawn & Garden Services	Lumber dealers	Day Care Centers
Office	Paint stores	Mini-warehouses
Water taxis	Restaurants, bars	Hotels (In an Accommodations Overlay Zone only)
Marinas	Florists	
Freight Offices	Laundries	Special Exemption Uses
Banks	Funeral Homes	Auto-repair shops
Security Institutions	Bowling Alleys	Gas Stations
Cemeteries	Dance Studios	Stables
Real Estate Offices	Golf Courses	Vet Hospitals
Dormitories	Colleges	Affordable housing
Mobile Home Dealers	Single-Family Detached	
	Multi-family Dwellings	
Source: City of Charleston Municipal Code		

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

ZONING SUMMARY	
Current Zoning	GB-A (Accomodations Overlay)
Legal Use/Conforming	Legal, conforming
Uses Permitted	Single-family, multifamily
Zoning Change	Unlikely
Minimum Lot Size	1,650 Sq.Ft.
Maximum Coverage	35%
Front Setback	3 Feet
Rear Setback	3 Feet
Side Yard Setbacks	9 Feet (S to W); 3 Feet (N to E)
Maximum Height	55 Feet
Source: Charleston Zoning Code	

The above chart summary indicates structure limitations and requirements for residential (multi-family) buildings constructed with the GB-A zone. According to Sec. 54-317 of the City of Charleston Zoning Ordinance, multi-family dwellings require a minimum of 1.5 parking spaces per unit. Based on this, the subject (if built to the 80 unit condominium units) will require a total of 120 parking spaces (regular and handicapped).

HIGHEST AND BEST USE

The highest and best use for real property can be defined as follows:

"The reasonable and probable use that supports the highest present value, as defined, as of the date of the appraisal."

Alternatively, highest and best use is . . .

"The use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value."

The first type of highest and best use, highest and best use of land or a site as though vacant, assumes that a parcel of land is vacant or that it can be made vacant through the demolition of any improvements. The question to be answered in this type of analysis is "what use should be made of it?", that is, what type of building or other improvement (if any) should be constructed on the land?

The second type of highest and best use, highest and best use of a property as improved, pertains to the use that should be made of the property as it exists. Should the existing improvements be maintained, renovated, expanded, partially demolished or should it be replaced with a different type use? The purpose of highest and best use analysis is different for each type of highest and best use examined.

For each type of highest and best use, the criterion in a highest and best use study are that the highest and best use must be 1) legally permissible, 2) physically possible, 3) financially feasible, and 4) maximally productive. According to **THE REAL ESTATE APPRAISAL TERMINOLOGY** book, published by the American Institute of Real Estate Appraisers, "...the concept of highest and best use represents the premise upon which value is based." We will examine the highest and best use of the subject on an analysis "As Vacant."

AS VACANT

LEGALLY PERMISSIBLE USES

The first criteria in analyzing the subject property as vacant are the legally permissible uses. The zoning ordinances or deed restrictions typically define legally permissible uses. We have previously stated that the subject property is zoned GB-A District. This district allows for a wide range of permitted uses including residential and accommodations development. Surrounding land uses include commercial and residential development.

PHYSICALLY POSSIBLE USES

The next criterion in determining the highest and best use considers uses that are physically possible. Some uses may be inappropriate due to certain physical characteristics of the site. These conditions are usually concerned with size, shape, egress and ingress, utilities, soil conditions and topography. The subject site is comprised of two contiguous parcels totaling 3.73 acres or 162,479 square feet. The site is served by public utilities and would be considered adequate for any of the legally permitted uses.

FINANCIALLY FEASIBLE.

The third criterion for determining the highest and best use of the subject, as vacant, would be what use would bring a positive cash flow to the investor. The primary attribute of the subject is its location in the Ripley Point area, just west of Charleston's attractions and central business district and adjoining Ripley Light Yacht Club Marina. To the north of the subject are higher-end extended stay hotels. Further east, at the end of Ripley Point Road, is the former Crab House Restaurant property which is currently occupied by Vue at Ripley Point restaurant and entertainment venue. The property was originally slated for redeveloped into a luxury condominium development. However, market condition for high-end, luxury residential developments have diminished considerably from the development boom of 2005-2006. While there is very little demand for such a development currently, we anticipate the demand for luxury residential uses will return sometime in the future. The length of time it will take for the economy and residential real estate market to recover is uncertain. Several of the real estate professionals we spoke with whom are very knowledgeable of the local market estimate it could be as long as two years until the market shows signs of substantial recovery. We are of the opinion however that the most financially feasible use would be residential in nature rather than a retail or restaurant use. A luxury residential development would be required in order to generate enough profit to warrant the costs involved in the development of the subject site and the purchase of the land.

MAXIMALLY PRODUCTIVE

The fourth criteria analyzes what uses would be maximally productive. After considering the above parameters, we conclude that residential development would maximize the value of the site, as vacant. It would further serve existing uses in the immediate neighborhood, as well as development in surrounding areas. We believe that a mid-rise, luxury residential project will maximize the use of the subject site and bring the highest return to the land. However, as stated previously, the current demand for such a development is not as strong as in recent years. Therefore, we are of the opinion that the highest and best use of the subject would be to hold the property until such a time as demand increases for the development of a luxury condominium development.

METHOD OF VALUATION

The appraisal process typically involves three approaches in determining value, which consists of the Cost Approach, Income Approach and Sales Comparison Approach. A brief description of each technique is as follows:

THE COST APPROACH

An appraisal procedure using depreciated replacement or reproduction costs of improvements plus land value as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more than the cost of producing a substitute property with the same utility as the subject property.

THE INCOME APPROACH

An appraisal procedure using capitalization of expected future income as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more for the subject property than would have to be paid for another property with an income stream of comparable amount, duration and quality.

THE SALES COMPARISON APPROACH

An appraisal procedure using sale prices of properties similar to the subject property as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more for a property than would have to be paid for a similar property of comparable utility.

APPRAISAL PROCEDURES

We have previously stated the subject property is comprised of two contiguous tracts of land. The subject property has been approved for the development of 80 residential condominium units and we will appraise the property as one tract. As such, only the Sales Comparison Approach will be utilized in our analysis. The sales in our analysis are older which reflects the slowdown in the Charleston market for condominium development. The computations that accompany this approach will be outlined on the following pages for the reader's reference.

SALES COMPARISON APPROACH TO VALUE

The Sales Comparison Approach is based on the assumption that an informed purchaser will pay no more for a property than the cost of acquiring an existing property of similar utility. Typically, one would estimate the value of the subject property by comparing the sales prices of recent transactions involving property similar to the subject. Adjustments are made to each sale for dissimilarities as compared to the subject property. These adjustments may include the date of sale, location, age, floor plan, condition, quality, size or external factors that may influence rents or occupancy levels. Typically, the reliability of the sales comparison approach is based on a number of factors such as:

- Availability of comparable sales data.
- Verification of sales data.
- Degree of comparability to the extent that large or numerous adjustments are not necessary to compensate for the differences between the subject property and the comparable sales used.

We have found that the reliability of the sales comparison approach for traditional real estate is excellent when valuing vacant land, single-family homes or small commercial type properties where there is more activity, a larger data base and greater degree of comparability. For more complex and larger investment grade properties such as shopping centers, office buildings, hotels and nursing homes, the required adjustments are often numerous and the degree to which they can be performed without a considerable amount of subjectivity is difficult. As mentioned previously, a number of factors must be verifiable and documented in order to make appropriate adjustments.

- Date of Sale
- Financing Terms and Conditions
- Management Contracts or Service Contracts Involved
- Location
- Amenities
- Income and Expense Data
- Personal Property Included
- Condition
- Appeal

There are obviously other differences that must be adjusted in the marketplace. For the purposes of this report, we analyzed a number of sales. However, we included only those believed most similar to the subject and the unit of comparison considered will be the price paid per acre. The sales occurred between February 2005 and August 2007. These are older sales however there have been very few transactions of waterfront / waterview properties due to the limited amount of land available as well as the current economic conditions. The following sales are offered as an indication of value for the subject property as of the date of this assignment. We have made significant adjustments to these sales.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

LAND SALE 1

LOCATION	Mizzen Mast Drive, off SC Hwy 61 & Ashley Pointe Drive
CITY / STATE	Charleston, Charleston County, SC
TAX ID#	421-11-00-272
GRANTOR	Ripley Cove, LLC
GRANTEE	Stonebridge Ashley Pointe, LLC
DEED REFERENCE	A527/646
DATE OF SALE	February 25, 2005
SIZE	1.681 Acres; 73,224.SF
WATER FRONTAGE	Yes - Ripley Pointe
NUMBER OF UNITS	42
TOPOGRAPHY	Level
UTILITIES	All public
ZONING	GB-A - General Business, Accommodations
IMPROVEMENTS	None
PRESENT USE	Vacant
HIGHEST AND BEST USE	High Density Residential
SALES PRICE	\$5,150,000
TERMS OF SALE	Cash to the seller
ANALYSIS:	
Price per Acre	\$3,063,653
Price per Square Foot	\$70.33
Unadjusted Sale Price / Unit	\$122,619
Average Pre-Construction Price	\$975,000 estimated
Land Value as % of Finished Condo:	
\$122,619/\$1,000,000	12.58%
Proposed Density 42 Units/1.681 Acres	24.99 Units per Acre
Comments	Stonebridge Ashley Pointe, LLC bought this site and plans 42 condominiums at this site. The site is located off SC Highway 61, with possible views of the Ashley River. The site is zoned GB - General Business by the City of Charleston and is also in the 50W height district, which restricts building height to 50' above curb elevation.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

LAND SALE 2

LOCATION	West side Lockwood Drive adjacent to The Harborage at Ashley Marina
CITY / STATE	Peninsular Charleston, Charleston County, SC
TAX ID#	460-14-00-021
GRANTOR	Richard H. Brooks
GRANTEE	Turtle Bay Investments, LLC
DEED REFERENCE	D546/486
DATE OF SALE	July 19, 2005
SIZE	1.713 Acres Highland; 74,618 s.f.
WATER FRONTAGE	Yes - Charleston Harbor
TOPOGRAPHY	Level
UTILITIES	All public
ZONING	GB-A - General Business, Accommodations
IMPROVEMENTS	Vacant
NUMBER OF UNITS	34
PRESENT USE	Vacant
HIGHEST AND BEST USE	High Density Residential
SALES PRICE	\$7,700,000
TERMS OF SALE	Cash to the Seller
ANALYSIS:	
Price Per Acre	\$4,495,038
Price Per Square Foot	\$103.19
Unadjusted Sale Price / Unit	\$226,471
Average Pre-Construction Price	\$1,350,000 estimated
Land Value as % of Finished Condo:	
\$226,471/\$1,350,000	16.78%
Proposed Density 34 Units / 1.70 Acres	20 Units/Acre
Comments	This site was purchased by Turtle Bay Investments, LLC from Richard Brooks. The site is zoned GB, General Business by the City of Charleston and is also in the 35' height district, which restricts building height to 35' above curb elevation. If a property is in a flood zone, then the height restriction may be raised above the 35' height restriction, but no higher than 45'. While the recorded deed states the sales price to be \$4,000,000, the purchaser paid an additional \$3,700,000 for an assignment of the sales contract. Therefore the total consideration paid was \$7,700,000.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

LAND SALE 3

LOCATION	317 Savannah Highway
CITY / STATE	Charleston, Charleston County, NC
TAX ID#	421-07-07-003
GRANTOR	317 Savannah Highway, LLC
GRANTEE	Riverview Ventures, LLC
DEED REFERENCE	R635/404
DATE OF SALE	August 13, 2007
SIZE	0.85 acres; 37,026 s.f.
FRONTAGE	Good along Savannah Highway
TOPOGRAPHY	Level
UTILITIES	All public
ZONING	GB-A – General Business, Accommodations
IMPROVEMENTS	La Chalet restaurant (vacant)
PROPOSED USE	150-room hotel
HIGHEST AND BEST USE	Lodging or service use or multi-family
SALES PRICE	\$1,750,000 which equates to \$2,058,824 per acre
TERMS OF SALE	Cash
ANALYSIS:	
Unadjusted Sale Price / Room	\$11,667
Comments	This is the sale of a 0.85 acre parcel of land located between the east bound and west bound lanes of Highway 17 (Savannah Highway) near the foot of the Ashley River bridges. It is mostly rectangular in shape and is improved with a 4,350 S.F. dine in restaurant that was long operated as the La Chalet. The business ultimately closed and the building has been vacant over the past several years. The purchase was based on land value. The site is also one of four commercial properties located between the east and west bound lanes of Highway 17. The most notable is the "Round Holiday Inn", which is located adjacent to the property to the east. This is a fourteen story, cylindrical shaped, full service motel that has long been considered one of the City's landmarks. The property is zoned GB-A, and is exempted from the City of Charleston's height ordinance that restricts all structures in the city to no more than 55'. This property has a 100 foot height cap to coincide with the adjacent Holiday Inn. Parking and other physical requirements will still need to meet the site approval process under the GB-A zoning. According to the zoning department, the site has gone before committee on August 28, 2008 for conceptual approval for 150 rooms. The current development plan has 143 parking space on the ground, 75 on the 1st level and 65 on the 2nd level, which is much greater than the 100 required spaces.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

LAND SALES SUMMARY CHART				
Sale Number	Subject	1	2	3
Date of Sale		Feb-05	Jul-05	Aug-07
Size in Acres	3.7300	1.681	1.713	0.850
Number of Water FF	350	30	300	0
Zoning	GB-A	GB-A	GB-A	GB-A
Sales Price		\$5,150,000	\$7,700,000	\$1,750,000
Sale Price Per Acre		\$3,063,653	\$4,495,038	\$2,058,824
Property Rights				
Financing Terms				
Conditions of Sale				
Market Conditions (Time)		-50%	-50%	-35%
Adjusted Price Per Acre		\$1,531,826	\$2,247,519	\$1,338,235
Location			-10%	
Size/Shape				
Topography				
Zoning				
Water Frontage Quality		+35%	+5%	+50%
Total % Adjustments		+35%	-5%	+50%
Adjusted Price Per Acre		\$2,067,965	\$2,135,143	\$2,007,353

EXPLANATION OF ADJUSTMENTS

The following are generally accepted adjustment categories. The first four categories - real property rights appraised, financing, conditions of sale, and market conditions (time) are cumulative when the adjustments are percentages. Normally, a sale should first be adjusted for the cumulative adjustment where the remaining adjustments such as location and other physical characteristics are applied. Location, physical characteristics and other adjustments are additive, and may be in any order. An explanation of each adjustment category is as follows:

PROPERTY RIGHTS APPRAISED

The real property rights conveyed are the first adjustment. The appraisal of the subject property rights can only be compared to similar property rights. All of the comparable sales are considered to be fee simple transactions and have the same property rights conveyed with the subject, therefore no adjustments were necessary.

FINANCING

A financing adjustment is actually a specific motivation adjustment and often is not capable of being accurately derived from the mathematical discounting process. The most reliable financing adjustment is from paired sales that are generally not available through sales information. Cash equivalency is the adjustment of a sales price to an equivalent price if sold for cash absent the contract terms of the loan. The adjustment may be negative to reflect favorable terms to positive to reflect unfavorable terms. All sales were cash transactions and no adjustments were necessary.

CONDITIONS OF SALE (MOTIVATION)

Typical adjustments under this category include adjustments for plottage, purchasing additional land for expansion, or other typically motivated sales. Each of the sales were transactions where each party was properly motivated and no adjustments were necessary.

MARKET CONDITIONS (TIME)

It is market conditions and not the passage of time that cause prices to change. This is an example of the principle of change. A market conditions adjustment is a cumulative adjustment within the sales comparison approach. The comparable sales occurred between February 2005 and August 2007. We attempted to identify recent land sales which had previously sold during 2005, 2006 or 2007 to determine the average appreciation or depreciation rate of land parcels; however we were unsuccessful in doing so.

Based on our discussions with real estate brokers in the area, we believe that depreciation has taken place. Additionally, it is anticipated that it could take up to 36 months before the market has recovered enough to the point where new high-end residential development is again financially feasible. Even then, pricing for end units will likely be lower than in 2005-2007. We have also taken into account as a purchaser would have to hold the property for an extended period of time before being able to develop it. The current financial market presently has very few lenders if any that are willing to make mortgage loans on speculative land parcels and the likely purchaser of a property such as the subject would be a cash buyer looking to hold the property until the market improves. Such a purchaser would likely require an additional discount in order to make the property attractive enough to purchase. We have adjusted comparable sales one and two downward by 50 percent. Comparable sale three was adjusted downward by 35 percent because market had begun to slow.

LOCATION

The location of the comparable sales used in this report is compared to the subject. Factors directly related to location such as population, labor supply, transportation and existing land uses are considered. The subject site is located along the southerly margin of the Ashley River. Sale two is located along the northerly margin of the Ashley River on the Peninsula of Charleston. The location of this comparable is considered to be superior to that of the subject and a downward adjustment was made. Comparable sales one and three are located in the immediate neighborhood of the subject and no adjustments were deemed necessary.

SIZE/SHAPE

Adjustments are considered based on optimum size, shape, and overall utility of the comparable sales as compared to the subject. Economies of scale are often considered in this adjustment when market proof supports the premise that the larger the property size, the lower the unit price and vice versa. The subject property contains a total of 3.73-net acres of uplands, while the comparable sales range in size from 0.85-acres to 1.713-acres of uplands. Each of the comparable sales are smaller in size to the subject however the economies of scale principle does not apply to land where the highest and best use is for condominiums. Therefore, no adjustments were deemed necessary.

IMPROVEMENTS

All of the comparable sales are unimproved or were purchased with no consideration being given to any existing improvements by the purchasers and no adjustments are required.

TOPOGRAPHY

The effects of topography are considered in this adjustment and the relative differences between the comparables and the subject are considered. The subject property has a generally level topography. The overall topography of the comparables was considered similar enough to the subject that no adjustments were made. This was due to the wetlands portions of the subject and the comparables were taken out of the formula and we utilized the upland acres for each.

ZONING

This adjustment is considered when different classifications of zoning are analyzed. Potential government restrictions are considered in this adjustment. Comparable sales one, two and three have the same zoning classification as the subject and no adjustment was necessary.

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

WATER FRONTAGE QUALITY

Adjustments are made for differences in water frontage. Typically, the more frontage sites have, the more favorable they are considered. The subject has approximately 350 net lineal feet of frontage along Ripley Cove. This will benefit the subject for the development of a waterfront residential development. Comparable sale one has approximately 30 lineal feet of water frontage along Ripley Cove. The property sits on a bluff elevated above the cove. This comparable is considered to be inferior to the subject and an upward adjustment was made. Sale two has approximately 300 lineal feet of frontage along the Ashley River. The subject has a larger amount of frontage and an upward adjustment was made. Comparable sale three has no water frontage however it has views of the Ashley River. An upward adjustment was made for inferior water frontage compared to the subject.

RECONCILIATION AND FINAL OPINION OF LAND VALUE

Before adjustments, the comparable land sales ranged from \$2,058,824 to \$4,495,038 per net acre. After making the indicated adjustments, the sales range from \$2,007,353 to \$2,135,143 per net acre. As a measure of central tendency, the average of the indications was \$2,070,154 per net acre. Adjustments were made for location, size, and water frontage quality. All of the comparable sales were considered to be good indicators of value and approximately equal weight was placed on the sales. Based upon the above analysis, we have summarized our opinion of value for the 3.73-net acres for the subject property in the table below:

CONCLUDED LAND VALUE			
Value/AC	Site Size	Total	Rounded
\$2,070,000	x 3.73 Acres	= \$7,721,100	\$7,720,000

FINAL OPINION OF LAND VALUE - SEPTEMBER 25, 2009

\$7,720,000

TWO PARCELS OF EXCESS LAND TOTALING 3.73 NET ACRES - CHARLESTON, S.C.

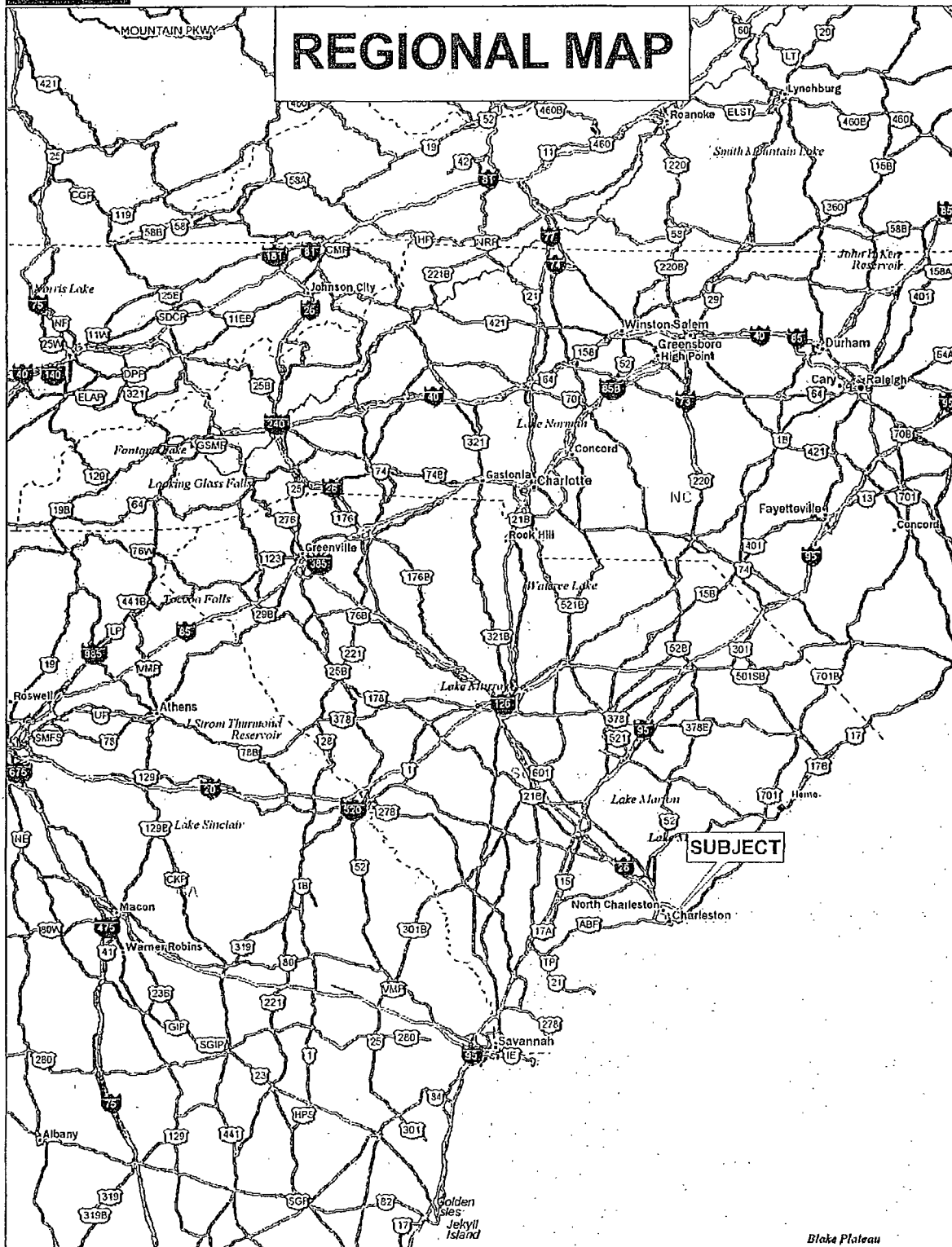
ADDENDA

REGIONAL MAP
METROPOLITAN AREA MAP
NEIGHBORHOOD MAP
FLOOD PLAIN MAP
ZONING MAP
SURVEY – EXCESS LAND
PHOTOGRAPHS OF THE SUBJECT
LAND SALES MAP
TAXES AND TAX ASSESSMENTS
ENGAGEMENT LETTER
ASSUMPTIONS AND LIMITING CONDITIONS
QUALIFICATIONS OF APPRAISERS

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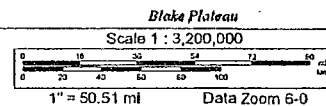
REGIONAL MAP



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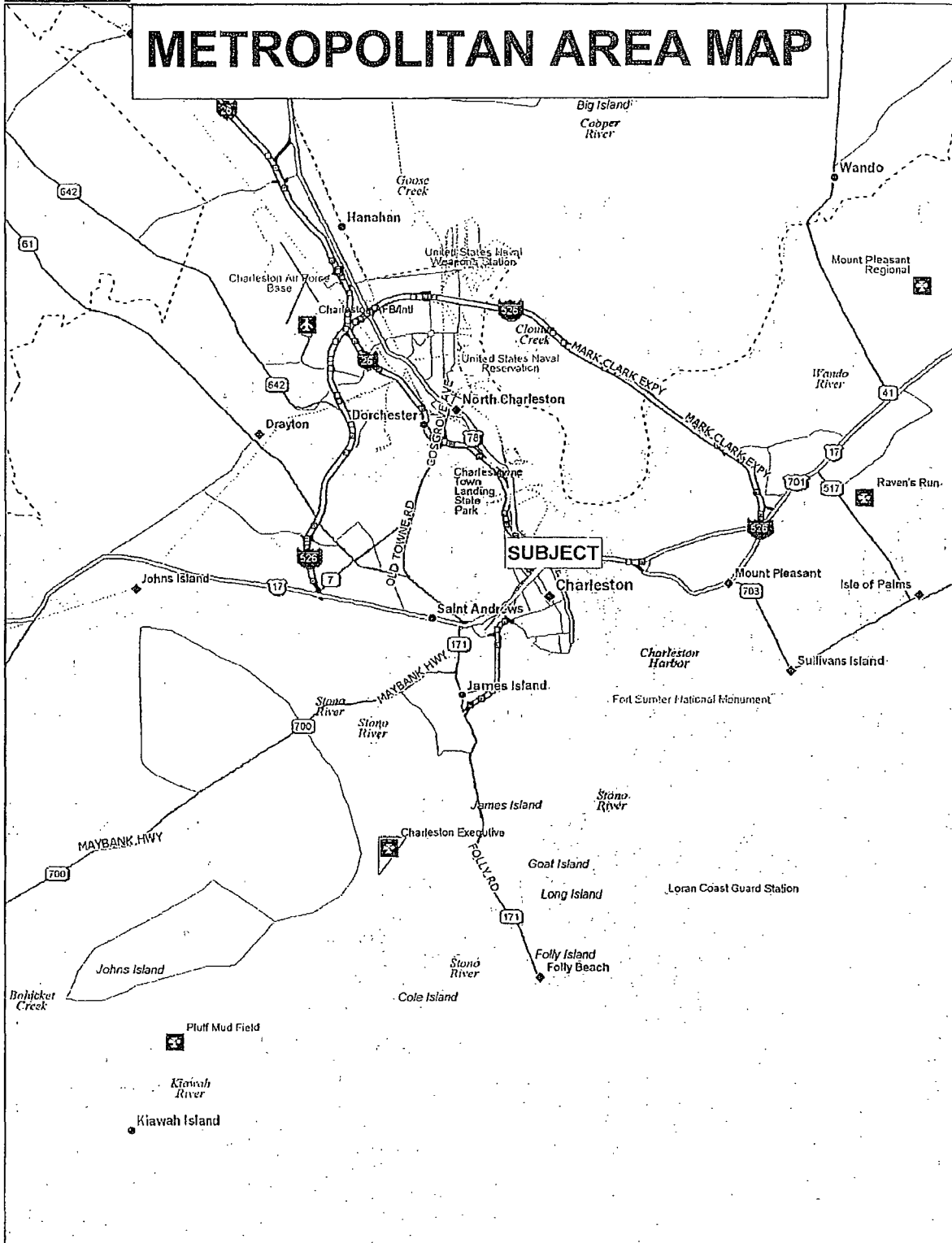
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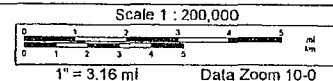
METROPOLITAN AREA MAP



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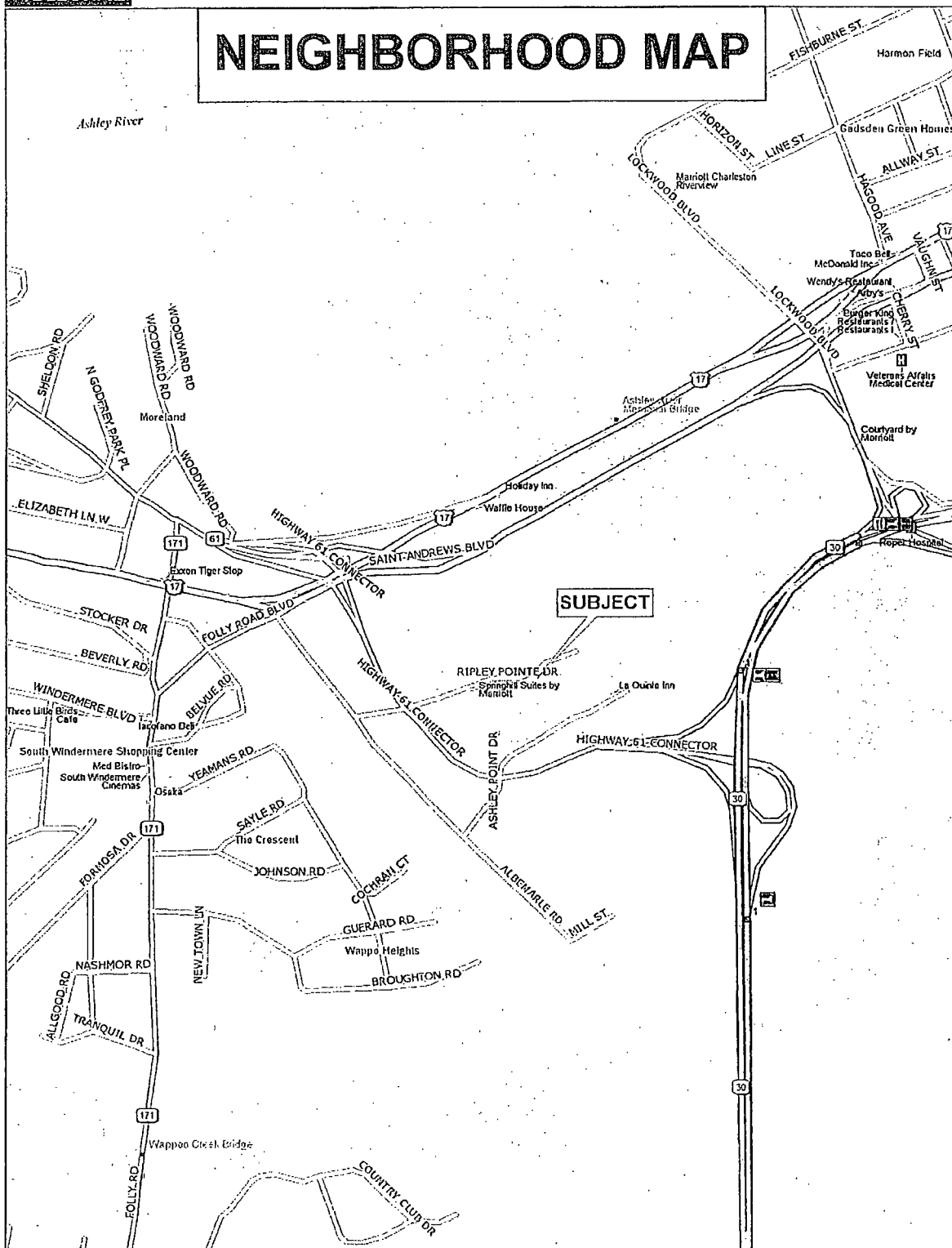
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NEIGHBORHOOD MAP

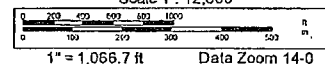


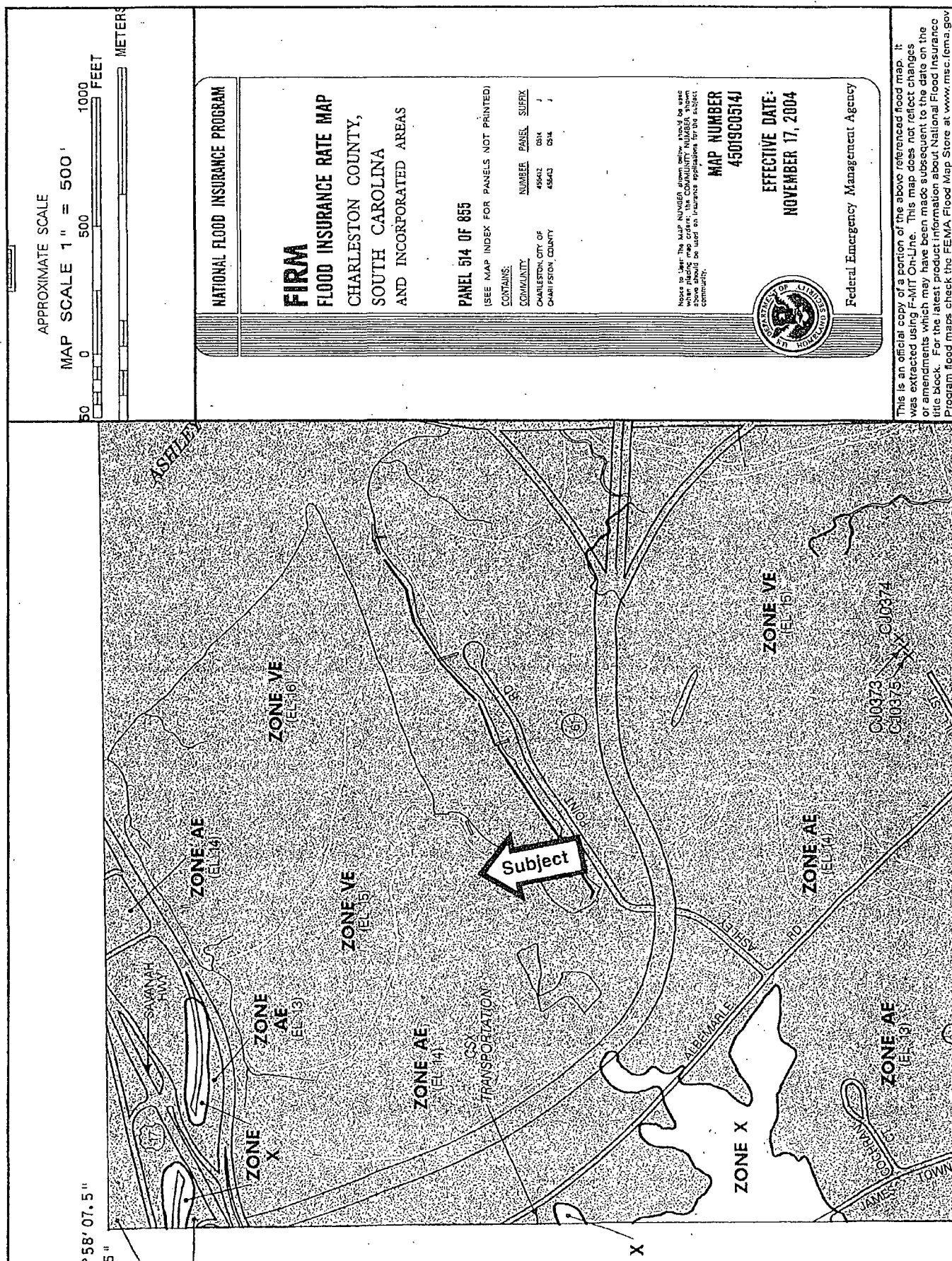
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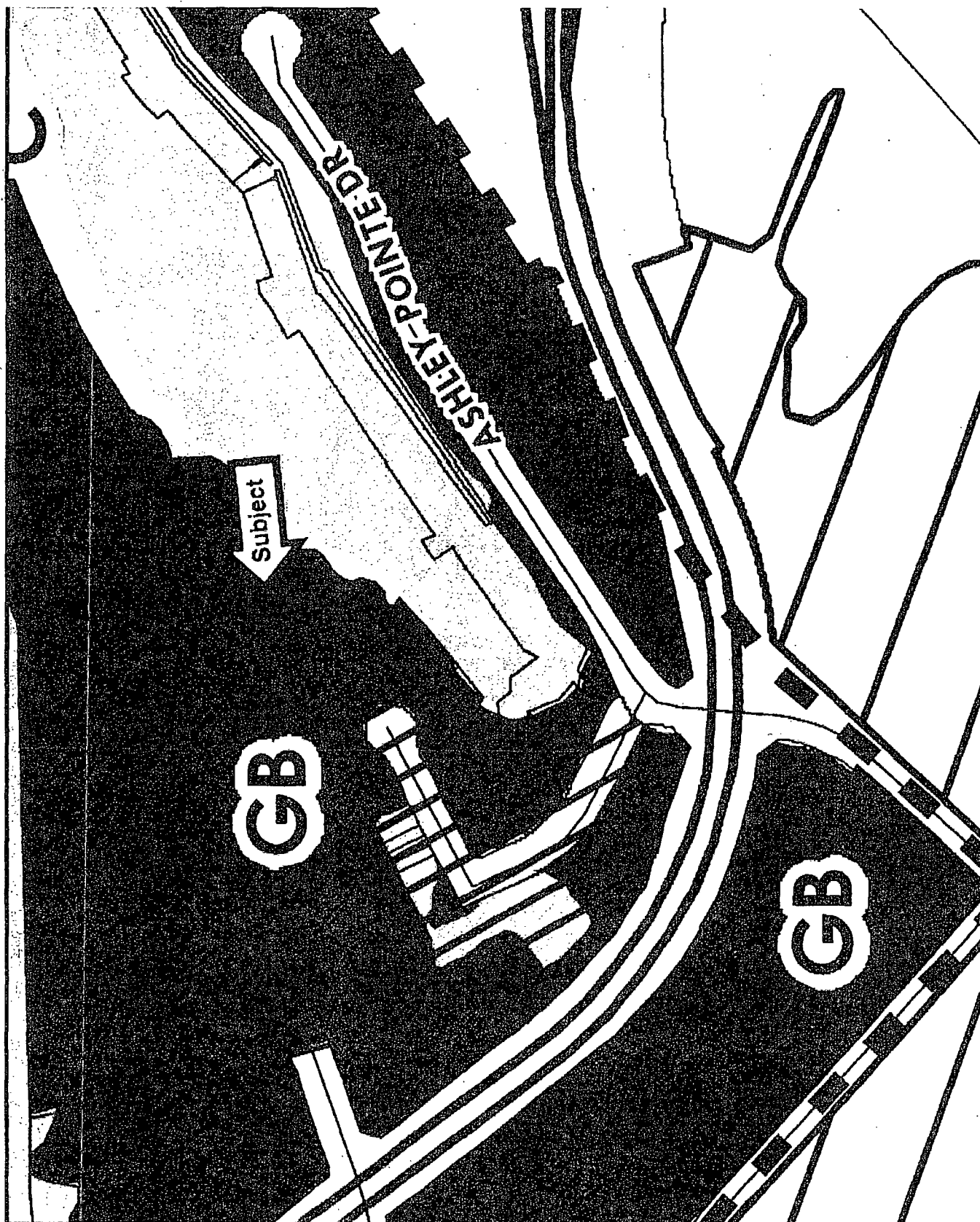
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Scale 1 : 12,800









Ripley Point Drive Looking West



Ripley Point Drive Looking West



Subject



Subject



Subject

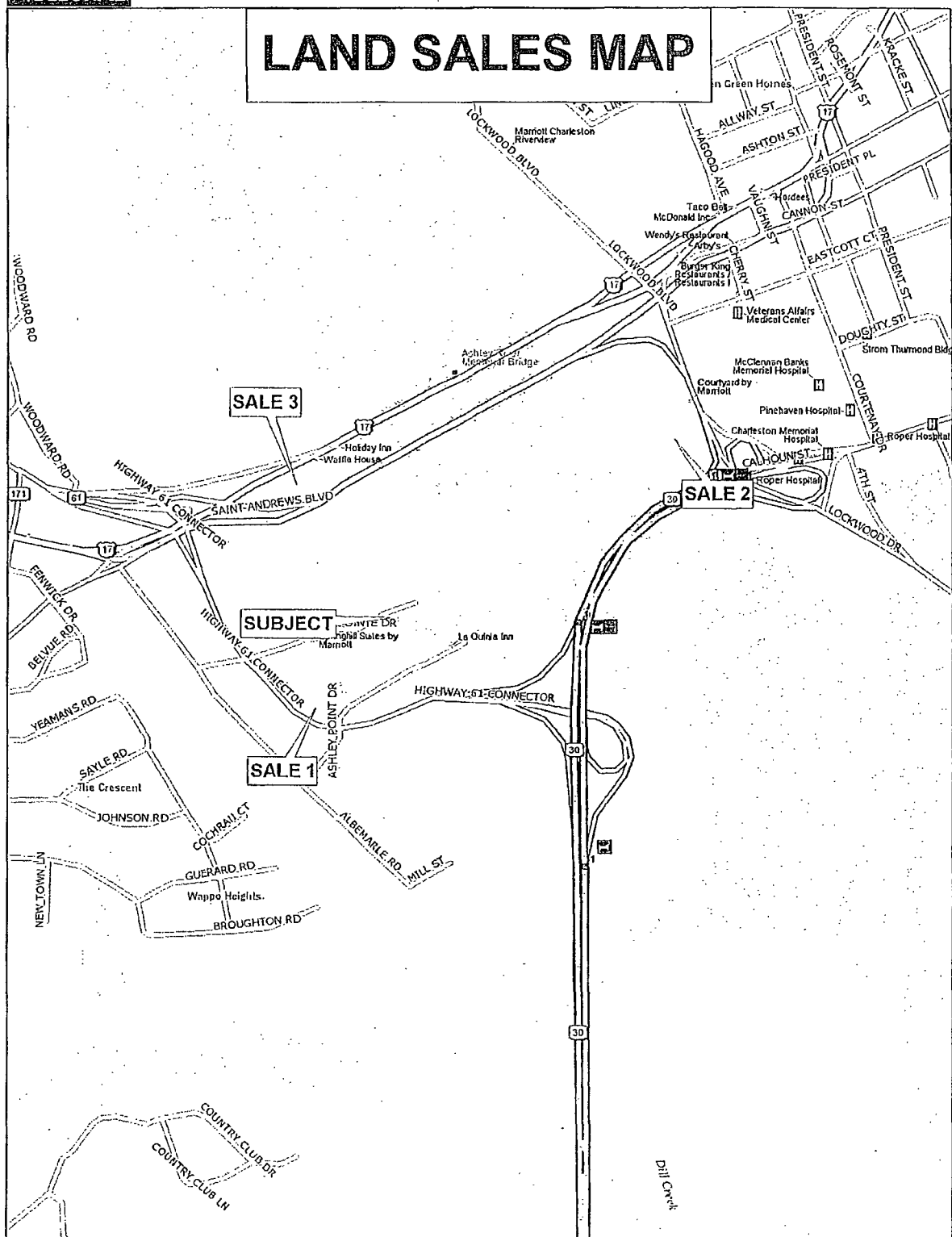


Subject



DeLorme Street Atlas USA® 2010

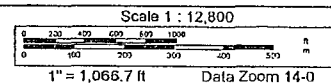
LAND SALES MAP

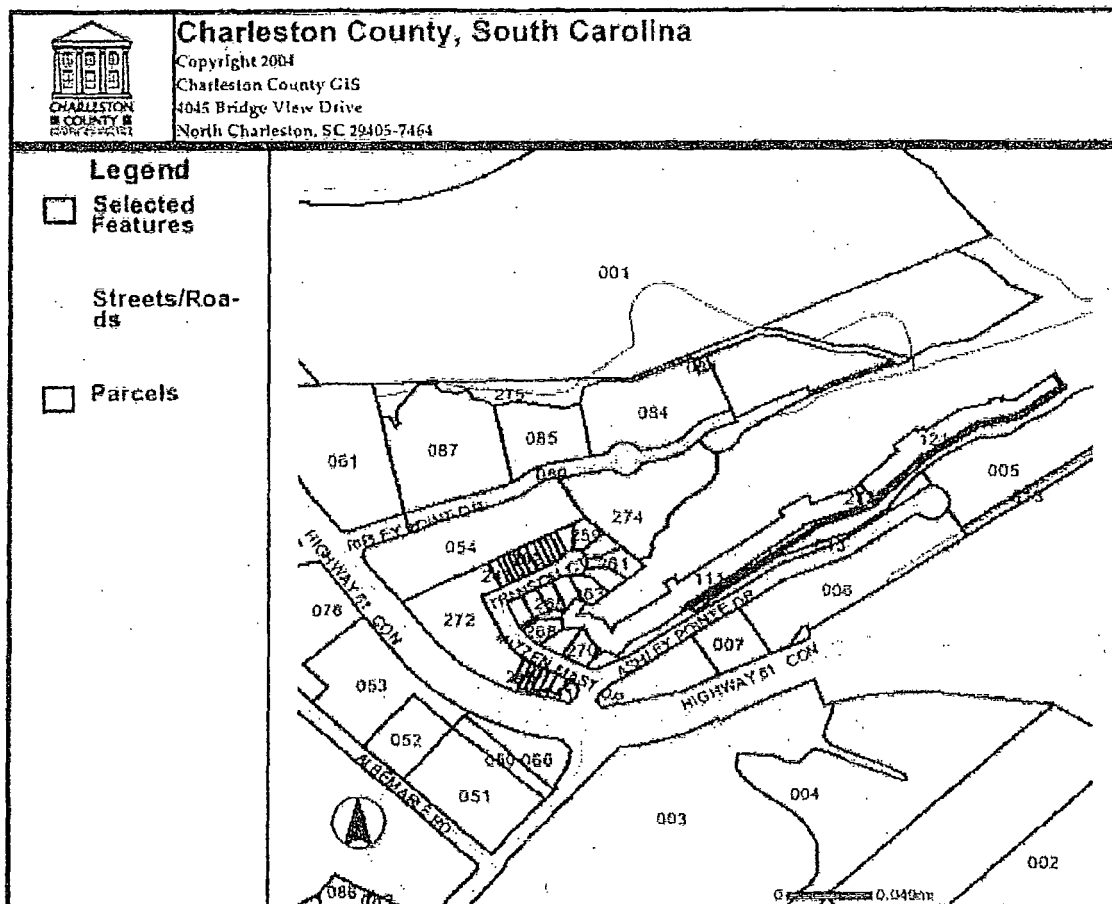


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PARCEL NUMBER: 4211100274

PARCEL ID: 4211100274

STREET NUMBER: 0

STREET NAME: RIPLEY POINT DRIVE

PROP UNIT:

PROP CITY:

PROP ZIP: 29407

SITE NAME:

GENERAL USE: VCC

MOBILE HOMES: 0

SUBDIVISION:

LEGAL DESCRIPTION: PARCEL B

LGL HI ACRES: 1.8

LGL MAR ACRES: 0

LGL WATER ACRES: 0

LGL SWAMP ACRES: 0

LGL TOTAL ACRES: 1.8

TAX DISTRICT: 63

JURISDICTION: MCP

PLAT BOOK: EK-219

OWNER ON 1ST: ASHLEY RIVER PROPERTIES II LLC

OWNER2 ON 1ST:

CURRENT OWNER1:

CURRENT OWNER2:

SALE DATE: 12/20/2003
DEED BOOK: E480-016
WILL CODE:
WILL DATE:
C O NAME:
MAIL STREET NUMBER: 0
MAIL STREET NAME: P O BOX 3156
MAIL UNIT:
MAIL CITY: CHARLESTON
MAIL STATE: SC
MAIL ZIP: 29417
MAIL COUNTRY:
MAIL POSTAL CODE:
SALE PRICE: 100000
MULT LOT: 0
SPLIT CODE: Y
MLOD GROUP:
FINAL VALUE: 1491000
BUILD COUNT: 0
AG USE VAL: 0
AG MARKET TOT: 0
LR APPROVE:
YEAR BUILT: 0
BEDROOMS: 0
FULL BATHS: 0
THREE QTR BATHS: 0
HALF BATHS: 0
TOTAL FINISH AREA: 0
LIVING AREA: 0
CONDO-BEDROOM: 0
CONDO FULL BATH: 0
CONDO H-BATH: 0
CONDO YR BUILT: 0

CHARLESTON COUNTY

Online Tax System

- MAIN MENU
- CONTACTS
- EXIT

- Billing Information -			- Property Information -		
Account	421-11-00-	Appraised	1,491,000	Legal Description:	RIPLEY POINT DRIVE - PARCEL B
(PID):	274	(FMV):		Subdivision:	NA
Tax Year:	2009	Assessment:	89460	Deed:	12-31-2003 E480-016
Prior Year:	NA	Mills:	x 0	Plat:	EK-219
Status:	Current			Land Use:	OTHER JURISDICTION
Receipt:	2009-004233	Base Tax:	0.00	General Use:	VCC
				Parcel:	952
Previous Receipt:	NA	Penalties:	+ 0.00		
Next Receipt:	NA	Interest:	+ 0.00	Buildings	Appraisal
Billed:	09-30-2009	Credits:	- 0.00	Others (6%)	1,491,000
Paid Date:	NA	User Fee:	+ (Other)		Assessment
Actual Date:	NA	SW Fee:	+ 0.00		89,460
				Totals:	1,491,000 89,460
Mortgage Co:	NA	Net Tax:	0.00	Acreage	Appraisal
		Amount Paid:	- 0.00	High:	1.80
		Nulla Bona		Marsh:	0.00
		Amount:	- 0.00	Swamp:	0.00
				Total:	1.80
		Refund Amount:	- 0.00	Land:	1491000
		Transfer		Improvements:	0
		Amount:	- 0.00	Buildings:	0
				Total:	1491000
		CURR Due:	0.00		

- Owner Information -

Current Owner:	ASHLEY RIVER PROPERTIES II LLC	Tax Address:	RIPLEY POINT DRIVE
Current Co-Owner:	NA		
Tax District:	63	Mail Address:	P O BOX 3156
Jurisdiction:	07	City State Zip:	CHARLESTON SC 29417

[Selections](#) [Tax Record](#) [Credits](#) [Main Menu](#)

Oct. 2, 2009 1:16PM ASHLEY RIVER PROPERTIES II, LLC.

No. 3579 P. 9

2008 CHARLESTON COUNTY
PROPERTY TAX BILL

COMPANY NAME: ASHLEY RIVER PROPERTIES II LLC

ACCT NUMBER: 421-11-00-274

FOR PERIOD COMMENCING JANUARY 1, 2008

BILL DATE: 09/30/08

PROPERTY	AMOUNT	DATE
ASHLEY RIVER PROPERTIES II LLC	\$20,435.65	09/30/08

ASHLEY RIVER PROPERTIES II LLC
95 RIPLEY POINT DRIVE
CHARLESTON, SC 29407-7598

AMOUNT DUE AFTER:
01/15/09 \$21,048.72
02/02/09 \$22,479.21
(PAYMENT TO COUNTY TREASURER)

AMOUNT DUE AFTER:
03/16/09 \$23,500.99
(PAYMENT TO DELINQUENT TAX)

PROPERTY	AMOUNT	DATE
ASHLEY RIVER PROPERTIES II LLC	\$20,435.65	09/30/08

	\$1,021.78	ECONOMIC DEVELOPMENT
	\$357.62	PARTNER COUNTY (COLLETON)
40.2	\$2,157.83	COUNTY GOVERNMENT OPERATING
6.6	\$550.58	COUNTY GOVERNMENT BOND ISSUES
90.7	\$8,233.70	SCHOOL BOARD OPERATING
23.9	\$1,903.77	SCHOOL BOARD BOND ISSUES
3.6	\$300.32	PARK AND RECREATION COMMISSION
2.0	\$166.84	PARK AND RECREATION BONDS
2.0	\$166.84	TRIDENT TECHNICAL COLLEGE
77.1	\$5,319.51	CITY OF CHARLESTON
2	\$166.84	CITY OF CHARLESTON DRAINAGE IMPR
256.1	\$20,435.65	TOTAL

PROPERTY	AMOUNT	DATE
ASHLEY RIVER PROPERTIES II LLC	\$20,435.65	09/30/08

AMOUNT DUE AFTER:
01/15/09 \$21,048.72
02/02/09 \$22,479.21
(PAYMENT TO COUNTY TREASURER)

AMOUNT DUE AFTER:
03/16/09 \$23,500.99
(PAYMENT TO DELINQUENT TAX)

Award Confirmation Letter

Supplier is hereby authorized to perform the Statement of Work detailed below. Supplier acknowledges that this confirmation letter is a summary of select contract terms and conditions which is provided for convenience. To view the complete agreement electronically accepted by Supplier, Supplier is referred to Bank of America's Commercial Valuation Services Information Management System.

Supplier: Statement of Work				
Service Type ID:	09-009978-APR01-002	Supplier:	Fred H. Beck & Associates, LLC	
Service:	Appraisal (Order)	Supplier Representative:	Mark Morgan	
Borrower:	Ashley River Properties II LLC	Agreement Number:	12668	
Award Terms and Conditions				
Sourcing Manager:	Debbie Pauza, Market Manager	Other Terms or Conditions:		
Date Awarded:	09/15/2009			
Fees:	\$6,000			
Bank Contact:	Debbie Pauza			
Contact Phone:	813.531.6774			
Appraisal Type:	Comprehensive			
Certification:	Contracted Appraiser or Designee			
Service Delivery Requirements				
Due Date	Description			
10/14/2009	Two properties. One is marina with excess land, one is (was) 3.73 acres approved for 81 condos. Final reports received and data uploaded to the Valuation Services Information Management System. Individual standalone reports to be provided for each listed property unless instructed otherwise in this agreement.			
Service Definition				
Premise	Qualifier	Interest Appraised	Allocations	Description
Market Value	As-Is	Fee Simple		
Policies and Procedures				
The report is intended for use as an aid in acquisition, financing, loan classification and/or asset disposition. Intended users of the report may include: Bank of America and its affiliates or subsidiaries, other participating financial institutions, governmental/non-governmental agencies, legal counsel or other transaction participants.				
Include the statement: "Bank of America makes no warranties or representations regarding this document or the conclusions contained herein." in your transmittal letter.				
Supplier is required to review, update and/or enter key summary information about the property appraised and associated value conclusions as part of this service.				
In addition to any CD or Bound reports listed in the Addressee and Distribution section, Adobe Acrobat (PDF) compatible digital reports must be uploaded for all appraisal reports (including all addendum and attachments) and invoices. Additional Microsoft and Argus documents can be uploaded in their native format subject to some limitations.				
Reappraisal assignments must document and explain assumption changes and resulting value differences for all Bank of America assignments completed within the prior two years.				
Addressee and Distribution Instructions				
Report Distribution	Name	Address	CD/DVD	Bound
Addressee and Recipient	Debbie Pauza Market Manager	Bank of America, NA 100 N WESTSHORE BLVD FL2-399-02-03 Tampa, FL 33609	0	0
Documents (content available online only)				
Reference Documents APPRAISAL REQUIREMENTS (EFFECTIVE 2008-10) 10_03_2008_08_43_32.pdf				
Properties (detailed descriptions may be viewed online or downloaded)				
#	Property Type	Property Address		
1	Special Purpose - Marina	95 Ripley Point Drive, Charleston, SC		
2	Land - Multi-Family-Apartment	S/S Ripley Point Drive, Charleston, SC		
Property Contact (additional contacts may be listed for each property. Refer to the online property profile for details)				
Name	Company / Role	Telephone	Comments	
Davidson Williams	CFO	212-599-3530X14		

VSIMS

Page 1 of 1

Property Details

Property Name : Ripley Light Yacht Club Marina
Address 1 : 95 Ripley Point Drive **Address 2 :**
Zip Code : 29407
Country : United States of America **State :** South Carolina **County :** Charleston **City :** Charleston
Property Type : Special Purpose-Marina **Site Owner Name :** Ashley River Properties II LLC **Same as Borrower**
Parcel Number :
Other Property Information :

Measurement Type	Quantity	Type	Additional Information	Delete
Building Size- primary	0	SF-GBA		
Building Size- secondary		Moorings		
Building Size-	95	Slips		

Transaction subject to Bond Financing? N
Is this property encumbered by a ground lease? N
What is the current use of the property? Marina
What is the future (proposed) use of the property? Marina
Is this property currently listed for sale? N
Property Status: Existing
Age of Building Improvements
Property Tenancy: N/A **Tenants(non-owner):**

VSIMS

Page 1 of 1

Property Details

Property Name : Ashley River Condo Land
 Address 1 : S/IS Ripley Point Drive Address 2 :
 Zip Code : 29407
 Country : United States of America State : South Carolina County : Charleston City : Charleston
 Property Type : Land-Multi-Family-Apartment Site Owner Name : Ashley River Properties II LLC Same as Borrower
 Parcel Number :
 Other Property Information :

Measurement Type	Quantity	Type	Additional Information	Delete
Land Area-primary	3.73	Acres		
Land Area-secondary		Lot-Avg Size (ac)		
Land Area-		Lot6-Finished		

Is this property encumbered by a ground lease? * N
 What is the current use of the property? * vacant
 What is the future (proposed) use of the property? * ??
 Is this property currently listed for sale? * N
 Property Status: * Land Only

Name	Company/Role	Phone Number *	Comments
dp	boa	8888888888	

Note: Fields marked (*) are mandatory

Introduction

All appraisal assignments engaged by Bank of America's Commercial Appraisal Services (CAS) department must conform to these *Appraisal Requirements*.

All real estate appraisal services performed for Bank of America must conform to the following:

- The *Uniform Standards of Professional Appraisal Practice (USPAP)*.
- Appraisal requirements of Title XI of the *Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FFRREA)*, revised June 7, 1994, and amendments thereto. Federal regulatory requirements and guidelines may also apply.
- The appraiser must provide all services in accordance with the Bank of America *Professional Services Agreement*.
- The assignment will conform to the requirements as detailed by Bank of America in the award/engagement contract and in Bank of America's Valuation Services Information Management System RFP award information.
- Bank of America CAS *Appraisal Performance and Reporting Guidelines*.

Appraiser Independence

Maintaining the independence and objectivity of the appraisal process is of utmost importance to Bank of America. If an appraiser has a current or prospective interest in the subject property, transaction, or parties involved, the appraiser must decline the assignment.

If the appraiser (1) has previously appraised the subject property, or (2) previously performed a consulting assignment related to the subject property, the appraiser must be able to remain unbiased by the previous assignment, or decline the current assignment. The appraiser must disclose the previous appraisal or consulting assignment to Bank of America CAS during the RFP/bidding process and prior to accepting an appraisal assignment.

If during the course of an assignment, the appraiser becomes aware of a potential conflict of interest, the appraiser should contact Bank of America CAS immediately.

Any communication between the appraiser and Bank of America must be through the CAS contact.

Confidential Information

Assignment results and all information provided by Bank of America, or its customers, related to the appraisal assignment are *confidential information*, and must be treated as such. Written approval from Bank of America CAS is required to release confidential information, including assignment results, to any third party.

Competency

In bidding for and accepting appraisal assignments from Bank of America CAS, the appraiser certifies that he or she is competent to perform the requested service. The appraiser must be an active State Certified General or State Licensed appraiser, as appropriate. Temporary certificates are acceptable.

Fair Lending Policy

Bank of America is committed to supporting fair lending practices and will not tolerate discrimination or discriminatory references in any form.

Appraisal reports must not include any subjective terms or phrases that might be interpreted as discriminatory. Apparent discrimination may be suggested by stating that a condition or feature is a negative influence without market support that it is regarded as such. Only those characteristics that are relevant to the valuation problem are to be addressed. Additionally, the appraiser must avoid using statistics that are not pertinent to the appraisal assignment.

Future Assignments

Your acceptance of any Bank of America CAS assignment certifies that you agree not to accept or pursue an appraisal, or related assignment, of the subject property without receiving prior approval from Bank of America CAS.

Introduction

The Bank of America Appraisal Performance and Reporting Guidelines apply to all appraisal assignments engaged by Bank of America CAS.

Scope of Work

It is the appraiser's responsibility to determine and perform a scope of work sufficient to produce credible assignment results given the intended use.

The subject property inspection should be sufficient to identify the relevant property characteristics and include a representative sample of interior spaces.

Report Content Requirements

The amount of information and analysis presented in the report is based on the appraisal product type and the relative complexity of the appraisal issues addressed.

Each appraisal report should include:

- Prominent disclosure of the Bank of America CAS appraisal product type
- Prominent summary of the key elements of the scope of work, including disclosure of the approach(es) to value used in the assignment
- Prominent disclosure and support for any deviation from the requested product (e.g. Comprehensive, Condensed, Concise), interest appraised, valuation premise (e.g. Upon Completion of Construction, Upon Stabilization, etc.), or valuation condition, as identified in the award/engagement contract
- Opinion of the "As Is" Market Value of the subject property
- The statement: *Bank of America makes no warranties or representations regarding this document or the conclusions contained herein.*
- A copy of the Award Confirmation Letter and any subsequent instructions
- Identification of the flood hazards, as applicable
- Identification of the earthquake hazards, as applicable

Disclaimers

Bank of America CAS will not accept the report if wording or disclaimers are included in the report that limit the appraiser's professional liability to Bank of America.

Borrower/Customer Contact

Bank of America CAS expects that the appraiser will communicate with the property contact (as identified in the award letter) within two business days of the assignment award.

Appraisal Report Delivery, Ownership & Distribution

Bank of America's Valuation Services Information Management System RFP/Award Information and Award Confirmation Letter provide appraisal report addressee and distribution instructions.

An electronic copy of the appraisal report, invoice and any supporting files are to be uploaded to the Bank of America Valuation Services Information Management System.

Bank of America owns the appraisal report and is under no restrictions regarding its redistribution to other interested parties of the Bank's choice.

Appraisal Analysis Software

Discounted cash flow models for income producing properties should be prepared using Argus financial software. Appropriate supporting documentation must be included in the report and the Argus file must be uploaded to Bank of America's Valuation Services Information Management System.

In cases where the appraiser has developed proprietary analysis models, such models/software must be made available to Bank of America CAS. Spreadsheets are to be forwarded in operational condition and in a format that can be reviewed.

Suspected Environmental Hazards

If the appraiser observes any suspected environmental hazards, the appraiser must notify Bank of America CAS immediately and document the suspected hazard in the report.

Quality Assurance Review

Appraisal reports are subject to review by Bank of America CAS. Appraisers must be prepared to discuss their analyses and conclusions and provide additional written support, clarification, and/or corrected appraisal pages if requested.

Date of Inspection / Date of Value

The date of inspection / date of value must occur within 45 days prior to the date the report is delivered, unless waived by Bank of America CAS.

Going Concern

In assignments where the subject is a going concern (an operating business enterprise that is expected to continue), non-realty components must be identified and the final value allocated among the real property, personal property, and business interests.

Other Valuation Issues

Performance and reporting requirements applicable to specialized lending situations (e.g., SBA, CMBS, etc.) will be identified by Bank of America CAS at the time of the engagement.

When appraising properties that include specialized valuation issues, such as mortgage revenue bonds, low income housing tax credits, etc., the appraiser must contact Bank of America CAS for clarification and guidance if the methods for handling these issues are not defined during the engagement process.

Definitions

Market Value: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: Code of Federal Regulations Title 12-Banks And Banking; Chapter I-Comptroller Of The Currency, Department Of The Treasury; Part 34-Real Estate Lending And Appraisal-Subpart C-Appraisals Sec. 34.42 Definitions; Revised as of January 1, 2000

"As Is" Market Value: An estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date of inspection. This requires that the property be valued according to its highest and best use. However, it does not prohibit valuation based upon reasonably anticipated future events such as the leasing of vacant space, demolition of obsolete buildings, etc.

Insurable Cost: The cost to replace the destructible portions of a property which should include the foundation. The estimate is based on replacement cost new, and must reflect only direct or hard construction costs, such as construction labor and materials, repair design, engineering, permit fees, and contractor's profit, contingency and overhead. It must not include surveys, site development, financing, or land acquisition costs.

Note: Insurable Cost provided to Bank of America CAS is for the Bank's internal use and is not intended to replace the due diligence done by an insurance company to determine the amount of insurance coverage.

Appraisal Products

The required appraisal product will be set forth in an award confirmation letter. The appraiser is not authorized to modify the assignment without prior approval by Bank of America CAS.

Appraisal services provided to Bank of America CAS are identified as Comprehensive, Condensed or Concise.

Comprehensive: The scope of work includes development of all applicable approaches to value.

The report discusses significant data and analysis in support of the assignment results with a thorough reporting of the relevant data, analysis, and conclusions.

Condensed: The scope of work includes development of the most applicable approach; in some circumstances, a less extensive secondary approach may be warranted.

The report summarizes significant data and analysis in support of the assignment results with an emphasis on critical data, analysis, and conclusions.

Concise: The scope of work includes development of the most applicable approach.

The report summarizes significant data and analysis in support of the assignment results with an emphasis on presenting the conclusions.

ASSUMPTIONS AND LIMITING CONDITIONS

GENERAL ASSUMPTIONS

1. The owner of record is assumed to have a free and clear fee simple title with no encumbrances that cannot be cleared through normal channels.
2. The information on which this appraisal is based on has been obtained from sources normally used by **Fred H. Beck & Associates, LLC** and is considered to be reliable, but is in no sense guaranteed.
3. The information furnished by others is believed to be reliable. No warranty is given for its accuracy.
4. **Fred H. Beck & Associates, LLC** reserves the right to alter its opinions of value on the basis of information withheld or not discovered in the normal course of a diligent investigation.
5. The appraiser assumes no responsibility for the legal description or matters of a legal nature affecting the property or the title thereto. The appraiser does not render any opinion as to title, which is assumed to be good and marketable.
6. Responsible ownership and competent property management are assumed.
7. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined and considered in the appraisal report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents or other legislative or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. The appraiser is not required to give testimony or appear in court because of having made this appraisal with reference to the property in question, unless arrangements have been previously made therefore. The fee charged for this appraisal does not include payment for court testimony or for further consultation.
11. No opinion of an engineering nature is intentionally expressed or implied and no responsibility is assumed for matters of this nature.
12. No survey was made especially for this appraisal. Property lines, area, etc., of record or otherwise provided, are assumed to be correct.
13. No engineering survey has been made by the appraiser. Except as specifically stated, size and area were taken from sources considered reliable and no encroachment of real property improvements is assumed to exist.
14. Maps, plats and exhibits are for illustration only as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose.
15. It is assumed that there are no hidden or unapparent conditions of the property, subsoil or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
16. No opinion is expressed as to the value of subsurface oil, gas or mineral rights. The property is not subject to surface entry for the exploration or removal of such materials except as is expressly stated.
17. Disclosure of the contents of the appraisal is governed by the Bylaws and Regulations of the professional organizations with which **Fred H. Beck & Associates, LLC** is affiliated.
18. Acceptance of and/or use of this report constitutes acceptance of these assumptions and limiting conditions.
19. This report is intended to comply with the Code of Ethics and Standards of Professional Appraisal practice of the Appraisal Institute. It is further intended to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and the guidelines set forth by the Financial Institution's Report, Recovery and Enforcement Act of 1989 (FIRREA).

LIMITING CONDITIONS

1. Possession of this report, or a copy, does not carry with it the right of publication.
2. Neither all nor any part of the contents of this report (especially any conclusions as to value, identity of the appraisers or firm with which they are connected or any reference to the Appraisal Institute or the MAI or SRA designations) shall be disseminated to the public through the advertising media or any other public means of communication without the prior written consent and approval of **Fred H. Beck & Associates, LLC** and the signatories of the report. Acceptance of and/or use of this report constitutes acceptance of these restrictions.
3. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
4. The forecasts, projections or operating estimates contained herein are based upon current market conditions, anticipated short term supply and demand factors and a continued stable economy. These forecasts are, therefore, subject to changes in future conditions.
5. Load bearing capacity of subsoil is assumed to be adequate for the present utilization, but no borings or engineering studies have been made especially for this appraisal and the value conclusion could be affected by such information.
6. We have not been supplied with building plans and specifications, site plans, surveys or occupancy permits. No responsibility or representation is assumed or made for any costs associated with obtaining same for any deficiencies discovered before or after they are obtained.
7. We have personally inspected the subject property and found no obvious evidence of structural deficiencies except as stated in this report; however, no responsibility for hidden defects or conformity to specific governmental requirements, such as fire, building and safety or occupancy codes, can be assumed without provision of specific professional or governmental inspections.
8. No termite inspection report was made available. We personally inspected the subject property and found no significant evidence of termite damage or infestation.
9. Unless otherwise stated in this report, we make no representation or warranties as to the adequacy or condition of appliances, electrical systems, plumbing and heating, air conditioning, presence of insulation, adequacy or condition of structural systems or any other subsystem within the property. We assume no responsibility for any costs incurred to discover or correct any deficiencies present in the property.
10. Unless otherwise stated, no consideration in the valuation process has been given mineral deposits (oil, gas, coal, gravel, etc.) or timber, if any, that may be found on the subject.
11. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraisers, however, are not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
12. On January 26, 1992, The Americans with Disabilities Act (ADA) took effect. This report has not considered this act and the impact it may have on the subject with respect to renovation cost and general compliance. Should a report be provided which indicates a possible renovation, we reserve the right to amend this report.
13. The appraisers have prepared this report in compliance with the competency provision explicitly detailed in the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisers are fully experienced in the appraisal of this product type (see Qualifications).

QUALIFICATIONS OF THE APPRAISER**MARK A. MORGAN****FRED H. BECK & ASSOCIATES, LLC****8924 Blakeney Professional Drive****Charlotte, NC 28277****EDUCATION**

Master of Science – Georgia State University, Atlanta, GA

Real Estate

Bachelor of Fine Arts – Southern Methodist University, Dallas, TX

Broadcasting

Bachelor of Business – Southern Methodist University, Dallas, TX

Completed The Appraisal Institute Courses:

- C1A-1 – Real Estate Appraisal Principles
- C1A-2 – Basic Valuation Procedures
- C1B-A – Capitalization Theory and Techniques, Part I
- C1B-B – Capitalization Theory and Techniques, Part II
- SPP – Standards of Professional Practice
- C2-1 – Case Studies in Real Estate Valuation
- C2-2 – Report Writing

Commercial Investment Real Estate Institute:

- CI-101 – Principles of Investment Analysis
- CI-102 – Creating a Real Estate Investment (Market Analysis)
- CI-103 – Advanced Real Estate Tax Analysis
- CI-104 – Understanding Human Behavior
- CI-105 – Case Studies in commercial Investment Real Estate

EXPERIENCE

Fred H. Beck & Associates, LLC – Charlotte, NC (May 2000 - Present)

- Real Estate Appraiser and Consultant

Bank of America – Charlotte, NC (3/93 – 5/00)

- Appraisal Department Area Manager

Schultz-Carr-Bissett – Atlanta, GA (11/89 – 3/93)

- Staff Appraiser

PROFESSIONAL AFFILIATIONS

- State-Certified General Real Estate Appraiser, North Carolina Certificate No. A4554
- State-Certified General Real Estate Appraiser, South Carolina Certificate No. CG3890
- State-Certified General Real Estate Appraiser, Georgia Certificate No. 689
- North Carolina Real Estate Broker - License #189040

8924 Blakeney Professional Drive, Charlotte, North Carolina 28277

Phone: 704.544.4884 / Fax: 704.544.6520 / Website: www.fredhbeck.com

**QUALIFICATIONS OF THE APPRAISER
EDWARD M. PARLER III**

**FRED H. BECK & ASSOCIATES, LLC
13089 Ocean Highway, Unit C-1
Pawleys Island, South Carolina 29585**

EDUCATION

Bachelor of Arts Degree – Wofford College, Spartanburg, SC (1995) - Business Economics

Real Estate Appraisal Courses:

- L-1 Category - Introductory Courses Pertaining to Real Estate Appraisal
- L-2 Category - Courses Pertaining to Valuation Procedures
- L-3 Category - Course in the Uniform Standards of Professional Appraisal Practice
- C-1 Certification – 1 – Introduction to Income Property Appraisal
- C-2 Certification – 2 – Advanced Income Capitalization Procedures
- C-3 Certification – 3 – Applied Income Property Valuation
- CR Certification – Applied Residential Property Valuation Case Study

Continuing Education Courses and Seminars:

- 1-CE-650 - Internet Search Strategies for Real Estate Appraising
- Argus Financial Software Training - Argus Lease-By-Lease Version 8.0.00
- Appraising Convenience Stores

Appraisal Institute Courses:

- Part A - Standards of Professional Practice
- Part B - Standards of Professional Practice
- Course 510 – Advanced Income Capitalization
- Course 520 – Highest & Best Use and Marketability Analysis
- Course 530 – Advanced Sales Comparison & Cost Approaches

EXPERIENCE

Fred H. Beck & Associates, LLC – Charlotte, NC (2006 – Present)

- Staff appraiser specializing in the appraisal of commercial and investment properties.

Marshall Dadds Company, Inc. – Columbia, SC (1997 - 2006)

- Staff appraiser specializing in the appraisal of commercial and investment properties.

Moovies Video Stores – Greenville, SC (1995-1997)

- Real Estate Market Analyst. Duties and responsibilities consisting of analyzing potential markets for video superstores, competition analysis, revenue projections, etc.

PROFESSIONAL AFFILIATIONS

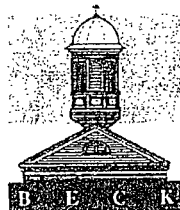
State-Certified General Real Estate Appraiser:

South Carolina Certificate No. CG3064

North Carolina Certificate No. A6179

Associate Member of The Appraisal Institute (Member # 397691)

8924 Blakeney Professional Drive, Charlotte, North Carolina 28277
Phone: 704.544.4884 / Fax: 704.544.6520 / Website: www.fredhbeck.com



FRED H. BECK AND ASSOCIATES
*Real Estate Appraisers
& Consultants*

APPRAISAL REPORT

Ripley Light Yacht Club Marina
95 Ripley Point Drive
Charleston, Charleston County, South Carolina 29407
(Bank of America Project ID #09-009978-APR01-02)

PREPARED FOR

Bank of America, N.A.
Real Estate Risk Assessment
Attn: Debbie Pauza, Market Manager
Mail Code: FL2-399-02-03
100 North Westshore Boulevard
Tampa, FL 33609

"Bank of America makes no warranties or representations regarding this document or the conclusions contained herein."

DATE OF REPORT

October 16, 2009

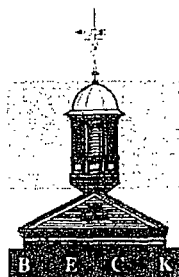
EFFECTIVE DATE OF APPRAISAL

"As Is" September 25, 2009

APPRAISED BY

FRED H. BECK & ASSOCIATES, LLC
Mark A. Morgan
Edward M. Parler, III





FRED H. BECK AND ASSOCIATES
Real Estate Appraisers
& Consultants

October 16, 2009

Bank of America, N.A.
Real Estate Risk Assessment
Attn: Debbie Pauza, Market Manager
Mail Code: FL2-399-02-03
100 North Westshore Boulevard
Tampa, FL 33609

Reference: Ripley Light Yacht Club Marina
95 Ripley Point Drive
Charleston, Charleston County, South Carolina 29407
(Bank of America Project ID: #09-009978-APR01-02)

Dear Ms. Pauza:

As requested, we have inspected the above referenced property for the purpose of providing its market value. Based on our inspection and analysis of the information obtained, it is our opinion that the market values of the Fee Simple and Leased Fee interests in the subject property are as follows:

AS IF SOLD OUT AS DOCKOMINIUM UNITS	
WET SLIP DOCKOMINIUMS	AS IS September 25, 2009
Property Rights	Fee Simple Estate
Sellout of Slips	\$8,765,000
Interim Income Value	\$765,000
Total	\$9,530,000

AS IF LEASED AS WET SLIPS	
WET SLIP DOCKOMINIUMS	AS IS September 25, 2009
Property Rights	Leased Fee
Value Opinion	\$2,340,000

These value opinions are supported by the data and reasoning set forth in the attached narrative. Your attention is invited to the Assumptions and Limiting Conditions attached and made a part of this report. We certify that we have no present or contemplated future interest in the property appraised and that our fee for this assignment is in no way contingent upon the value opinions supplied.

We previously appraised this property on November 8, 2007 at which time the property was still under construction and not stabilized from an occupancy standpoint. There were 96 slips planned with 82 completed and 14 slips to be constructed. When the project had been completed, the developer reconfigured the layout of the slips where there ended up being a total of 87 slips. The concluded market values at that time were \$17,714,000 for the fee simple estate at completion and assuming the sellout of the slips. The concluded value of the leased fee estate which assumes the continued operation of the rental marina "at stabilization" was \$5,518,000. Since that time, the real estate market in the Charleston MSA, like majority of the State of South Carolina and the nation as a whole, has experienced decreasing property values. The housing boom for this market peaked in 2006 and 2007. Additionally, our absorption period is much longer than estimated previously; the projected slip sales price is lower and the profit & discount rates have increased due to market conditions. Due to the prolonged sellout period we have added the value of the interim cash flow generated by the continued operation of the marina.

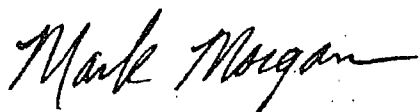
Furthermore, a poor economy and a financial crisis which hit Wall Street, financial institutions, etc. aided in the rapid decline in property values as the financial institutions stopped lending new money for a period of time and tightened lending requirements as well. The overall effect on the subject property was the lack of demand for properties similar to the subject. Therefore the value of the subject property as well as the majority of similar properties has declined significantly over the past 18 to 24 months. Sales of boats, boat slips and other luxury items have declined rapidly as consumers cut excess expenditures in these tough economic times. Additionally, in the previous report, we included approximately \$217,000 of other income which we were told by the marina manager at that time was from ancillary items. It was discovered during the process of completing this report that this income was actually interest which has accrued from a lawsuit settlement between the property owners. The owner told us that his accountant added this to the operating statements in order to account for the accruing interest until the settlement is paid in full.

The following report complies with the standards and regulations outlined in Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In addition, the report conforms to the Office of the Comptroller of the Currency's (OCC) appraisal standards. This includes compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute as promulgated by the Appraisal Standards Board of the Appraisal Foundation; compliance with USPAP includes the ethics and competency provisions.

The undersigned hereby acknowledges that Edward M. Parler, III completed this analysis and report and Mark Morgan acted as review appraiser. Thank you for the opportunity to be of service and please let us know if you have any questions.

Respectfully Submitted,

Fred H. Beck & Associates, LLC



Mark A. Morgan
State-Certified General Real Estate Appraiser
S.C. Certificate No. CG3890



Edward M. Parler, III
State-Certified General Real Estate Appraiser
S.C. Certificate No. CG306

CERTIFICATE OF THE APPRAISER

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
 2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
 3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
 4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
 5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
 6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
 7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the ***Uniform Standards of Professional Appraisal Practice***.
 8. The use of this report is subject to the requirements of the Appraisal Institute relating to the review by its duly authorized representatives.
 9. I have made a personal inspection of the property that is the subject of this report.
 10. No one provided significant real property appraisal assistance to the person signing this report, other than ***Edward M. Parler, III.***
- The appraisal was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.



MARK A. MORGAN

State-Certified General Real Estate Appraiser
S.C. Certificate No. CG3890

CERTIFICATE OF THE APPRAISER

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
 2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
 3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
 4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
 5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
 6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
 7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the **Uniform Standards of Professional Appraisal Practice**.
 8. The use of this report is subject to the requirements of the Appraisal Institute relating to the review by its duly authorized representatives.
 9. I have made a personal inspection of the property that is the subject of this report.
 10. No one provided significant real property appraisal assistance to the person signing this report.
- The appraisal was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.



EDWARD M. PARLER, III

State-Certified General Real Estate Appraiser
S.C. Certificate No. CG3064

SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS
RIPLEY LIGHT YACHT CLUB MARINA
(Bank of America Project ID #09-009978-APR01-02)

Property Location	South side of Ripley Point Drive in Charleston, Charleston County, South Carolina 29407
Property Owner	Ashley River Properties II, LLC
Date of Report	October 16, 2009
Effective Date of Appraisal "As Is"	September 25, 2009
Property Rights Appraised	Fee Simple and leased fee estate
Zoning	GB-A; General Business - Accommodations
Tax Map Reference	421-11-00-275
Land Area	Total site contains 1.64 gross acres, irregular shape on Ashley River. We conclude 0.13 net usable acres for the marina with the remainder of 1.51 acres being additional land and having no contributory value.
Improvements	Wet slip marina with a total of 87 slips, marina office/store and a party deck. Marina opened in May 2006. 69 slips are leased on annual contracts.
Present Use	Wet slip marina
Highest and Best Use	Sellout of slips as dockominiums
Appraisal Procedures	Cost Approach - \$8,000,000 Income Approach - \$2,255,000 Development Valuation Method \$9,530,000

FINAL OPINIONS OF VALUE FOR RIPLEY LIGHT YACHT CLUB MARINA WET SLIPS

As If Sold Out As Dockominium Units

"As Is" (FEE SIMPLE ESTATE) – September 25, 2009 **\$9,530,000**

As If Leased as Wet Slips

"As Is" (LEASED FEE ESTATE) – September 25, 2009 **\$2,255,000**

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IDENTIFICATION OF THE SUBJECT PROPERTY

The property being appraised is an existing wet slip marina located at 95 Ripley Point Drive, Charleston, South Carolina 29407. The subject property is identified in the Charleston County Tax Assessor's Office as tax parcel 421-11-00-275 and contains 1.64 gross acres as identified by a site plan provided. The marina site is at the terminus of Ripley Point Drive on a canal south of the Ashley River and the Charleston Peninsula. SCDHEC issued a permit for the construction of the subject marina on November 20, 2001, #2001-1H-315-P, expiring November 20, 2006. The permit was for 102 boat slips. On May 10, 2002, the Department of the Army, US Army Corps of Engineers issued permit #2001-1P-582 to Ripley Light Development for dredging of the subject's inlet to further marina construction. An additional Permit #2001-1H-315 issued on December 20, 2002 permitted the construction of a bulkhead, pier and marina facilities in the subject's Ripley Inlet Canal. On December 29, 2004, SCDHE/OCRM amended to marina permit, reducing the permitted number of slips to 95 in order to accommodate larger vessels. The owners revised this plan to the present layout which includes a total of 87 slips which is less than the maximum number permitted. The end of C-Dock was reconfigured with side dock slips to accommodate larger party boats / charter boats as well as providing a wider access point to the Ashley River.

Our appraisal assignment is to value the existing marina comprised of a total of 87 wet-slips, which are fully complete and 69 are presently leased with 2 additional slips being occupied by tenants which do not pay rent. One of the slips is occupied by the marina manger/dockmaster, Jennifer Jefferies (Slip B-20), while the other is occupied by Ron Acierno (Slip B-14). According to Ms. Jefferies, Mr. Acierno was one of eleven individuals who signed a contract to buy one of the 80 condominium units which the owners of the subject had planned to develop. When the condominium project fell through due to the rapidly declining condominium market, Mr. Acierno was offered a boat slip for his personal use as long as one was available in the marina. We were told by Ms. Jeffries that Mr. Acierno has helped to bring in several patrons to the marina since he has been docking his boat there. There are presently 71 slips occupied.

The subject property is legally described on a Plat prepared by Stantec Consulting Services of Charleston, South Carolina and dated June 16, 2006. The subject is also legally described in a Draft Master Deed of Ripley Light Horizontal Property Regime dated March 13, 2006.

APPRAISAL PROBLEM & PROPOSED SOLUTION

FRED H. BECK & ASSOCIATES, LLC

In this appraisal, we have been asked to appraise the marina as a 'stand-alone' property with land for parking. The marina site contains 0.13 acres which supports the existing building and 8 parking spaces on site. Zoning requirements call for an additional 36 spaces to be provided. We have allocated 0.35 acres for parking from an adjoining parcel of land (under the same ownership as the subject) for this.

APPRAISER COMPETENCY

Mark Morgan and Edward M. Parler, III, both South Carolina Certified General Real Estate Appraisers, have been appraising marina properties for over 10 years. The appraisers have experience in the appraisal of vacant land and marina properties in North and South Carolina. Mark A. Morgan has also reviewed appraisal reports on a number of marinas. Therefore, we have met the requirements of the USPAP Competency Provision.

INSPECTION OF THE PROPERTY

The subject property was inspected on Friday, September 25, 2009 at which time photographs contained herein were taken. At the time of inspection, the marina was fully complete with 87 wet slips, a marina building, concrete decking, pylons, bulkheads, piers, electrical hookups and lighting. Of the 87 slips, 69 were leased on short-term leases with 2 additional slips being occupied by individuals who are not required to pay rent.

TYPE OF REPORT

According to the Uniform Standards of Professional Appraisal Practice, Standards Rule 2-2, an appraisal report must be prepared under one of the following three options: Self Contained Appraisal Reports, Summary Appraisal Reports, or Restricted Appraisal Reports. These three report types are described as follows:

SELF-CONTAINED APPRAISAL REPORT

Should contain all information significant to the solution of the appraisal problem. "Describe" is the distinguishing term related to the Self-Contained Appraisal Report.

SUMMARY APPRAISAL REPORT

Should contain a summary of all information significant to the solution of the appraisal problem. "Summarize" is the distinguishing term related to the Summary Appraisal Report.

RESTRICTED APPRAISAL REPORT

Should contain a brief statement of information significant to the solution of the appraisal problem. "State" is the distinguishing term related to the Restricted Appraisal Report.

This report is prepared as a **SUMMARY APPRAISAL REPORT**.

INTENDED USE AND INTENDED USER OF THE APPRAISAL

This report is intended for the exclusive use of the client, **BANK OF AMERICA, N.A. – REAL ESTATE RISK ASSESSMENT**, and it intended to be used for underwriting, loan classification and/or disposition of the asset. A copy of the Engagement Letter is shown in the Addenda.

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

PROPERTY RIGHTS APPRAISED

There are three primary types of property rights that may be appraised. They are Fee Simple Estate, Leased Fee Estate, and Leasehold Estate. They are defined as follows:

FEE SIMPLE ESTATE

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the government powers of taxation, eminent domain, police power, and escheat.

LEASED FEE ESTATE

An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.

LEASEHOLD ESTATE

The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.

We have been asked to appraise the fee simple interest in the property based on the highest and best use. **We did not prepare a title search, nor were current exceptions to title provided to us. Please consult an attorney for clarification of legal constraints. Our analysis consists of two scenarios. The first assumes the continued operation as a private for rent marina. The second assumes that the slips would be converted to dockominiums and sold off individually. We have added the present worth of the interim rental income due to the extended sellout needed in light of today's poor economic climate.**

DATE OF REPORT

The date of this report is October 16, 2009.

EFFECTIVE DATE OF THE APPRAISAL

The effective date of this appraisal is as follows:

"As Is"	September 25, 2009

DEFINITION OF MARKET VALUE

The following definition of market value is approved by the Office of the Comptroller of the Currency of the United States of America, Chapter 12, Code of Federal Regulation, Part 34.42 (f). Market Value is defined as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. both parties are well informed or well advised and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

VALUE REPORTED

Values are typically reported on the basis of one or more of the following situation.

Market Value "As Is" on the Appraisal Date: Market Value "As Is" on the appraisal date is an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions or qualifications as of the date the appraisal is prepared.

Prospective Future Value Upon Completion of Construction: Prospective future value "upon completion" of construction is the prospective future value of a property on the date that construction, conversion or rehabilitation is completed, based upon market conditions forecast to exist as of that completion date. The value estimate at this stage of value should be stated in current dollars as of a current date.

Prospective Future Value Upon Reaching Stabilized Occupancy: Prospective future value "upon reaching stabilized occupancy" is the prospective future value of a property when all improvements have been physically constructed and the property has been leased to its optimum level of long-term occupancy at the market rent level. The value estimate at this stage of value should be stated in current dollars as of a current date.

In this report, we will estimate the Market Value of the subject, "**AS IS**" as of September 25, 2009.

LEGAL CONSTRAINTS

The property is zoned GB-A, General Business, in the Accommodations Overlay District. Based on our research, the use of the property as a marina conforms to the existing zoning regulations as to use. Please consult an attorney for clarification of zoning, setbacks, buffers, water rights, and other legal issues. The GB-A zoning district is discussed in detail in the Zoning Section of this report. Please note that we did not prepare a title search, nor were current exceptions to title provided to us. Please consult an attorney for clarification of legal constraints. We are aware of the following legal issues:

- 10' boardwalk easement along the subject's water frontage
- Easement to South Carolina Electric & Gas Company as recorded in Charleston County Deed Book W527, Page 534
- Assignment of Leases Rents and Profits to Marshall Investments Corporation recorded in Charleston County Deed Book H502, Page 078 and K511, Page 283
- Department of the Army dredging Permit 2000-1P-582
- Right of First Refusal Agreement between Ashley River Properties I, LLC and Kirti Ripley, LLC dated December 30, 2003 and recorded in Charleston County Deed Book G486, Page 355
- 15' water main easement as shown on the survey
- Possible 15' force main easement as shown on the survey
- Charges for maintenance of common area of Ripley Pointe Drive, a private drive apparently owned by Ripley Point Hotel and shown on Charleston County Tax Map 421-11-00-080.
- SC Department of Health & Environment Control (SCDHEC), Ocean and Coastal Resource Management (OCRM) Critical Line as shown on the surveys
- Other required permits for operating the marina as well as requirements for sewer pump-outs
- Zoning ordinances
- Development Ordinances
- Board of Architectural Review
- Navigable Servitude of the US Government and the State of SC with regard to improvements within the OCRM critical line
- Interests or restrictions placed by the Federal Coastal Zones Management Act

STATEMENT OF OWNERSHIP

According to the Charleston County tax records, the property described in this report is currently owned by:

**ASHLEY RIVER PROPERTIES II, LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD, CT 06877**

HISTORY OF PROPERTY

Ashley River Properties II, LLC acquired the subject from Ripley Light Development, LLC on December 29, 2003 by deed recorded in Charleston County Deed Book E480, Page 016. Consideration was \$100,000, but the deed is not arm's length, as Stuart L. Longman is the managing member of both entities. The sale included all the docks, floating docks and all other properties attached to the property, according to the deed. The price is not reflective of the subject's market value.

Ripley Light Development, LLC acquired the subject vacant site from Ripley Point Associates, LLC on November 4, 2002 as recorded in Charleston County Deed Book S424, Page 112. Arthur H. Applegate is listed as the Managing Member of Ripley Point Associates, LLC. The sale does not appear to have included the permit for the marina or approval for the construction of a proposed condominium project. That future condominium project is not a part of this appraisal. The price was \$100,000 which is well below the market and is not reflective of the subject's current market value.

SCDHEC issued a permit for the construction of the subject marina on November 20, 2001, #2001-1H-315-P, expiring November 20, 2006. The permit is for 102 boat slips. On May 10, 2002, the Department of the Army, US Army Corps of Engineers issued permit #2001-1P-582 to Ripley Light Development for dredging of the subject's inlet to further marina construction. An additional Permit #2001-1H-315 issued on December 20, 2002 permitted the construction of a bulkhead, pier and marina facilities in the subject's Ripley Inlet Canal. On December 29, 2004, SCDHE/OCRM amended to marina permit, reducing the permitted number of slips to 95 in order to accommodate larger vessels. The subject's original marina plan called for a total of 96 slips, one more than permitted. The owners revised this plan to the present layout which includes a total of 87 slips which is less than the maximum number permitted. The end of C-Dock was reconfigured with side dock (facedock) slips to accommodate larger party boats / charter boats as well as providing a wider access point to the Ashley River. The subject property is a part of a larger parcel that was acquired in 1996.

Kriti Ripley, LLC and Ashley River Properties I, LLC have executed a Right of First Refusal Agreement on December 30, 2003 as recorded in Charleston County Deed Book 486, Page 355. Kriti Ripley, LLC may participate in the development of the property. Kriti may participate as a 50% development partner for an initial investment price for a 50% ownership interest in the property equal to 50% of Ashley River's document expenditures to date. The agreement terminates on the tenth anniversary date of the agreement. The Agreement runs with the land. The Agreement is signed by Stuart Longman, Operating

Manager of Emerald Investments, LLC, Managing Member of Ashley River Properties I, LLC and by Davidson D. Williams, Managing Member of Kriti Ripley, LLC.

We are aware of two unsolicited offers to purchase the subject property and adjoining interior land totaling 5.145 acres of land and not included in this appraisal plus the permits for the marina. The amount of land contained in the uplands is 5.72 acres but the 5.145 acres was the amount known at the time of the offer. Centex Corporation offered \$14,500,000 on June 6, 2005 to purchase the land (5.145 acres) plus the permits for the marina slips. The offer was considered to be at market terms at the time. Gillespie and Company of Concord, Massachusetts offered \$12,400,000 to buy the marina land, adjoining interior parcels and permits for the marina on June 8, 2005. This offer was considered at below-market terms. Neither offer was entertained by the owners.

Legal issues slowed the development in Fall 2005 when an published article in *The Charleston Post and Courier* stated that a holdup in development was caused by a legal dispute between the majority landowner, Connecticut developer Stuart Longman and his financial partner, an offshoot of Kriti Management, Inc. We also understand that another legal issue required larger boats docked at smaller slips at the Ripley Light Marina to relocate as they restricted navigation in the inlet channel. We are unaware of any other pending contracts, existing leases or options to purchase all or portions of the subject property.

SCOPE OF THE APPRAISAL

As part of this appraisal, a number of independent investigations and analyses were conducted. In addition to data compiled by Fred H. Beck & Associates, LLC on a regular basis, the investigations undertaken and major data sources used are listed below. Legal constraints were obtained by researching DHEC/OCRM databases and interviews with Jennifer Jeffries (marina manager/dockmaster) and Davidson D. Williams, Managing Member of Kiti Ripley, LLC. We also researched the Charleston County Register of Deeds to obtain the subject's deed, survey, and comparable data. We also researched the Charleston Consolidated Multiple Listing Service.

AREA AND NEIGHBORHOOD SUMMARY

An inspection of the neighborhood was conducted on September 25, 2009. Several local real estate firms were contacted to discuss recent land sales in the area.

SITE SUMMARY

The developer provided a preliminary site plan. We also utilized the legal description shown in the most recent deed. The subject property is 1.64 gross acres. FEMA flood maps were also researched. We have noted that the subject site is highly irregular in shape with significant portions of the property front the marshlands to the north and west of the marina. There is no access to this area and we conclude only a portion of the subject property of 0.13 acres is attributed to the marina. The remainder is land that totals 1.51 acres, and in our opinion, offers no contributory value to the subject property. This will be discussed in the land valuation section of the report. A current survey is recommended. This will be discussed at greater length in the site summary section of this report.

IMPROVEMENT SUMMARY

At the time of inspection, 87 marina slips were fully complete. Of the 87 slips, 69 are leased and 2 additional are occupied by individuals who are not required to pay rent. A current rent roll was provided for the marina slip rentals. There is also a marina building with a rental office, storage rooms, laundry facility and two restrooms with showers located on the site. The marina slips are not presently being offered for sale as dockominium units.

COST APPROACH

The **Marshall Valuation Service**, a national cost service, was utilized in determining the replacement cost for the marina property. Our projection was compared to the developer's actual expenditures utilized to complete the marina. We also estimated the subject's land value by analyzing recent comparable land sales.

INCOME APPROACH

We were provided year-to-date income and expenses for the subject property and a rent roll showing 69 of the 87 slips as leased on short-term rentals with 2 additional slips being occupied by individuals who are not required to pay rent. We surveyed the marina market to determine market rental rates per lineal foot for similar marinas and determine the gross income potential for the subject property. We deducted market vacancy, operating expenses and the resulting net operating income which was then capitalized in to a value indication. We compared our concluded value with the other approaches to determine the reasonableness of our conclusion.

DEVELOPMENT VALUATION METHOD

This method combines both the Income and Sales Comparison Approaches. In this technique, the retail value of the individual marina slips is estimated based on comparable properties. None of the subject's slips are being offered for sale. Additional market information is used to document absorption of the units. Expenses incurred during the sellout process are deducted from sales revenues. The resulting net income stream is discounted to a present value. We have added to the value conclusion the present value of the interim rental income from boat slip rentals due to the extended sellout time.

EXTRAORDINARY ASSUMPTIONS

Please refer to the typical Assumptions and Limiting Conditions in the Addenda for further clarification of the conditions significant to this assignment.

HYPOTHETICAL CONDITIONS

There are no hypothetical conditions in this assignment.

SUPPLEMENTAL STANDARDS

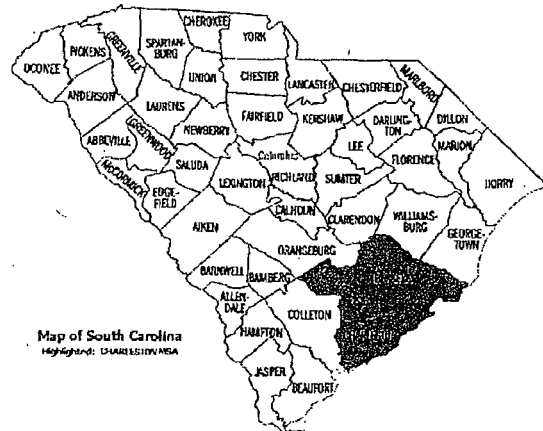
Our firm has an executed engagement letter from the client, a copy of which is provided in the addenda of this report.

JURISDICTIONAL EXCEPTIONS

There are no jurisdictional exceptions in this assignment.

METROPOLITAN PROFILE CHARLESTON METROPOLITAN REGION

The constantly changing nature of economic relationships within a given area, as shaped by the forces controlling future growth and development, will have a direct bearing on the whole spectrum of economic activity, including the long term value of real estate investments. The purpose of this section of the report is to isolate and examine those economic trends and forces prevalent in the Charleston market that influence and create value. Since real estate is an immobile asset, the economic trends and forces that affect the subject's quality of location in relation to other competing facilities within its market area, are to be fully evaluated. Past and probable future trends affecting the economic structure of the market area are studied, including the analysis of foreseeable changes.



LOCATION

The Charleston Trident Metropolitan Region is comprised of Berkeley, Charleston and Dorchester Counties. The Trident area stretches along the central and southern South Carolina coast with 90 miles of Atlantic coastline in an inland depth that extends 50 miles inland. The Trident area consists of approximately 26 incorporated communities ranging in population from 88 (Jamestown) to nearly 98,000 (Charleston). The Trident metropolitan area contains approximately 3,163 square miles. This area is primarily influenced by four major economic sectors - the Military, the Port of Charleston, the visitor industry and the medical community.

Charleston has long been an important seaport in the center of a rich agricultural region. It is also a nationally known resort and convention city. Progress has been made in recent years in industrial development due to the sea port facilities and the favorable business climate. The following are two examples of the increasing economic development of the Trident area.

- Charleston is home to the largest containerized port on the Southeast and Gulf coasts, second only to the combined ports of New York and New Jersey.
- Seventeen International operate in the Trident region and produce more than 25 percent of the manufacturing jobs in the region.

The impact of the closing of the Charleston Naval Shipyard, which was accepted by Congress in 1993, led to some economic uncertainty. The base was physically closed in October 1995 and completely closed in April 1996. The impact of the shipyard closure will be addressed in detail later in this section. Charleston is the largest business and financial center for southeastern section of South Carolina. The economy of the tri-county area has expanded steadily over the past couple of years. Manufacturing, the military, the State Ports Authority, and tourism combined to enhance the Trident area's economy.

More than eight million tons of cargo passes through the Port of Charleston each year. As the largest containerized cargo port on the Southeast Atlantic and Gulf coasts and the seventh largest nationwide, the port annually handles over 6.8 million tons of cargo and employs an estimated 17,000 people. Confidence in the port's expanding future is evident in BMW Corporation's decision to import/export from these docks. The Port of Charleston is expected to be a cornerstone of the Trident area's economic growth.

POPULATION TRENDS AND PROJECTIONS

The Trident area has seen steady population growth over the past seventeen years. Please refer to the chart below for population statistics for the City of Charleston, Charleston County, and the Charleston MSA.

AREA POPULATION STATISTICS							
Area	Census 1990	Census 2000	Annual Chg 1990-2000	Estimate 2009	Annual Chg 2000-2009	Projection 2014	Annual Chg 2008-2014
City of Charleston	96,102	96,650	0.1%	106,890	1.1%	112,858	1.1%
Charleston County	295,039	309,969	0.5%	336,819	0.9%	353,151	1.0%
Charleston MSA	506,875	549,033	0.8%	617,882	1.3%	662,617	1.4%

Source: Claritas, Inc.

The City of Charleston has experienced very slight growth since 1990 through 2000 which continued with a slightly higher growth factor of 1.1% for the period 2000-2009.

This growth factor is also projected for the years 2009 through 2014. Charleston County and the Charleston MSA have experienced similar type growth rates over the past two decades and are projected to have similar growth rates as the city through the year 2014. The historical and projected household statistics for Charleston, Charleston County, and Charleston MSA are presented in the following table:

AREA HOUSEHOLD STATISTICS							
Area	Census 1990	Census 2000	Annual Chg 1990-2000	Estimate 2009	Annual Chg 2000-2009	Projection 2014	Annual Chg 2008-2014
City of Charleston	36,669	40,791	1.1%	46,649	1.5%	49,831	1.3%
Charleston County	107,069	123,326	1.4%	139,777	1.4%	150,738	1.5%
Charleston MSA	177,668	207,957	1.6%	243,772	1.8%	267,730	1.9%

Source: Claritas, Inc.

The household statistics are basically similar to and mirror the population growth figures for the City of Charleston, Charleston County and the Charleston MSA.

AREA INCOME STATISTICS

The Trident area has seen steady income growth over the past five years. Please refer to the chart below for the 2009 income statistics for comparisons of the City of Charleston, Charleston County, and the Charleston MSA.

2009 INCOME STATISTICS			
Area	Average Household	Median Household	Per Capita
City of Charleston	\$64,432	\$44,520	\$28,518
Charleston County	\$66,857	\$47,558	\$27,905
Charleston MSA	\$64,628	\$49,370	\$25,566

MAJOR EMPLOYERS

The 25 largest employers in the Charleston MSA are detailed in the following table:

LARGEST EMPLOYERS CHARLESTON MSA		
Company	Product/Service	Employees
US Navy	Various Naval Commands	16,219
Medical University of South Carolina	Healthcare	8,200
Charleston Airforce Base	United States Air Force	5,594
Charleston County School District	Primary & Secondary Education	5,000
Roper St. Francis Healthcare	Healthcare	4,000
Berkeley County School District	Primary & Secondary Education	3,414
Piggly Wiggly Carolina Co. Inc.	Grocery headquarters & 23 area stores	2,500
Charleston County	County Government	2,243
Robert Bosch Corporation	Fuel Injection & braking systems	2,243
Wal Mart Stores	Retail general merchandise (8 area stores)	2,153
Trident Health System	Trident and Summerville Medical Centers	2,082
Dorchester County School District II	Primary & Secondary Education	2,000
Santee Cooper	Electric Utility	1,725
Mead Westvaco	Specialty paper, packaging, chemicals, etc.	1,596
City of Charleston	Municipal government	1,470
Bi-Lo Inc.	15 area grocery stores	1,300
U.S. Postal Service	Postal Service	1,200
R.H. Johnson Dept. of Veterans Affairs Hospital	Healthcare	1,100
Cummins Engine Divisions & Joint Ventures	Automotive products	1,062
OSI	Billing & accounts receivable services	1,000
SCANA/SC Electric & Gas Company	Electric & gas utility	1,000
College of Charleston	Post secondary education	990
City of North Charleston	Municipal government	850
Nucor Steel	Steel roll and beam manufacturing complex	831
Berkeley County	County Government	750

Source: Charleston County Chamber of Commerce

The four largest employers in the Charleston region are the US Navy, The Medical University of SC, The U.S. Air Force, and The Charleston County School District. Historically, Charleston's largest employer has been the United States Navy; however, this changed with the 1993 announcement that the Charleston Naval Base and Shipyard would be closed, resulting in the imminent loss of 33,000 active, civilian and contract military jobs. The payroll for the armed forces community in the Trident area is \$1 billion dollars. In the last five years, total Navy employment has declined by 41 percent. From 1991-1993, Navy employment declined by 9,000. By phasing the jobs out gradually and not all at one time, the damage to the employment base and the overall economy was greatly reduced. It has been estimated that 21,000 jobs have been lost in the past 6 years.

The Building Economics Solutions Together committee (BEST) was formed to pursue alternative uses for the Charleston Naval Base in the areas of job creation and business development. The naval base and shipyard contain 2.3 million square feet of industrial space, 1.8 million square feet of warehouse space, and 2.2 million square feet of office space. The success of the committee's efforts to find an alternative use for the naval base

can considerably lessen the base closure's impact on the Trident area economy. It has been learned that the Naval Electronics Systems Engineering Center (NAVALEX) facility will not be closed, and will undergo expansion. The three Naval Electronic Divisions are being consolidated to form the new NISE East Complex. The Charleston Naval Weapons Station will also remain in operation and a new army depot will replace POMFLANT. Other military users in the Trident area include the United States Air Force and the Coast Guard, which have major bases in the area, and are not being phased out.

One of the largest industries in the Trident area is tourism, which attracts over 3,700,000 visitors annually. The total estimated annual impact of the visitor industry is over \$3.2 billion, providing around 34,000 jobs. Popular visitor attractions in the Trident area include the Maritime Museum at Patriot's Point, which features the aircraft carrier, Yorktown. Other sites include Fort Sumter, Charlestown Landing, as well as the downtown market area. An event in the area that attracts visitors is the Spoleto Festival, a three-week festival at the end of May and the beginning of June. The Spoleto Festival has been held in Charleston since 1977 and is a nationally recognized festival of the performing arts. Charleston has both a Spring Festival of House and Gardens and a Fall Tour of Homes. Both of these events are a month long and offer tours of antebellum homes not normally open to the public. Another major event is the Southeastern Wildlife Exposition, which is considered to be the largest Wildlife exposition in the country. The Wildlife Exposition is held for one weekend in February and attracts over 40,000 visitors.

The largest manufacturers in the Trident area are Westvaco Corporation; The Robert Bosch Corporation; Bayer; Cummins Engine Company, inc.; Alcoa, Mt Holly; and Williams Technologies. This industry, especially defense-related contractors, experienced the negative effects of the Charleston Naval Base closure, as well as reduced military spending; however, after September 11, 2001, military spending has resumed. It should be noted, however, that the Trident Economic Development Authority has reported strong interest from national as well as international manufacturing firms wishing to locate in the Trident area.

LABOR FORCE

The chart below illustrates the most recent employment figures for the City of Charleston, Charleston County, Charleston MSA as well as the State and National Unemployment Rates.

LABOR FORCE STATISTICS						
Annual Average of Year:	2004	2005	2006	2007	2008	Jul-09
City of Charleston						
Total Civilian Labor Force	52,202	53,194	57,377	58,368	58,343	60,505
Total Employment	49,321	50,241	54,203	55,356	54,991	54,201
Total Unemployment	2,883	2,953	3,174	3,012	3,352	6,304
Unemployment Rate	5.5%	5.6%	5.5%	5.1%	5.7%	10.4%
Charleston County						
Total Civilian Labor Force	165,081	168,190	172,913	176,205	176,873	182,514
Total Employment	156,191	159,084	164,178	167,671	167,505	165,100
Total Unemployment	8,890	9,106	8,735	8,534	9,368	17,414
Unemployment Rate	5.4%	5.4%	5.1%	4.8%	5.3%	9.5%
Charleston MSA						
Total Civilian Labor Force	288,815	297,228	306,292	312,168	320,000	331,738
Total Employment	273,340	281,301	290,308	296,485	302,080	297,742
Total Unemployment	15,475	15,927	15,984	15,683	17,920	33,996
Unemployment Rate	5.4%	5.4%	5.2%	5.0%	5.6%	10.2%
State and National Rates						
South Carolina	6.4%	5.5%	5.2%	4.8%	6.9%	11.8%
United States	6.0%	5.5%	5.1%	4.6%	7.2%	9.4%
Source: US Bureau of Labor Statistics						

The following chart illustrates the employment sector breakdown in Charleston, Charleston County and the Charleston MSA:

ESTIMATED 2009 EMPLOYMENT STATISTICS						
Description	City of Charleston		County		MSA	
	Total	% Total	Total	% Total	Total	% Total
OVERALL CLASSIFICATION						
For Profit Private Workers	33,418	66.0%	109,443	67.5%	208,567	69.2%
Non-Profit Private Workers	3,146	6.2%	8,529	5.3%	13,912	4.6%
Local Government Workers	3,332	6.6%	10,073	6.2%	19,017	6.3%
State Government Workers	6,051	11.9%	16,084	9.9%	27,077	9.0%
Federal Government Workers	1,569	3.1%	6,566	4.1%	13,895	4.6%
Self-Employed Workers	3,022	6.0%	10,782	6.7%	17,893	5.9%
Unpaid Family Workers	127	0.3%	563	0.3%	848	0.3%
Total Employment	50,655	100.0%	162,040	100.0%	301,209	100.0%
INDUSTRY CLASSIFICATION						
Management, Business, & Financial Operations	6,978	13.8%	21,794	13.4%	37,127	12.3%
Professional and Related Occupations	13,859	27.4%	37,631	23.2%	62,333	20.7%
Service Industries	9,569	18.9%	28,563	17.6%	47,808	15.9%
Sales and Office	12,901	25.5%	42,212	26.1%	79,078	26.3%
Farming, Fishing, and Forestry	224	0.4%	713	0.4%	1,334	0.4%
Construction, Extraction, and Maintenance	3,338	6.6%	15,110	9.3%	33,986	11.3%
Production, Transportation, & Material Moving	3,796	7.5%	16,017	9.9%	39,543	13.1%
Total Employment	50,655	100.0%	162,040	100.0%	301,209	100.0%

Source: Claritas, Inc.

TRANSPORTATION

The Charleston International Airport currently serves over 1.4 million passengers annually, with seven major airlines offering over 90 flights per day to national and international destinations. The major airlines serving the airport include Continental, Delta, USAir, and Midway. The Trident area has six private airports in addition to the international airport, to accommodate both corporate and private aircraft. There are approximately 100 motor freight carriers serving the Trident area. Also serving the Trident region is the Norfolk Southern, the CSX system, as well as the South Carolina Railroad Commission. The interstate highways serving the Trident area are Interstate 26, which is an east/west interstate which intersects with Interstate 95 (a north/south interstate) about 50 miles northwest of Charleston. Interstate 26 also intersects Interstate 77 (a north/south interstate) in Columbia, South Carolina. In addition to Interstate service, five major U.S. highways and eleven major state highways also serve this area. Forming a semi-circle across the region is Interstate 526, the Mark Clark Expressway, which is a 19-mile freeway connecting Mt. Pleasant, North Charleston, and the West Ashley area of Charleston.

TOURISM

Tourism is the second largest industry in the Trident area, attracting around 4,000,000 visitors annually and pumping an estimated \$3.7 billion into the local economy. Charleston

promotes itself as "America's Most Historical City" and attracts affluent tourists who appreciate the historic architecture and character of the downtown area. Charleston consistently ranks in the top 10 most popular tourist destinations in the United States, and in the top 20 in the world. Charleston has a wide array of hotels, motels, and inns for the pleasure and business traveler. The average daily rate increased significantly in 1998, from \$88.65 to \$93.95. The hotel occupancy rate for 1998 was 71.1%, up from 70.1% in 1997. Primary visitor attractions in the Charleston area include Fort Sumter, Charlestowne Landing, and the Maritime Museum at Patriot's Point which features the aircraft carrier Yorktown, which is the state's number one paid destination for tourists. Since 1977, Charleston has been the home to Spoleto Festival USA. The success of this three-week festival held in May/June has established Charleston as the site of the nation's premiere festival of performing arts. The Southeastern Wildlife Exposition, held in February, is the largest wildlife art exposition in the country and is the busiest tourist weekend of the year with over 40,000 upscale visitors attracted annually.

SHIPPING

The Port of Charleston is the largest containerized port on the South Atlantic and Gulf Coasts and is second only to the combined ports of New York and New Jersey on the entire east coast. According to port officials, over 12.6 million tons of cargo was handled through Charleston's terminals in 1998. This was more than a 14% increase from the 11 million ton total for 1996. A recent study estimates there are over 14,000 port related jobs in the Trident region generating over \$1 billion annually in the local economy. The Port has four inter-modal facilities, which handle container, bulk, and break-bulk cargo. These facilities have been operating at capacity levels, which have resulted in relatively flat tonnage growth. The Port spent \$100 million in 1994 to expand the Wando Terminal facility in Mount Pleasant. This expansion helped solve the existing capacity problem at the other terminals. In addition, the Port is proceeding with its plans to construct a new container terminal facility opposite the naval base on Daniel Island. These expansion plans will allow the Port of Charleston to continue to grow and compete effectively with other ports.

HEALTH CARE

With a combined employment of nearly 16,000 and an economic impact in excess of \$1 billion annually, the regions' hospital and health care community are of increasing importance to the area's overall economy. There are 10 full service hospitals with a total of 2,161 beds in the Trident region. Two new hospitals were built in Charleston during the 1990s. St. Francis Hospital opened a 160 bed full service hospital in West Ashley in December 1996, and Roper Hospital opened the Roper North in West Ashley in the summer of 1995, offering emergency and outpatient services with 104 beds. Additional medical services for the area are provided by the Ronald McDonald House, several nursing homes,

convalescent homes, children's hospitals, psychiatric hospitals, and a private alcoholism/drug dependency treatment facility.

COLLEGES AND SCHOOL SYSTEM

The Trident area has an excellent array of public/private schools, colleges, and universities. There are four colleges/universities, a medical university, a culinary arts college, two technical colleges, a good public school system, and 25 private and parochial schools. The College of Charleston is a four-year, state-assisted, liberal arts institution offering 34 undergraduate degree programs. In conjunction with the college, the University of Charleston offers 10 graduate degree programs. The College of Charleston was founded in 1770, and is the oldest institution of higher learning in South Carolina and the 13th oldest in the nation. The Citadel, founded in 1842, is a state-assisted military college which until recently was all male. The Citadel philosophy combines classroom requirements with a military environment, which emphasizes discipline, responsiveness and leadership. Charleston Southern University opened in 1964 as the only church-affiliated college in the area. Today it is the second largest private university in the state, with 28 undergraduate degrees along with masters in business administration, education, and teaching. The Medical University of South Carolina (MUSC) is the oldest medical school in the South, and forms the core of the state's largest medical complex. Established in 1824, it is located in historic downtown Charleston. Trident Technical College is a public two-year institution founded in 1964 to provide accessible, practical, high-quality education. The college emphasizes practical, marketable job skills through comprehensive and updated technical programs. Other colleges and universities in the Charleston area include Johnson and Wales Culinary University, Webster University and Limestone College.

GOVERNMENT SERVICES

Management of local government varies between city and county governments in the Trident area. Charleston County has a county-administrator form of government. The City of Charleston is governed by an elected mayor and 12 city council members. Municipal water and sewer is provided by the Commissioners of Public Works of the City of Charleston. Both the water and sewer systems are modern and have been adequately planned for expansion. South Carolina Electric and Gas Company provide the electricity and natural gas for the majority of Charleston County and Southern Bell provides the primary telephone service. Their rates are competitive compared to other cities in the state. The Trident area's various municipalities have zoning departments, land use plans, and building codes, which govern how a property can be developed. These controls have created a general conformity of development in the Trident area.

DISTANCE TO MAJOR CITIES

City, State	Distance
Atlanta, GA	291 miles
Chicago, IL	906 miles
Miami, FL	590 miles
New York, NY	768 miles
Washington, DC	532 miles

CONCLUSION

The social, economic, governmental, and environmental forces that influence real estate values appear to be in balance in the Trident area. Despite the closure of the Charleston Naval Base and Shipyard in 1996 and the subsequent BRAC re-alignments of 2005, the Charleston area has and continues to show signs of improvement. The expansion of the port is likely to create a significant number of new jobs during the next several years as more and more companies relocate to Charleston. Because the region is not dependent on any one single industry or business sector, the area is poised to weather the latest economic downturn much better than other areas dominated by one particular industry. The anticipated growth in population, increased tourism, and expanded port operations should lessen the economic repercussions of the recession.

DOCKOMINIUM MARKET OVERVIEW

The subject property has a proximate location to Charleston CBD with good highway access. Surrounding areas (mainland and islands) have a population bases that sharply increases in the spring, summer and fall months with the rise in tourism. During the winter months, this population falls. The Ripley Point area is itself a desirable location and has been the focus of much new development since the mid 1990s. There are a number of marinas similar to the subject property in the immediate area and are discussed below.

WET-SLIP DOCKOMINIUMS

The subject is a wet slip marina with 87 slips and 69 are presently leased. The slips range in size from 30' to 65'. The marina slips were originally built to be marketed for sale in conjunction with a condominium project to be developed on land adjoining the marina site. With a downturn in the condominium market in late 2005 and early 2006, the owners moved ahead with development of the marina and opted to lease the slips on short-term leases rather than try to sell them. Currently, 69 slips of the total of 87 slips are leased.

During the late 1990's to approximately 2005, the Charleston area marinas followed a national trend in selling rather than leasing boat slips. The cost to construct a marina escalated to a point whereby the return in leased slips was not as financially feasible as the return from the sale of those slips. Hurricanes in Florida have destroyed some supply, creating greater demand for slips in South and North Carolina. In South Carolina, most marina slips are converted to condominiums, or 'dockominiums', while ownership in slips in the NC is 'memberships'. Both forms of ownership are transferable, but a dockominium requires a unit to also have a mailbox or a 'locker box'.

Marinas that still offer slips for rent include the largest permitted marina in SC - Charleston Harbor Marina at Patriot's Point, The Bristol Marina, City Marina, Daniel Island Marina, Isle of Palms Marina, Shem Creek Marina, Folly Beach Marina, the Cooper River Marina, Stono Marina and Ripley Light Yacht Club Marina (subject). Since the average size of a boat is increasing nationwide, not all marinas are suitable for conversion. The average boat size has grown from 21' feet ten years ago to upwards of 30' and more today. All but The Bristol Marina are established marinas in Charleston. As with most forms of condo ownership, maintenance fees are paid in addition to the purchase of a slip. Some of these marinas have converted to slip ownership, including Ripley Cove, The Harborage, Toler's Cove, Wild Dunes Yacht Club, Bohicket Marina on Seabrook Island and St. Johns Yacht Club on Johns Island.

Ripley Cove Marina

Ripley Cove Marina is located across Ripley Cove from the subject property. The marina has both wet slips as well as dry stack storage. The wet slips were converted to dockominiums in 2004. As previously stated in the History of the Property section of this report, this marina appears to have issues regarding its slip size as reported in the condominium documents and the slip size permitted by the US Army Corps of Engineers. We found one sale in 2005 of two slips that were represented in the condo documents as having 60 lineal feet each and sold for \$570,000, or \$4,750 per lineal foot, and the sale of 20 slips totaling 335 lineal feet that sold for \$1,471,428 or \$4,392 per lineal foot. These purchasers believed they were purchasing 60' slips. According to Ryan Black, former property manager of the subject property, the purchasers of these slips were misled and the purchase prices indicated are not indicative of market terms. We believe that if the purchasers knew they were buying smaller slips, the price per lineal foot would have been much less. This property also has dry stack storage. These wet slips are sold out and had absorption of 72 slips per quarter due to presales, high demand, and below market pricing. We have calculated that approximately 60% of the slips were presold in 2004, with average absorption of 15 slips per quarter through the remaining sellout period. On the quality side, this marina is inferior to the subject with wood floating docks and shorter pilings. The shorter pilings do not allow the docks to float sufficiently during high water events, storms and hurricanes.

The last wet slip sold in 2007. There are currently 14 wet slips listed for sale on MLS by the same owners (Ashley Cove, LLC). Each of the slips are 60'L X 17.5'W. Seven slips located on E-dock are listed for \$87,000 (\$1,450 / LF) and the seven slips on B-dock are listed for \$95,000 (\$1,583 / LF)

The Harborage at Ashley Marina

Located immediately adjacent to the City Marina across the Ashley River from the subject, this marina is accessible by Lockwood Drive, just south of Highway 17 and north of the 61 Connector on the Peninsula of Charleston. The marina has floating concrete docks that are advertised to accommodate vessels up to 150 feet in length. The Harborage was purchased by AMH-Ashley Marina, LLC in March of 2005, and the final stage of renovation was completed in February 2006. Slips began selling by May of 2005. Many slips were pre-sold. The Harborage has 230 slips. Typical slips range in size from 30' to 60', although slips are as long as 150'. The average slip size appears to be 45'. Prices have readily increased, with most small slips bringing \$1,875 when sales began in mid May of 2005. Sales in 2006 and 2007 show an increase from \$2,000 for a 45' inside slip; \$3,322 per lineal foot for a 45' outside slip; and \$4,500 per foot for a 90' outside slip. Prices were very competitive, with The Harborage publishing the price per lineal foot for comparable slips in the marketplace. The larger slips were in higher demand. It was reported that this project was 80% presold, with an average of 12 sales per quarter during the remainder of the sellout. On-site parking at this marina is limited. Slip purchasers also have a locker and access to the marina's two-story clubhouse. The marina offers a dock master's office, fuel dock, baths, a lounge area, outdoor shower. The slips were all sold with all new sales being resales. There has been only one resale of a slip in 2009 which sold for \$1,900 per lineal foot. This was approximately 9.5% lower than the previous sales price of the same 50' wet slip. During 2008, there were two 40' wet slips sold with sales prices being \$2,623 and \$3,000 per lineal foot. According to the Charleston MLS, there are 13 wet slips listed for sale. The slips range from 40' to 50', with asking prices from \$1,475 to \$3,075 per lineal foot. The average asking price is \$2,477 per lineal foot.

Slips are available for rent for \$16.00 per lineal foot per month in January and February, \$16.00 per lineal foot in August, \$17.00 per lineal foot in March and December, \$18.00 per lineal foot in November, \$22.00 per lineal foot in April, and \$25 per lineal foot in May, June, July, September and October. Semi-annual rates are \$14.50 per lineal foot per month (includes electrical charges), while quarterly rates are \$15.00 per lineal foot per month (includes electrical charges). Transient slips are available, with rates depending on the electricity amperage

needed. It is our understanding that a dredging permit cannot be issued for this facility due to Dioxins in the water. Regime fees range from \$75 to \$175 per month.

Wild Dunes Yacht Harbor

Wild Dunes is located adjacent to the Isle of Palms Marina on 5757 Palm Boulevard in the Isle of Palms. In 1998, the Isle of Palms Marina was taken over by the City and the separate business components leased to various entities: the marina slips, retail store, ramp, restaurant, fuel sales and slip rentals. The Wild Dunes Yacht Club marina has 100 slips that generally range in size from 35' to 50', although some are as large as 105'. In August of 2000, the condo docs for Wild Dunes Yacht Harbor were filed. The Yacht Harbor offers a graveled parking lot. Regime fees average \$250 per month in this exclusive area. Fourteen new floating slips and a deck for crabbing was added in 2004. The marina is proximate to Morgan's Creek Grill at the Isle of Palms Marina. While all the slips have been sold, slip resales occur, albeit infrequently and most of the sales are not exposed on the market. Slips at the adjacent Isle of Palms Marina are only available for rent, with a year-long waiting list, while slips at Yacht Harbor are offered for rent for \$12.00 to \$13.00 per lineal foot monthly. A 101' dock sold for \$275,000 in November of 2005 for \$2,723 per lineal foot, while prices are reported as averaging \$3,400 per lineal foot. A 45' slip sold in June of 2005 for \$3,333 per lineal foot. During 2008, there were three, 50' wet slips sold with sales prices being \$3,500, \$3,700 and \$5,000 per lineal foot. One 45' slip sold for \$3,889 per lineal foot. There has been one resale during 2009 which was a 40' wet slip for \$3,500 per lineal foot. According to the Charleston MLS, there are 5 wet slips listed for sale. The slips range from 35' to 50', with asking prices from \$4,300 to \$5,625 per lineal foot. The average asking price is \$4,850 per lineal foot.

The Yacht Club at Toler's Cove Marina

This marina is located in the Marsh Harbor development just across the Intracoastal Waterway in Mt. Pleasant. Located halfway between Sullivan's Island and Mt. Pleasant at the Ben Sawyer Bridge, the Yacht Club has 140 boat slips that were developed in phases, ranging size from 35' to 70' and were sold in the late 1990's. Toler's Cove offers rental boats and has charter boats. One 52.5' slip sold for \$210,000 on May 29, 2009, or \$4,000 per lineal foot. During 2008, there were two, 52.5' wet slips sold with sales prices being \$4,476 and \$5,238 per lineal foot, while a 38' slip sold for \$4,079 per lineal foot. According to the Charleston MLS, there are 5 wet slips listed for sale. The slips range from 35' to 62.5', with asking prices from \$3,286 to \$4,560 per lineal foot. The average asking price is \$4,269 per lineal foot.

Slips rent monthly for \$13.00 per lineal foot with a minimum of \$200 per month. Transient rates are the same on a monthly basis. The dockmaster reported that the property consists of approximately 25% of slips which are in a rental pool.

Bohicket Marina and Yacht Club

Bohicket Marina is located between Kiawah and Seabrook Islands in Charleston County on the Intra Coastal Waterway. The marina was purchased in August of 2004 and was converted into dockominiums by Master Deed recorded in February of 2005. Approximately 60% of the Yacht Club's 194 slips were presold, while the remaining 78 slips sold out in February 2005. This is an absorption of 11.14 slips per month or 35 slips per quarter. The marina has slips available for long- and short-term rentals. Amenities include a fuel dock, river lift, ship's store, showers, a Laundromat, a video store and an Internet Café. Mechanic's services and boat cleaning services are available. Upscale restaurants and shops are located immediately adjacent at the Bohicket Marina. Slips range in size from 30' to 117', but most slips are 33' to 50' in length. This marina, although the priciest marina surveyed, is also in the most exclusive resort area but is located about 30 minutes driving time from

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downtown Charleston. The Bohicket Marina Village has 71 residential units that adjoin the marina. Dry slips are also available.

There have been 4 re-sales of slips over the past 18 months. One 36.4' slip sold for \$55,000 on June 3, 2009, or \$1,511 per lineal foot. During 2008, there were two, 45.1' wet slips sold with sales prices being \$1,330 (December 2008) and \$3,326 (July 2008) per lineal foot, while a 40' slip sold for \$3,125 per lineal foot in April 2008. According to the Charleston MLS, there are 3 wet slips listed for sale. The slips range from 45' to 55', with asking prices from \$2,727 to \$3,978 per lineal foot. The average asking price is \$3,561 per lineal foot.

St. Johns Yacht Harbor

St. Johns Yacht Harbor is located on the south side of the Stono River on Johns Island in Charleston County. The marina (Stono Marina) was purchased in August of 2006 and was converted into dockominiums by Master Deed recorded in April of 2008. Approximately 4% (9 slips) of the Yacht Club's 252 slips (Phase I) were presold, while an additional 9 slips have been sold to date for a total of 18 closed sales of slips. This is an absorption rate of 0.53 slips per month or 1.6 slips per quarter. There are an additional 179 slips which are planned to be released as phase II. Sixty-three (63) of the Phase I slips (F Dock) are wet lifts which include a boat lift capable of accommodating vessels up to 35 feet in length and 16,000 pounds. Eight of the F Dock slips have been sold to date. Planned amenities include a fuel dock, ship's store, restaurant, pool with cabanas, private poolside bar, captain's retreat within the harbormaster's building, etc. Slips range in size from 35' to 80', but most slips are 32' to 50' in length. Sales prices have ranged from \$2,875 to \$3,450 per lineal foot. The wet lift slips sold for \$3,575 per lineal foot. According to the Charleston MLS, there are 12 wet slips listed for sale. Slips range from 34' to 52' in length and are currently being offered for sale at \$3,090 per lineal foot to \$3,492 per lineal foot. The average asking price for the wet slips is \$3,203 per lineal foot.

Ripley Light Yacht Club (Subject)

The subject Ripley Light Yacht Club is an 87-slip marina that is fully completed. Slips range in length from 30' to 65', with an average slip size of 48 lineal feet. Amenities include a party deck constructed of Brazilian hardwood. The marina is designed with a turn radius large enough to accommodate a 50' boat, while larger boats must back into the inlet from the dock. The docks are composed of a lightweight 'Pearlite' core with 3" fiber reinforced concrete shell and are built to withstand a 32' wave. Pilings are higher than standard height. No other amenities are available. As no residential units have been built here, parking for 8 vehicles is available for the owners of the marina slips. More parking is needed to accommodate the required spaces under zoning requirements. We believe this is best met by a parking access easement on adjoining lands also owned by the subject's property owner. However, in a stand-alone situation, more land would be required to meet this demand. This will be discussed later in this section. Each wet slip at the subject is provided with 2 hose bibs, 30 and 50 amp power hookups, and a plastic storage box with pneumatic opening. A pump-out facility is on site. Additional amenities will include free cable television and internet service beginning in November of 2009. The docks are designed to float and are built to withstand a hurricane worse than Hugo which ravaged the Charleston area in September 1989. Rental rates for new tenants at the subject's slips are \$13.00/LF/month, although the rent roll provided to us shows current tenants paying an average rent ranging from \$7.00/LF to \$18.00/LF, depending on the length of the slip.

CONCLUSION

Wet slip lease to own conversions have occurred rapidly in the Charleston area in recent years. Prices range from \$1,226 to \$5,000 per lineal foot, with most selling for an average price of \$3,500 to \$4,000 per lineal foot, depending on the length of the slip and its location

(inside or outside). For formerly converted projects, between 60% to 80% of slips have pre-sold, with quarterly absorption of 12 to 33 slips after presales. Slips are available for rent from \$13 to \$25 per lineal foot per month, with most renting for \$13 per lineal foot. Based on our survey, it appears that most wet slips have a vacancy rate of 20%. This is due to the ongoing recession and suppressed real estate markets. Vacancy rates were approximately 10% in 2007. The supply of available slips is increasing and sales of existing dockominium slips have been very scarce over the past 18 to 24 months due to a lack of first generation supply and a bad market.

BARRIERS TO ENTRY

The supply of available waterfront sites for marina development is rapidly diminishing, and land prices have escalated so much that single-family development is no longer financially feasible. The US Army Corps of Engineers controls permitting for marinas and have been reluctant to issue new permits. Also, there is extensive expertise needed to develop and manage a marina, in light of the growing demand for larger slips to accommodate larger boats. From the time applications are made to the time actual permits are received, the development of marinas is more complex and specialized than more traditional forms of commercial properties.

NEIGHBORHOOD SUMMARY

LOCATION/BOUNDARIES

The subject neighborhood is situated along the Ashley River to the west of downtown Charleston. The subject is less than one mile west of the central business district and main attractions of Charleston. For purposes of this analysis, neighborhood boundaries include US Highway 17 to the north, the Intracoastal Waterway to the south, the Ashley River to the east and State Highway 171 to the west. For further information and an understanding of the neighborhood boundaries, please refer to the maps included in this report.

LAND USE PATTERNS

The land use patterns within the neighborhood consist of residential, commercial and recreational uses. Commercial development includes:

- Vue at Ripley Pointe (formerly The Crab Shack)
- California Dreaming Restaurant
- Hampton Inn
- Residence Inn
- Springhill Suites
- Office and service development

Residential and marina land uses include:

- Ripley Light Marina
- Westwind Landing at Ripley Marina Condominiums
- Ripley Light single family residential lots adjacent to Westwind Landing
- The Albemarle Condominiums
- The subject Ripley Light Yacht Club Marina

The former Crab Shack, with 10,729 square feet of area, occupies a prime point location at the end of Ripley Pointe Drive. It had been vacant for some time but has been reopened as the Vue at Ripley Pointe which is an upscale dining and entertainment venue. The property was purchased in 2006 for condo development. However, the owner was not successful in buying out an existing long-term lease and the decline in the residential real estate market made the project not feasible at this time. The subject property is part of a larger planned development that includes future condominium units but those units are not included in this appraisal. While land uses differ, we believe they are complementary of the area and buffered by natural land breaks.

ACCESS/TRAFFIC CORRIDORS

Primarily access into the community is via US Highway 17, a four-lane highway, which runs in a north/south direction and provides the neighborhood with access to the central business district and main attractions of Charleston to the northeast and State Route 30 which provides access to James Island to the south. The recently completed SC Highway 61 Connector now provides alternate easy access from Peninsular Charleston to the subject neighborhood. Access from the immediate neighborhood to Charleston's Central Business District is within two miles, and five minutes travel time.

UTILITIES

The subject neighborhood is situated in an area served by the Charleston City Utilities Department. Our conversations with representatives of this agency indicate that the neighborhood is served by public water and sewer service. South Carolina Electric and Gas Company provides electricity in the neighborhood, while cable and telephone service are also readily available.

ZONING

Zoning in the neighborhood is under the jurisdiction of Charleston County. The primary zoning is GB-A - General Business District- Accommodations Overlay District. The specifics of the GB-A District are discussed later in this report.

ENVIRONMENTAL CHARACTERISTICS

The primary environmental characteristics to be considered are any nuisances or hazards as a result of the land uses within the subject neighborhood. At the time of inspection no nuisances or hazards were noted.

SUMMARY

The subject neighborhood is situated just west of Charleston's central business district and main attractions, where demographic and economic characteristics favor a developing area. Strong employment figures in the region, a good transportation network and a traditionally strong real estate market for residential development suggests that the subject neighborhood will continue to be a desirable location once current economic conditions improve. In considering the four life cycles that neighborhoods generally have (growth, stability, decline and revitalization), the neighborhood is considered to be in the **stable** stage. In the past, the area has continued to have increasing property values due to the location of the neighborhood.

However, the downturn in the economy and the real estate market conditions that started in early 2007 have continued to this date and have exerted downward pressure on all types of real estate and their values. These downward trends are projected to further slightly decline through the end of 2009 and then are projected to begin to rebound in late 2010 with continued recovery projected through the remainder of 2010 and beyond. During the projected rebounding/recovery periods of 2009 and 2010 and beyond, we are of the opinion that the real estate values will begin to increase in value in correlation with the recovery.

SITE SUMMARY

LOCATION

The subject property is situated on the western side of the Ashley River just north of the Intracoastal Waterway inside the city limits of Charleston in Charleston County, South Carolina. Its street address is 95 Ripley Point Drive, Charleston, SC 29407. The subject is located across the Ashley River from the Charleston Peninsula, and access is excellent via Ripley Point Drive (2 lanes) to the Fielding Connector/SC Highway 61 Expressway (4 lanes with a center turn lane), supported by a traffic light at the intersection. Ripley Point Drive provides access across the Connector to Albemarle Road, which connects with US Highway 17 within two blocks of the subject site, proving direct access to the Charleston Peninsula about two minutes of the subject site and to points west. The Connector/Expressway provides direct access to Charleston and James Island. Ripley Point Drive is a private road and currently maintained by the developer of the subject property. Location maps for the site and surveys are included in the addenda.

SIZE & SHAPE

The site contains 1.64 gross acres or 71,438 square feet, based on surveys provided for the assignment. The site is highly irregular in shape caused by its water frontage on a canal off of the Ashley River and marsh lands which surround the subject property to the north. The property does have approximately 126.92 front feet on Ripley Point Drive. Visually, the property is basically a spaghetti string of land that includes the site for the marina office and then snakes east, then north and finally west along the marsh just north of the canal. The reader is encouraged to review the maps contained in this report and an understanding of the site configuration. Based on our observations of the surveys, it appears that only about 0.13 acres is attributed to the marina with the balance being upland in the spaghetti string shape previously described. We will apply value to 0.13 acre site in our analysis for the marina. The remaining 1.51 acres is concluded to offer no contributory value.

TOPOGRAPHY

The topography of the subject property is level to Ripley Point Drive upon which the property fronts, and slopes gently downward towards the canal. Drainage appears adequate. The topography is typical of the neighborhood. We reviewed the Federal Emergency Management Agency's Flood Insurance Rate Map Community Panel Numbers 455019C-0519J dated November 17, 2004, which indicates that the subject site is located in flood hazard zone VE, a coastal flood area with velocity hazard (wave action). Base flood elevations range from 13 to 17 feet, but the flood location is typical of coastal

areas and is not detrimental to development. Development must be above these elevations. A copy of the flood map is shown in the Addenda.

SOIL ANALYSIS

We had access to a Phase I Environmental Site Assessment (ESA) prepared by Albrecht Environmental, Inc., dated April 13, 2004, which also included other nearby tracts of land. The Phase I ESA revealed no adverse environmental or soil conditions. During the inspection, we conducted a visual survey of the subject property for environmental hazards, at which time no obvious environmental hazards were noted. However, due to the fact that we are not soil scientists, the values rendered herein are predicated upon the assumption that no adverse soil conditions exist, and should further testing prove otherwise, we reserve the right to amend those values.

LEGAL CONSTRAINTS

The subject property is zoned GB-A, General Business – Accommodations by the City of Charleston Zoning Ordinance, which will be discussed in further detail following this section. Easements affecting the property include typical utility easements granted to public utilities and municipalities for service lines.

Zoning requirements call for a total of 44 parking spaces to be provided for the marina use. On the subject site, there are 8 spaces currently available. The additional spaces for 36 vehicles, drives, ingress and egress must be obtained from an adjoining parcel under the same ownership of the subject. We have determined later in this report that 0.35 acres is needed to accommodate the parking.

UTILITIES

As of the date of inspection, the property had access to all available public and private utilities. Water and sewer service is provided by the City of Charleston. The utilities are assumed to be adequate to serve the subject site.

ENVIRONMENTAL

The Phase I Environmental Survey revealed no underground storage tank releases reported on the subject site. Seven sites were identified as suspect sites within a one-mile search of the subject property, with three of the seven sites located on the parcels surveyed. The spills have reportedly been addressed and no 'recognized environmental conditions' were noted during the survey's research. No further investigation was reported to be needed. This appraisal does not consider the impact, if any, of any environmental hazards that may be discovered. Please refer to the Assumptions and Limiting Conditions in the Addenda for further information.

SUMMARY

The subject site is well suited for marina development, with excellent access and water amenity. It is centrally located with easy access to entertainment, shopping, hospitals, schools and numerous places of employment. Access to all of these areas is less than five miles. There are no known detrimental uses in the immediate vicinity. It is our opinion that the site does not have any characteristics that would impede its development potential to its highest and best use, as if vacant, or adverse to the existing use of the site except that additional land is needed for parking if the subject is severed from the adjoining parcel.

IMPROVEMENT SUMMARY

GENERAL DESCRIPTION - YACHT CLUB SLIPS

The subject Ripley Light Yacht Club Marina is permitted by the US Army Corps of Engineers for 95 wet slips totaling 4,599 lineal feet of dockage. Eighty-seven (87) slips were built as the developer modified their original plan. Its Master Deed has not been filed. Slips range in length from 30' to 65', with an average slip size of 48 lineal feet. Amenities include a party deck constructed of Brazilian hardwood. The marina is designed with a turn radius large enough to accommodate a 50' boat, while larger boats must back into the inlet from the dock. The docks are composed of a lightweight 'Pearlite' core with 3" fiber reinforced concrete shell and are built to withstand a 32' wave. Pilings are higher than standard height. There is a small marina office on the property adjacent to the party deck. This building totals 609 square feet in a one-story design. It has a small office, storage room and two restrooms. Each slip is provided with 2 hose bibs, 30 and 50 amp power, and a plastic storage box with pneumatic opening. A pump-out facility is on site.

No other amenities are available. It appears that eight parking spaces are available behind the marina office off Ripley Point Drive. According to the proposed Master Deed, the Marina Association will have the authority to acquire and provide additional parking for the owners of the marina slips. Our discussions with Jennifer Jeffries, on-site manager, indicated that there would be enough parking to accommodate the wet-slips on adjacent lands owned by the subject property owner and this could be accommodated by parking access easements on adjoining land also owned by the subject's property owners.

We have considered the cost of acquiring land for the 44 spaces needed to meet the parking requirement which is discussed in the zoning section of this report. Since we have assumed that only 0.13 acres of the site is attributed to the marina and 8 parking spaces, we have deducted the cost to acquire adjoining land for the additional 36 spaces needed from our final valuation.

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Slip sizes are summarized as follows:

RIPLEY LIGHT YACHT CLUB SLIP INVENTORY*					
Slip # Slip Length - Linear Feet			Slip # Slip Length - Linear Feet		
1	A-1	50	47*	B-1	40
2	A-2	50	48*	B-2	40
3	A-3	50	49*	B-3	40
4	A-4	50	50*	B-4	40
5	A-5	50	51*	B-5	40
6	A-6	65	52*	B-6	40
7	A-7	65	53*	B-7	40
8	A-8	65	54*	B-8	40
9	A-9	65	55*	B-9	40
10	A-10	65	56	B-10	60
11	A-11	65	57	B-11	60
12	A-12	65	58	B-12	60
13	A-13	65	59	B-13	60
14	A-14	65	60&	B-14	60
15	A-15	65	61	B-15	50
16	A-17	30	62	B-16	50
17	A-18	45	63	B-17	50
18	A-19	40	64	B-18	50
19	A-20	40	65	B-19	50
20	A-21	48	66	B-20	50
21	A-22	48	67	B-21	50
22	A-23	40	68	B-22	50
23	A-24	40	69	B-23	50
24	A-25	48	70	C-1	50
25	A-26	48	71	C-2	50
26	A-27	40	72	C-3	50
27	A-28	30	73	C-4	50
28	A-29	48	74	C-5	50
29	A-30	49	75	C-6	50
30	A-31	30	76	C-7	40
31	A-32	30	77	C-8	40
32	A-33	30	78	C-9	40
33	A-34	30	79	C-10	40
34	A-35	49	80	C-11	40
35	A-36	50	81	C-12	40
36	A-37	50	82*	C-13	36
37	A-38	50	83*	C-14	36
38	A-39	43	84*	C-15	36
39*	A-40	43	85*	C-16	36
40*	A-41	50	86*	C-17	45
41	A-42	50	87*	C-18	45
42	A-43	50			
43	A-44	50			
44*	A-45	43			
45*	A-46	43			
46	A-47	50			

Highlighted slips indicate available slips

*- Indicates Slip is a Facedock

#- Indicates Slip is occupied by marina manager and no rent is paid

&- Indicates Slip is occupied by friend of marina manager and no rent is paid

Total	A	2,235	Total	B & C	1,884
Total Linear Feet					4,119
Average Size in Linear Feet					47.34

TAX AND ASSESSMENT DATA

South Carolina has no state property taxes and no intangibles tax. Local taxing authorities levy real and personal property taxes, which in the case of the subject, is the City of Charleston and Charleston County. The formula for the calculation of real property taxes in South Carolina is as follows:

$$(\text{Market Value}) \times (\text{Assessment Ratio}) \times (\text{District Millage Rate}) = \text{Tax Burden}$$

MARKET VALUE

The subject is identified in the Charleston County Tax Assessor's Office as tax parcel number 421-11-00-275 and contains 1.64 gross acres of which 0.13 net acres has been determined to be applicable to the marina. The remainder is 1.51 acres of land in our appraisal, has no value in our opinion due to the shape and topography. State law requires that South Carolina counties revalue all properties a minimum of every five years. All Charleston County properties were reassessed in 2004 becoming effective January 1, 2005. According to our review of these tax records, the subject currently has a market value for the land based on 1.64 gross acres and the marina structure. A summary of the current tax value for the subject (marina only) is as follows:

CURRENT MARKET (TAX) VALUE	
Land (421-11-00-275) (1.64 Acres)	\$1,191,000
Improvements	\$972,000
Buildings	\$41,200
Total	\$2,204,200
Source: Charleston Co. Tax Department	

Based on the current market (tax) value of \$2,204,200, the tax liability for the 1.64 gross acres and marina improvements based on the 2008 millage rate and 2009 tax values is \$30,740 (\$2,204,200 x 6% x 256.1 mills - \$3,130 in option tax credits). The 2009 millage rates had not been released as of the date of this appraisal. These are typically finalized in September or October of each year. South Carolina State Law requires that tax assessors to consider a sale of a property when assessing the property for tax purposes. It is our opinion that if the subject property were sold at or near the final opinion of value concluded herein that the property would likely continued to be assessed at the current rate due to the extremely large spread between values and the fact that dockominiums are rarely sold in bulk and the value could be appealed as such.

ASSESSMENT RATIO

The assessment ratio is established by the South Carolina Department of Revenue. The ratios are based on property classifications, as detailed in the following chart. The subject is classified under the "All Other Real Property" classification. The subject is therefore assessed at a ratio of **6.0%**.

TYPE OF PROPERTY	ASSESSMENT RATIO
Manufacturing Property	10.5% of fair market value
Primary Residences	4.0% of fair market value
All Other Real Property	6.0% of fair market value
Personal Property	10.5% of income tax depreciated value

DISTRICT MILLAGE RATE

The subject is located in Charleston County inside the city limits of Charleston, S.C. and therefore should be subject to both the city and county millage rates. The subject property is located in Tax District 63.

However, the subject falls under an economic development tax bill that places its taxation under the jurisdiction of SC Tax Commission.

- The 2008 millage rate for the subject's Tax District was 256.1 mills (City rate = 79.1 mills & County Rate = 177.0 mills).

Properties within the subject's tax district are provided two tax discounts, which reduce the total tax burden; these discounts are as follows:

- 2009 County Government Tax Credit in the amount of 0.00071% Market Value
- 2009 City of Charleston Tax Credit in the amount of 0.00071% Market Value

Since the marina improvements have been assessed, we have utilized the tax values for the marina improvements and land. To our land value, we added the allocated land tax value 0.35 acres needed to be acquired for parking at \$289,917. This is calculated as follows:

TAX VALUE - PARKING LOT OF 0.35 ACRES	
Land (Parcel 421-11-00-274 of 1.80 acres)	\$1,491,000
Allocated to 0.35 acres for parking	\$289,917
Total	\$289,917
Source: Charleston Co. Tax Department	

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We then included the costs for paving 36 additional parking spaces which we concluded to cost approximately \$37,800 (36 spaces x \$1,000/Space + 5% profit). We will use this figure in our calculation of taxes as follows:

PROJECTED TAX BURDEN	
Assessed Value	Forecast
Land Value (By component for marina and land for parking) (\$1,191,000 + \$289,917)	\$1,480,917
Improvement Value (includes 36 parking spaces) (\$972,000 + \$41,200 + \$37,800)	\$1,051,000
Total Market Value	<u>\$2,531,917</u>
Assessment Rate	6.0%
Total Assessment (Rate x Value)	<u>\$151,915</u>
Projected Millage Rate (2008 rate of 256.1 mills + 3%)	263.7830
Tax Burden prior to Tax Credit (Rate x Assessment)	<u>\$40,072.59</u>
Less:	
County Option Sales Tax Credit	\$1,797.66
Local Option Sales Tax Credit	<u>\$1,797.66</u>
Net Tax Burden (Tax Burden less Tax Credit)	<u>\$36,477</u>
ROUNDED TO	<u>\$36,500</u>
Net Tax Burden per Wet Slip Per Year	<u>\$420</u>

Our tax burden is shown net **\$420** per slip, rounded when the tax value of the additional parking is included. This will be utilized in our discounted sellout.

In our leased fee scenario, we have used the current tax liability attributed to the land and improvements, less discounts for the designation in city and county option sales tax districts. Year 1 tax liability based on land value by component for the marina only (excluding the land needed for the parking and parking lot improvements), totaling \$2,494,117, less option sales tax credits:

Tax Value	Assessment Ratio	Total Assessment	Proj 2009 Millage Rate	Less City/County OSD	Tax Burden
\$2,494,117	6%	\$149,647	0.263783	(\$3,542)	\$35,932

We have rounded the tax burden from the previous chart to **\$36,000**. It is our opinion that if the subject property were sold at or near the final opinion of value concluded herein that the property would likely continued to be assessed at the current rate due to the extremely large spread between values and the fact that dockominiums are rarely sold in bulk and the value could be appealed as such.

ZONING/LAND USE CONTROL

The subject property is situated inside the city limits of Charleston and is subject to the City of Charleston Zoning Department Regulations. The site is zoned **GB-A, General Business District, with Accommodations Overlay**. According to the Charleston Zoning Ordinance, the intent and permitted uses within this district are as follows:

"The **GB district** is intended to provide for a broad range of commercial uses and activities. It is the most intensive commercial zoning district. It is the most intensive commercial zoning district. Prohibited uses include junk and salvage yards, storage yards (except for vehicles and boats), and warehouses including self-storage mini-warehouses. Automotive repair shops, gasoline service stations, veterinary clinics, and stables are permitted only as special exceptions subject to approval of the Board of Zoning Appeals."

"Accommodations, A Overlay Zone is intended to identify those areas within the city limits where hotel, motel and inn accommodation uses, and timesharing uses are allowed. The accommodation uses are prohibited except within the A Overlay Zone."

The present zoning classification allows for different types of commercial and retail use. Marinas are a permitted use in this district, as are residential condominiums. Other requirements are as follows:

ZONING SUMMARY	
Current Zoning	GB - A, General Business Accommodations Overlay
Legal Use/Conforming	Legal, conforming
Uses Permitted	Marinas, multi-family, others
Zoning Change	Unlikely
Minimum Lot Size - GB District	1,650 SF/Unit
Maximum Coverage	N/A - Nonresidential 35% Residential
Front & Rear Setback	N/A - Nonresidential 3' Total Front & Rear - Residential
Side Yard Setbacks	N/A - Nonresidential 15' total, 9' South/West/3' North/East
Maximum Height	50' in 50W District
Source: Charleston Zoning Code	

Although Charleston's Zoning Ordinance is specific to dry a storage marina which indicates that parking is required at a ratio of one space per two dry slips, it is implied that the same ratio holds true for wet slip marinas. The Draft Master Deed permits the future Homeowner's Association to provide additional parking in the future and we believe this is best handled by parking easement on adjoining lands which are owned by the subject property owners. In our analysis of the subject however, we must consider if the subject were sold as a stand-alone asset, parking must be provided. We believe this is best derived for the subject by the purchase of approximately 0.35 acre of land to accommodate the needed 36 additional parking spaces, ingress and egress.

MARKETABILITY/EXPOSURE PERIOD

The most probable investor for the subject property would be an investor seeking to profit from the sellout of the slips for a dockminium project. In order to estimate a reasonable marketing time for the subject, we contacted real estate brokers active in the region. We explained the parameters of the subject site size and location. Overall, the brokers estimated a marketing period of twelve to eighteen months if the subject were sold to a single purchaser. We have estimated a marketing period of twelve to eighteen months.

This is also applicable to the exposure period, which would precede the date of the appraisal. Typical selling commissions on a property similar to the subject would be about five percent. The marketing period would be predicated on the site being free of environmental hazards. If problems were found, the time to eradicate the site would add to the marketing time. After considering all the information available, we conclude that a reasonable marketing and exposure period of twelve to eighteen months is applicable to the subject property.

**ESTIMATE OF MARKETING AND EXPOSURE TIME - AS IS
TWELVE TO EIGHTEEN MONTHS**

HIGHEST AND BEST USE

The highest and best use for real property can be defined as follows:

"The reasonable and probable use that supports the highest present value, as defined, as of the date of the appraisal."

Alternatively, highest and best use is . . .

"The use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value."

The first type of highest and best use, highest and best use of land or a site as though vacant, assumes that a parcel of land is vacant or that it can be made vacant through the demolition of any improvements. The question to be answered in this type of analysis is "what use should be made of it?", that is, what type of building or other improvement (if any) should be constructed on the land?

The second type of highest and best use, highest and best use of a property as improved, pertains to the use that should be made of the property as it exists. Should the existing improvements be maintained, renovated, expanded, partially demolished or should it be replaced with a different type use? The purpose of highest and best use analysis is different for each type of highest and best use examined. For each type of highest and best use, the criterion in a highest and best use study are that the highest and best use must be 1) legally permissible, 2) physically possible, 3) financially feasible, and 4) maximally productive. According to **THE REAL ESTATE APPRAISAL TERMINOLOGY** book, published by the American Institute of Real Estate Appraisers, "...the concept of highest and best use represents the premise upon which value is based." We will examine the highest and best use of the subject on an analysis both "As Vacant" and "As Improved."

AS VACANT

LEGALLY PERMISSIBLE USES

The first criteria in analyzing the subject property as vacant are the legally permissible uses. The zoning ordinances or deed restrictions typically define legally permissible uses. We have previously stated that the subject property is zoned GB-A District. This district allows for a wide range of permitted uses including marina, residential and accommodations development. This is the least restrictive zoning category in Charleston. Surrounding land uses include commercial and residential development. These uses suggest that a residential application would be legal. A marina operation requires special permits that are often difficult to obtain.

PHYSICALLY POSSIBLE USES

The next criterion in determining the highest and best use considers uses that are physically possible. Some uses may be inappropriate due to certain physical characteristics of the site. These conditions are usually concerned with size, shape, egress and ingress, utilities, soil conditions and topography. The subject site contains 1.64 gross acres and has a very irregular shape since the majority of the subject property is located along the Ashley River and a canal and inlet off the River. We believe there is about 0.13 acres of land attributable to the marina with the remainder totaling 1.51 acres of excess uplands.

This upland area is essentially a spaghetti string of land and based on our observation, is usable only to a 1.114 acre of land that directly adjoins the property on the north side of the marsh. This 1.114 acre site is not owned by the subject's owner and is sandwiched between two sites that have been developed with hotels. The development of hotels on either side of the 1.114 acre site greatly limits development potential for high-end condominium units and greatly diminishes the desirability of the units as being waterfront or water view units. The hotels have been built to the maximum height restriction of five stories so even if a condominium property were built, the views would be limited to the hotels on the north and south elevations. The 1.114 acre site could be developed with another hotel and the excess land of the subject used for density requirements. With such a limited scope and use, the excess land appears to have little to no value.

The overall subject site is served by public utilities and would be considered adequate for any of the legally permitted uses. The Ripley Cove Marina is currently located across the canal from the subject site. The inlet has sufficient width to accommodate another marina. It therefore appears that the inlet has sufficient depth to accommodate a marina, although dredging permits are typically needed to maintain channel depth.

FINANCIALLY FEASIBLE

The third criterion for determining the highest and best use of the subject, as vacant, would be what use would bring a substantial positive cash flow to the investor. The primary attribute of the subject is its location in the Ripley Point area, just west of Charleston's attractions and central business district. We expect continued development of luxury residential uses to occur near the subject property. Due to the size of the site with regard to usable area, a residential use is not considered a financially feasible use of the site as it would be difficult to build on a small site with height restrictions and provided needed parking. A marina development would enhance the subject's financial feasibility as its cost is typically less than its value from the sale of individual slips. The lease of marina slips does not return as high a price to the land as the sale of the individual slips. However, given the poor current economic conditions, a very tight credit market and the suppressed residential housing market, the development of a marina would not be financially feasible at this time. We believe that speculative holding would be the most feasible use if vacant.

MAXIMALLY PRODUCTIVE

The fourth criteria analyzes what uses would be maximally productive. After considering the above parameters, and taking into account the size of the property, we conclude that marina development would maximize the value of the site, as vacant. It would further serve existing uses in the immediate neighborhood, as well as development in surrounding areas. However the current market conditions make such a project is not feasible at the present time. We believe that speculative holding of the land for future development of a marina project of the highest market accepted density will maximize the use of the subject site and bring the highest return to the land.

AS IMPROVED

The following considerations have been made in addition to those mentioned in the analysis "as vacant".

LEGALLY PERMISSIBLE USE

The marina is a legally permitted use and is currently improved with 87 wet slips. A total of 96 wet slips are permitted.

PHYSICALLY POSSIBLE USES

The subject property is an existing marina on an inlet of the Ashley River in Charleston, South Carolina. This development is one of many on the Ashley River and has access to

deep water and water amenities. The size of the land attributed to the marina at 0.13 net acres is considered reasonable for the use as a wet-slip marina.

FINANCIALLY FEASIBLE USE

It was concluded in the "as vacant" section that a marina development would be the most financially feasible use of the site. The subject has been improved with flotation docks and marina office for an 87-wet slip marina with pump-out stations and docks of sufficient size to accommodate the larger boats in the marketplace. Wet slip marinas are generally more profitable on a sell-out basis than they are as rental units. The site is of size to accommodate the marina but not a condominium project and marina. More land is needed to accommodate parking for the marina. This would be addressed by obtaining parking easements on lands adjoining the subject property and owned by the subject property's owners. Our analysis however assumes the property is a stand-alone operation and we must include acquisition of land costs to support parking requirements.

MAXIMALLY PRODUCTIVE

The final criterion for determining the highest and best use examines which uses are maximally productive. The cost of renovating or modifying the improvements to an alternative use would be cost prohibitive and not maximally productive. The highest and best use will be the use that maximizes the marina asset's value which is a sellout of the marina slips.

METHOD OF VALUATION

The appraisal process typically involves three approaches in determining value, which consists of the Cost Approach, Income Approach and Sales Comparison Approach. A brief description of each technique is as follows:

THE COST APPROACH

An appraisal procedure using depreciated replacement or reproduction costs of improvements plus land value as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more than the cost of producing a substitute property with the same utility as the subject property.

THE INCOME APPROACH

An appraisal procedure using capitalization of expected future income as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more for the subject property than would have to be paid for another property with an income stream of comparable amount, duration and quality.

THE SALES COMPARISON APPROACH

An appraisal procedure using sale prices of properties similar to the subject property as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more for a property than would have to be paid for a similar property of comparable utility.

APPRAISAL PROCEDURES

Since the subject valuation involves the sellout of the marina wet slips, the Cost Approach, the Income Approach and Development Valuation Analysis (DVA) will be used. The computations that accompany each approach will be outlined on the following pages for the reader's reference.

LAND VALUATION

We considered several land sales in the Charleston area that had sold for condominium development. We were unable to find sales of parcels of land that had sold specifically for marina development. Key to finding similar sales for marina development was that each of the sales must have deep-water access. The sales we considered ranged from \$2,058,824 to \$4,955,490 per acre and data sheets for those sales are included in the Addenda of this report. Since there is 0.13 acres attributed to the marina site, there is no room to construct condominium units on the marina site. We therefore considered a price per acre rather a price per unit as being appropriate to value the marina site. In a separate appraisal prepared for this same client on October 16, 2009 for 3.73 adjoining acres, zoned in similar fashion and having similar views as the marina site, we concluded a land value of \$2,070,000 per acre. If we allocated value to the marina site based on this value per acre, the marina site has a preliminary value of \$269,100 ($\$2,070,000 \times 0.13$), rounded to \$270,000. The market does not perceive that a knowledgeable investor would pay \$1,000,000 or more for such a small site of 0.13 acre, but given the scarcity for premium sites, especially those with access to the river and deep-water, we believe it prudent to double our allocated value conclusion for the marina site of \$235,000 to \$540,000 ($\$270,000 \times 2$). We concluded the final value of the subject property being a discounted sellout of the marina slips value at \$9,565,000 which includes the costs to construct the property. We see there is a wide spread that could be applied to the land value. Since we have not relied on the Cost Approach for any concluded value, we have not attempted to further investigate the land value attributable to the tiny marina site of 0.13 acres.

FINAL OPINION OF LAND VALUE ATTRIBUTED TO MARINA SITE OF 0.13 ACRES - SEPTEMBER 25, 2009
\$540,000 (R)

LAND VALUATION FOR RESIDUAL LAND

For the purposes of this report, we have determined that the 1.51 acres of upland has no contributory value to the subject property due to the shape and limited utility of the site and no value assignment will be made.

COST ANALYSIS TO ACQUIRE ADDITIONAL PARKING AREA

Based on our previous analysis with a value of \$2,070,000 per acre for the land, we have determined the cost to acquire the 0.35 acres of land for the additional parking, roads, ingress and egress is \$724,500 ($\$2,070,000 \times 0.35$) or \$725,000 rounded. We then added the cost to complete and stripe the surface parking at \$1,000 per space or \$36,000. The total would be \$761,000 plus a small profit of say 5% for acquisition cost of \$800,000 rounded. We will deduct the land acquisition cost attributed to parking at the end of this report.

IMPROVEMENT VALUATION - MARINA

The owners provided the final hard costs for the marina development, which totaled \$5,138,064 or \$59,058 per wet slip for the 87 existing slips. The total soft costs, which includes engineering, soil studies, impact fees, legal costs, architectural, surveys, insurance, permits and administrative costs, totaled \$658,857 or \$7,573 per wet slip. The total marina development costs, excluding profit and land costs, were \$5,796,921 or \$66,631 per wet slip. To this figure we have added 15% for profit totaling \$869,538. The resulting cost is then \$6,666,459 (\$5,796,921 hard & soft costs + \$869,538 in profit) or **\$6,665,000** rounded. This equates to **\$76,609 per wet slip**.

We are aware of one marina cost comparable which we have utilized in this analysis. This development is located in the Wilmington, NC area. According to information provided by the developer of this 56 wet slip marina, the total hard costs are projected at \$3,243,984 or \$57,928 per wet slip. To this figure, soft costs of 10% and profit of 15% are added. The resulting cost is then \$4,103,639 (\$3,243,984 hard costs + \$324,398 in soft costs + \$535,257 in profit) or \$4,105,000 rounded or \$73,305 per wet slip.

We are of the opinion that the actual construction costs for the subject property are reasonable when compared to those of our cost comparable. The actual construction costs from cost comparables are far more accurate than the cost per Marshall Valuation Service or any other cost service due to the wide variations in the cost to build a marina.

Based on the costs new plus soft costs and developer's profit, and marina land value of \$540,000, plus the cost to acquire the additional land for parking of \$800,000, the total cost is \$8,005,000, **rounded to \$8,000,000**.

Final Opinion of Market Value "As Is" – September 25, 2009
\$8,000,000 (R)

INCOME APPROACH TO VALUE

The income approach is an appraisal procedure that capitalizes an expected income stream into an indication of market value. The underlying premise is that an informed purchaser will pay no more for the subject property than he would have to pay for another property with an income stream of comparable quantity, quality and durability. The first step undertaken is to make an estimate of the gross potential income for the subject property. In order to do this the appraiser must survey the market for comparable properties with which to make a comparison. Our market analysis was concluded earlier in this report.

Thereafter, a vacancy estimate is made based on market conditions at the time of the appraisal. The next step involves estimating the expenses that can reasonably be expected in order to maintain the income stream set forth in the estimate of gross potential income. A comparison of several similar type facilities has been used and an estimate of expenses, by category, results. By deducting vacancy and expenses from gross potential income, an indication of net operating income is derived. It is this figure that is capitalized in order to arrive at a value using the direct capitalization method.

GROSS ANNUAL INCOME ESTIMATE

In order to determine the economic rental rate of the subject property, we reviewed the operating statement for the 9-month period ending September 30, 2009 as well as the 2007 and 2008 operational data provided to us by the owners. The subject property is a wet-slip marina with 87 wet slips of which 69 are presently leased and 2 additional slips are occupied by individuals who are not required to pay rent. One of the slips is occupied by the marina manger/dockmaster, Jennifer Jefferies (Slip B-20), while the other is occupied by Ron Acierno (Slip B-14). According to Ms. Jefferies, Mr. Acierno was one of eleven individuals who signed a contract to buy one of the 80 condominium units which the owners of the subject had planned to develop. When the project fell through due to the rapidly declining condominium market, Mr. Acierno was offered a boat slip for his personal use as long as one was available in the marina. We were told by Ms. Jeffries that Mr. Acierno has helped to bring in several patrons to the marina since he has been docking his boat there. There is no dry storage. The wet-slips are leased on short-term leases of one year. We compared the contract rent for the subject slips with market rent for other marina facilities in the marketplace. Based on our market analysis earlier, we present a summary of the competing properties in chart form:

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

Project Name	Location	Amenities	Size/LF	Rent/LF
The Bristol Marina	Charleston Peninsula along Lockwood Dr.	Average	12' - 70'	\$15.00 - Monthly \$12.50 - Semi-Annually* \$11.75 - \$12.25 - Annual*
The Harborage at Ashley Marina	Charleston Peninsula along Lockwood Dr.	Good	30' - 140'	\$13.00 - \$25.00 - Monthly \$14.50 - Semi-Annually* \$15.50 - Quarterly*
The Charleston Harbor Marina	Mt. Pleasant	Good	33' - 66' 100' - 200' - T-Heads	\$12.50 - \$14.75 - Annual
City Marina	Charleston Peninsula along Lockwood Dr.	Good	30' - 100'	\$16.00 - \$30.00 - Monthly \$13.00 - \$14.50 - Annual*
The Yacht Club at Toler's Cove	Mt. Pleasant	Good	35' - 70'	\$12.00 - Monthly
Bohicket Marina & Yacht Club	Seabrook/Kiawah Islands	Excellent	30' - 117'	\$15.00 - Monthly \$11.50 - Annual
Subject Property	95 Ripley Point Drive	Average	35' - 65'	\$13.00 - Asking \$7.00 - \$18.00 - In-Place

* - Includes Electrical Charges

POTENTIAL GROSS INCOME FROM WET-SLIP RENTALS

The rental rates at the competitive properties represent an average monthly rent from \$11.50 to \$14.75 per lineal foot based on either a semi-annual or annual contract lease term. The subject's asking rent is \$13.00 per foot based on an annual contract. The four marinas located across the Ashley River from the subject property on the Peninsula of Charleston show rents between \$11.75 and \$14.75 per foot. We believe market rent is supported at **\$13.00 per foot**. The current rent roll shows 69 of the 87 units leased, or occupancy of 78.2%. There are two (2) additional slips which are occupied but do not pay rent. Slip B-20 (50' slip) is occupied by the marina manager and slip B-14 (60' slip) is occupied by a friend of the former marina manager. According to the information provided to us by the owners, neither pay rent on the slips.

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

RIPLEY LIGHT YACHT CLUB SLIP INVENTORY*					
Slip # Slip Length - Linear Feet			Slip # Slip Length - Linear Feet		
1	A-1	50	47*	B-1	40
2	A-2	50	48*	B-2	40
3	A-3	50	49*	B-3	40
4	A-4	50	50*	B-4	40
5	A-5	50	51*	B-5	40
6	A-6	65	52*	B-6	40
7	A-7	65	53*	B-7	40
8	A-8	65	54*	B-8	40
9	A-9	65	55*	B-9	40
10	A-10	65	56	B-10	60
11	A-11	65	57	B-11	60
12	A-12	65	58	B-12	60
13	A-13	65	59	B-13	60
14	A-14	65	60&	B-14	60
15	A-15	65	61	B-15	50
16	A-17	30	62	B-16	50
17	A-18	45	63	B-17	50
18	A-19	40	64	B-18	50
19	A-20	40	65	B-19	50
20	A-21	48	66	B-20	50
21	A-22	48	67	B-21	50
22	A-23	40	68	B-22	50
23	A-24	40	69	B-23	50
24	A-25	48	70	C-1	50
25	A-26	48	71	C-2	50
26	A-27	40	72	C-3	50
27	A-28	30	73	C-4	50
28	A-29	48	74	C-5	50
29	A-30	49	75	C-6	50
30	A-31	30	76	C-7	40
31	A-32	30	77	C-8	40
32	A-33	30	78	C-9	40
33	A-34	30	79	C-10	40
34	A-35	49	80	C-11	40
35	A-36	50	81	C-12	40
36	A-37	50	82*	C-13	36
37	A-38	50	83*	C-14	36
38	A-39	43	84*	C-15	36
39*	A-40	43	85*	C-16	36
40*	A-41	50	86*	C-17	45
41	A-42	50	87*	C-18	45
42	A-43	50			
43	A-44	50			
44*	A-45	43			
45*	A-46	43			
46	A-47	50			

Highlighted slips indicate available slips

*- Indicates Slip is a Facedock

#- Indicates Slip is occupied by marina manager and no rent is paid

&- Indicates Slip is occupied by friend of marina manager and no rent is paid

Total	A	2,235	Total	B & C	1,884
Total Linear Feet					4,119
Average Size in Linear Feet					47.34

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

The rent roll provided (and shown in the addenda) indicates monthly rent on the 69 leased slips totals \$41,424. We considered the rent roll for an analysis of average rent per lineal foot of slip as shown below:

SLIP SIZE	50'	65'	60'	40'	30'	49'	48'	45'	43'	90'	102'
# EACH	22	8	2	16	6	2	5	1	2	1	1
AVG RENT	\$13.27	\$14.07	\$10.00	\$10.97	\$13.61	\$13.13	\$13.16	\$13.29	\$11.49	\$10.80	\$18.00
TOTAL # LF	1100	520	120	640	180	98	240	45	86	90	102
											3221

NOTES:

50' Slips 1 slip is for marina manager and no rent is paid (Not Included Above)
 60' Slips 1 slip is for friend of marina manager and no rent is paid (Not Included Above)
 40' Slips 3 boat owners lease 2 facedock slips each at reduced rate
 90' Slip Consists of 3, 45' Facedock Slips
 102' Slip Consists of 2, 45' Facedock Slips

Total # Slips	87
Total # Slips Leased	69
Total # Slips Occupied	71

LF Slips Leased	3221
Total LF of Slips	4119
% Leased (LF)	78.20%

Market Rent	\$13.00
Actual Leased LF	3221
Monthly Rent Potential	\$41,873

*- The chart above shows a total of only 66 slips instead of the 69 which are leased. The 90' slip is actually two slips and the 102' slip is composed of three slips.

Based on the information provided, we input the actual leased lineal feet totaling 3,221 with market rent of \$13.00/LF to derive a monthly rent potential of \$41,873 or \$502,476 per annum. This is very close to the \$41,424 reported for the subject by the owner in the rent roll provided to us. We would conclude then that the subject's rent levels for the 69 leased slips are at market.

For the remaining 18 slips (16 vacant and 2 occupied but not paying rent), we have applied market rent at \$13.00 per foot per month with the total of 898 lineal feet, resulting in \$140,088 (\$13/LF/month x 898 LF x 12 months). Based on this analysis, the scheduled base rent from slip rentals in the first 12 months at **\$642,564** (\$502,476 + \$140,088). The un-leased slips are shown to be about the same as the average rental rates in place.

OTHER INCOME

The subject property reported other income for 2007 at \$194,283 (\$2,233 per slip) and \$72,024 (\$828 per slip) in 2008. The annualized 2009 other income is -\$694 or -\$8 per slip. This category includes interest income on deposits and late fees. According to the marina manager, these interest income items were added on December 31 of each year by the

accountant and are likely related to legal disputes between Kriti Ripley, LLC and Stuart Longman. This income is in no way associated with the operations of the marina according to Jennifer Jeffries, the marina manager, and has been excluded in our analysis. There has been no interest income recorded to date in 2009 which has made up the majority of the other income in 2007 and 2008. Our projection for the first 12 months is **\$0**.

ELECTRICAL SERVICE REIMBURSEMENT

The subject provides dockage electrical services to all tenants and each service is metered separately. The annualized historical data indicates reimbursements totaled \$15,214 for 2007 and \$38,318 in 2008. The annualized 2009 reimbursements would be \$48,317. We have projected the Year One reimbursements at **\$50,000** or **\$575 per slip**.

MARINA STORE SALES INCOME

The subject property operates a shop sales office for parts, materials and supplies (excluding fuel) including marine batteries, propellers, keys, switches, light bulbs, fishing rods, tackle accessories, clothing and other items. We have also included environmental and safety fees in this category which were added in 2009 at the subject property. The subject reported income from this source totaling \$4,592 in 2007 and \$14,852 in 2008. The annualized 2009 reimbursements would be \$28,607. Our projection gives credence to the relatively stable figures presented for 2007 and 2008 at **\$287 per slip** or **\$25,000 annually**.

POTENTIAL REVENUES

Potential revenues in Year One total **\$717,564** (\$642,564+\$50,000+\$25,000) or **\$8,248 per slip**.

VACANCY AND COLLECTION LOSS

In order to estimate vacancy loss, we utilized local market data for actual rates at competing marina facilities. The comparable properties were surveyed, and occupancies ranged from 50% to 100%. Our findings are summarized in the following table.

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

Project Name	Location	Amenities	Slip Size/LF	Rent/LF	Occupancy Rate
The Bristol Marina	Charleston Peninsula along Lockwood Dr.	Average	12' - 70'	\$15.00 - Monthly \$12.50 - Semi-Annually* \$11.75 - \$12.25 - Annual*	72.0%
The Harborage at Ashley Marina	Charleston Peninsula along Lockwood Dr.	Good	30' - 140'	\$13.00 - \$25.00 - Monthly \$14.50 - Semi-Annually* \$15.50 - Quarterly*	85.0%
The Charleston Harbor Marina	Mt. Pleasant	Good	33' - 66' 100' - 200' - T-Heads	\$12.50 - \$14.75 - Annual	84.0%
City Marina	Charleston Peninsula along Lockwood Dr.	Good	30' - 100'	\$16.00 - \$30.00 - Monthly \$13.00 - \$14.50 - Annual*	82.0%
The Yacht Club at Toler's Cove	Mt. Pleasant	Good	35' - 70'	\$12.00 - Monthly	100.0%
Bohicket Marina & Yacht Club	Seabrook/Kiawah Islands	Good	30' - 117'	\$15.00 - Monthly \$11.50 - Annual	50.0%
Subject Property	95 Ripley Point Drive	Average	35' - 65'	\$13.00 - Asking \$7.00 - \$18.00 - In-Place	79.3%

* - Includes Electrical Charges

Of course, many of the marinas have sold units as dockominium units and these unit owners are in turn, are leasing in the open market. We found general market vacancy due to turnover of about 20%. The subject posted occupancy at 79.3% at the time of our inspection with 69 of 87 slips leased and 81.6% occupied when the 2 complementary slips are added. The subject is considered to be stabilized at the present time.

Large cruisers, yachts and motorized sailboats that sail the Intercoastal Waterway between New York and South Carolina during the summer months, routinely head for warmer waters in South Florida or the Caribbean in the late fall and winter. In the spring, these large vessels return to the upper ICW. Therefore, occupancy at a given marina can fluctuate. Giving weight to the market occupancy levels, we project stabilized occupancy for the subject at 80%. This totals vacancy loss in Year One is **\$143,513** (\$717,564 x 0.20) or **\$1,650 per slip**.

EFFECTIVE GROSS INCOME

The effective rental income is the calculation of gross potential income less vacancy. Our analysis concludes effective gross income for the subject in Year One at **\$574,051** (\$717,564 - \$143,513) or **\$6,598 per slip**. The annualized 2009 effective gross income is higher than our projected gross income due to our vacancy and collection loss being taken on store sales and electrical fees. Additionally, the marina will typically lose a number of renters who then return in the spring due to taxes on boats which are docked for longer than 6 months.

ANALYSIS OF EXPENSES

We have provided reconstructed operating statements for 2007, 2008 and the 9-month period ending September 2009 with 87 operational slips. These statements show the various and accepted expenses as a cost per slip and percentage of effective gross income. As stated, the income statement shows rental income for 69 leased slips and we believe the rental income shown includes varying levels of rent, both below and above-market. The subject property is considered to be stabilized. We have considered the expenses for the subject property as well as other marinas in the southeast. We also had access to the line-item expense survey prepared by the International Marina Institute's *Financial and Operational Benchmark Study for Marina Operators* published in 2000 which is the most recent available. The Institute is an International Trade Organization for owners and operators of marinas. The survey is broken down by region in the US and by the top 25% of marinas. This survey is presented on the following pages and will be referred to as the FOBS in our discussion section.

Reconstructed Operating Statement Year Ending December 2007 Ripley Light Yacht Club Marina				Reconstructed Operating Statement Year Ending December 2008 Ripley Light Yacht Club Marina				Reconstructed Operating Statement 9 Months of 2009 - Annualized Ripley Light Yacht Club Marina			
Income	\$	\$/ Slip	% EGI	Income	\$	\$/ Slip	% EGI	Income	\$	\$/ Slip	% EGI
Rental Income from Slips	\$383,626	\$4,409	95.22%	Rental Income from Slips	\$487,282	\$5,601	90.09%	Rental Income from Slips	\$554,554	\$6,374	87.92%
Utilities	\$15,214	\$175	3.78%	Utilities	\$38,318	\$440	7.08%	Utilities	\$48,317	\$555	7.66%
Marina Goods & Services Sales	\$4,592	\$53	1.14%	Marina Goods & Services Sales	\$9,492	\$109	1.75%	Marina Goods & Services Sales	\$20,250	\$233	3.21%
Environmental & Safety Fees	\$0	\$0	0.00%	Environmental & Safety Fees	\$5,360	\$62	0.99%	Environmental & Safety Fees	\$8,357	\$96	1.32%
Penalties	\$700	\$8	0.17%	Penalties	\$1,135	\$13	0.21%	Penalties	\$893	\$10	0.14%
Discounts	-\$450	-\$5	-0.11%	Discounts	\$0	\$0	0.00%	Discounts	-\$105	-\$1	-0.02%
Other Income (Invoice Adjustments)	-\$800	-\$9	-0.20%	Other Income (Invoice Adjustments)	-\$700	-\$8	-0.13%	Other Income (Invoice Adjustments)	-\$1,482	-\$17	-0.23%
Effective Gross Income	\$402,882	\$4,831	100.00%	Effective Gross Income	\$540,887	\$6,217	100.00%	Effective Gross Income	\$630,783	\$7,250	100.00%
Operating Expenses				Operating Expenses				Operating Expenses			
Salaries & Wages	\$41,920	\$482	10.41%	Salaries & Wages	\$78,823	\$906	14.57%	Salaries & Wages	\$81,820	\$940	12.97%
Insurance (General Liability)	\$56,321	\$647	13.98%	Insurance (General Liability)	\$107,169	\$1,232	19.81%	Insurance (General Liability & Env Risk)	\$63,060	\$725	10.00%
Property Taxes	\$47,015	\$540	11.67%	Property Taxes	\$51,699	\$594	9.56%	Property Taxes	\$0	\$0	0.00%
Utilities	\$49,605	\$570	12.31%	Utilities	\$75,640	\$869	13.98%	Utilities	\$106,201	\$1,221	16.84%
Cost of Goods Sold - Marina Shop	\$13,640	\$157	3.39%	Cost of Goods Sold - Marina Shop	\$20,250	\$233	3.74%	Cost of Goods Sold - Marina Shop	\$21,700	\$249	3.44%
Advertising	\$1,248	\$14	0.31%	Advertising	\$17,577	\$202	3.25%	Advertising	\$4,501	\$52	0.71%
Repairs & Maintenance	\$20,151	\$232	5.00%	Repairs & Maintenance	\$15,795	\$182	2.92%	Repairs & Maintenance	\$15,726	\$181	2.49%
Marina Services	\$3,387	\$39	0.84%	Marina Services	\$724	\$8	0.13%	Marina Services	\$682	\$8	0.11%
General & Administrative	\$5,183	\$60	1.29%	General & Administrative	\$24,807	\$285	4.59%	General & Administrative	\$10,217	\$117	1.62%
Management Fees	\$0	\$0	0.00%	Management Fees	\$0	\$0	0.00%	Management Fees	\$0	\$0	0.00%
Replacement Reserves	\$0	\$0	0.00%	Replacement Reserves	\$0	\$0	0.00%	Replacement Reserves	\$0	\$0	0.00%
Total Operating Expenses	\$238,470	\$2,741	59.19%	Total Operating Expenses	\$392,483	\$4,511	72.56%	Total Operating Expenses	\$303,908	\$3,493	48.18%
Net Operating Income	\$164,412	\$1,890	40.81%	Net Operating Income	\$148,403	\$1,706	27.44%	Net Operating Income	\$326,876	\$3,757	51.82%

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

Comparable Operating Expenses					
	Comparable One		Comparable Two		Marine Institute
<i>Income</i>	Per Slip	%	Per Slip	%	%
Wet Slips Leases	\$3,885	61.50%	\$3,151	75.59%	N/A
Fuel Sales	\$0	0.00%	\$248	5.95%	N/A
Electrical Reimbursement	\$274	4.40%	\$0	0.00%	N/A
Marina Shop Sales	\$0	0.00%	\$351	8.42%	N/A
Other Income	\$2,150	34.10%	\$418	10.04%	N/A
Effective Gross Income	\$6,309	100.00%	\$4,168	100.00%	N/A
Operating Expenses					
Salaries & Wages	\$709	11.24%	\$2,329	55.88%	17.10%
General & Administrative	\$619	9.81%	\$179	4.29%	2.60%
Utilities	\$716	11.35%	\$121	2.90%	4.00%
Property Association Dues	\$236	3.74%	\$0	0.00%	0.00%
Telephone	\$0	0.00%	\$7	0.17%	0.40%
Repairs & Maintenance	\$426	6.75%	\$526	12.62%	5.30%
Fuel Costs	\$0	0.00%	\$231	5.54%	3.20%
Property Taxes	\$12	0.19%	\$0	0.00%	1.90%
Insurance	\$841	13.33%	\$294	7.05%	1.90%
Advertising	\$168	2.66%	\$2	0.05%	1.40%
Management Fees	\$0	0.00%	\$0	0.00%	0.00%
Replacement Reserves	\$0	0.00%	\$0	0.00%	0.00%
Other	\$0	0.00%	\$0	0.00%	14.60%
Total Operating Expenses	\$3,727	59.07%	\$3,689	88.51%	52.40%
Net Operating Income	\$2,582	40.93%	\$479	11.49%	

OPERATING EXPENSES

SALARIES & WAGES

This expense category generally includes salaries and wages of personnel and management including overtime, holiday and vacation pay. Also included in this category are employee benefits and payroll taxes such as federal, state, social security and workmen's compensation. Within the comparables, this item ranged from \$709 to \$2,329 per slip or 11.30 to 55.88 percent of the effective gross income. The FBOS study showed an average expense of 17.10 percent of effective gross income.

The subject reported expenses for 2007 at \$41,920 or \$482 slip; and \$78,823 or \$906 per slip in 2008. The annualized 2009 amount is \$81,820. We considered the office and maintenance staffing for a marina the size of the subject which includes a marina manager, a maintenance person and three dock hands. Based on this we have concluded an expense of **\$80,000 annually** to be reasonable. This totals **\$920 per slip**. As a percentage of EGI, this totals **13.9%**.

PROPERTY INSURANCE

This expense category takes into consideration the insurance on the structures, as well as equipment necessary to operate the marina, including the furniture and fixtures. A review of the annualized historical data from the subject property indicates an insurance expense of \$56,321 or \$647 per slip in 2007 and \$107,169 or \$1,232 per slip in 2008. For the 2009, this expense is \$63,060 or \$725 per slip.

We have noted the subject property is in a flood hazard area on the Intercoastal Waterway. Insurance companies, with marina properties in their portfolios, which have some exposure in hurricane-prone areas have seen their costs escalate in the last five years. As such, many insurance companies are increasing their premiums to hedge against future losses, especially to existing properties prone to hurricane damage. The subject property is in this classification.

The comparables reported this expense as ranging from 7.05% to 13.33% of EGI and \$294 to \$841 per slip. The FOBS study indicated an expense of 1.90% of effective gross income. We have noted the subject property is in a flood hazard area in Charleston. Insurance companies with marina properties in their portfolios that have exposure in hurricane-prone areas; these companies have seen their costs escalate in the last five years. As such, many insurance companies are increasing their premiums to hedge against future losses, especially to existing properties prone to hurricane damage. The subject property is in this classification. We note that 2006 and 2007 were years of adjustment for insurance companies following catastrophic losses incurred in the Gulf Coast region as a result of Hurricane Katrina. While this hurricane did not have a direct physical impact on the subject property, the location and use of the subject structure as a marina having close access to the Atlantic Ocean has an impact on future premiums against losses.

We project an expense of **\$65,000 or \$747 per slip** for the subject property after giving credence to the actual 2009 premiums and the expense comparables. As a percentage of EGI, our figure totals **11.3%**.

REAL ESTATE (PROPERTY) TAXES

Property taxes for the subject property were previously estimated to be **\$36,750** or **\$422 per slip**. As a percentage of EGI, our projection is **6.4%**.

UTILITIES

This expense category includes the cost of electricity and water, telephone, cable television, internet, operation of the ship-to-shore radio systems, and natural gas costs. This expense is anticipated to be small since the office structure is very small with only the office and common areas heated and cooled, and utilities are regulated at each slip with a meter. Further, wet slip electrical charges are reimbursed.

The study of our comparables shows an expense related to this category at a wide range between 2.90% and 11.40% or \$121 to \$716 per slip. FBOS showed an average of 4.00%. The subject reported the 2007 expense at \$49,605 or \$570 per slip and 2008 expenses were \$75,640 or \$869 per slip. For the first nine months of 2009, this expense has totaled \$79,651 which equals \$106,201 when annualized. We spoke with the marina manager for the subject property, Jennifer Jeffries, who explained that there were likely two main factors which have contributed to the escalating utilities costs over the past 2 plus years. First is that in 2007, the dock was set up with individual meters for each slip which was billed directly to the slip renter each month. The occupants during this time were likely more conservative in their energy usage as they were billed on an individual basis. The individual meters were removed in 2008 due to a large percentage of the meters not working properly. Once the meters were removed, a fixed monthly electrical charge was implemented. When the flat fee was implemented, the occupants became less concerned with the amount of electricity they were using since they paid a flat fee. The second variable is the increase in the occupancy rate of the marina from 2007 to present. Our projection is based on historical 2008 figures and the annualized 2009 numbers taking into account the electricity usage is typically less in the winter and fall months as compared to the spring and summer months. We have projected the utilities expense at **\$100,000 annually** or **\$1,149 per slip**. As a percentage of EGI, our projection is **17.4%**.

COST OF GOODS SOLD - MARINA STORE

This category is included as an expense for the cost of goods sold in the marina shop, inclusive of bait, ice, the ship's store, service items, etc. The historical data indicates 2007 expenses were \$17,027 or \$196 per slip. This increased to \$20,974 and \$241 per slip in 2008. For the first nine months of 2009, this expense totaled \$16,275. The comparable data did not include cost of goods sold as an expense item. The FBOS data did not include this either since it is a going-concern expense related to the operation of the marina.

Our projection is based on the tight range shown between 2007 and 2008 as an expense and we project **\$21,000** for the coming year. This amounts to **\$241 per slip**. As a percentage of EGI, our projection is **3.7%**.

ADVERTISING

This expense includes advertising, publicity, and other promotional expenses such as printing, newspaper, magazine and Internet web space. The comparables study shows an expense range from 0.05% to 2.66% of EGI. FBOS had an average of 1.40%. The subject reported this expense at \$14 per slip in 2007; \$202 per slip in 2008; and \$39 per slip for the first 9 months of 2009. Our projection is **\$100 per slip** or **\$8,700 annually**. As a percentage of EGI, our projection is **1.5%**.

REPAIRS & MAINTENANCE

This expense category includes the cost of materials used in repairing equipment, mechanical systems, exterior and interior of building (floors, walls, doors), grounds and landscaping, painting and decorating (excluding capital repairs), the removal of waste matter, and other related expenses necessary for the upkeep of the marina facility. The study of our comparable marina's data indicated a range of 6.75% to 12.62%, or \$426 to \$526 per slip, with FBOS being at 5.30%.

The subject reported an annual expense of \$29,212 or \$336 per slip in 2007 and \$54,312 or \$624 per slip in 2008. For the first nine months of 2009, this expense has totaled \$49,335 which equals \$65,780 when annualized. We spoke with the marina manager for the subject property, Jennifer Jeffries, who explained that there were numerous items included as repairs & maintenance which were actually capital improvements. She stated that there were numerous punch list items as well as other things such as pouring concrete for walkways, upgrades to the marina office and restrooms, etc. Given this information, we project an expense in this category of **\$30,000 annually** or **\$345 per slip**. As a percentage of EGI, our projection is **5.2%**. Our estimate is considered to be reasonable given the age of the improvements and overall condition of the property at the time of inspection.

GENERAL & ADMINISTRATIVE

This expense generally includes data processing services, general insurance, licenses and dues, operating supplies, professional fees, security services, travel and entertainment, reservation, and other relating such expenses. The comparables reported this item ranging from 4.29% to 9.81% or \$179 to \$619 per slip. FBOS showed an average expense of 2.60%. The subject reported this expense for 2007 at \$5,183 or \$60 per slip and \$24,807 or \$285 per slip in 2008. For the first nine months of 2009, this expense totaled \$7,662. The 2008 figures included a \$10,675 Miscellaneous Professional Services expense. Our projection is between

the 2007 and 2008 figures at **\$15,000** and **\$172 per slip**. As a percentage of EGI, our projection is **2.6%**.

MANAGEMENT FEES

Though the subject did not report this as an expense for the annualized term, we have factored in a management fee for services and supervision of the property. Management fees are expressed as a percentage of effective gross income, less revenues from goods sold. Neither of our comparables nor the FOBS study reported any management fee expense. Our experience in appraising marina properties and discussions with brokers indicates a management fee between three and four percent to be reasonable. We have utilized a fee of **3.50%** of effective gross revenues. In Year One, management fees total **\$20,092** or **\$231 per slip**.

RESERVES

We also included an allowance for reserves to replace short-lived items. Our experience indicates few if any marina property (including the subject) actually report reserves. Our expense is reported as a percentage of effective gross income at **2.0%**. This amounts to **\$11,481** or **\$132 per slip**.

EXPENSE SUMMARY

Our estimated expense for the subject in Year One total **\$388,023** and **\$4,460 per slip**. As a percentage of EGI, our projected expenses are **67.6%**.

By comparison, the subject's 2007 expense were \$238,470; \$2,741 per slip; and 59.19% of EGI. In 2008, these expenses were \$392,483; \$4,511 per slip; and 72.56% of EGI. The expenses for the first nine months of 2009 total \$230,192 which excludes real estate taxes, management fees and reserves. This increases to \$340,658 when it is annualized and real estate taxes are added. This equates to \$3,916 per slip; and 54.00% of EGI. The subject historical expenses do not include provisions for management fees or reserves. The FOBS study and comparables indicate an expense range between 52.40% and 88.51%. Our stabilized expense ratio is within this range.

NET INCOME

The net income for Year One is derived by deducting expenses of \$388,023 from effective gross income totaling \$574,051. This results in a net operating income of **\$186,028** or **\$2,138** per slip.

A summary of the projected income and expenses is presented on the following page:

Ripley Light Yacht Club Marina Stabilized Direct Capitalization Summary 87-Wet Slips			
	\$ Amount	% EGI	\$ / Slip
Income:			
Slip Rentals	\$642,564		\$ 7,386
Other Income	\$0		\$ -
Electric Reimbursement	\$50,000		\$ 575
Marina Shop Sales Income	\$25,000		\$ 287
Gross Potential Income	\$717,564		\$ 8,248
Less Vacancy	(\$143,513)	20.0%	
Effective Gross Income	\$574,051	100.0%	\$ 6,598
Expenses:			
Salaries & Wages	\$80,000	13.9%	\$ 920
Property Insurance	\$65,000	11.3%	\$ 747
Property Taxes	\$36,750	6.4%	\$ 422
Utilities	\$100,000	17.4%	\$ 1,149
Cost of Goods Sold - Marina Store	\$21,000	3.7%	\$ 241
Advertising	\$8,700	1.5%	\$ 100
Repairs & Maintenance	\$30,000	5.2%	\$ 345
General & Administrative	\$15,000	2.6%	\$ 172
Management Fees	\$20,092	3.5%	\$ 231
Reserves	\$11,481	2.0%	\$ 132
Total Expenses	\$388,023	67.6%	\$ 4,460
Net Operating Income	\$186,028	32.4%	\$ 2,138

CAPITALIZATION PROCESS

In order to capitalize the net operating income into a value opinion, we spoke with brokers active in the sale of marina properties on the East Coast in order to arrive at an appropriate capitalization rate for the subject property. We talked at great length with Jim Foley of Jim Foley Realty of Cambridge, Massachusetts. Mr. Foley has over 35 years experience in the sale of wet-slip, dockominium and rackominium marina facilities. According to Mr. Foley, few wet slip marinas are actually leased as it is proven financially feasible to sell the units as dockominium units rather than rent them on short-term contracts. Additionally, the market for wet-slip marinas on the Atlantic Coast has fallen in over the past 12 to 24 months as the equity requirements for investors has increased due to the economic downturn. Further, there are a limited number good quality of these properties available. Inland marinas, sometimes referred to as freshwater marinas, appear to be more favorable since these marinas generally cater to smaller boats than would be found on the ICW and Atlantic. Boat dealers report to us that large boats (with more engines, requiring more fuel) are falling out of favor in the marketplace and buyers are turning to smaller boats that require less fuel to operate.

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

According to Mr. Foley, marina properties where a going-concern value can be established (both inland and Intracoastal locations) are selling at capitalization rates between 10.50% and 12.50%, based on stabilized cash flows with expense ratios range from 55% to 65% which include deductions included for management fees at 3.00% and reserves at 1.00% to 2.00%. This is in-line with our valuation method. The subject property does not have any other income stream other than the rental income from the slips and a very small amount of income generated from marina store sales. Therefore, the risk associated with the subject property as it relates to the stability of the income stream would be much less than that of other properties which provide services such as marine repairs, fuel sales, boat launching services, food services, etc. Therefore, the capitalization rates for properties such as the subject would be much lower due to the reduced risk associated with the income stream.

We also considered opinions of other brokers such as Karen Calvacca with Waterfront Investment Properties in Newburyport, Massachusetts who stated that capitalization rates for leased marinas is currently in the 8.00 to 10.00 percent now as opposed to 5.00 to 6.00 percent a few years ago. We also considered some sales of marina properties in the Southeastern United States which have sold in the last four years. These are discussed below:

Sale #	Name	Location	Sale Date	# Wet Slips	# Dry Slips	Occupancy	Sale Price	Year Built	Exp Ratio	NOI	OAR
1	Atlantis Marina	Winthrop, MA	Feb-09	99	0	100%	\$ 2,750,000	1992/2008	39.94%	\$196,222	7.14%
2	De City Marina	Delaware City, DE	Apr-08	114	0	100%	\$ 2,750,000	1980/2007	N/A	\$293,975	10.69%
3	High Grove Harbor	Eatonton, GA	Nov-07	18	79	100%	\$ 1,064,250	1970/2003	18.28%	\$110,339	10.37%
4	Wacca Wache Marina	Murrells Inlet, SC	Feb-07	130	112	N/A	\$ 14,425,000	1990	28.00%	\$721,759	5.00%
5	Silver Coat Marina	N. Myrtle Beach, SC	Dec-06	0	220	N/A	\$ 4,325,000	1997	32.00%	\$388,329	8.98%
6	Duncans Marina	Charleston, SC	Aug-06	60	220	100%	\$ 9,543,000	1980	59.64%	\$838,750	8.79%
7	Alafia Marina	Gibsonville, FL	Aug-06	130	0	95%	\$ 6,600,000	1964	N/A	\$336,000	5.06%
8	Bahia Bleu	Savannah, GA	Sep-05	50	220	90%	\$ 4,000,000	1979	56.84%	\$325,191	8.13%
9	Mangrove Marina	Taverne, FL	Jul-05	130	80	98%	\$ 10,000,000	1980	36.84%	\$888,912	8.89%
10	Reserve Harbour	Pawley's Island, SC	Jun-05	50	210	90%	\$ 4,800,000	2001	60.95%	\$294,222	6.13%
11	Harborage at Ashley	Charleston, SC	Apr-05	223	0	N/A	\$ 8,909,500	1970	52.00%	\$600,000	6.73%
12	Daniel Island Marina	Daniel Island, SC	Jun-04	44	300	N/A	\$ 5,500,000	1995	48.50%	\$554,905	10.09%
13	Ripley Light Marina	Charleston, SC	Apr-04	76	124	N/A	\$ 4,519,250	1988/1993	39.30%	\$481,300	10.65%
14	Shem Creek Marina	Mt. Pleasant, SC	May-03	7	201	N/A	\$ 3,905,000	1991/1993	46.10%	\$351,500	9.00%

Source: CB Richard Ellis, Cushman Wakefield, various marina brokers and appraisers

ATLANTIS MARINA is our newest Atlantic Ocean marina sale and is located in Suffolk County, Massachusetts and is located just north of Boston. It sold in February 2009 for \$2,750,000. This 99 slip property is located near the Residences of Atlantis Marina, an upscale condominium complex under construction. Owners of the condominium units are the target renters of this sale property. The property is entirely wet storage which is uncommon on the Atlantic Coast. The sale property is structural steel construction with stucco veneer. The property was reportedly at 100% occupancy at the time of sale. Based on the purchase price stated, the selling price per slip was \$27,778. The net operating income was reported at \$196,222 which indicates an overall rate of 7.14%. This sale would be superior to the subject with regard to location and occupancy. We believe the subject would have a higher overall rate than is indicated by this sale.

HIGH GROVE HARBOR MARINA in Eastonton, Georgia sold in November 2007 for \$1,064,250. This 1.76 acre property is located on Lake Sinclair just outside of Milledgeville, Georgia. This property has 97 slips, which equates to a purchase price per slip of \$10,972. The property was reported 90% occupied at the time of sale. The dry storage building is similar to the subject property and was built in 1978. The marina also has a ship store, repair shop and detail shop. There is no available fuel at this property. This property sold on a net operating income of \$110,339 which results in an overall rate of 10.37%. The subject property is considered to be superior to this comparable with regard to location, age/condition and quality but inferior in occupancy. We believe the subject would be more desirable in the marketplace than this sale and have a lower overall rate due to the lower risk associated with the income stream.

RIVERS EDGE MARINA, formerly known as **Duncan's Marina**, is located in Charleston, South Carolina at 4354 Bridge View Drive. This facility has 220 dry slips and 60 wet slips. At the time of sale in August 2006, the property was 100% occupied and had a waiting list for slip rentals. This property was purchased with the intent to convert the property to dockominium units. The net operating income was \$838,750. The purchase price was \$9,543,000, indicating an overall rate of 8.79%. The income is reported to include fuel sales. The subject property is superior in age/condition, quality and location. This sale occurred in 2006 and capitalization rates have increased since that time. Overall, we believe the overall rate for the subject would be lower than this sale.

BAHIA BLEU is located in Savannah, Georgia and is approximately one hour's drive south of the subject property. The property was formerly known as Fountain Marina and later redeveloped as Bahia Bleu Marina in 2002. This marina has 220 dry slips and 50 wet slips with good ocean access which is similar to the subject. The subject property is superior in location and age/condition compared to this comparable. The property sold in September 2005 for \$4,000,000 on net operating income of \$325,191, indicating an overall rate of 8.13%. The property was reported to be 90% occupied at the time of sale. The expense ratio was 56.84% which included management fees and reserves. This sale occurred in 2005 and capitalization rates have increased since that time. Overall, we believe the overall rate for the subject would be similar to this sale.

RESERVE HARBOR MARINA is located in Pawley's Island, South Carolina, about one hour's drive north of the subject property. This marina has 210 dry slips and 50 wet slips and was reported to be 90% occupied at the time of sale in June 2005. The property sold for \$4,800,000 or \$18,462 per slip. It was built in 2001. The net operating income was reported at \$294,222 with an expense ratio of 60.95%. The resulting overall rate was 6.13%. This property had considerably more amenities than the subject including a clubhouse, a pool

and restaurant as well as having a higher occupancy rate and is considered superior to the subject. The comparable has inferior ocean access to the subject. This sale occurred in 2005 and capitalization rates have increased since that time. Overall, we believe the overall rate for the subject would be higher than this sale.

These five sales discussed above indicate capitalization rates ranging from 6.13% to 10.37% with an average of 8.11%. Sales of purely wet slip marinas were difficult to find as wet slip marinas are generally sold in a discounted sellout. These sales, while regional, represent both wet and dry slips with some added amenities not found at the subject property. Based on the information provided and giving credence to the sales and discussions with market participants, we believe an overall rate of **8.25%** is appropriate. This capitalization rate reflects the future possibility of dockominium conversion.

The net operating income of \$186,028 capitalized at 8.25% results in a value of \$2,254,890 rounded to **\$2,255,000**. On a per slip basis, this totals **\$25,920 per slip**.

FINAL OPINION OF MARKET VALUE "AS IS" – September 25, 2009
\$2,255,000 (R)

MARINA DOCKOMINIUM, DEVELOPMENT VALUATION ANALYSIS

The development valuation analysis is used for sales of the subject wet slips. The methodology is the same as for the residential condominium analysis. We have analyzed a number of dockominium sales in the Charleston area in order to determine the values of each dockominium unit at completion of construction.

DOCKOMINIUM RETAIL PRICING

A market study was made of dockominium developments in the Charleston area to determine the reasonableness of the developer's contract and asking prices. Although requested, we do not have a list of the prospective buyers of the subject's slips. The subject's slips are currently being rented on short-term annual contracts at \$13.00/LF. The marina manager/dockmaster of the subject, Jennifer Jeffries, has reported that no slips are for sale, only leased. Although the slips are leased on short-term annual contracts, we have been asked to value all of the slips as if they will all be sold without reservation or lease. Next, we evaluated the prices of several dockominium communities believed comparable to the subject. There have been very few sales over the past 18 - 24 months due to majority of the projects having been previously sold out and all the sales are re-sales. A complete discussion of these projects is shown in the Market Analysis section of this report. A summary of each is discussed below:

Project Name	Location	Amenities	Presale %	Absorption/Qtr	Size/LF	Price/LF	Avg Price/LF
Ripley Cove *- Sales began in 2004 *- Last sales occurred in 2007	Acorss inlet from subject property	Average	70%	15	40' avg. 14 MLS Listings	\$1,226 - \$4,750 \$1,450 - \$1,583	\$3,067 \$1,503
The Harborage at Ashley Marina *- Sales began in 2005	Charleston Peninsula	Good	80%	12	30' - 140' 2009 - 1 Sale 2008 - 2 Sales 13 MLS Listings	\$2,000 - \$3,222 \$1,900 \$2,623 - \$3,000 \$1,475 - \$3,075	\$2,186 \$1,900 \$2,612 \$2,477
Wild Dunes Yacht Harbor *- Sales began in 2001	Isle of Palms	Good	n/a	n/a	35' - 50' 2009 - 1 Sale 2008 - 4 Sales 5 MLS Listings	\$2,723 - \$3,333 \$3,500 \$3,500 - \$5,000 \$4,300 - \$5,625	\$3,000 \$3,500 \$4,025 \$4,850
The Yacht Club at Toler's Cove *- Sales began in 1995	Mt. Pleasant	Good	n/a	n/a	35' - 70' 2009 - 1 Sale 2008 - 3 Sales 5 MLS Listings	\$3,176 - \$3,427 \$4,000 \$4,079 - \$5,238 \$3,286 - \$4,560	\$3,300 \$4,000 \$4,650 \$4,269
Bohicket Marina & Yacht Club *- Sales began in 2005	Seabrook Island	Good	60%	17	30' - 117' 2009 - 1 Sale 2008 - 3 Sales 3 MLS Listings	\$4,000 - \$5,000 \$1,511 \$1,330 - \$3,326 \$2,727 - \$3,978	\$4,500 \$1,511 \$2,573 \$3,561
St. John's Yacht Harbor *- Sales began in 2008	Johns Island	Good	9%	1.6	35' - 80' 2009 - 1 Sale 2009 - 8 Sales with Lifts 2008 - 9 Pre-Sales 12 MLS Listings 2 MLS Listings w/lift	\$2,875 - \$3,450 \$3,450 \$3,575 \$2,875 - \$3,450 \$3,090 - \$3,492 \$3,997 - \$4,140	\$3,050 \$3,450 \$3,575 \$3,050 \$3,203 \$4,069
Subject - Ripley Light Yacht Club	95 Ripley Point Drive	Average	n/a	n/a	35' - 65'	n/a	n/a

MARKET VALUE OF SUBJECT SLIPS

We have estimated the market value of the subject slips by comparing the comparable slips to each of the subject slips. Considering the subject's location and the quality of development of the condominium units, we believe that the slip prices for Toler's Cove, Wild Dunes Yacht Club and the St. John's Yacht Club are most comparable to the subject, ranging in price (2008 & 2009 average closed sales) from \$3,050 to \$4,650 per lineal foot. Consideration has also been given to the asking prices for slips within these developments which were obtained from MLS. The asking prices ranged from \$3,090 in St. John's Yacht Club to \$5,625 in Wild Dunes Yacht Club. We have forecast a sales price of **\$3,750 per lineal foot** for the subject's slips and increased the sales price at a rate of 3.0 percent per year.

Absorption rates from the dockominium projects surveyed ranged from 1.6 slips sales per quarter in St. John's Yacht Club to 17 slips sales per quarter for Bohicket Marina & Yacht Club. Pre-sales for these developments ranged from approximately 9% in St. John's Yacht Club to approximately 80% in the Harborage at Ashley Marina. St. John's Yacht Club is the most recent of the comparables to begin selling as dockominiums and began in 2008. The other developments came on line primarily in 2004/2005 which was during the boom years of the residential real estate market. If the subject slips were converted to dockominiums today, the demand would be substantially less than during the middle portion of this decade. Thus we would anticipate that both the pre-sales percentage and absorption rate to be much lower. We are of the opinion that there would likely be some interest from boat owners who presently rent slips within the subject that would like to keep their vessels moored there and could lead to some early sales.

The subject was reported slow leasing the 87 slips with just 4 leased between May 2006 when the property opened, and August 2006. Since August 2006 and up through September 2007, 57 slips were leased, resulting in absorption of 4.38 units per month of 13.15 per quarter. Since September 2007, there has been a net gain of 8 additional slips rented or approximately 1 slip per quarter.

We believe it is reasonable to forecast that 10% of the subject's existing 87 slips, or 9 slips, could be sold to current tenants or other investors at the beginning of the conversion. We believe that there would likely be a long sellout period due to the current inventory of slips on the market for sale and the likelihood that additional slips will continue to be added as boat owners look to cut un-necessary expenses due to the current economic conditions. Therefore, we have projected 2 additional slip sales for the first year (total of 11 sales) of the sellout and increased the absorption to 8 sales in year two. It is anticipated that the market conditions will have improved over the next 24 months. The year 3 absorption rate

was increased to 16 sales and the remaining two years of the sellout at 26 slips per year. The overall absorption rate results in 87 slip sales over the five year sellout is approximately 17.40 slips per year, or an average of 4.4 sales per quarter. Absorption is shown in lineal feet whereby the average slip consists of approximately 47.34 lineal feet.

MARKET VALUE OF DOCKOMINIUM UNITS

Based on the above analysis, the total gross retail value of the subject's dockominium units is \$3,750 per linear foot times 4,119 linear feet, or **\$15,446,250**.

DISCOUNTED SELLOUT OF SLIPS – REVENUES

BASE CONTRACT PRICES

In projecting revenues for the sellout of the subject slips, we have used the projected market prices for the subject slips.

Average Price of wet Slips per Linear Foot prior to completion	\$3,750
Total Base Sales Revenues 4,119 linear feet @ \$3,650/ LF /Unit=	\$15,446,250

SELLOUT EXPENSES

Sellout expenses are those expenses that will likely be incurred during the sellout of the finished condo slips. Expenses will include closing costs, real estate sales commissions, miscellaneous costs and developer's profit. Real estate taxes, insurance and general and administrative expenses will be included in miscellaneous costs. Expenses that will be applied to the slips are sales commissions and closing costs.

CLOSING COSTS

We have estimated the closing costs related to the sale of the slips will be about **0.25%** of gross sales.

REAL ESTATE SALES COMMISSIONS

Sales commissions are typically paid to brokers at approximately 2.5 to 4%. We have included a **3.00%** expense for sales commissions.

MISCELLANEOUS COSTS

Miscellaneous costs for the subject include hazard insurance, repairs & maintenance and some general and administrative expenses. We have estimated a cost of **0.50%** of gross sales revenues of the slips.

REAL ESTATE TAXES

Real estate taxes were estimated at \$420 per slip per year based on a projected tax burden of \$36,500. This is approximately **\$9 per LF per year**. This cost will be applied to the number of un-sold lineal feet at the beginning of each year and increased by 3 percent in year two.

ENTREPRENEURIAL PROFIT

We have included a reasonable allocation for entrepreneurial profit. This is intended to reflect the inherent risk incurred in the development of a project similar to the subject. When determining a profit allocation to subtract from the anticipated cash flow, we have analyzed varying degrees of profit that may be necessary in order to attract a purchaser to a development project of this type. Dockminium slips typical demand a profit allocation of between 6% and 10% of the gross sales price on the slips. We have estimate the profit requirement on the subject property to be about 10.0% on the unsold slips. The purchaser of the property would have the responsibility of closing out all the slips and selling the un-sold slips. There is some risk that a purchaser would not complete a transaction.

DISCOUNT RATE

According to the Korpacz Real Estate Survey, 3Q 2009, discount rates for the national luxury apartment market ranged from 7.50% to 14.00%, with an average of 10.03%. This was the most comparable information to use to determine a discount rate for the subject property. We have used a **12.00% discount rate** to discount the cash flow back to a present value. This discount rate is within the middle of the above range.

VALUE OF PROCEEDS FROM SELLOUT OF IMPROVEMENTS

The total bulk value from the sellout of the marina slips, September 25, 2009, is \$9,563,477 or \$9,565,000 rounded. The chart on the following page shows the gross sales and expenses likely to be incurred during the sellout of the slips.

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

Discounted Sellout							
Period		Year1	Year 2	Year 3	Year 4	Year 5	Total
Total Linear Feet of Slips	4,119						
Price per Linear Foot	\$3,750						
Avg Slip Size per LF	47.34						
Remaining Unsold Slips	87	87	76	68	52	26	
Slips Sold This Period		11	8	16	26	26	
Remaining Unsold Linear Feet		4,119	3,598	3,220	2,462	1,231	0
Linear Feet Sold This Period		521	379	757	1,231	1,231	
Average Price Per Linear Foot		\$3,750	\$3,863	\$3,978	\$4,098	\$4,221	
Total Sales		\$ 1,952,775	\$ 1,462,806	\$ 3,013,380	\$ 5,043,645	\$ 5,194,955	\$ 16,667,561
Less Expenses							
Closing Costs	0.25%	\$ 4,882	\$ 3,657	\$ 7,533	\$ 12,609	\$ 12,987	\$ 41,669
Real Estate Commissions	3.00%	\$ 58,583	\$ 43,884	\$ 90,401	\$ 151,309	\$ 155,849	\$ 500,027
Miscellaneous Costs (Ins & G&A)	0.50%	\$ 9,764	\$ 7,314	\$ 15,067	\$ 25,218	\$ 25,975	\$ 83,338
Real Estate Taxes (\$9/Foot/Year)	\$ 9	\$ 36,741	\$ 33,059	\$ 30,467	\$ 23,998	\$ 12,361	\$ 136,628
Entrepreneurial Profit - Unsold Units	10.0%	\$ 195,278	\$ 146,281	\$ 301,338	\$ 504,365	\$ 519,495	\$ 1,666,756
Total Expenses		\$ 305,248	\$ 234,195	\$ 444,807	\$ 717,500	\$ 726,668	\$ 2,428,417
Net Income		\$ 1,647,527	\$ 1,228,611	\$ 2,568,573	\$ 4,326,146	\$ 4,468,287	\$ 14,239,144
Discount Factor	12.0%	0.892857	0.797194	0.711780	0.635518	0.567427	
PV of Cash Flow		\$ 1,471,006	\$ 979,441	\$ 1,828,260	\$ 2,749,344	\$ 2,535,426	\$ 9,563,477
Total PV of Cash Flows		\$ 9,563,477					
Rounded		\$ 9,565,000					
FINAL VALUE AT SELLOUT		\$ 9,565,000					

MARKET VALUE "AS IS"

We have deducted the land acquisition cost for the needed parking areas totaling \$800,000, resulting in a market value conclusion of the marina slips "as is" (September 25, 2009) is **\$8,765,000** (rounded).

ADDITIONAL VALUE DUE TO INTERIM INCOME FROM SLIP RENTALS DURING SELLOUT

The subject property is presently an all rental marina and is achieving a positive cash flow from operations. We are of the opinion that if the property were converted to dockominiums, that the owners would continue to rent the slips during the sellout period. This would generate a cash flow during the sellout in addition to the revenues generated from slip sales. As slips are sold, the number of slips in the rental pool will decrease and the rental income generated would decrease as well.

In this analysis, we have utilized the same income and expenses that were discussed previously in the Income Approach. One change that has been made relates to the vacancy and collection loss. This was previously estimated to be 20%. In the discounted sellout to follow we have kept the vacancy & collection loss at 20% for years 1 and 2. In years 3, 4 and 5, we have decreased this to 15% as we anticipate the market to have

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

improved. Secondly, we have utilized one-half of the insurance, real estate taxes and repairs & maintenance costs which shift to the slip owners after purchase.

Furthermore, the reversion is not applicable as all of the slips will have been sold at the end of the fifth year. The subject cash flows will fluctuate based on the steady decrease in the number of slips available to be rented. An 11.0 percent discount rate was utilized in the discounted sellout of the boat slips. The subject cash flows do not have a reversion and are for a very short term. A discount rate of 9.00 percent would be considered appropriate for the subject cash flows.

Ripley Light Yacht Club Marina - Interim Cash Flow Analysis							
Period	Per LF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Income:							
Lineal Feet - Beginning		4119	3,598	3,220	2,462	1,231	
Projected LF Sold		521	379	757	1,231	1,231	
Half of Total Sold		260.37	189.36	378.72	615.42	615.42	
Projected Avg LF Generating Rental Income		3858.63	3408.9	2840.82	1846.68	615.84	
Rental Rate		\$13.00	\$13.39	\$13.79	\$14.21	\$14.63	
Rental Income Per Year		\$642,564	\$578,168	\$532,835	\$419,703	\$216,184	\$ 2,389,454
Other Income		\$0	\$0	\$0	\$0	\$0	\$ -
Electric Reimbursement	\$12.14	\$46,839	\$42,622	\$36,584	\$24,495	\$8,414	\$ 158,955
Marina Shop Sales Income	\$6.07	\$23,420	\$21,311	\$18,292	\$12,248	\$4,207	\$ 79,477
Total Potential Income		\$712,823	\$642,101	\$587,712	\$456,446	\$228,805	\$ 2,627,886
Less Vacancy & Collection Loss	20% / 15%	(\$142,565)	(\$128,420)	(\$88,157)	(\$68,467)	(\$34,321)	\$ (461,929)
Effective Gross Income		\$570,258	\$513,681	\$499,555	\$387,979	\$194,484	\$ 2,165,957
Less Expenses							
Salaries & Wages	13.9%	\$ 79,471	\$ 71,587	\$ 69,618	\$ 54,069	\$ 27,103	\$ 301,849
Property Insurance (1/2 of total)	5.7%	\$ 32,220	\$ 29,023	\$ 28,225	\$ 21,921	\$ 10,988	\$ 122,377
Property Taxes (1/2 of total)	3.2%	\$ 18,248	\$ 16,438	\$ 15,986	\$ 12,415	\$ 6,223	\$ 69,311
Utilities	17.4%	\$ 99,339	\$ 89,483	\$ 87,023	\$ 67,586	\$ 33,879	\$ 377,311
Cost of Goods Sold - Marina Store	3.7%	\$ 20,861	\$ 18,792	\$ 18,275	\$ 14,193	\$ 7,115	\$ 79,235
Advertising	1.5%	\$ 8,643	\$ 7,785	\$ 7,571	\$ 5,880	\$ 2,947	\$ 32,826
Repairs & Maintenance (1/2 of total)	2.6%	\$ 14,827	\$ 13,356	\$ 12,988	\$ 10,087	\$ 5,057	\$ 56,315
General & Administrative	2.6%	\$ 14,901	\$ 13,423	\$ 13,053	\$ 10,138	\$ 5,082	\$ 56,597
Management Fees	3.5%	\$ 19,959	\$ 17,979	\$ 17,484	\$ 13,579	\$ 6,807	\$ 75,808
Reserves	2.0%	\$ 11,405	\$ 10,274	\$ 9,991	\$ 7,760	\$ 3,890	\$ 43,319
Total Expenses		\$ 319,874	\$ 288,138	\$ 280,215	\$ 217,628	\$ 109,092	\$ 1,214,947
Net Income		\$ 250,384	\$ 225,543	\$ 219,340	\$ 170,350	\$ 85,392	\$ 951,010
Discount Factor	9.0%	0.917431	0.841680	0.772183	0.708425	0.649931	
PV of Cash Flow		\$ 229,710	\$ 189,835	\$ 169,371	\$ 120,681	\$ 55,499	\$ 765,096
Total PV of Cash Flows		\$ 765,096					
Rounded		\$ 765,000					

We have concluded the present value of the future cash flows associated with the interim slip rentals and marina operations to be \$765,096, rounded to **\$765,000**.

RECONCILIATION AND FINAL VALUE OPINIONS

We have been asked to appraise the market value of the property "As Is" for the existing marina. In the Cost Approach we determined the market value of the subject "As Is" plus the acquisition costs associated with acquiring the additional land for the required number of parking for the marina. In the Income Approach, we determined market rent for the subject property and compared this to contract rent, estimated vacancy and expenses and capitalized the resulting net operating income into a value conclusion. We used both a direct capitalization method and a discounted cash flow analysis to determine the market value "As Is". In the Development Method, we estimated the value of the completed slips as if sold to an investor assuming the additional land for the required number of parking for the marina had occurred, as well as the "as is" value. Finally, we determined the present value of the cash flows associated with the interim leasing of the subject slips during the sellout. Our value conclusions are summarized as:

RIPLEY LIGHT YACHT CLUB MARINA

Value by Cost Approach "At Completion" – September 25, 2009	\$8,000,000
Value by Income Approach "As Is" – September 25, 2009	\$2,255,000
Development Valuation Analysis "As Is" – September 25, 2009	\$8,765,000
Development Valuation	
Value by Income Approach – Interim Cash Flows from Slip Rentals & Marina Operations As of September 25, 2009	\$765,000

We have selected the Development Valuation Method as our final value conclusion. Since the Cost Approach value conclusion is far less than the development approach method, the project is proven to be financially feasible. Developer-purchasers would consider the Development Valuation Approach as their primary consideration when analyzing their purchase offer. The Cost Approach would be relied on to ascertain what excess profit can be derived. The difference between these two approaches illustrates the financial feasibility of the remaining construction. The Development Valuation Analysis is the most appropriate method for the marina wet slips. The Cost Approach also illustrates the value intrinsic in the going concern via the permits, development expertise, and the right to use navigable waters. Our conclusion of value for the subject property, Ripley Light Yacht Club Marina, is based on the development analysis for the marina wet slips.

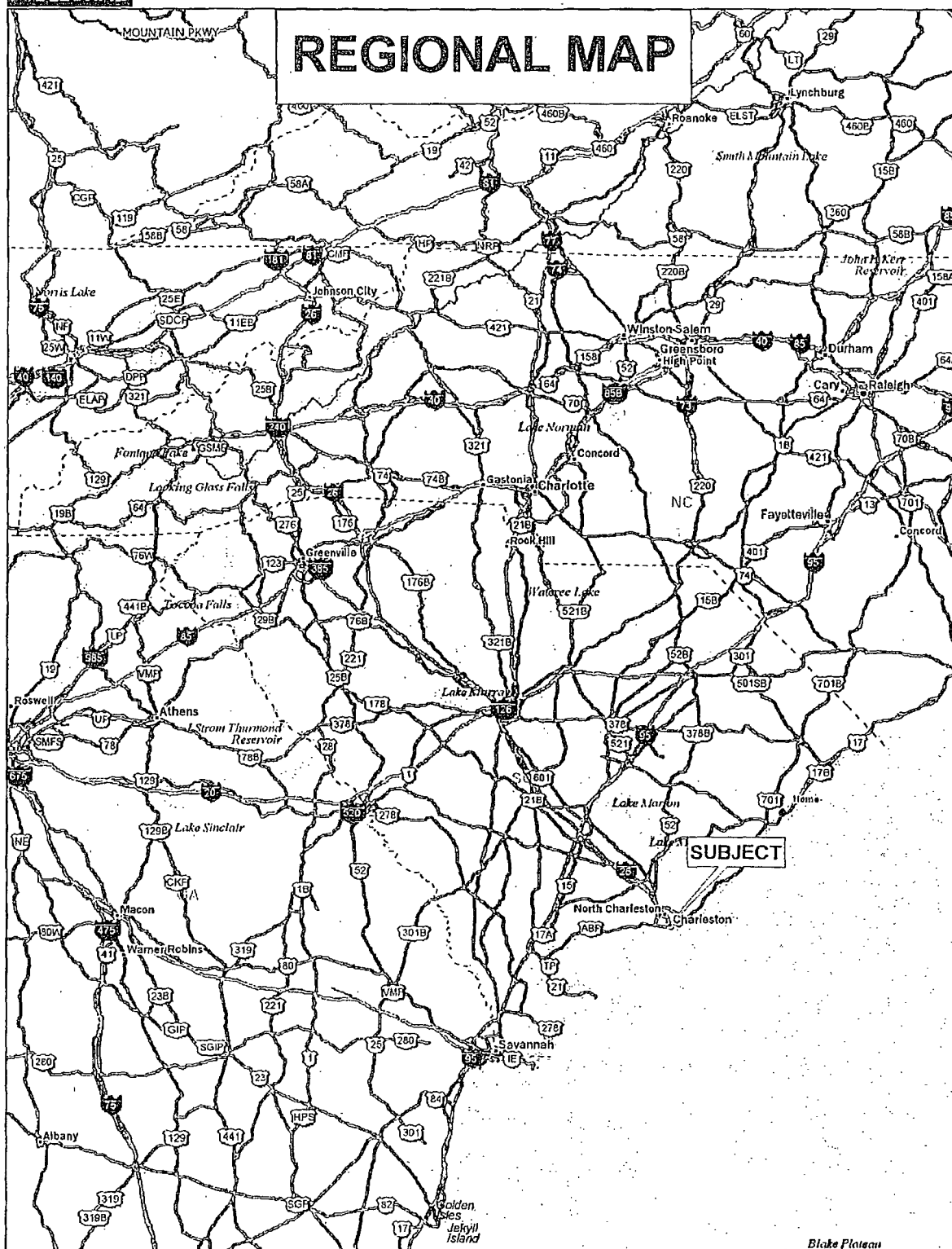
Opinion of Market Value "As Is" – Ripley Light Yacht Club Marina Wet Slips
September 25, 2009
\$9,530,000
(\$8,765,000 + \$765,000)

RIPLEY LIGHT YACHT CLUB MARINA - CHARLESTON, S.C.

ADDENDA

REGIONAL MAP
METROPOLITAN AREA MAP
NEIGHBORHOOD MAP
FLOOD PLAIN MAP
ZONING MAP
SURVEYS
DOCK SURVEY
PHOTOGRAPHS OF THE SUBJECT
COMPARABLE LAND SALES
FINAL CONSTRUCTION COSTS
OPERATING STATEMENTS
TAXES AND TAX ASSESSMENTS
RENT ROLL
ENGAGEMENT LETTER
ASSUMPTIONS AND LIMITING CONDITIONS
QUALIFICATIONS OF APPRAISERS

REGIONAL MAP



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HH (6.8-10)

Blake Plaisau

Scale 1 : 3,200,000

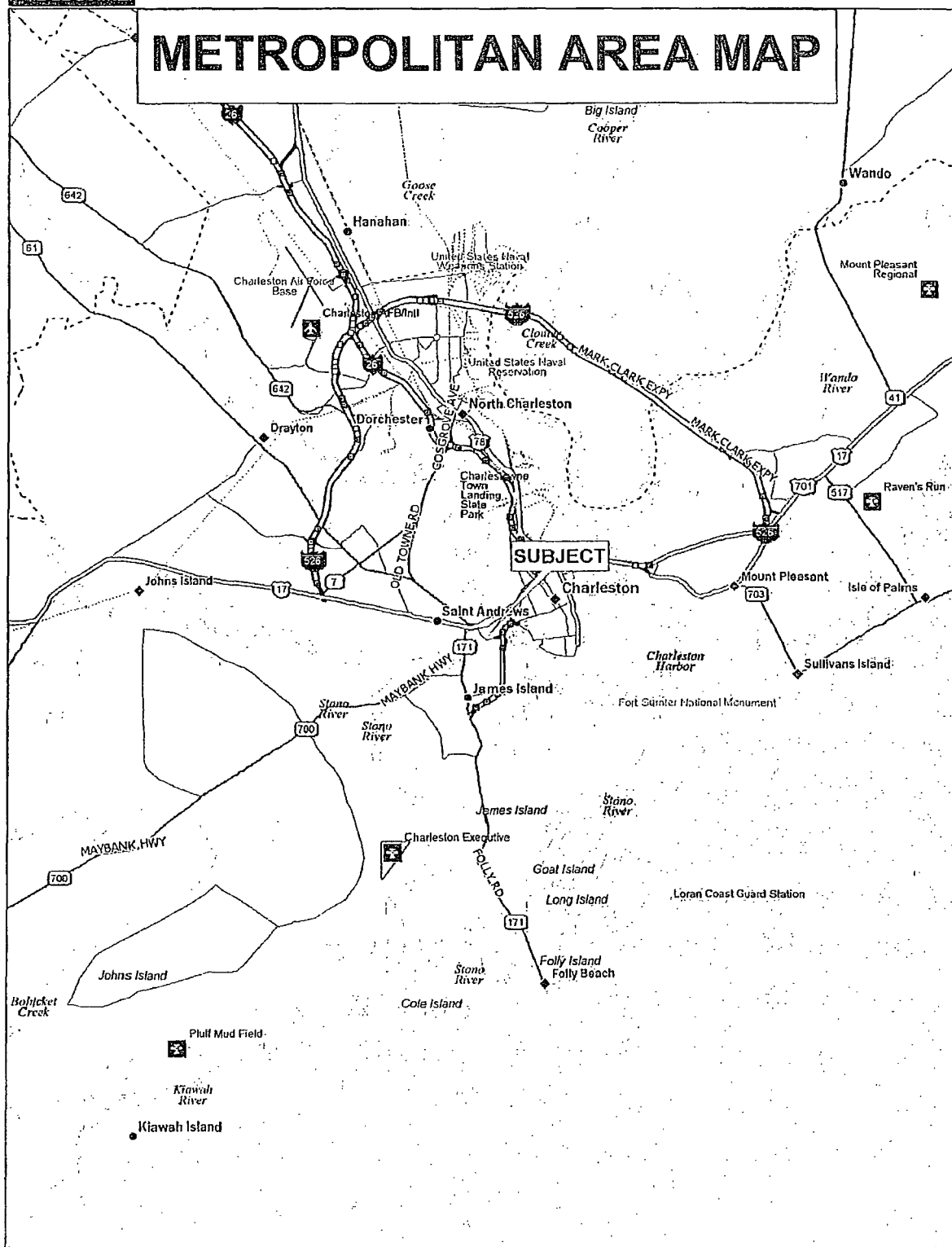
$$1'' = 50.51 \text{ mi}$$

Data Zoom 6-0

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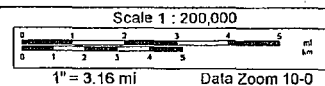
METROPOLITAN AREA MAP



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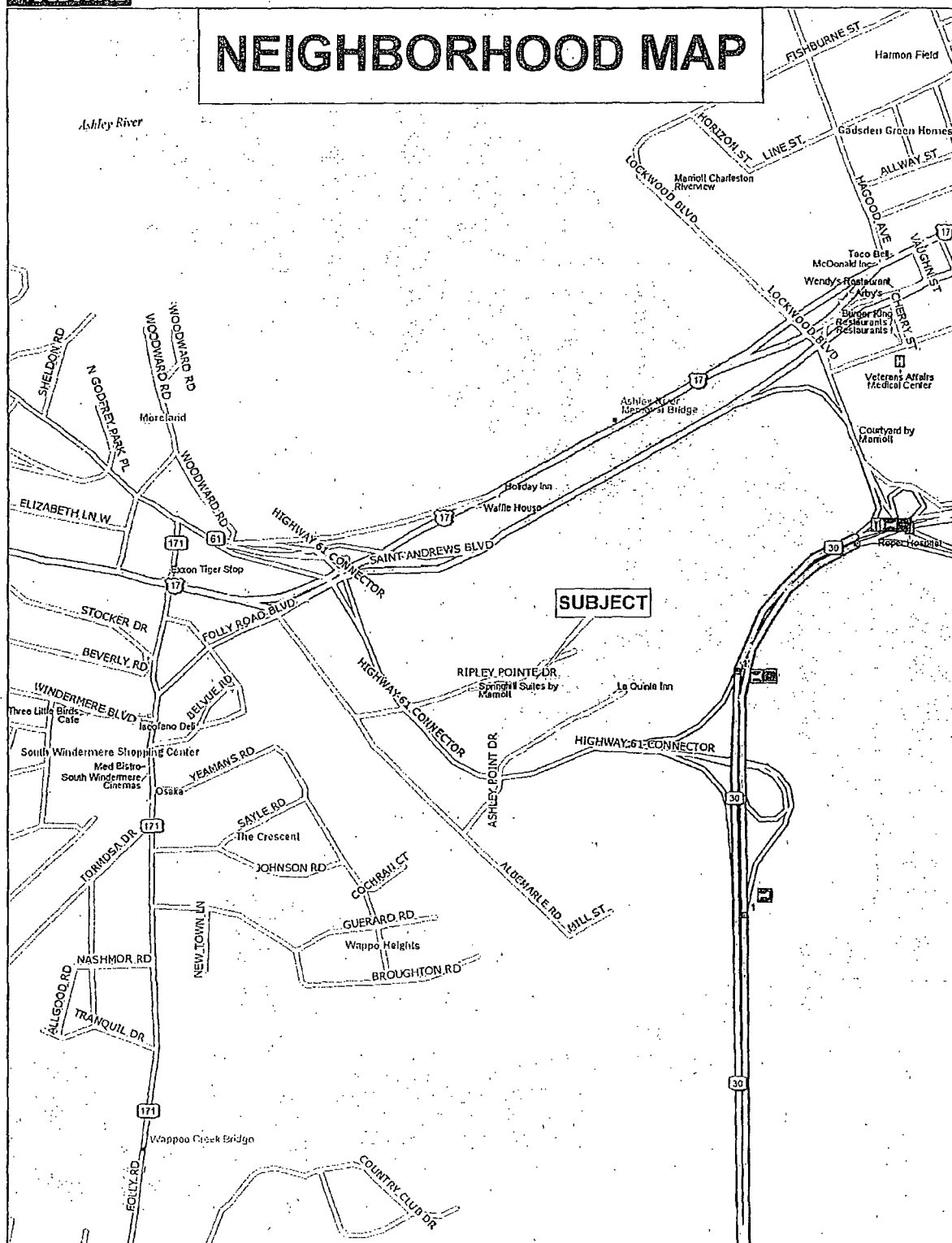
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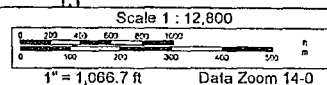
NEIGHBORHOOD MAP

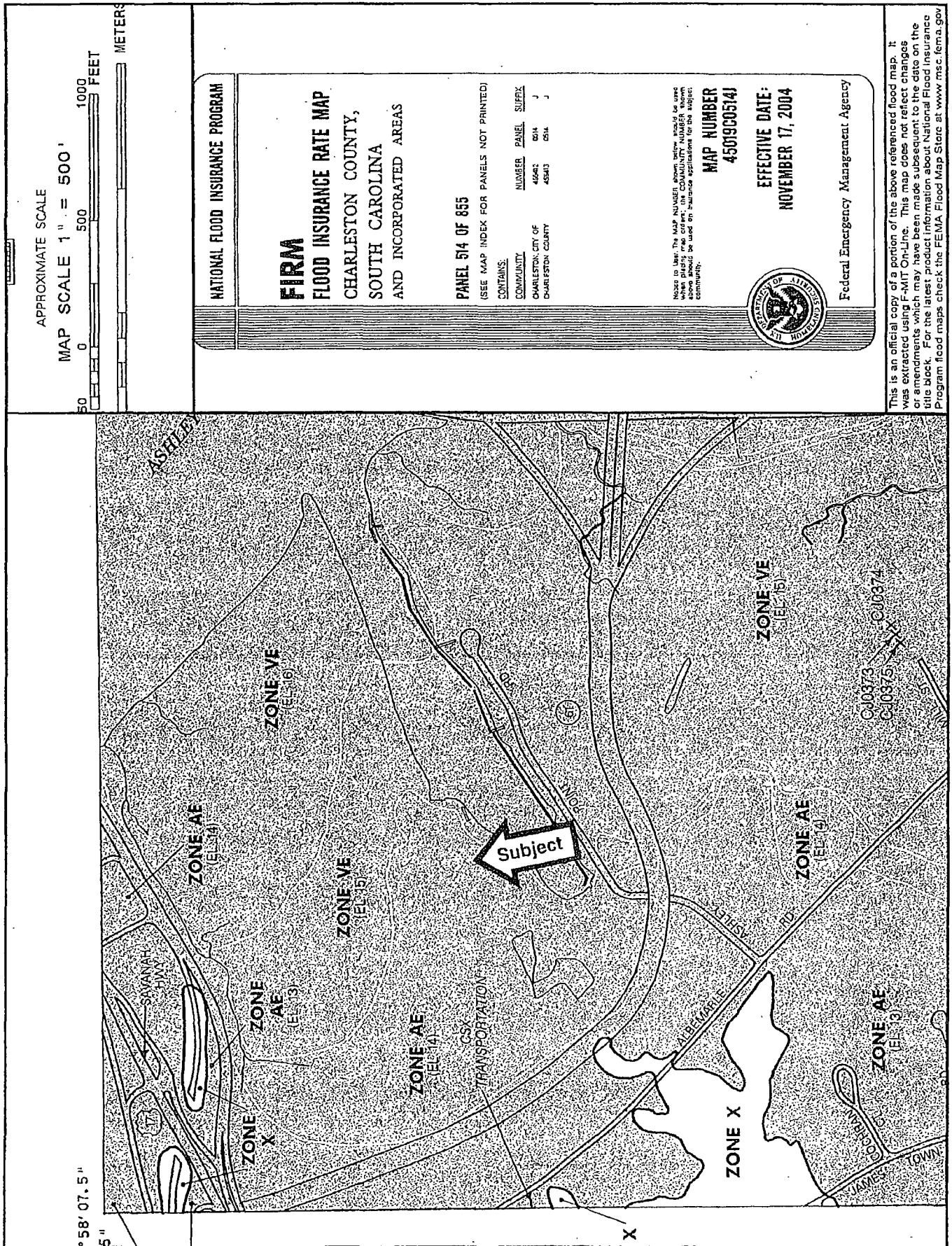


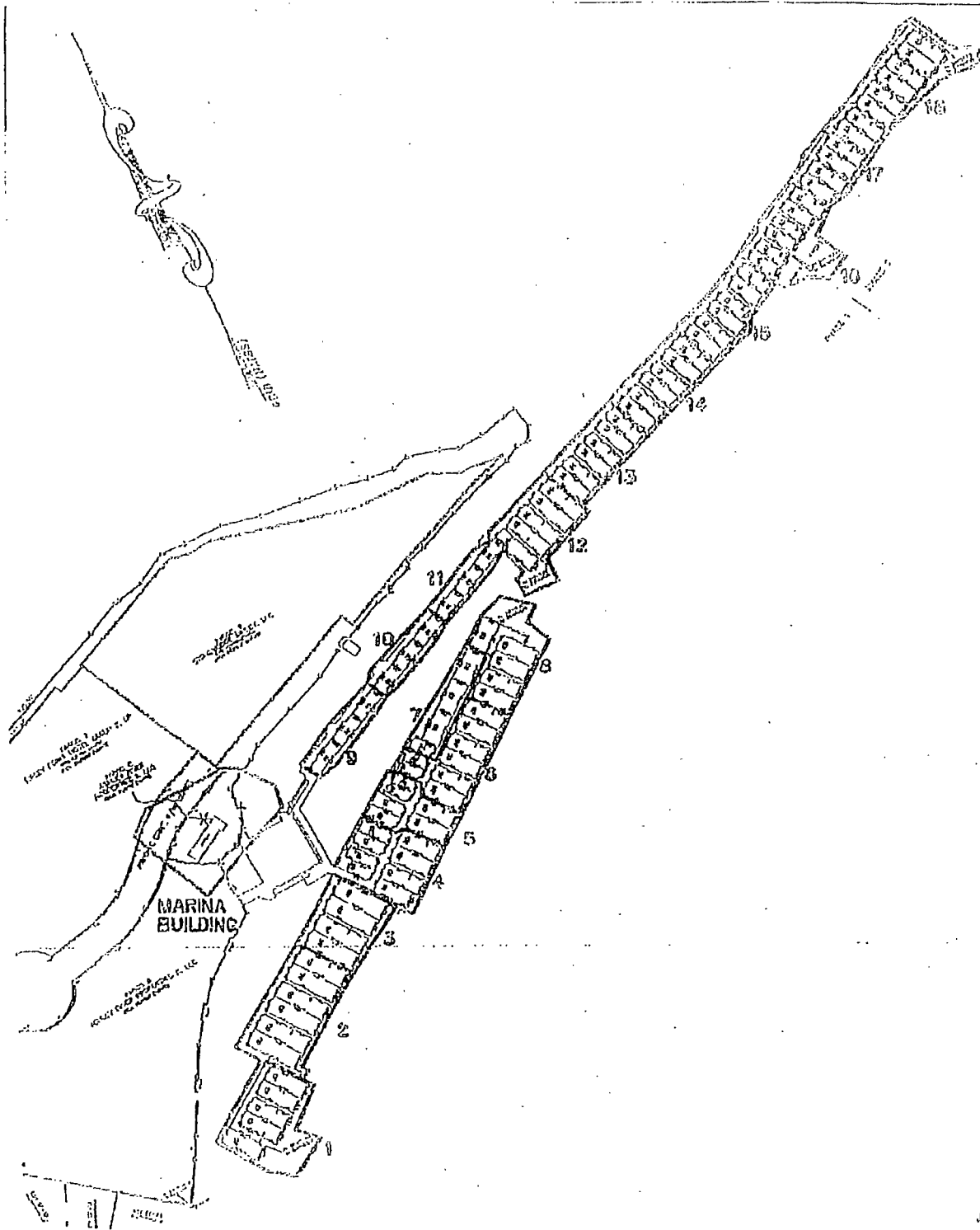
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June 6, 2006
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Client/Project

ASHLEY RIVER PROPERTIES II, LLC
90 RIPLEY POINT DRIVE
CHARLESTON, SC 29407

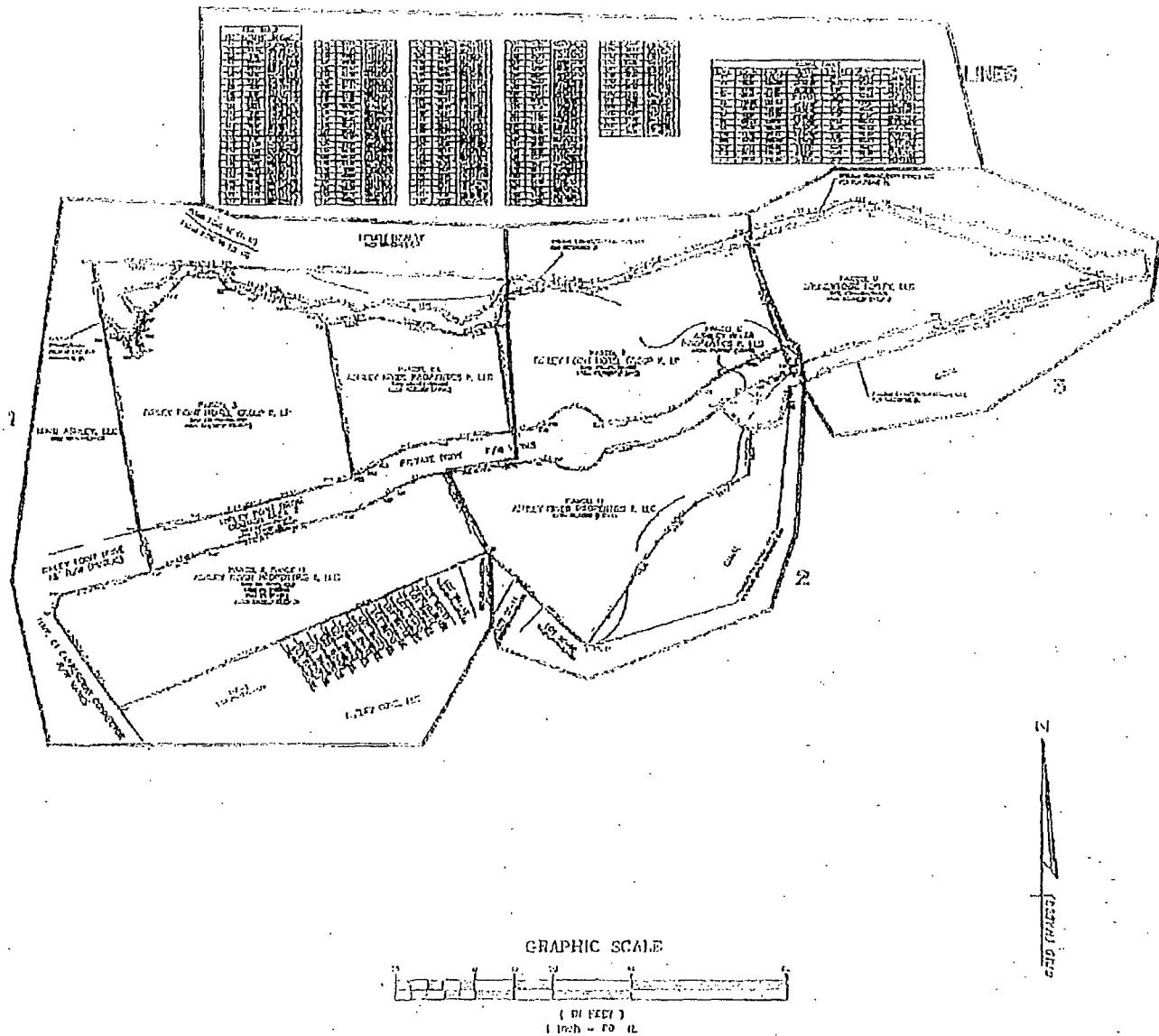
Figure No.

KEY (NOT TO SCALE)

Title

DOCK EXHIBIT

HIGHLIGHTED AREA INDICATES SUBJECT PROPERTY



June 10, 2006
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Stanlec

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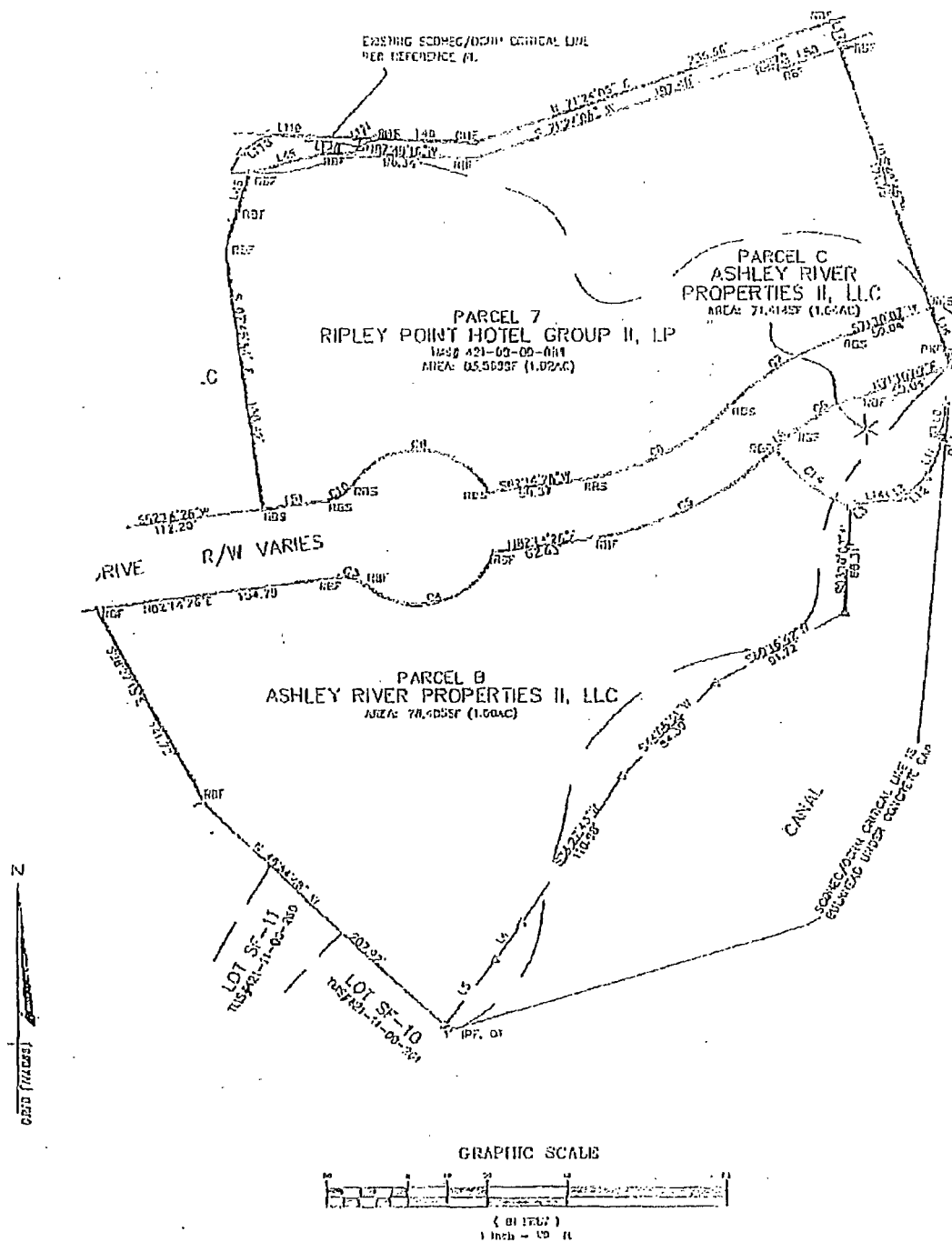
ASHLEY RIVER PROPERTIES II, LLC
90 RIFLEY POINT DRIVE
CHARLESTON, SC 29407

Figure No.

KEY (NOT TO SCALE)

Title

SUBDIVISION



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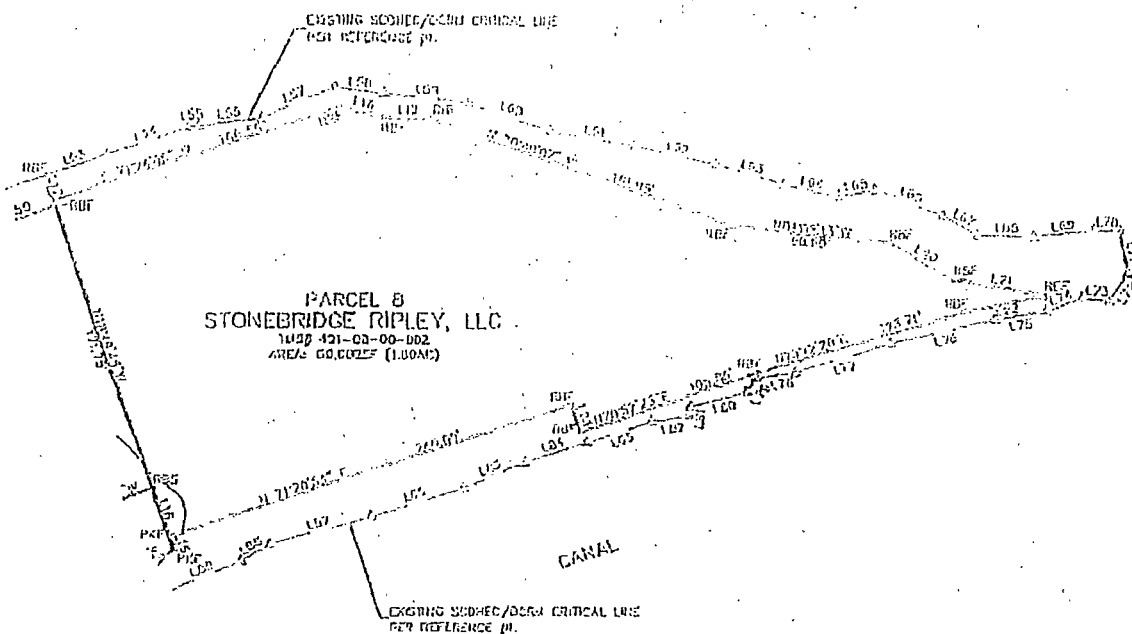
ASHLEY RIVER PROPERTIES II, LLC
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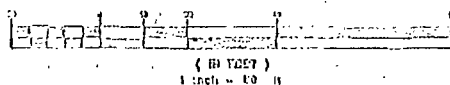
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Title

SUBDIVISION



GRAPHIC SCALE



June 16, 2006
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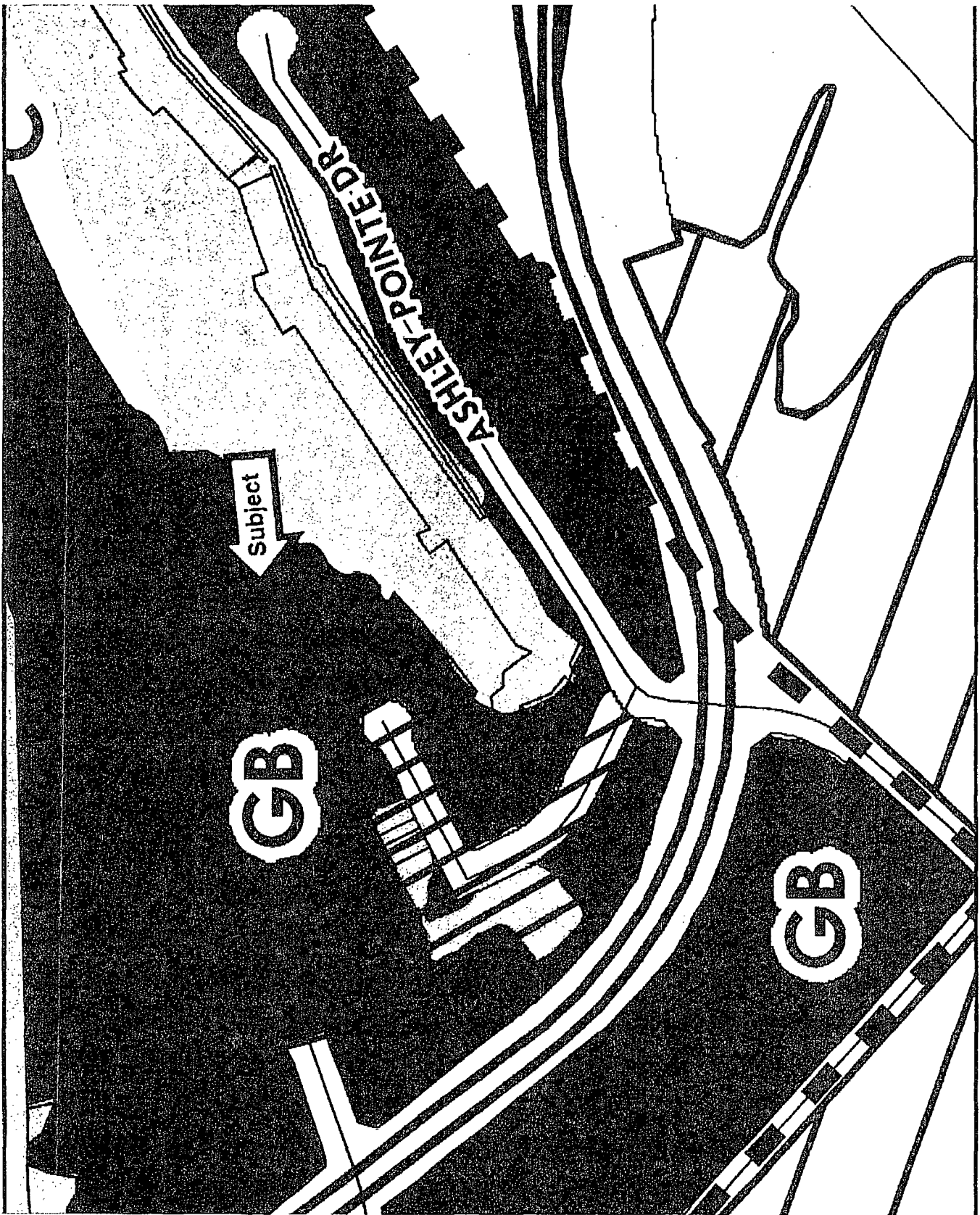
ASHLEY RIVER PROPERTIES II, LLC
90 RIPLEY POINT DRIVE
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Figure No.

3.

Title

SUBDIVISION





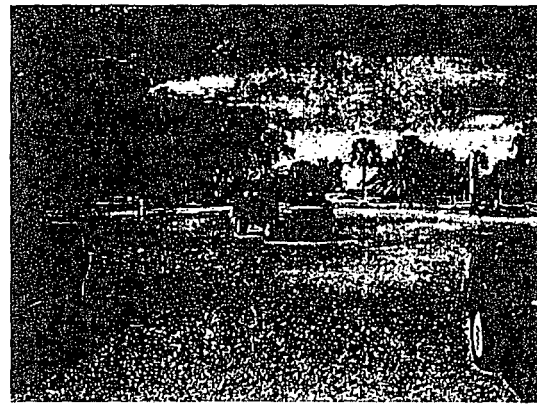
Ripley Point Drive Looking West



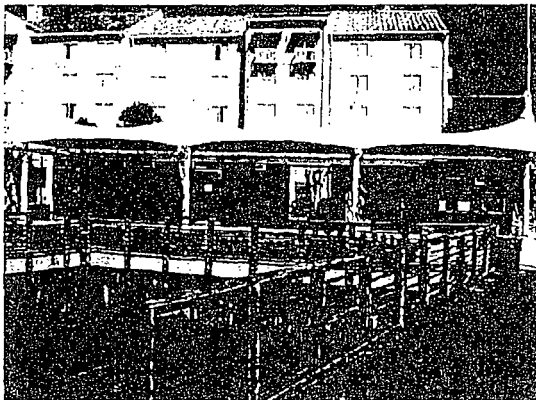
Ripley Point Drive Looking West



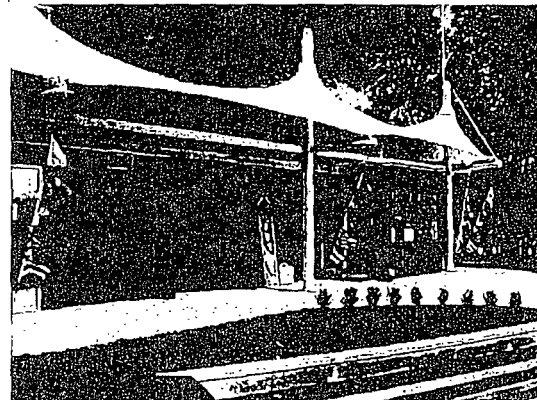
View of Main Parking Lot



View of Main Parking Lot



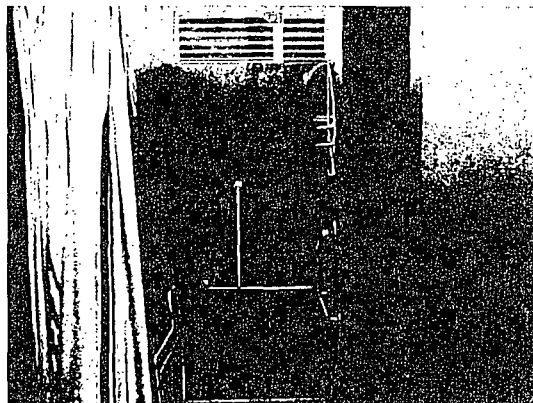
View of Office & Restrooms Building



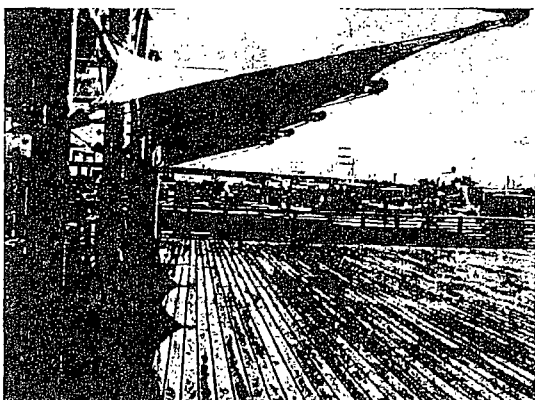
View of Office & Restrooms Building



Interior View of Restrooms



Interior View of Restrooms



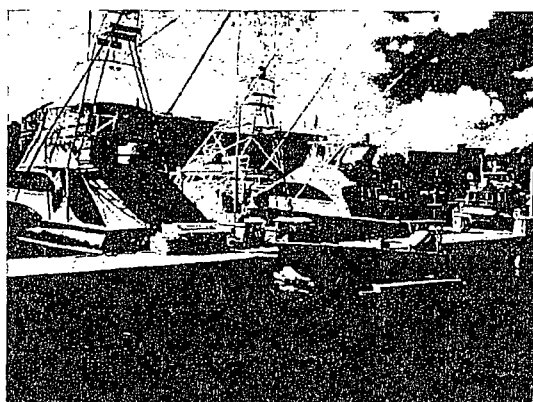
View of Main Deck Area



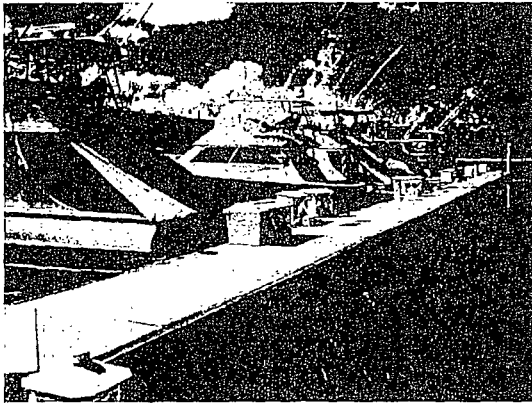
View of Main Deck Area



Access to Parking Area from Main Deck



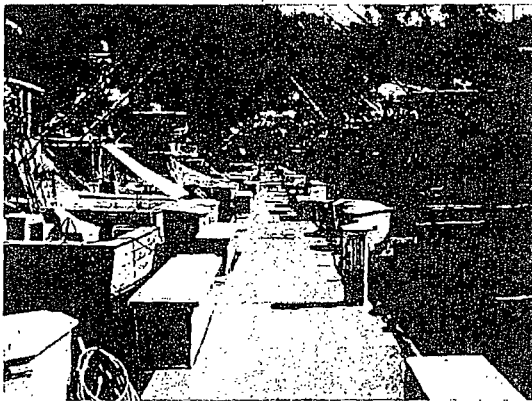
View of A-Dock



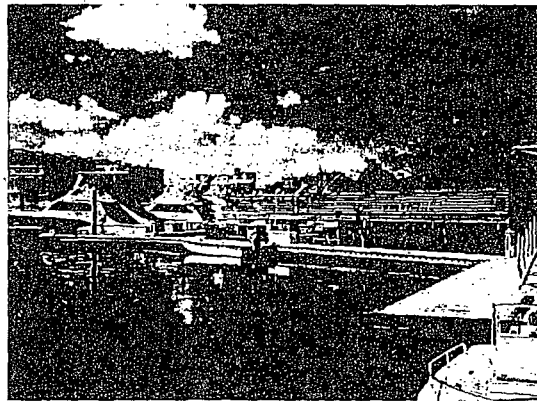
View of A-Dock



View of A-Dock



View of A-Dock



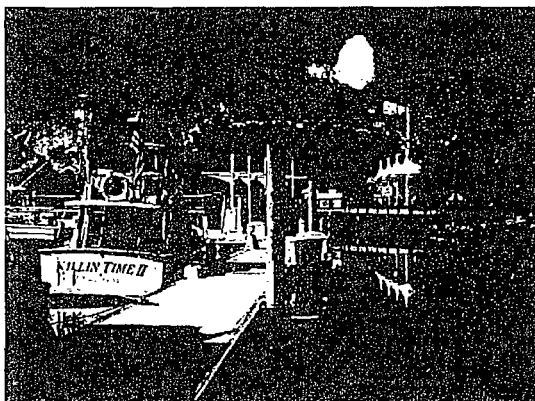
View of A-Dock



View of A-Dock



View of A-Dock



View of B-Dock



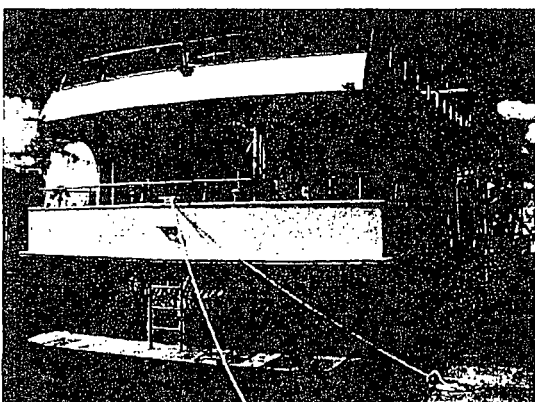
View of B-Dock



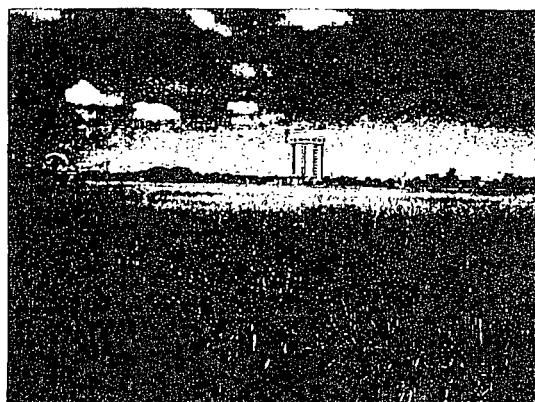
View of B & C-Dock



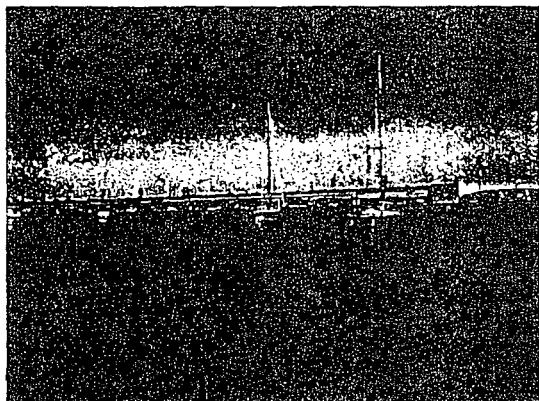
View of C-Dock



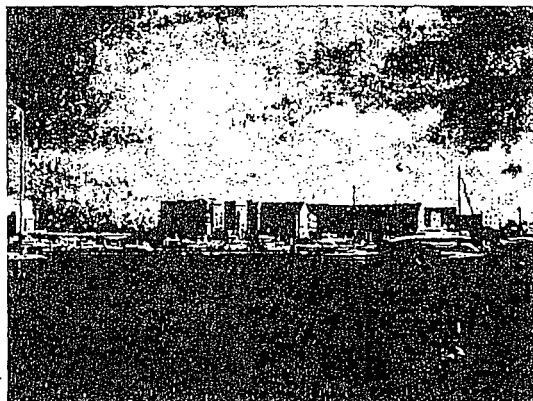
View of C-Dock



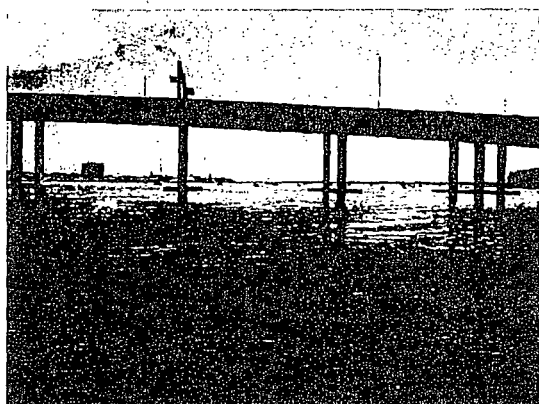
Northerly View From C-Dock



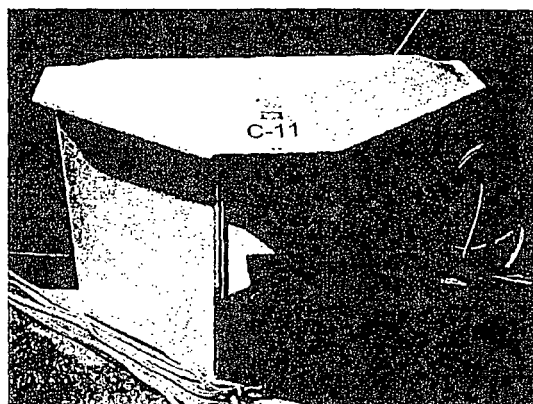
Northerly View of Ashley River



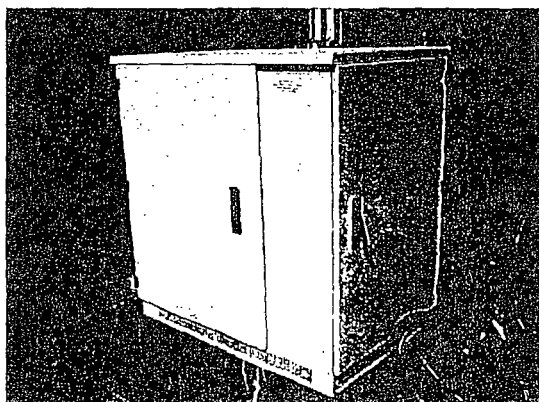
View of Downtown Charleston



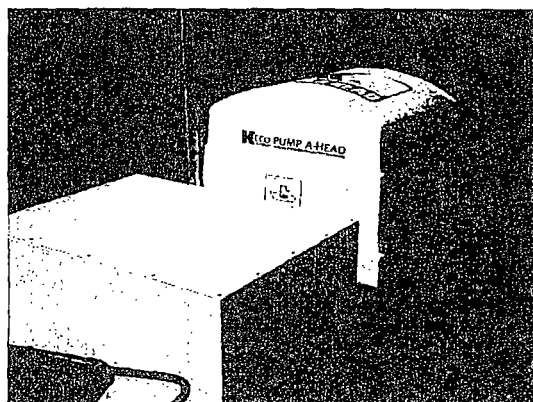
Easterly View of Ashley River



Deck Box



Dock Transformer

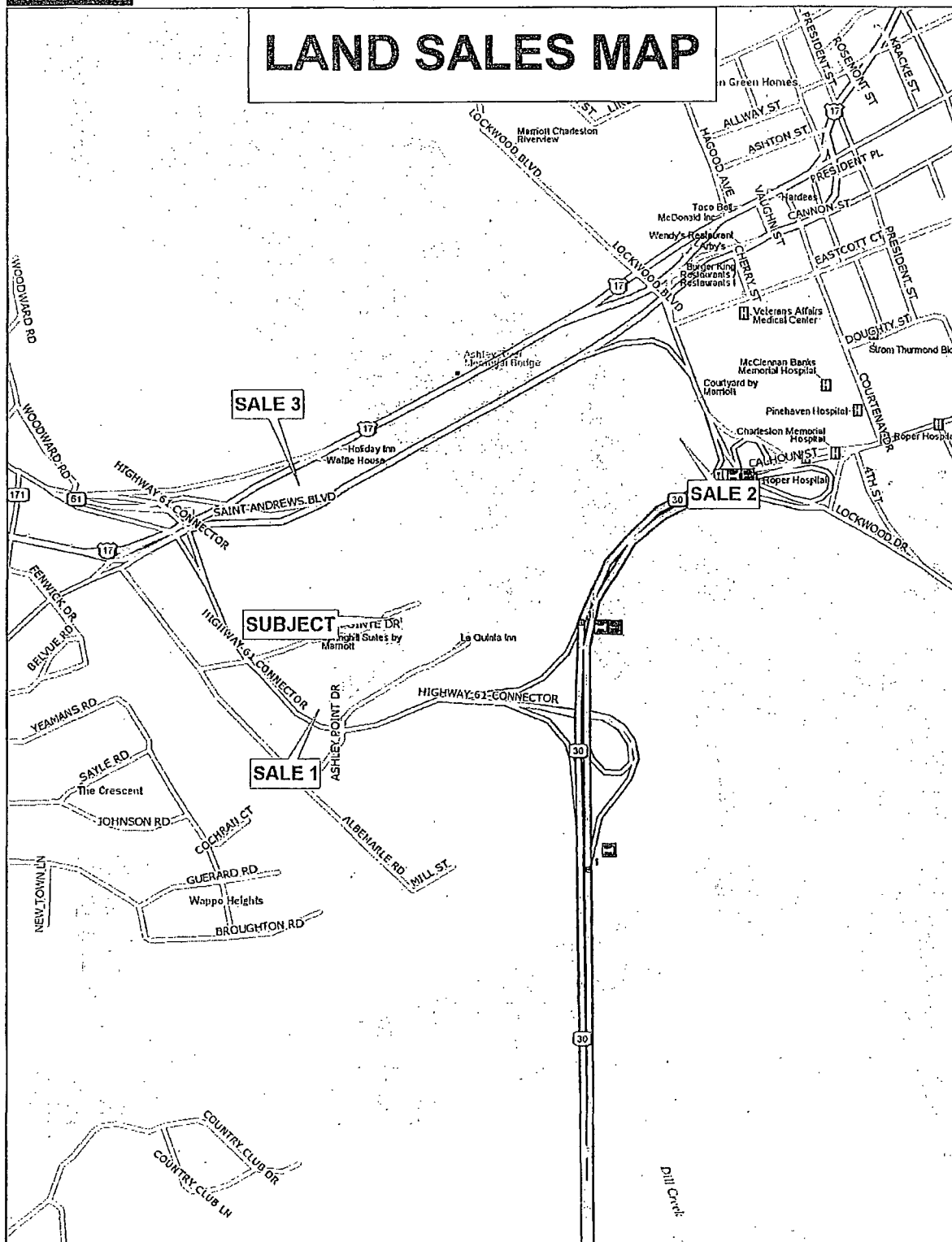


Pump Out Unit



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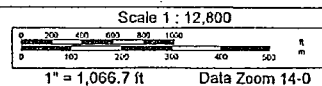
LAND SALES MAP



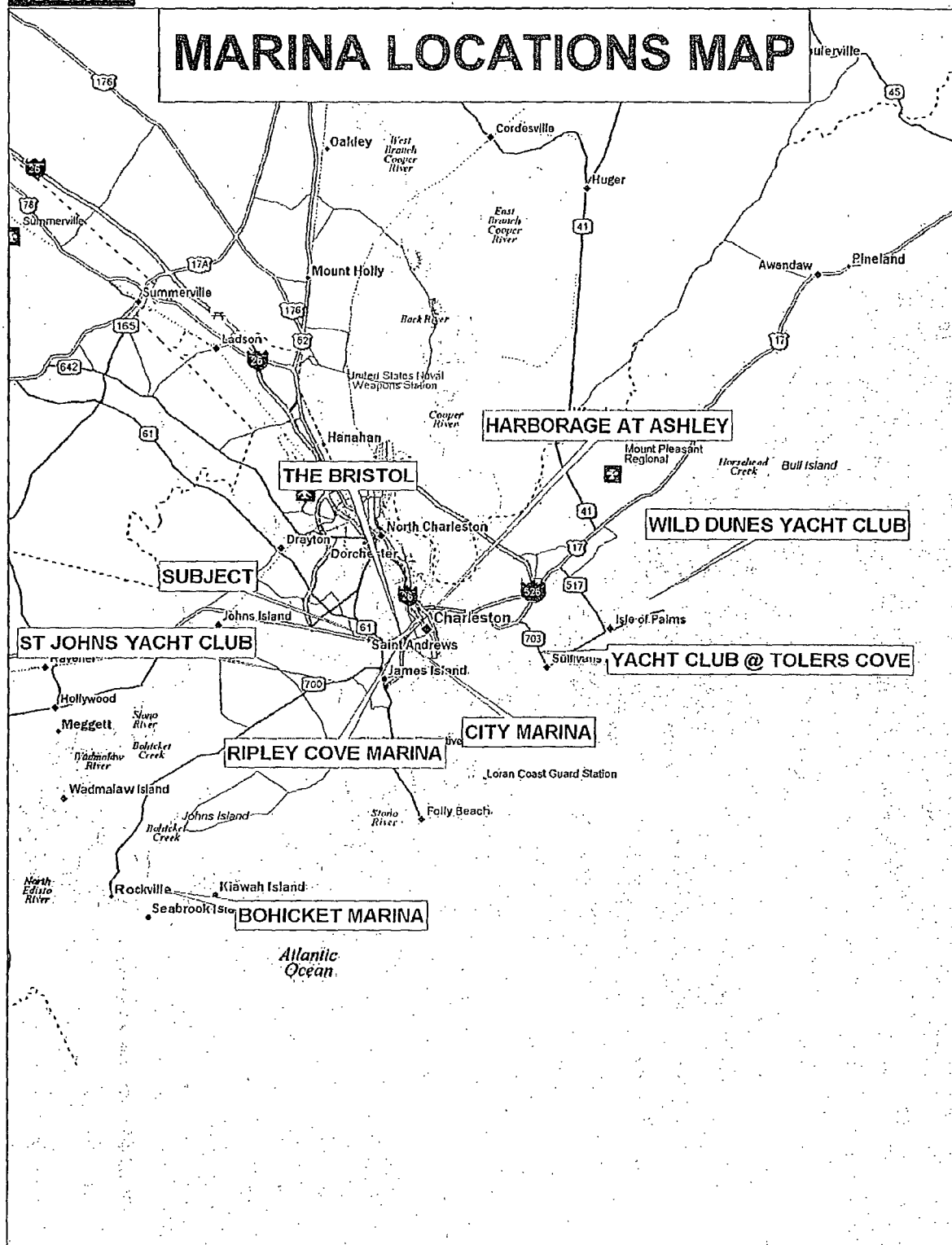
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MARINA LOCATIONS MAP



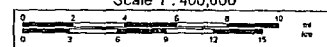
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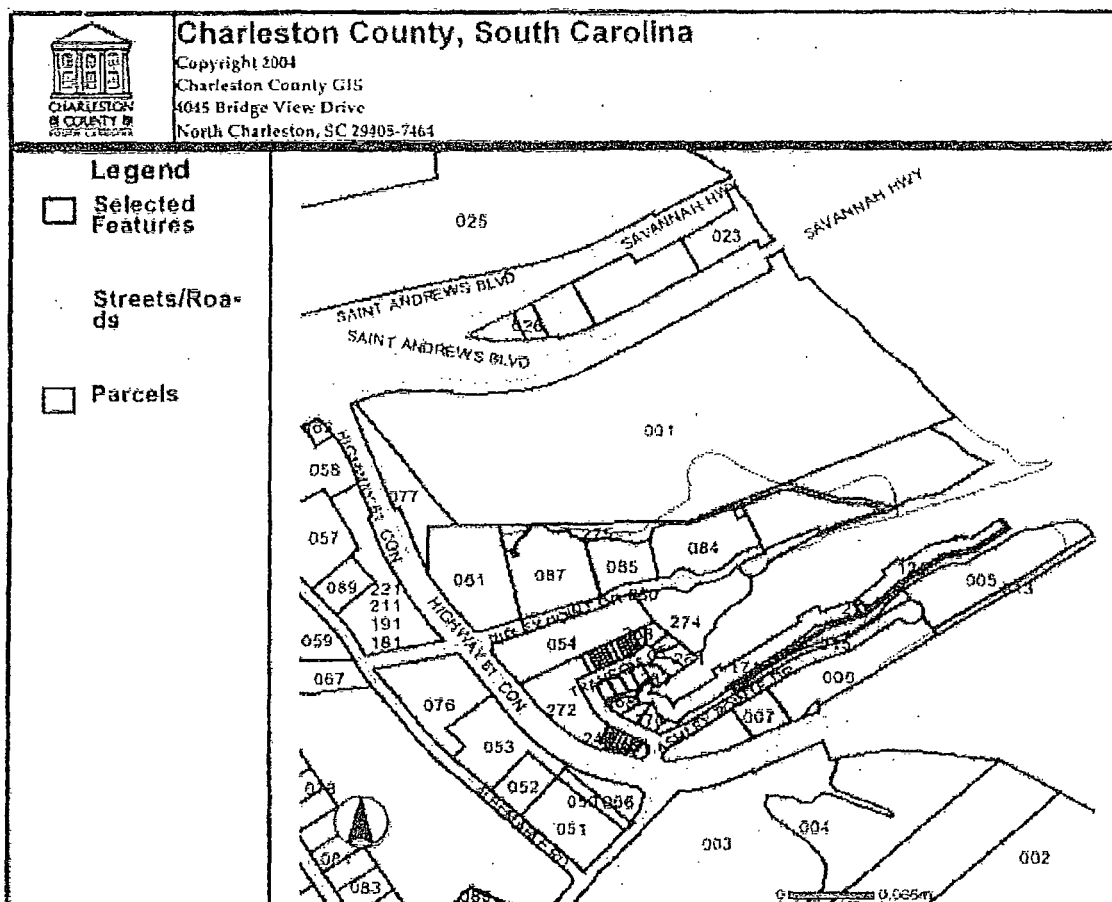
1.8 N (7.4 mW)

Scale 1 : 400,000



1" = 6.31 mi

Data Zoom 9-0



PARCEL NUMBER: 4211100275

PARCEL ID: 4211100275

STREET NUMBER: 95

STREET NAME: RIPLEY POINT DRIVE

PROP UNIT:

PROP CITY:

PROP ZIP: 29407

SITE NAME: RIPLEY LIGHT YACHTCLUB

GENERAL USE: CER

MOBILE HOMES: 0

SUBDIVISION:

LEGAL DESCRIPTION: LOT C

LGL HI ACRES: 1.84

LGL MAR ACRES: 0

LGL WATER ACRES: 0

LGL SWAMP ACRES: 0

LGL TOTAL ACRES: 1.84

TAX DISTRICT: 63

JURISDICTION: MCP

PLAT BOOK: EK-219

OWNER ON 1ST: ASHLEY RIVER PROPERTIES II LLC

OWNER2 ON 1ST:

CURRENT OWNER1:

CURRENT OWNER2:

SALE DATE: 12/29/2003
DEED BOOK: E480-016
WILL CODE:
WILL DATE:
C O NAME:
MAIL STREET NUMBER: 0
MAIL STREET NAME: P O BOX 3158
MAIL UNIT:
MAIL CITY: CHARLESTON
MAIL STATE: SC
MAIL ZIP: 29417
MAIL COUNTRY:
MAIL POSTAL CODE:
SALE PRICE: 100000
MULT LOT: 0
SPLIT CODE: Y
MLOD GROUP:
FINAL VALUE: 2204200
BUILD COUNT: 2
AG USE VAL: 0
AG MARKET TOT: 0
LR APPROVE:
YEAR BUILT: 0
BEDROOMS: 0
FULL BATHS: 0
THREE QTR BATHS: 0
HALF BATHS: 0
TOTAL FINISH AREA: 0
LIVING AREA: 0
CONDO-BEDROOM: 0
CONDO FULL BATH: 0
CONDO H-BATH: 0
CONDO YR BUILT: 0

CHARLESTON COUNTY

Online Tax System

- MAIN MENU
- CONTACTS
- EXIT

- Billing Information -			- Property Information -		
Account (PID):	421-11-00-275	Appraised (FMV):	2,204,200	Legal Description:	95 RIPLEY POINT DRIVE - LOT C
Tax Year:	2009	Assessment:	132250	Subdivision:	NA
Prior Year:	NA	Mills:	x 0	Deed:	12-31-2003 E480-016
Status:	Current			Plat:	EK-219
Receipt:	2009-004234	Base Tax:	0.00	Land Use:	OTHER JURISDICTION
Previous Receipt:	NA	Penalties:	+ 0.00	General Use:	CER
Next Receipt:	NA	Interest:	+ 0.00	Parcel:	744
Billed:	09-30-2009	Credits:	- 0.00		
Paid Date:	NA	User Fee:	+ (Other)		
Actual Date:	NA	SW Fee:	+ 0.00		
		Net Tax:	0.00		
Mortgage Co:	NA	Amount Paid:	- 0.00		
		Nulla Bona Amount:	- 0.00		
MLOD Factor:	No	Refund Amount:	- 0.00		
		Transfer Amount:	- 0.00		
		CURR Due:	0.00		

- Owner Information -		
Current Owner:	ASHLEY RIVER PROPERTIES II LLC	Tax Address: 95 RIPLEY POINT DRIVE
Current Co-Owner:	NA	
Tax District:	63	Mail Address: P O BOX 3166
Jurisdiction:	07	City State Zip: CHARLESTON SC 29417

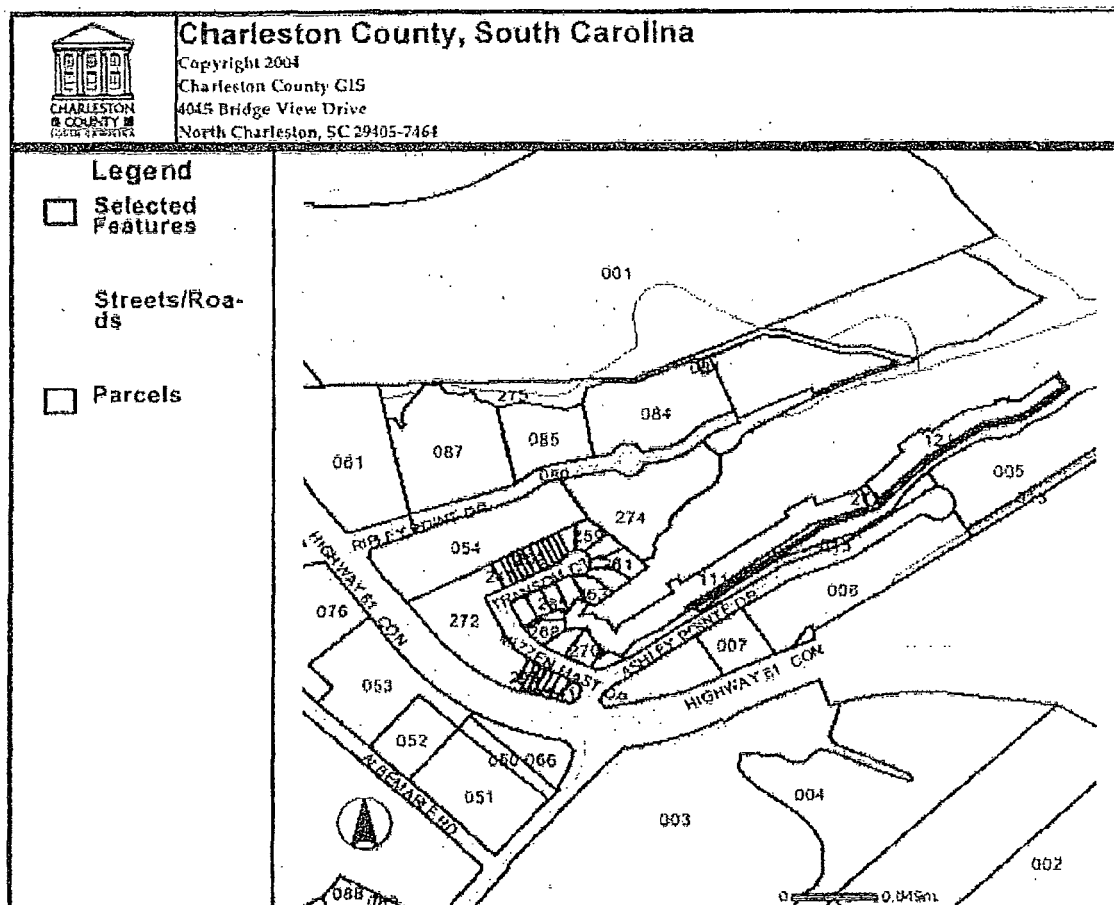
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\$3,129.96
 \$2,117.22

 \$5,247.18

\$3,130



PARCEL NUMBER : 4211100274

PARCEL ID: 421110027.5

STREET NUMBER: 0

STREET NAME: RIFLEY POINT DRIVE

PROP UNIT:

PROP CITY:

PROP ZIP: 29407

SITE NAME:

GENERAL USE: VCC

MOBILE HOMES: 0

SUBDIVISION:

LEGAL DESCRIPTION: PARCEL B

LGL HI ACRES: 18

LGL MAR ACRES: 0

LGL WATER ACRES: 0

LGL SWAMP ACRES: 0

LGL TOTAL ACRES: 1.6

TAX DISTRICT: 63

JURISDICTION: MCP

FLAT BOOK: EK-219

OWNER ON 1ST: ASHLEY RIVER PROPERTIES II LLC

OWNER2 ON 1ST:

CURRENT OWNER:

CURRENT OWNER2:

SALE DATE: 12/29/2003
DEED BOOK: E480-016
WILL CODE:
WILL DATE:
CO NAME:
MAIL STREET NUMBER: 0
MAIL STREET NAME: P O BOX 3156
MAIL UNIT:
MAIL CITY: CHARLESTON
MAIL STATE: SC
MAIL ZIP: 29417
MAIL COUNTRY:
MAIL POSTAL CODE:
SALE PRICE: 100000
MULT LOT: 0
SPLIT CODE: Y
MLOD GROUP:
FINAL VALUE: 1491000
BUILD COUNT: 0
AG USE VAL: 0
AG MARKET TOT: 0
LR APPROVE:
YEAR BUILT: 0
BEDROOMS: 0
FULL BATHS: 0
THREE QTR BATHS: 0
HALF BATHS: 0
TOTAL FINISH AREA: 0
LIVING AREA: 0
CONDO-BEDROOM: 0
CONDO FULL BATH: 0
CONDO H-BATH: 0
CONDO YR BUILT: 0

CHARLESTON COUNTY Online Tax System

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* MAIN MENU
* CONTACTS
* EXIT

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• Billing Information •

Account (PID):	421-11-00-274	Appraised (FMV):	1,491,000
Tax Year:	2009	Assessment:	89460
Prior Year:	NA	Mills:	x 0
Status:	Current		
Receipt:	2009-004233	Base Tax:	0.00
Previous Receipt:	NA	Penalties:	+ 0.00
Next Receipt:	NA	Interest:	+ 0.00
Billed:	09-30-2009	Credits:	- 0.00
Paid Date:	NA	User Fee:	+ (Other)
Actual Date:	NA	\$W Fee:	+ 0.00
		Net Tax:	0.00
Mortgage Co:	NA	Amount Paid:	- 0.00
		Nulla Bona	
		Amount:	- 0.00
MLOD Factor:	No		
		Refund Amount:	- 0.00
		Transfer Amount:	- 0.00
		CURR Due:	0.00

- Property Information -

Legal Description:	RIPLEY POINT DRIVE - PARCEL B		
Subdivision:	NA		
Deed:	12-31-2003 E480-016		
Plat:	EK-219		
Land Use:	OTHER JURISDICTION		
General Use:	VCC		
Parcel:	952		

Buildings	Appraisal	Assessment
Others (6%)	1,491,000	89,460
Totals:	1,491,000	89,460

Acreage	Appraisal
High: 1.80	Land: 1491000
Marsh: 0.00	Improvements: 0
Swamp: 0.00	Buildings: 0
Total: 1.80	Total: 1491000

- Owner Information -

Current Owner: ASHLEY RIVER PROPERTIES II LLC Tax Address: RIPLEY POINT DRIVE
Current Co-Owner: NA
Tax District: 63 Mail Address: P O BOX 3156
Jurisdiction: 07 City State Zip: CHARLESTON SC 29417

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Customer & Slip List
Maximum Marine Capacity:

3865 (Total Linear Dockage)

Deal/Slip	Slip Length	Actual Vessel Length	Customer Name	Vessel	Disc.	Dockage	Slip Potential (Rate at \$13.00 Per Foot)	Date of Pay (Slip or Vessel Length Billed)	Vessel/Slip Length Billed	Per Foot	Customer Vessel Length	Actual Vessel Length	Contract Status/ Open Date	Insurance Expiration	ARPI Named Insured	Notes
A-1	50'		(Waiting To Be Dredged)				\$630									Dredging Issue...
A-2	50'	45'	Marina Construction, LLC	Luna Sea		\$750	\$650	S	50'	\$15	45'	45'	01.01.09	No		
A-3	50'	47'	Ben C. Dantzier, Jr.	Dough Boy		\$650	\$650	S	50'	\$13	45'	47'	05.01.09	No		
A-4	50'	46'	DUNP, LLC	Reel Hooker		\$650	\$650	S	50'	\$13	45'	46'	10.31.08			
A-5	50'	35'	Hank Chevas	Sandra C (II)		\$650	\$650	S	50'	\$13	32'	35'	05.01.09	12.05.08	7	
A-6	65'	54'	Hank Chevas	Sandra C (II)		\$845	\$845	S	65'	\$13	53'	54'	05.01.09	01.11.09	7	
A-7	65'	54'	Thomas Fieldstead	Chief's Lady	10%	\$845 (\$760.50)	\$845	S	65'	\$13	45'	54'	05.10.10	06.11.10	A.I.	
A-8	65'		Open				\$845									
A-9	65'	61'	Jack Hagood	Seader		\$845	\$845	S	65'	\$13	51'	61'	05.01.09	No		
A-10	65'	60'	Hunter Edwards	Briggs Custom 68		\$1,224	\$845	V	64'	\$16	64'	64'	Month-To-Month	04.18.09	No	
A-11	65'	53'	Smyth McKissick (Bennett Grillon)	Chasin		\$845	\$845	S	65'	\$13	54'	53'	05.01.09			
A-12	65'	58'	Bill Fishin, LLC	Bill Fishin		\$975	\$845	S	65'	\$15	52'	58'	11.16.09	06.14.06	No	
A-13	65'		Reserved: "Ultra" Captain Mike Glasner				\$845									
A-14	65'	55'	Michael Larrow	Micabe		\$975	\$845	S	65'	\$15	55'	55'	11.01.09	08.19.09	No	
A-15	65'	56'	Windsor Marine, LLC	Fly Buoy		\$845	\$845	S	65'	\$13	56'	56'	Open			
A-16			(Does Not Exist)				N/A									
A-17	30'	26'	Ben Rugman	Excavator		\$390	\$390	S	30'	\$13	25'	26'	Month-To-Month	04.28.09	No	
A-18	45'	40'	Louis E. Costa, II	Hosanna		\$598	\$585	V	45'	\$13	45'	45'	Open			
A-19	40' (30')	35'	John B. Young, Jr.	Double Eagle		\$390	\$390	S	30'	\$10	34.9'	35'	12.31.08			
A-20	40'	37'	John Kenneth Blankenship	Matty B III		\$520	\$520	S	40'	\$13	37'	37'	09.30.08			
A-21	40'	46'	Heartbreaker Fishing Charters, LLC	Over Run		\$624	\$624	S	48'	\$13	47'	46'	05.01.09	04.21.09	N.A.I	
A-22	40'	44'	Randy S. Stone	Hook 'Um Up		\$624	\$650	S	48'	\$13	42'	44'	05.01.09	12.11.08	C.H.	
A-23	40'	39'	Kenneth T. Black, Jr.	Nutlin But Bills		\$520	\$520	S	40'	\$13	38'	39'	Open			
A-24	40'	38'	Ryan Marcello	My Papa's Pride		\$520	\$520	S	40'	\$13	39'	38'	05.01.09	No		
A-25	40'	51'	Robert J. Kivshlavsk	Day Maker		\$663	\$624	V	51'	\$13	48'	51'	Open			
A-26	48'	42'	Richard M. Campbell, II	Marlin Darlin		\$624	\$624	S	48'	\$13	40'	42'	05.01.09	No		
A-27	40'	40'	Douglas A. Hinson	High Current		\$520	\$520	S	40'	\$13	40'	40'	Open	12.19.08	7	
A-28	30'	38'	DMPH, LLC	Footloose	10%	\$481 (\$444.60)	\$390	V	38'	\$13	36'	38'	05.01.09			
A-29	48'	43'	Eric L. Burn	Hot Shot		\$624	\$624	S	48'	\$13	43'	43'	05.01.09	04.21.10	A.I.	
A-30	49'	52'	Can't Complain, LLC	Can't Complain		\$650	\$637	S	50'	\$13	49'	52'	03.31.09			
A-31	30'	37'	Vega, Inc.	October Sky	10%	\$481 (\$432.90)	\$390	V	37'	\$13	36'	37'	08.01.10	01.10.10	No	
A-32	30'	29'	Charleston Wooden Boatworks, LLC	Novak 29		\$390	\$390	S	30'	\$13	29'	29'	10.31.08			
A-33	30'	31'	Scott Benard	Voodoo		\$403	\$390	V	31'	\$13	27'	31'	05.01.09			
A-34	30'	30'	Donald E. Gehken, Jr.	Reality Check		\$390	\$390	S	30'	\$13	28'	30'	05.01.09	No Expiration	7	
A-35	49'	49'	Allen Bell	Big Daddy		\$637	\$637	S	49'	\$13	46'	49'	03.31.09			His next contract needs to be based on a 49' slip (\$637.00)...
A-36	50'	61'	T. Gordon Brooks, Jr.	Salt Shaker		\$793	\$650	V	61'	\$13	55'	61'	07.23.10	01.19.10	No	
A-37	50'	52'	Risky Business Charters, LLC	Risky Business		\$676	\$650	V	52'	\$13	40'	52'	06.01.10	05.22.10	No	
A-38	50'	42'	John Kendle, Jr.	Geese Girl		\$900	\$650	S	50'	\$18	42'	42'	Month-To-Month			
A-39	145' (30')	39'	Darrell C. Ferguson	Dandy		\$429	\$390	V	38'	\$13	33'	39'	10.01.09	No		
A-40	143'	41'	Albert W. Palmer	Asuazillon		\$559	\$559	S	43'	\$13	39'	41'	11.30.08			
A-41	50'	50'	C. Edward Godwin	Mayhem		\$650	\$650	S	50'	\$13	45'	50'	06.01.10	04.16.10	No	
A-42	50'	41'	Rick Trowman	Escape		\$600	\$650	S	50'	\$12	36'	41'	08.30.08			
A-43	50'		Open				\$650									
A-44	50'	48'	Dennis S. Crosby	Frayed Knot	10%	\$650 (\$585)	\$650	S	50'	\$13	47'	48'	08.01.10	05.11.10	No	
A-45	143'		Open				\$559									
A-46	143'		Open				\$559									
A-47	50'	53'	Gerald W. Stetler	Michelle Renee	3%	\$689 (\$654.55)	\$650	V	53'	\$13	48'	53'	06.01.09	05.09.10	No	
B-1	140'		Open				\$520									
B-2	140'	35'	John W. Buck	Klinton Time II		\$455	\$520	V	35'	\$13	34'	35'	05.01.09	01.02.09	7	
B-3	140'	53'	Edwin B. Hill, Jr.	Marquise		\$689	\$520	V	53'	\$13	47'	53'	05.01.09	12.30.08	A.I.	
B-4	140'															
B-5	140'	68'	Blue Hen, LLC	Blue Moon		\$816	\$520	V	70'	\$12	68'	68'	Open			
B-6	140'															
B-7	140'		Open				\$520									
B-8	140'	59'	J. Larry Duncan	Harbour House		\$767	\$520	V	59'	\$13	57'	59'	04.01.10	04.27.09	No	
B-9	140'						\$520									
B-10	60'	53'	Jim Hodges	Tranquility		\$780	\$780	S	60'	\$13	53'	53'	09.01.09	07.07.09	C.H.	
B-11	60'		Open				\$780									
B-12	60'		Open				\$780									
B-13	60'	41'	Strickland Marine Insurance, Inc	Goicha Covered		\$420	\$780	S	60'	\$7	38'	41'	06.01.09	No		
B-14	60'	41'	Ron Aclero	Allessandra		N/A	\$780	N/A	N/A	N/A	38'	41'	N/A	No		Does not pay Dockage/Line JC & Fee (Grand of Ryan's)...
B-15	50'	42'	Connie E. Davis	The Black Pearl	5%	\$750 (\$712.50)	\$650	S	50'	\$15	40'	42'	01.01.10	05.22.10	A.I.	
B-16	50'		Open				\$650									
B-17	50'	53'	Christian E. Maurer, Jr.	Hooked Up		\$650	\$650	S	50'	\$13	53'	53'	02.29.09			
B-18	50'	46'	Stacey A. Shea	Jaybird		\$650	\$650	S	50'	\$13	42'	46'		04.07.10	A.I.	
B-19	50'	41'	Anthony Ward	Knot Less II		\$598	\$650	V	41' (+ 5') = 46'	\$13	38'	41'	05.01.09	Expired	7	
B-20	50'	42"	Jennifer Jeffries	Rachel II		N/A	\$650	N/A	N/A	N/A	35'	42'	N/A	10.02.09	No	Does not pay Dockage/Line JC & Fee (Marine Manager - Employee Benefit Package)...
B-21	50'	56'	Larry Crimo	Seas The Day		\$650	\$650	S	50'	\$13	56'	56'	12.31.08			
B-22	50'	46'	Walter D. Hoffman	Knot Justified		\$650	\$650	S	50'	\$13	41'	46'		11.14.09	No	
B-23	50'	49'	Robert L. Paovey	Threasure		\$850	\$650	S	50'	\$13	45'	49'	11.15.09	07.22.09	No	

C-1	50'	43'	Cathy Anthony & Mark Butler	Avalon		\$624	\$650	V	43' (+ S) = 48'	\$13	41'	43'	05.01.09	06.25.08	7	
C-2	50'		Open				\$650									
C-3	50'	41'	James H. Whitstone	At Ease		\$600	\$650	S(40')	40'	\$15		41'				
C-4	50'	52'	Plane Crazy, LLC	Plane Crazy	10%	\$676 (\$608.40)	\$650	V	52'	\$13	47'	52'	10.01.09	12.21.09	A.I.	* - See Insurance Notes in File...
C-5	50'		Reserved (C-4 [When he arrives]): Nick Stefanou (Trawler)				\$650									
C-6	50'	49'	Donald & Wendy Bennett	Imagine		\$650	\$650	S	50'	\$13	44'	49'	01.01.10	04.16.09	A.I. *	* (Additional Interest)...
C-7	40'	37'	Michael Marzluft	Lyra		\$481	\$650	V	37'	\$13	37'	37'	Open			
C-8	40'	35'	Ray & Sarah Hifton	Sarah Ann		\$520	\$520	S	40'	\$13	35'	35'	04.01.10	03.13.10	No	
C-9	40'		Reserved: Paula Keener "Lydia"				\$520									
C-10	40'		Open				\$520									
C-11	40'	36'	Clayton C. Fleher	Revel		\$520	\$520	S	40'	\$13	35'	36'	01.01.10	(Continuous)	I.P.	
C-12	40'	29'	Gregory E. Johnson	Rusty Nail III		\$390	\$520	V	30'	\$13	27'	29'	05.01.09	05.01.08	7	
C-13	Facedock	36'	Seascope Adventures, Ltd.	Seascope (Century)		N/A	N/A	N/A	N/A	N/A	32'	36'	N/A	03.24.00	C.H.	
C-14	Facedock	102'	Seascope Adventures, Ltd.	Seascope		\$1,836	N/A	V	102'	\$18	102'	102'	Month-To-Month	03.24.00	C.H.	
C-15	Facedock	102'	"	"		"	N/A	"	"	"	"	"	"	"	"	
C-16	Facedock	102'	"	"		"	N/A	"	"	"	"	"	"	"	"	
C-17	Facedock	90'	Robert L. Murray	Carolina Girl	10%	\$1,080 (\$972)	N/A	V	90'	\$12	90'	90'	04.30.11	01.29.10	C.H.	Paid (2+) Years In advance = \$12 per Foot...
C-18	Facedock	"	"	"		"	N/A	"	"	"	"	"	"	"	"	

Notes:

Open
Reserved

Customer Electricity Draw

Boat Slip	Electricity	Customer Name	Vessel	Current Electricity		Note	Meter Date	Meter Date	Difference	Amount	Notes
	Amps at each slip			Amp Being Drawn	Total Price		12.03.08	03.08.09			
A-1	50 & 20	Open									
A-2	50 & 20	Marinex Construction, LLC.	Luna Sea	50	\$65						
A-3	50 & 20	Ben C. Dantzer, Jr.	Dough Boy	50	\$65						
A-4	50 & 20	DLNP, LLC.	Reel Hooker	50	\$65						
A-5	50 & 20	Hank Cheves	Sandra C (I)	1/2 of 50	\$35	* Needs 35 Amps (No other option with 50 Amp Pedestal)...					
A-6	(2)50 & 20	Hank Cheves	Sandra C (II)	50	\$65						
A-7	(2)50 & 20	Thomas Fieldstead	Chief's Lady	50	\$65						
A-8	(2)50 & 20	Open									
A-9	(2)50 & 20	Jack Hagood	Sonador	50	\$65						
A-10	(2)50 & 20	Hunter Edwards	Briggs Custom 68	50 + 50	\$130						
A-11	(2)50 & 20	Smyth McKissick (Bennett Griffon)	Chasin	50	\$65						
A-12	(2)50 & 20	Bill Fishin, LLC.	Bill Fishin	50	\$65						
A-13	(2)50 & 20	Open									
A-14	(2)50 & 20	Michael Larrow	Micabe	50	\$65						
A-15	(2)50 & (2)30	Windsor Marine, LLC	Fly Bouy	50	\$65						
A-16	N/A	(Does Not Exist)									
A-17	50 & 20	Ben Rugman	Excavator	30	\$35						
A-18	50 & 20	Louis E. Costa, II	Hosanna	50	\$65						
A-19	50 & 20	John B. Young, Jr.	Double Eagle	30	\$35						
A-20	50 & 20	John Kenneth Blankenship	Molly B III	30	\$35						
A-21	50 & 20	Heartbreaker Fishing Charters, LLC.	Over Run	50	\$65						
A-22	50 & 20	Randy S. Stone	Hook 'Um Up	50	\$65						
A-23	50 & 20	Kenneth T. Black, Jr.	Nutin But Bills	50	\$65						
A-24	50 & 20	Ryan Marcello	My Papa's Pride	30	\$35						
A-25	50 & 20	Robert J. Krivohlavek	Day Maker	50	\$65						
A-26	50 & 20	Richard M. Campbell, II	Marlin Darlin	50	\$65						
A-27	50 & 20	Douglas A. Hinson	High Current	50	\$65						
A-28	50 & 20	DMPN, LLC.	Footloose	30	\$35						
A-29	50 & 20	Eric L. Burn	Hot Shot	30	\$35						
A-30	50 & 20	Can't Complain, LLC.	Can't Complain	50	\$65						
A-31	(2)30 & 20	Vega, Inc.	October Sky	50	\$65						
A-32	(2)30 & 20	Charleston Wooden Boatworks, LLC.	Novak 29	N/A	N/A	Does not use Power...					
A-33	(2)30 & 20	Scott Benard	Woosah	30	\$35						
A-34	(2)30 & 20	Donald E. Gehlken, Jr.	Reality Check	30	\$35						
A-35	50 & 20	Allen Bell	Big Daddy	50	\$65						
A-36	50 & 20	T. Gordon Brooks, Jr.	Salt Shaker	50	\$65						
A-37	50 & 20	Risky Business Charters, LLC.	Risky Business	50	\$65						
A-38	50 & 20	John Kendle, Jr.	GeeChee Girl	50	\$65						
A-39	50 & 20	Darrell C. Ferguson	Dandy	30	\$35						
A-40	50 & 20	Albert W. Palmer	Aquasition	30	\$35	* (See Notes) Actual: 50 Amps...					
A-41	50 & 20	C. Edward Godwin	Mayhem	50	\$65						
A-42	50 & 20	Rick Trowman	Escape	50	\$65						
A-43	50 & 20	Open									
A-44	50 & 20	Dennis S. Crosby	Frayed Knot	50	\$65						
A-45	50 & 20	Open									

A-46	50 & 20	Open				
A-47	50 & 20	Gerald W. Stetler	Michelle Renee	50	\$65	
B-1	50 & 50	Open				
B-2	50 & 50	John W. Buck	Killin Time II	2 x 30	\$35	? - Investigating if they can use a 50 Amp Splitter For His Dual Hookup...
B-3	(2)30 & 20	Edwin B. Hill, Jr.	Marquise	2 x 30	\$35	? - Investigating if they can use a 30 Amp Splitter For His Dual Hookup...
B-4	(2)30 & 20	"	"			Does not use Power...
B-5	50 & 30	Blue Hen, LLC.	Blue Moon	50	\$65	
B-6	50 & 30	"	"			Does not use Power...
B-7	50 & 30	Open				
B-8	50 & 30	J. Larry Duncan	Harbour Hours	50 + 30	\$65	Only charging him for 50 Amps - (He is allowing us to use his washer/dryer - Which uses a lot of electricity)...
B-9	50 & 50	"	"			Does not use Power...
B-10	50 & 50	Jim Hodges	Tranquility	50	\$65	
B-11	50 & 50	Open				
B-12	50 & 50	Open				
B-13	50 & 50	Strickland Marine Insurance, Inc.	Gotcha Covered	50	\$65	
B-14	50 & 50	Ron Acerno	Allessandra	N/A	N/A	Does not pay Dockage/Elec./E & S Fee (Friend of Ryan's)...
B-15	50 & 20	Connie E. Davis	The Black Pearl	50	\$65	
B-16	50 & 20	Open				
B-17	50 & 20	Christian E. Maurer, Jr.	Hooked Up	50	\$65	
B-18	50 & 20	Stacey A. Shea	Jaybird	50	\$65	
B-19	50 & 20	Anthony Ward	Knot Less II	50	\$35	* Needs 35 Amps/ Dual hookup (No other option with 50 Amp Pedestal)...
B-20	50 & 20	Jennifer Jeffries	Rachel II	N/A	N/A	Does not pay Dockage/Elec./E & S Fee (Marina Manager - Employee Benefit Package)...
B-21	50 & 20	Larry Crimo	Seas The Day	50	\$65	
B-22	50 & 20	Walter D. Hallman	Knot Justified	50	\$65	
B-23	50 & 20	Robert L. Poovey	Threadbare	50	\$65	
C-1	50 & 20	Cathy Anthony & Mark Rutter	Avalon	50	\$35	* Needs 35 Amps/ Dual hookup (No other option with 50 Amp Pedestal)...
C-2	50 & 20	Open				
C-3	50 & 20	James H. Whetstone	At Ease	30	\$35	
C-4	50 & 20	Plane Crazy, LLC.	Plane Crazy	50	\$65	
C-5	50 & 20	Open				
C-6	50 & 20	Donald & Wendy Bennett	Imagine	50	\$65	
C-7	50 & 20	Michael Marzluff	Lyra	30	\$35	
C-8	50 & 20	Ray & Sarah Hilton	Sarah Ann	30	\$35	
C-9	50 & 20	Open				
C-10	50 & 20	Open				
C-11	50 & 20	Clayton C. Fleher	Revel	30	\$35	
C-12	50 & 20	Gregory E. Johnson	Rusty Nail III	30	\$35	
C-13	20 + 30 + 50	Seascope Adventures, Ltd.	Seascope (Century)	N/A	N/A	
C-14	30 + (2)50	Seascope Adventures, Ltd.	Seascope	(2)100	\$975	
C-15	100	"	"			Does not use Power...
C-16	100	"	"			Does not use Power...
C-17	20 + 30 + 50	Robert L. Murray	Carolina Girl	50	\$65	
C-18	30 + (2)50	"	"			Does not use Power...

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
 January 1 through October 1, 2009

	Jan 1 - Oct 1, 09
Ordinary Income/Expense	
Income	
40000 - Marina Income	
42000 - Boat Slip Rentals	
42100 - Transient Boat Slip Rental	10,517.00
42200 - Marina Access & Usage Rental	1,210.00
42000 - Boat Slip Rentals - Other	404,188.18
Total 42000 - Boat Slip Rentals	415,915.18
43000 - Events	
43100 - Private Events	2,400.00
Total 43000 - Events	2,400.00
44000 - Utilities	
44100 - Electricity	36,237.47
Total 44000 - Utilities	36,237.47
45100 - Ice	9,613.50
45300 - RLYC T-Shirts	40.00
45500 - Misc. Marina Items	2,700.00
47000 - Service Fees	
47050 - Collection Fees & Services	433.75
Total 47000 - Service Fees	433.75
47010 - Environmental & Safety Fee	6,267.93
47100 - Penalties	
47110 - Late Payments	565.00
47130 - Returned Check Fee	5.00
Total 47100 - Penalties	570.00
47200 - Discounts	
47210 - Miscellaneous Discounts	-78.75
Total 47200 - Discounts	-78.75
47500 - Other Income	
47510 - Invoice Adjustments	-1,111.55
Total 47500 - Other Income	-1,111.55
Total 40000 - Marina Income	473,087.53
Total Income	473,087.53
Gross Profit	473,087.53

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
 January 1 through October 1, 2009

	Jan 1 - Oct 1, 09
Expense	
60000 - Marina Operating Expenses	
60100 - Payroll	
60110 - Regular	56,010.50
60120 - Temporary Labor	50.00
60150 - Payroll Processing Fees	78.75
Total 60100 - Payroll	56,139.25
60150 - Employee Health Ins. & Related	5,225.68
60200 - Insurance	
60210 - Citadel Spoil Basin Envir. Risk	13,621.00
60220 - P & C - General Liability	48,439.77
Total 60200 - Insurance	53,060.77
60300 - Utilities	
60310 - Electricity	57,532.18
60320 - Water	5,378.35
60330 - Cable	4,120.64
60340 - Garbage Removal & Sanitation	8,597.35
60360 - Telecommunications	4,022.35
Total 60300 - Utilities	79,650.88
60400 - Selling Costs & Related	
60410 - Credit Card Processing Fees	9,516.98
Total 60400 - Selling Costs & Related	9,516.98
60500 - Advertising & Promotion	3,375.99
60600 - Maintenance & Repairs	
60610 - General Marina	25,218.52
60620 - Equipment	1,936.30
Total 60600 - Maintenance & Repairs	28,154.82
60700 - Supplies & Materials	
60710 - Office	1,953.06
60720 - Marina & Grounds	17,400.22
60730 - Fuel	458.53
60700 - Supplies & Materials - Other	40.52
Total 60700 - Supplies & Materials	19,852.33
60800 - Small Tools & Equipment	1,328.21
60900 - Goods & Vending	
60910 - Ice	6,758.29
Total 60900 - Goods & Vending	6,758.29
61100 - Licenses & Permits	76.00
61200 - Collection Fees & Services	580.00

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
January 1 through October 1, 2009

	Jan 1 - Oct 1, 09
61300 - Marina Services	
61350 - Communications & Technology	511.40
Total 61300 - Marina Services	511.40
61360 - Miscellaneous Prof. Services	2,354.50
61400 - Miscellaneous Expenses	
61410 - Dues & Subscriptions	602.97
61420 - Printing & Reproduction	383.85
61440 - Vehicle Expense	
61441 - Employee Fuel Reimbursement	1,061.68
61442 - Misc. Vehicle Expense	35.00
Total 61440 - Vehicle Expense	1,096.68
61450 - Meals & Entertainment	57.51
61470 - Education	825.00
61480 - Charitable Contributions	200.00
Total 61400 - Miscellaneous Expenses	3,165.91
Total 60000 - Marina Operating Expenses	279,750.41
Total Expense	279,750.41
Net Ordinary Income	193,337.12
Net Income	193,337.12

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
January through December 2008

	Jan - Dec 08
Ordinary Income/Expense	
Income	
40000 - Marina Income	
42000 - Boat Slip Rentals	
42100 - Transient Boat Slip Rental	9,117.75
42200 - Marina Access & Usage Rental	805.30
42000 - Boat Slip Rentals - Other	477,359.13
Total 42000 - Boat Slip Rentals	487,282.18
44000 - Utilities	
44100 - Electricity	38,317.62
Total 44000 - Utilities	38,317.62
45000 - Goods	513.00
45100 - Ice	8,124.00
45200 - Bait Fish	10.00
45300 - RLYC T-Shirts	45.00
45400 - Pump Out	0.00
46000 - Labor	800.00
46500 - Emergency Response Materials	
46510 - Oil Boom	0.00
46520 - Absorbent Pads	0.00
Total 46500 - Emergency Response Materials	0.00
47010 - Environmental & Safety Fee	5,359.88
47100 - Penalties	
47110 - Late Payments	1,120.00
47130 - Returned Check Fee	15.00
Total 47100 - Penalties	1,135.00
47500 - Other Income	
47510 - Invoice Adjustments	-700.00
47520 - Interest Income	71,589.10
Total 47500 - Other Income	70,889.10
Total 40000 - Marina Income	612,475.78
Total Income	612,475.78
Gross Profit	612,475.78

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
January through December 2008

	Jan - Dec 08
Expense	
60000 - Marina Operating Expenses	
60100 - Payroll	
60110 - Regular	78,294.92
60120 - Temporary Labor	100.00
60150 - Payroll Processing Fees	229.96
Total 60100 - Payroll	78,624.88
60160 - Employee Health Ins. & Related	198.39
60200 - Insurance	
60220 - P & C - General Liability	107,169.11
Total 60200 - Insurance	107,169.11
60300 - Utilities	
60310 - Electricity	58,146.07
60320 - Water	5,444.20
60340 - Garbage Removal & Sanitation	6,729.22
60360 - Telecommunications	7,329.48
Total 60300 - Utilities	75,639.97
60400 - Selling Costs & Related	
60410 - Credit Card Processing Fees	11,036.38
60420 - Sales & Commissions	700.00
Total 60400 - Selling Costs & Related	11,736.38
60500 - Advertising & Promotion	17,578.74
60600 - Maintenance & Repairs	
60610 - General Marina	12,727.19
60620 - Equipment	3,055.96
60660 - Maintenance & Repairs - Other	12.00
Total 60600 - Maintenance & Repairs	15,795.15
60700 - Supplies & Materials	
60710 - Office	3,893.02
60720 - Marina & Grounds	33,293.42
60730 - Fuel	840.74
Total 60700 - Supplies & Materials	38,027.18
60800 - Small Tools & Equipment	489.22
60900 - Goods & Vending	
60910 - Ice	8,226.87
Total 60900 - Goods & Vending	8,226.87
60920 - Bait Fish (*)	161.25
61000 - Inspection & Fees	125.00

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
 January through December 2008

	Jan - Dec 08
61300 - Marina Services	
61320 - Temporary Dockage	380.00
61350 - Communications & Technology	343.75
Total 61300 - Marina Services	723.75
61360 - Miscellaneous Prof. Services	10,675.00
61400 - Miscellaneous Expenses	
61420 - Printing & Reproduction	824.34
61430 - Computer Expenses	
61431 - Computer Hardware	1,352.32
61432 - Computer Software	1,257.49
Total 61430 - Computer Expenses	2,609.81
61440 - Vehicle Expense	
61441 - Employee Fuel Reimbursement	1,495.09
61442 - Misc. Vehicle Expense	92.29
Total 61440 - Vehicle Expense	1,587.38
61450 - Meals & Entertainment	741.07
61460 - Travel Expenses	1,143.47
61470 - Education	2,545.00
61480 - Charitable Contributions	2,000.00
61490 - Other Expenses	
61492 - Marina Liability	180.00
61490 - Other Expenses - Other	2,500.00
Total 61490 - Other Expenses	2,680.00
Total 61400 - Miscellaneous Expenses	14,131.07
61500 - Uncategorized Expenses	0.50
Total 60000 - Marina Operating Expenses	379,300.46
Total Expense	379,300.46
Net Ordinary Income	233,175.32
Net Income	233,175.32

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
January through December 2007

	Jan - Dec 07
Ordinary Income/Expense	
Income	
40000 - Marina Income	
42000 - Boat Slip Rentals	
42100 - Transient Boat Slip Rental	5,546.75
42200 - Marina Access & Usage Rental	200.00
42000 - Boat Slip Rentals - Other	377,878.97
Total 42000 - Boat Slip Rentals	383,625.72
44000 - Utilities	
44100 - Electricity	15,214.29
Total 44000 - Utilities	15,214.29
45000 - Goods	4,592.00
47100 - Penalties	
47110 - Late Payments	700.00
Total 47100 - Penalties	700.00
47200 - Discounts	
47210 - Miscellaneous Discounts	-450.00
Total 47200 - Discounts	-450.00
47500 - Other Income	
47510 - Invoice Adjustments	-800.01
47520 - Interest Income	194,833.00
Total 47500 - Other Income	194,032.99
Total 40000 - Marina Income	597,715.00
Total Income	597,715.00
Gross Profit	597,715.00
Expense	
60000 - Marina Operating Expenses	
60100 - Payroll	
60110 - Regular	41,239.44
60130 - Employee Taxes	464.98
60140 - Employer Taxes	176.52
60150 - Payroll Processing Fees	39.42
Total 60100 - Payroll	41,920.06
60200 - Insurance	
60220 - P & C - General Liability	56,320.77
Total 60200 - Insurance	56,320.77

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Accrual Basis

Ashley River Properties II, LLC
Marina Operating Statement
 January through December 2007

	Jan - Dec 07
60300 • Utilities	
60310 • Electricity	35,950.19
60320 • Water	4,182.99
60340 • Garbage Removal & Sanitation	945.44
60345 • Sewer Charges & Temp. Toilets	180.00
60350 • Housekeeping & Janitorial	3,330.37
60360 • Telecommunications	4,055.34
Total 60300 • Utilities	49,605.33
60400 • Selling Costs & Related	
60410 • Credit Card Processing Fees	5,479.94
60420 • Sales & Commissions	300.00
Total 60400 • Selling Costs & Related	5,779.94
60500 • Advertising & Promotion	1,247.50
60600 • Maintenance & Repairs	
60610 • General Marina	12,631.40
60620 • Equipment	7,470.07
Total 60600 • Maintenance & Repairs	20,151.47
60700 • Supplies & Materials	
60710 • Office	515.73
60720 • Marina & Grounds	6,015.74
60730 • Fuel	93.52
Total 60700 • Supplies & Materials	6,624.99
60800 • Small Tools & Equipment	2,435.47
60900 • Goods & Vending	
60910 • Ice	7,860.54
Total 60900 • Goods & Vending	7,860.54
61100 • Licenses & Permits	315.00
61300 • Marina Services	
61320 • Temporary Dockage	1,502.00
61330 • Temporary Parking	1,800.00
61340 • Diving Services	85.00
Total 61300 • Marina Services	3,387.00
61400 • Miscellaneous Expenses	
61420 • Printing & Reproduction	139.22
61440 • Vehicle Expense	
61441 • Employee Fuel Reimbursement	46.51
Total 61440 • Vehicle Expense	46.51
61450 • Meats & Entertainment	1,032.78
61460 • Travel Expenses	25.00
61470 • Education	450.00

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10/13/09

Accrual Basis

Ashley River Properties II, LLC
Marina Development Costs
 As of October 13, 2009

	Oct 13, 09
ASSETS	
Fixed Assets	
14000 • Marina Development Costs	
14100 • Hard Costs	
14110 • Site Work	103,787.52
14120 • Dredging	
14121 • Dyke Work	276,200.02
14122 • Dyke Spillway	54,749.09
14129 • Other	136,862.47
14120 • Dredging - Other	918,557.58
Total 14120 • Dredging	1,386,369.16
14130 • Bulkhead & Pier	1,525,747.10
14140 • Docks & Piles	1,586,786.74
14150 • Marina Building	427,161.89
14160 • Shoreside Utilities	57,794.89
14170 • Pier Electrical	45,831.97
14180 • Other	4,584.89
Total 14100 • Hard Costs	5,138,064.16
14500 • Soft Costs	
14510 • Marina Building Architecture	28,604.72
14520 • Engineering & Design	324,173.61
14530 • Other Engineering (GEL)	141,972.17
14540 • Construction Administration	7,653.24
14550 • Surveys & Inspections	61,729.58
14560 • Permits & Related	11,580.24
14570 • Testing & Reports	37,355.00
14580 • Impact Fees	18,649.60
14590 • Insurance	22,744.04
14600 • Legal	4,394.59
Total 14500 • Soft Costs	658,856.79
Total 14000 • Marina Development Costs	5,796,920.95
Total Fixed Assets	5,796,920.95
TOTAL ASSETS	5,796,920.95
LIABILITIES & EQUITY	0.00

Award Confirmation Letter

Supplier is hereby authorized to perform the Statement of Work detailed below. Supplier acknowledges that this confirmation letter is a summary of select contract terms and conditions which is provided for convenience. To view the complete agreement electronically accepted by Supplier, Supplier is referred to Bank of America's Commercial Valuation Services Information Management System.

Supplier: Statement of Work				
Service Type ID:		09-009978-APR01-002		Supplier:
Service:		Appraisal (Order)		Fred H. Beck & Associates, LLC
Borrower:		Ashley River Properties II LLC		Supplier Representative:
				Mark Morgan
				Agreement Number:
				12668
Award Terms and Conditions				
Sourcing Manager:		Debbie Pauza, Market Manager		
Date Awarded:		09/15/2009		
Fees:		\$6,000		
Bank Contact:		Debbie Pauza		
Contact Phone:		813.531.6774		
Appraisal Type:		Comprehensive		
Certifications:		Contracted Appraiser or Designee		
Other Terms or Conditions:				
Service Delivery Requirements				
Due Date	Description			
10/14/2009	Two properties. One is marina with excess land, one is (was) 3.73 acres approved for 80 condos, Final reports received and data uploaded to the Valuation Services Information Management System. Individual standalone reports to be provided for each listed property unless instructed otherwise in this agreement.			
Service Definition				
Premise	Qualifier	Interest Appraised	Allocations	Description
Market Value	As-Is	Fee Simple		
Policies and Procedures				
The report is intended for use as an aid in acquisition, financing, loan classification and/or asset disposition. Intended users of the report may include: Bank of America and its affiliates or subsidiaries, other participating financial institutions, governments/non-governmental agencies, legal counsel or other transaction participants.				
Include the statement: "Bank of America makes no warranties or representations regarding this document or the conclusions contained herein." in your transmittal letter.				
Supplier is required to review, update and/or enter key summary information about the property appraised and associated value conclusions as part of this service.				
In addition to any CD or Bound reports listed in the Addressee and Distribution section, Adobe Acrobat (PDF) comparable digital reports must be uploaded for all appraisal reports (including all addendum and attachments) and invoices. Additional Microsoft and Argus documents can be uploaded in their native format subject to some limitations.				
Reappraisal assignments must document and explain assumption changes and resulting value differences for all Bank of America assignments completed within the prior two years.				
Addressee and Distribution Instructions				
Report Distribution	Name	Address	CD/DVD	Bound
Addressee and Recipient	Debbie Pauza Market Manager	Bank of America, NA 100 N WESTSHORE BLVD FL2-399-02-03 Tampa, FL 33609	0	0
Comments				
Documents (content available online only)				
Reference Documents				
APPRaisal REQUIREMENTS (EFFECTIVE 2008-10)_10_03_2008_08_43_32.pdf				
Properties (detailed descriptions may be viewed online or downloaded)				
#	Property Type	Property Address		
1	Special Purpose - Marina	95 Ripley Point Drive, Charleston, SC		
2	Land - Multi-Family-Apartment	S/S Ripley Point Drive, Charleston, SC		
Property Contact (additional contacts may be listed for each property. Refer to the online property profile for details)				
Name	Company / Role	Telephone	Comments	
Davidson Williams	CFO	212-599-3510x14		

VSIMS

Page 1 of 1

Property Details

Property Name : Ripley Light Yacht Club Marina
Address 1 : 95 Ripley Point Drive **Address 2 :**
Zip Code : 29407
Country : United States of America **State :** South Carolina **County :** Charleston **City :** Charleston
Property Type : Special Purpose-Marina **Site Owner Name :** Ashley River Properties II LLC **Same as Borrower**
Parcel Number :
Other Property Information :

Measurement Type	Quantity	Type	Additional Information	Delete
Building Size- primary	0	SP-GBA		
Building Size- secondary		Moorings		
Building Size-	96	Slips		

Transaction subject to Bond Financing? N
 Is this property encumbered by a ground lease? N
 What is the current use of the property? Marina
 What is the future (proposed) use of the property? Marina
 Is this property currently listed for sale? N
 Property Status: Existing
 Age of Building Improvements
 Property Tenancy: N/A Tenants(non-owner):

VSIMS

Page 1 of 1

Property Details

Property Name : Ashley River Condo Land
 Address 1 : S/S Ripley Point Drive Address 2 :
 Zip Code : 29407
 Country : United States of America State : South Carolina County : Charleston City : Charleston
 Property Type : Land-Multi-Family-Apartment Site Owner Name : Ashley River Properties II LLC Same as Borrower
 Parcel Number :
 Other Property Information :

Measurement Type	Quantity Type	Additional Information	Delete
Land Area-primary	3.73 Acres		
Land Area-secondary	Lot-Avg Size (acr)		
Land Area-	Lots-Finished		

Is this property encumbered by a ground lease? N
 What is the current use of the property? vacant
 What is the future (proposed) use of the property? ??
 Is this property currently listed for sale? N
 Property Status: Land Only

Name	Company/Role	Phone Number	Comments
dp	hoa	8888888888	

Note: Fields marked (*) are mandatory

Introduction

All appraisal assignments engaged by Bank of America's Commercial Appraisal Services (CAS) department must conform to these Appraisal Requirements.

All real estate appraisal services performed (or Bank of America must confirm to the following:

- The Uniform Standards of Professional Appraisal Practice (USPAP).
- Appraisal requirements of Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FFIRREA), revised June 7, 1994, and amendments thereto. Federal regulatory requirements and guidelines may also apply.
- The appraiser must provide all services in accordance with the Bank of America Professional Services Agreement.
- The assignment will conform to the requirements as detailed by Bank of America in the award/engagement contract and in Bank of America's Valuation Services Information Management System RFP award information.
- Bank of America CAS Appraisal Performance and Reporting Guidelines

Appraiser Independence

Maintaining the independence and objectivity of the appraisal process is of utmost importance to Bank of America. If an appraiser has a current or prospective interest in the subject property, transaction, or parties involved, the appraiser must decline the assignment.

If the appraiser (1) has previously appraised the subject property, or (2) previously performed a consulting assignment related to the subject property, the appraiser must be able to remain unbiased by the previous assignment, or decline the current assignment. The appraiser must disclose the previous appraisal or consulting assignment to Bank of America CAS during the RFP/bidding process and prior to accepting an appraisal assignment.

If during the course of an assignment, the appraiser becomes aware of a potential conflict of interest, the appraiser should contact Bank of America CAS immediately.

Any communication between the appraiser and Bank of America must be through the CAS contact.

Confidential Information

Assignment results and all information provided by Bank of America, or its customers, related to the appraisal assignment, are confidential information, and must be treated as such. Written approval from Bank of America CAS is required to release confidential information, including assignment results, to any third party.

Competency

In bidding for and accepting appraisal assignments from Bank of America CAS, the appraiser certifies that he or she is competent to perform the requested service. The appraiser must be an active State-Certified General or State-Licensed appraiser, as appropriate. Temporary certificates are acceptable.

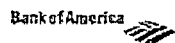
Fair Lending Policy

Bank of America is committed to supporting fair lending practices and will not tolerate discrimination or discriminatory references in any form.

Appraisal reports must not include any subjective terms or phrases that might be interpreted as discriminatory. Apparent discrimination may be suggested by stating that a condition or feature is a negative influence without market support that it is regarded as such. Only those characteristics that are relevant to the valuation problem are to be addressed. Additionally, the appraiser must avoid using statistics that are not pertinent to the appraisal assignment.

Future Assignments

Your acceptance of any Bank of America CAS assignment certifies that you agree not to accept or pursue an appraisal or related assignment of the subject property without receiving prior approval from Bank of America CAS.



Appraisal Performance and Reporting Guidelines
Revised October 2008

Commercial Appraisal Services

Introduction

The Bank of America Appraisal Performance and Reporting Guidelines apply to all appraisal assignments engaged by Bank of America CAS.

Scope of Work

It is the appraiser's responsibility to determine and perform a scope of work sufficient to produce credible assignment results given the intended use.

The subject property inspection should be sufficient to identify the relevant property characteristics and include a representative sample of interior spaces.

Report Content Requirements

The amount of information and analysis presented in the report is based on the appraisal product type and the relative complexity of the appraisal issues addressed.

Each appraisal report should include:

- Prominent disclosure of the Bank of America CAS appraisal product type
- Prominent summary of the key elements of the scope of work, including disclosure of the approach(es) to value used in the assignment
- Prominent disclosure and support for any deviation from the requested product (e.g. Comprehensive, Condensed, Concise), interest appraised, valuation premise (e.g. Upon Completion of Construction, Upon Stabilization, etc.), or valuation condition, as identified in the award/engagement contract
- Opinion of the "As Is" Market Value of the subject property
- The statement: *Bank of America makes no warranties or representations regarding this document or the opinions contained herein.*
- A copy of the Award Confirmation Letter and any subsequent instructions
- Identification of the flood hazards, as applicable
- Identification of the earthquake hazards, as applicable

Disclaimer

Bank of America CAS will not accept the report if warnings or disclaimers are included in the report that limit the appraiser's professional liability to Bank of America.

Borrower/Customer Contact

Bank of America CAS expects that the appraiser will communicate with the property contact (as identified in the award letter) within two business days of the assignment award.



Appraisal Performance and Reporting Guidelines
Revised October 2008

Commercial Appraisal Services

Appraisal Report Delivery, Ownership & Distribution

Bank of America's Valuation Services Information Management System RFP/award information and Award Confirmation Letter provide appraisal report addressee and distribution instructions.

An electronic copy of the appraisal report, invoice and any supporting files are to be uploaded to the Bank of America Valuation Services Information Management System.

Bank of America owns the appraisal report and is under no restrictions regarding its redistribution to other interested parties of the Bank's choice.

Appraisal Analysis Software

Discounted cash flow models for income producing properties should be prepared using Argus financial software. Appropriate supporting documentation must be included in the report and the Argus file must be uploaded to Bank of America's Valuation Services Information Management System.

In cases where the appraiser has developed proprietary analysis models, such models/software must be made available to Bank of America CAS. Spreadsheets are to be forwarded in operational condition and in a format that can be reviewed.

Suspected Environmental Hazards

If the appraiser observes any suspected environmental hazards, the appraiser must notify Bank of America CAS immediately and document the suspected hazard in the report.

Quality Assurance Review

Appraisal reports are subject to review by Bank of America CAS. Appraisers must be prepared to discuss their analyses and conclusions and provide additional written support, clarification, and/or corrected appraisal pages if requested.

Date of Inspection / Date of Value

The date of inspection / date of value must occur within 45 days prior to the date the report is delivered, unless waived by Bank of America CAS.

Going Concern

In assignments where the subject is a going concern (an operating business enterprise that is expected to continue), non-realty components must be identified and the final value allocated among the real property, personal property, and business interests.

Other Valuation Issues

Performance and reporting requirements applicable to specialized lending situations (e.g., SBA, CMBS, etc.) will be identified by Bank of America CAS at the time of the engagement.

When appraising properties that include specialized valuation issues, such as mortgage revenue bonds, low income housing tax credits, etc., the appraiser must contact Bank of America CAS for clarification and guidance if the methods for handling these issues are not defined during the engagement process.

Definitions

Market Value: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: Code of Federal Regulations, Title 12—Banks And Banking; Chapter I—Comptroller Of The Currency, Department Of The Treasury, Part 34—Real Estate Lending And Appraisal—Subpart C—Appraisals Sec. 34.42 Definitions; Revised as of January 1, 2009

"As Is" Market Value: An estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date of inspection. This requires that the property be valued according to its highest and best use. However, it does not prohibit valuation based upon reasonably anticipated future events such as the leasing of vacant space, demolition of obsolete buildings, etc.

Insurable Cost: The cost to replace the deteriorable portions of a property which should include the foundation. The estimate is based on replacement cost new, and must reflect only direct or hard construction costs, such as construction labor and materials, repair design, engineering, permit fees, and contractor's profit, contingency and overhead. It must not include surveys, site development, financing, or land acquisition costs.

Note: Insurable Cost provided to Bank of America CAS is for the Bank's internal use and is not intended to replace the due diligence done by an insurance company to determine the amount of insurance coverage.

Appraisal Products

The required appraisal product will be set forth in an award confirmation letter. The appraiser is not authorized to modify the assignment without prior approval by Bank of America CAS.

Appraisal services provided to Bank of America CAS are identified as *Comprehensive*, *Condensed* or *Concise*.

Comprehensive: The scope of work includes development of all applicable approaches to value.

The report describes significant data and analysis in support of the assignment results with a thorough reporting of the relevant data, analysis, and conclusions.

Condensed: The scope of work includes development of the most applicable approach in some circumstances, a less extensive secondary approach may be warranted.

The report summarizes significant data and analysis in support of the assignment results with an emphasis on critical data, analysis, and conclusions.

Concise: The scope of work includes development of the most applicable approach.

The report summarizes significant data and analysis in support of the assignment results with an emphasis on presenting the conclusions.

ASSUMPTIONS AND LIMITING CONDITIONS

GENERAL ASSUMPTIONS

1. The owner of record is assumed to have a free and clear fee simple title with no encumbrances that cannot be cleared through normal channels.
2. The information on which this appraisal is based on has been obtained from sources normally used by **Fred H. Beck & Associates, LLC** and is considered to be reliable, but is in no sense guaranteed.
3. The information furnished by others is believed to be reliable. No warranty is given for its accuracy.
4. **Fred H. Beck & Associates, LLC** reserves the right to alter its opinions of value on the basis of information withheld or not discovered in the normal course of a diligent investigation.
5. The appraiser assumes no responsibility for the legal description or matters of a legal nature affecting the property or the title thereto. The appraiser does not render any opinion as to title, which is assumed to be good and marketable.
6. Responsible ownership and competent property management are assumed.
7. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined and considered in the appraisal report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents or other legislative or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. The appraiser is not required to give testimony or appear in court because of having made this appraisal with reference to the property in question, unless arrangements have been previously made therefore. The fee charged for this appraisal does not include payment for court testimony or for further consultation.
11. No opinion of an engineering nature is intentionally expressed or implied and no responsibility is assumed for matters of this nature.
12. No survey was made especially for this appraisal. Property lines, area, etc., of record or otherwise provided, are assumed to be correct.
13. No engineering survey has been made by the appraiser. Except as specifically stated, size and area were taken from sources considered reliable and no encroachment of real property improvements is assumed to exist.
14. Maps, plats and exhibits are for illustration only as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose.
15. It is assumed that there are no hidden or unapparent conditions of the property, subsoil or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
16. No opinion is expressed as to the value of subsurface oil, gas or mineral rights. The property is not subject to surface entry for the exploration or removal of such materials except as is expressly stated.
17. Disclosure of the contents of the appraisal is governed by the Bylaws and Regulations of the professional organizations with which **Fred H. Beck & Associates, LLC** is affiliated.
18. Acceptance of and/or use of this report constitutes acceptance of these assumptions and limiting conditions.
19. This report is intended to comply with the Code of Ethics and Standards of Professional Appraisal practice of the Appraisal Institute. It is further intended to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and the guidelines set forth by the Financial Institution's Report, Recovery and Enforcement Act of 1989 (FIRREA).

LIMITING CONDITIONS

1. Possession of this report, or a copy, does not carry with it the right of publication.
2. Neither all nor any part of the contents of this report (especially any conclusions as to value, identity of the appraisers or firm with which they are connected or any reference to the Appraisal Institute or the MAI or SRA designations) shall be disseminated to the public through the advertising media or any other public means of communication without the prior written consent and approval of **Fred H. Beck & Associates, LLC** and the signatories of the report. Acceptance of and/or use of this report constitutes acceptance of these restrictions.
3. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
4. The forecasts, projections or operating estimates contained herein are based upon current market conditions, anticipated short term supply and demand factors and a continued stable economy. These forecasts are, therefore, subject to changes in future conditions.
5. Load bearing capacity of subsoil is assumed to be adequate for the present utilization, but no borings or engineering studies have been made especially for this appraisal and the value conclusion could be affected by such information.
6. We have not been supplied with building plans and specifications, site plans, surveys or occupancy permits. No responsibility or representation is assumed or made for any costs associated with obtaining same for any deficiencies discovered before or after they are obtained.
7. We have personally inspected the subject property and found no obvious evidence of structural deficiencies except as stated in this report; however, no responsibility for hidden defects or conformity to specific governmental requirements, such as fire, building and safety or occupancy codes, can be assumed without provision of specific professional or governmental inspections.
8. No termite inspection report was made available. We personally inspected the subject property and found no significant evidence of termite damage or infestation.
9. Unless otherwise stated in this report, we make no representation or warranties as to the adequacy or condition of appliances, electrical systems, plumbing and heating, air conditioning, presence of insulation, adequacy or condition of structural systems or any other subsystem within the property. We assume no responsibility for any costs incurred to discover or correct any deficiencies present in the property.
10. Unless otherwise stated, no consideration in the valuation process has been given mineral deposits (oil, gas, coal, gravel, etc.) or timber, if any, that may be found on the subject.
11. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraisers, however, are not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
12. On January 26, 1992, The Americans with Disabilities Act (ADA) took effect. This report has not considered this act and the impact it may have on the subject with respect to renovation cost and general compliance. Should a report be provided which indicates a possible renovation, we reserve the right to amend this report.
13. The appraisers have prepared this report in compliance with the competency provision explicitly detailed in the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisers are fully experienced in the appraisal of this product type (see Qualifications).

QUALIFICATIONS OF THE APPRAISER
MARK A. MORGAN

FRED H. BECK & ASSOCIATES, LLC
8924 Blakeney Professional Drive
Charlotte, NC 28277

EDUCATION

Master of Science – Georgia State University, Atlanta, GA
Real Estate
Bachelor of Fine Arts – Southern Methodist University, Dallas, TX
Broadcasting
Bachelor of Business – Southern Methodist University, Dallas, TX

Completed The Appraisal Institute Courses:

- C1A-1 – Real Estate Appraisal Principles
- C1A-2 – Basic Valuation Procedures
- C1B-A – Capitalization Theory and Techniques, Part I
- C1B-B – Capitalization Theory and Techniques, Part II
- SPP – Standards of Professional Practice
- C2-1 – Case Studies in Real Estate Valuation
- C2-2 – Report Writing

Commercial Investment Real Estate Institute:

- CI-101 – Principles of Investment Analysis
- CI-102 – Creating a Real Estate Investment (Market Analysis)
- CI-103 – Advanced Real Estate Tax Analysis
- CI-104 – Understanding Human Behavior
- CI-105 – Case Studies in commercial Investment Real Estate

EXPERIENCE

Fred H. Beck & Associates, LLC – Charlotte, NC (May 2000 – Present)

- Real Estate Appraiser and Consultant

Bank of America – Charlotte, NC (3/93 – 5/00)

- Appraisal Department Area Manager

Schultz-Carr-Bissett – Atlanta, GA (11/89 – 3/93)

- Staff Appraiser

PROFESSIONAL AFFILIATIONS

- State-Certified General Real Estate Appraiser, North Carolina Certificate No. A4554
- State-Certified General Real Estate Appraiser, South Carolina Certificate No. CG3890
- State-Certified General Real Estate Appraiser, Georgia Certificate No. 689
- North Carolina Real Estate Broker – License # 189040

QUALIFICATIONS OF THE APPRAISER
EDWARD M. PARLER III

FRED H. BECK & ASSOCIATES, LLC
13089 Ocean Highway, Unit C-1
Pawleys Island, South Carolina 29585

EDUCATION

Bachelor of Arts Degree – Wofford College, Spartanburg, SC (1995) - Business Economics

Real Estate Appraisal Courses:

- L-1 Category - Introductory Courses Pertaining to Real Estate Appraisal
- L-2 Category - Courses Pertaining to Valuation Procedures
- L-3 Category - Course in the Uniform Standards of Professional Appraisal Practice
- C-1 Certification – 1 – Introduction to Income Property Appraisal
- C-2 Certification – 2 – Advanced Income Capitalization Procedures
- C-3 Certification – 3 – Applied Income Property Valuation
- CR Certification – Applied Residential Property Valuation Case Study

Continuing Education Courses and Seminars:

- 1-CE-650 - Internet Search Strategies for Real Estate Appraising
- Argus Financial Software Training - Argus Lease-By-Lease Version 8.0.00
- Appraising Convenience Stores

Appraisal Institute Courses:

- Part A - Standards of Professional Practice
- Part B - Standards of Professional Practice
- Course 510 – Advanced Income Capitalization
- Course 520 – Highest & Best Use and Marketability Analysis
- Course 530 – Advanced Sales Comparison & Cost Approaches

EXPERIENCE

Fred H. Beck & Associates, LLC – Charlotte, NC (2006 – Present)

- Staff appraiser specializing in the appraisal of commercial and investment properties.

Marshall Dodds Company, Inc. - Columbia, SC (1997 - 2006)

- Staff appraiser specializing in the appraisal of commercial and investment properties.

Moovies Video Stores – Greenville, SC (1995-1997)

- Real Estate Market Analyst. Duties and responsibilities consisting of analyzing potential markets for video superstores, competition analysis, revenue projections, etc.

PROFESSIONAL AFFILIATIONS

State-Certified General Real Estate Appraiser:

South Carolina Certificate No. CG3064

North Carolina Certificate No. A6179

Associate Member of The Appraisal Institute (Member # 397691)

Page 1 of 1

Remp, Danielle

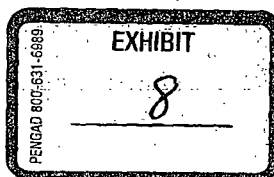
From: TVHMIAM1@aol.com
Sent: Thursday, April 21, 2005 9:17 AM
To: STULONGMAN@aol.com
Subject: CDP - Charleston LOIs

Stu,

As requested, here are copies of the LOIs.

Terry V. Hauser
444 Brickell Avenue, Suite 1000
Miami, FL 33131
Phone: (305) 371-5588
Fax: (305) 371-2941

The information contained in this e-mail is intended solely for the use of the addressee. Access, copying or other use of the e-mail or any information contained in it by anyone other than the addressee is not authorized. If you are not the intended recipient, please notify us immediately by returning this e-mail to the originator.



4/21/2005



April 20, 2005

Mr. Stuart L. Longman, Managing Member
Ashley River Properties I, LLC and Ashley River Properties II, LLC
424 West Mountain Road
Ridgefield, CT 06877

Mr. David Williams
Ashley River Properties II, LLC and KRIT Management, Inc.
345 East 37th Street, Suite 312
New York, NY 10016

RE: Proposed purchase of property located in Charleston, South Carolina

Stuart and David:

I am submitting this Letter of Intent outlining the major business terms on which Centex Destination Properties (a division of Centex Homes) would be interested in purchasing the property described below.

1. PROPERTY

Approximately 5.145 acres of land, located in Charleston, South Carolina, known by Parcel identifier 4211100054 ("the Big Parcel"), being a part of the project commonly known as Ripley Light Yacht Club Marina & Condominiums, together with all of Seller's right, title and interest therein and in and to all easements, permits, approvals and improvements relating thereto, including, without limitation, any permits and approvals for, and improvements comprising, a marina and/or boat slips, and all of Seller's interest in any land adjacent thereto (collectively, "the Property"). The land comprising the Big Parcel is described on Exhibit "A" attached hereto.

The Contract (defined below) shall provide for Seller to install the improvements comprising a marina with 95 boat slips and for Purchaser to reimburse Seller, at closing, for Seller's costs related thereto.

2. SELLER

Ashley River Properties II, LLC.

3. PURCHASER

Centex Homes, a Nevada general partnership d/b/a Centex Destination Properties.

4. PURCHASE PRICE

\$14,500,000.

5. DEPOSIT

Initial Deposit: \$75,000, to be delivered to Commerce Title Company ("Escrow Agent"), within 5 business days after the date (the "Effective Date") on which both parties have executed a contract of sale (the "Contract") for the Property.

Additional Deposit: \$125,000, to be delivered to Escrow Agent within 5 business days after the expiration of the Due Diligence Period (defined in Paragraph 8 below).

The Deposit will be delivered to Seller at Closing and Purchaser will receive credit for such amount against the Purchase Price. If the Contract is terminated during the Due Diligence Period for any reason, the Initial Deposit will be refunded to Purchaser. If the Contract is terminated after the expiration of the Due Diligence Period, the Deposit will be disbursed to

Seller, as liquidated damages, provided that if the Contract is terminated by Purchaser due to the failure of any of the Conditions to Closing (defined in Paragraph 10 below), the Deposit will be refunded to Purchaser.

6. CLOSING.

Purchaser will purchase the Property at a single closing to occur on or before 30 days after the date on which the last of the Conditions to Closing have been satisfied. Purchaser may accelerate the closing by providing 10 days prior notice to Seller. At least 30 days prior to the Closing, Seller will terminate all reservation agreements affecting units to be constructed on the Property. Seller acknowledges and agrees that Purchaser is submitting a Letter of Intent for adjacent property owned by Ashley River Properties I, LLC ("the Small Parcel"). The Contract will provide that it is a condition to closing that Purchaser close on both the Big Parcel and the Small Parcel simultaneously.

7. INTENDED USE.

The development of a resort community on the Property, including 128 luxury condominium or condo-hotel units in buildings being approximately 50 feet tall with 4 stories over parking, together with an approximately 2,000 square foot (under air) clubhouse with pool, 95 wet slips, an approximately 3,500 square foot waterfront deck area and associated amenities and subdivision improvements.

8. FEASIBILITY PERIOD.

120 days after the Effective Date (the "Due Diligence Period"). Seller will provide to Purchaser copies of all information concerning the Big Parcel and the Property and the operation and development thereof.

9. TITLE/SURVEY.

Seller will convey to Purchaser valid, good, marketable and insurable fee simple title to the Big Parcel free from all defects, by special warranty deed. Within 45 days after the Effective Date, Purchaser, at Purchaser's expense, may obtain a current ALTA survey (the "Survey") of the Big Parcel. Within 60 days after the Effective Date, Purchaser will obtain, at Purchaser's expense, from Commerce Title Company, a Title Commitment covering the Big Parcel and proposing to insure Purchaser in the amount of the Purchase Price. Purchaser will review the Survey and Title Commitment and provide Seller with its objections prior to the expiration of the Due Diligence Period.

10. CONDITIONS TO CLOSING.

Purchaser will not be obligated to close on the purchase of the Big Parcel unless each of the following conditions (collectively, the "Conditions to Closing") are either fulfilled or waived by Purchaser: (1) Seller has performed all of its obligations under the Contract and Seller's representations and warranties are true and correct; (2) title to the Big Parcel is in the condition as required by the Contract and the title company is prepared to issue a Title Policy insuring the Big Parcel in the amount of the Purchase Price; (3) all Development Permits (defined in Paragraph 12 below) necessary to develop the Big Parcel for the Intended Use have been approved and all appeal periods have expired without appeal; (4) access to the Big Parcel, sufficient for the Intended Use, is available by dedicated public roads or rights-of-way and/or acceptable easements, and all utilities are available and have been brought to the boundary of the Big Parcel within public rights-of-way and/or acceptable easements and Purchaser has obtained evidence, satisfactory to Purchaser, that the applicable governmental authorities and utility providers are committed to providing such access and utilities (including sewer) to the Big Parcel; (5) no moratoria have been imposed, threatened or contemplated by any governmental authority or utility provider with respect to the issuance of building permits or certificates of occupancy or the availability of utilities and no unusual fees or other restrictions will have been imposed, threatened or contemplated by any governmental authority or utility provider which would increase the cost of development, construction or occupancy for the Intended Use; and (6) the Big Parcel is free of all hazardous materials.

11. PRORATIONS AND CLOSING COSTS.

Purchaser and Seller will prorate real property taxes based on amounts for the current year (with maximum discount, if any, taken). Seller will pay all liens, special assessments, taxes, interest and penalties which are pending or levied against the Big Parcel before the closing. However, Seller will be responsible for the payment of any so-called "roll-back" or retrospective taxes assessed against the Big Parcel applicable to periods before the closing, regardless of when such roll-back taxes are assessed or imposed, and, if such roll-back taxes are assessed after such closing, Seller will either pay such taxes directly in a timely manner, or reimburse Purchaser for any such taxes paid by Purchaser.

Seller will pay for the following items at the closing: (a) Seller's prorations pursuant to this Paragraph; (b) outstanding mortgages, security interests and liens against the Big Parcel; (c) title curative instruments, if any; (d) all state and local transfer taxes and fees (other than recording fees) and all documentary stamp tax on the deed; (e) preparation of closing documents; and (f) Seller's attorney's fees. Purchaser will pay for the following items at the closing: (i) Purchaser's prorations in accordance with this Paragraph; (ii) fees for recording the deed; (iii) the cost of the Survey; (iv) Owner's Title Policy premium and Title Commitment fees; and (v) Purchaser's attorney's fees.

12. DEVELOPMENT APPROVAL PROCESS.

Purchaser will, at Purchaser's cost and expense, attempt to obtain all approvals and permits, including, without limitation, a development order and site plan and architectural approvals, necessary to allow the development of the Property for the Intended Use immediately following the closing (collectively, the "Development Permits"). The Contract will provide a mechanism for Seller to approve Purchaser's applications for Development Permits prior to submittal to the governmental authorities.

13. REPRESENTATIONS, COVENANTS AND WARRANTIES.

In the Contract, Seller will make representations regarding: Seller's authority to enter into the Contract; title to the Big Parcel; environmental issues and adverse site conditions affecting the Big Parcel; utilities serving the Big Parcel; and pending claims and violations. The undersigned hereby represent that Seller is the owner of the Big Parcel and has the right to sell the Big Parcel to Purchaser on the terms described in this Letter of Intent and that the undersigned are duly authorized to execute this Letter of Intent. Seller hereby represents that, to the best of Seller's knowledge, there are not currently, and have never been, any debris or hazardous materials located on the Property and that the Property is not, and has never been, in violation of any laws relating to hazardous materials.

14. POSSESSION.

Purchaser will be granted possession and control of the Big Parcel at closing. Except as specified in the Contract, Seller will remove all improvements and all equipment, live stock and other personal property from the Big Parcel at least 3 days prior to the closing.

15. CONSULTING FEE.

Seller and Purchaser hereby agree to indemnify, defend and save harmless the other from and against any and all claims, losses, damages, costs or expenses (including, without limitation, reasonable attorney's fees incurred at all levels) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with the transaction contemplated hereby. Purchaser shall compensate Karen E. Poydenis and Terry V. Hauser, Esq. pursuant to a separate agreement, if, as and when the Closing occurs.

16. EXCLUSIVITY.

As a material consideration to Purchaser in entering into this Letter of Intent and expending funds in connection with its due diligence, Seller agrees to deal and negotiate with Purchaser on a good faith and exclusive basis with respect to the Property for 30 days from and after the final execution of this Letter of Intent. Seller agrees not to conduct any activities related to the marketing or sale (including, without limitation, negotiating or entering into back-up contracts) of the Property or any portion thereof (including, without limitation sales of lots) to others during such period or so long as the Contract is in effect.

17. CONTRACT.

Within 10 business days after full execution of this Letter of Intent, Purchaser will provide Seller with a Purchase and Sale Contract for the Big Parcel for review and execution. If the parties fail to enter into the Contract within 30 days after the full execution of this Letter of Intent, either party may terminate this Letter of Intent. Purchaser will be permitted to record a Memorandum of the Contract upon the expiration of the Due Diligence Period.

18. NON-BINDING.

Subject only to Paragraphs 13, 15 and 16 above, unless and until the Contract is executed and delivered by both parties, any communications and correspondence between the parties (and their respective representatives) in connection with this matter, including, without limitation, this Letter of Intent, are intended only as non-binding discussions, and either party will have the absolute right to withdraw from such discussions at any time without any liability or obligation to the other whatsoever.

If the foregoing correctly represents your understanding of the proposed major terms for the transaction described herein, please sign this Letter of Intent in the area set forth below, complete Seller's Information described on Exhibit "B" attached to this Letter of Intent and return the enclosed copy of this Letter of Intent to me. Upon receipt of an executed copy of this Letter of Intent, we will proceed to generate the Contract. This Letter of Intent will lapse unless it is signed in the area set forth below and returned to me on or before 5:00 p.m., on April 29, 2005.

I look forward to working with you on this transaction

Sincerely,

Edward Milgrim
Assistant Regional General Counsel

The undersigned agrees with the terms and conditions of the foregoing Letter of Intent.

Ashley River Properties II, LLC

By: _____
Stuart L. Longman, Managing Member
Date: _____

ACKNOWLEDGED AND AGREED TO:

Ashley River Properties II, LLC
By: Krite Management, Inc.

By: _____
Davidson D. Williams
Title: _____
Date: _____

Exhibit "A"PROPERTY DESCRIPTION

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 "PLAT SHOWING THE 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. Said lot having such size, shape, dimensions, buttings and boundings as shown on said plat. ALSO All the docks, bulkheads, floating docs (sic) and all other properties attached to the rear property described above.

Exhibit "B"SELLER'S INFORMATION

SELLER:	Ashley River Partners, LLC, a South Carolina limited liability company Authorized Representative: Stuart L. Longman Phone: () Fax: () E-Mail Address: _____ Tax ID#: _____
SELLER'S COUNSEL:	_____, Esq. Firm Name: _____ Suite#: _____ (Please provide Street (not post office) Address) City: _____ State: _____ Zip: _____ Phone: () Fax: () E-Mail Address: _____

THIS NOTE IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND/OR §15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS AMENDED.

Promissory Note

\$9,000,000.00

May 9, 2006

FOR VALUE RECEIVED, Ashley River Properties II, LLC, a South Carolina limited liability company ("Borrower"), hereby promises to pay to the order of Bank of America, N.A., a national banking association (together with any and all of its successors and assigns and/or any other holder of this Note, "Lender"), without offset, in immediately available funds in lawful money of the United States of America at 200 Meeting Street, Suite 201, Charleston, South Carolina 29401, the principal sum of Nine Million and No/100 Dollars (\$9,000,000.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

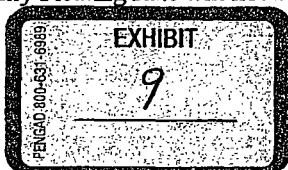
Section 1 Payment Schedule and Maturity Date. Installments of interest for each calendar month shall be due and payable in arrears on the fifteenth (15th) day of each month beginning with the interest installment due on May 15, 2006, and continuing on the fifteenth (15th) day of each month thereafter until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. The entire principal balance of this Note then unpaid, together with all accrued and unpaid interest and all other amounts payable hereunder and under the other Loan Documents (as hereinafter defined), shall be due and payable in full on May 8, 2007 (the "Maturity Date"), the final maturity of this Note.

Section 2 Security; Loan Documents. The security for this Note includes a Mortgage, Assignment, Security Agreement and Fixture Filing (as the same may from time to time be amended, restated, modified or supplemented, the "Mortgage") of even date herewith from Borrower to Lender, conveying and encumbering certain real and personal property more particularly described therein (the "Property"). This Note, the Mortgage, the Construction Loan Agreement between Borrower and Lender of even date herewith (as the same may from time to time be amended, restated, modified or supplemented, the "Loan Agreement") and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same may from time to time be amended, restated, modified or supplemented, are herein sometimes called individually a "Loan Document" and together the "Loan Documents."

Section 3 Interest Rate.

(a) BBA LIBOR Daily Floating Rate. The unpaid principal balance of this Note from day to day outstanding which is not past due, shall bear interest at a fluctuating rate of interest per annum equal to the BBA LIBOR Daily Floating Rate plus one hundred ninety (190) basis points per annum. The "BBA LIBOR Daily Floating Rate" shall mean a fluctuating rate of interest per annum equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Lender from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Lender's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by Lender. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

(b) Alternative Rates. If Lender determines that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate or that the BBA LIBOR Daily Floating Rate will not adequately and fairly reflect the cost to



Lender of funding the Loan, or that any applicable Law or regulation or compliance therewith by Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate and Lender so notifies Borrower, then until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, interest shall accrue and be payable on the unpaid principal balance of this Note from the date Lender so notifies Borrower until the Maturity Date of this Note (whether by acceleration, declaration, extension or otherwise) at a fluctuating rate of interest equal to the Prime Rate of Lender minus fifty (50) basis points per annum. The term "Prime Rate" means, on any day, the rate of interest per annum then most recently established by Lender as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Lender may make various business or other loans at rates of interest having no relationship to such rate. Each time the Prime Rate changes, the per annum rate of interest on this Note shall change immediately and contemporaneously with such change in the Prime Rate. If Lender (including any subsequent holder of this Note) ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

(c) Past Due Rate. If any amount payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at the Past Due Rate (as defined below) to the fullest extent permitted by applicable Law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on demand, at a fluctuating rate per annum (the "Past Due Rate") equal to the BBA LIBOR Daily Floating Rate plus four hundred (400) basis points.

Section 4 Prepayment. Borrower may prepay the principal balance of this Note, in full at any time or in part from time to time, without fee, premium or penalty, provided that: (a) no prepayment may be made which in Lender's judgment would contravene or prejudice funding under any applicable permanent loan commitment or tri-party agreement or the like; (b) Lender shall have actually received from Borrower prior written notice of (i) Borrower's intent to prepay, (ii) the amount of principal which will be prepaid (the "Prepaid Principal"), and (iii) the date on which the prepayment will be made; (c) each prepayment shall be in the amount of \$1,000 or a larger integral multiple of \$1,000 (unless the prepayment retires the outstanding balance of this Note in full); and (d) each prepayment shall be in the amount of 100% of the Prepaid Principal, plus accrued unpaid interest thereon to the date of prepayment, plus any other sums which have become due to Lender under the Loan Documents on or before the date of prepayment but have not been paid. If this Note is prepaid in full, any commitment of Lender for further advances shall automatically terminate.

Section 5 Late Charges. If Borrower shall fail to make any payment under the terms of this Note (other than the payment due at maturity) within fifteen (15) days after the date such payment is due, Borrower shall pay to Lender on demand a late charge equal to four percent (4%) of the amount of such payment. Such fifteen (15) day period shall not be construed as in any way extending the due date of any payment. The late charge is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other amount that Lender may be entitled to receive or action that Lender may be authorized to take as a result of such late payment.

Section 6 Certain Provisions Regarding Payments. All payments made under this Note shall be applied, to the extent thereof, to late charges, to accrued but unpaid interest, to unpaid principal, and to any other sums due and unpaid to Lender under the Loan Documents, in such manner and order as Lender may elect in its sole discretion, any instructions from Borrower or anyone else to the contrary notwithstanding. Remittances shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and shall be accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance

on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not in any way (a) waive or excuse the existence of an Event of Default (as hereinafter defined), (b) waive, impair or extinguish any right or remedy available to Lender hereunder or under the other Loan Documents, or (c) waive the requirement of punctual payment and performance or constitute a novation in any respect. Payments received after 2:00 p.m. shall be deemed to be received on, and shall be posted as of, the following Business Day. Whenever any payment under this Note or any other Loan Document falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

Section 7 Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Note:

- (a) Borrower fails to pay when and as due and payable any amounts payable by Borrower to Lender under the terms of this Note.
- (b) Any covenant, agreement or condition in this Note is not fully and timely performed, observed or kept, subject to any applicable grace or cure period.
- (c) An Event of Default (as therein defined) occurs under any of the Loan Documents other than this Note (subject to any applicable grace or cure period).

Section 8 Remedies. Upon the occurrence of an Event of Default, Lender may at any time thereafter exercise any one or more of the following rights, powers and remedies:

- (a) Lender may accelerate the Maturity Date and declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts payable hereunder and under the other Loan Documents, at once due and payable, and upon such declaration the same shall at once be due and payable.
- (b) Lender may set off the amount due against any and all accounts, credits, money, securities or other property now or hereafter on deposit with, held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.
- (c) Lender may exercise any of its other rights, powers and remedies under the Loan Documents or at law or in equity.

Section 9 Remedies Cumulative. All of the rights and remedies of Lender under this Note and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default.

Section 10 Costs and Expenses of Enforcement. Borrower agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses, whether or not suit is filed hereon, or whether in connection with bankruptcy, insolvency or appeal.

Section 11 Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon Davidson D. Williams, KRITI Management, Inc., The

Corinthian, 345 East 37th Street, Suite 312, 3rd Floor, New York, NY 10016, the agent hereby designated and appointed by Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in this Note shall affect the right of Lender to serve process in any manner otherwise permitted by law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions, subject to any provision or agreement for arbitration or dispute resolution set forth in the Loan Agreement.

Section 12 Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents.

Section 13 General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and each party executing this Note as Borrower hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that Lender shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the state and county in which payment of this Note is to be made for the enforcement of any and all obligations under this Note and the other Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any title, security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate to the Loan and the Loan Documents any and all rights against Borrower and any security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. This Note and its validity, enforcement and interpretation shall be governed by the laws of the state in which payment of this Note is to be made (without regard to any principles of conflicts of laws) and applicable United States federal law. Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of the place where payment of this Note is to be made. The term "Business Day" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

Section 14 Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the terms of the Loan Agreement regarding notices.

Section 15 No Usury. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal law

should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note and all other indebtedness secured by the Mortgage, and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use or forbearance of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan.

Section 16 Arbitration. This Note is subject to arbitration as provided in the Loan Agreement.

Section 17 Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the Property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE BORROWER HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE PROPERTY.

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

Borrower:

ASHLEY RIVER PROPERTIES II, LLC,
a South Carolina limited liability company

By: Kriti Ripley, LLC
Its: Member

By: Davidson D. Williams [SEAL]

Name: DAVIDSON D. WILLIAMS

Title: MANAGING MEMBER

May. 13. 2007 11:37AM DAN

No. 7746 P. 1

East Coast Horizon, LLC
14131 Highway 50/210
Sea Oaks Plaza, Suite B
Surf City, NC 28445

May 18, 2007

Mr. Clay Cunningham
1041 Johnnie Dodds Blvd
Suite 15B
Mt. Pleasant, SC 29464

Re: (Ripley Light Marina consisting of 5.7 acres approximately with improvements located in Charleston, South Carolina.)

Dear Clay:

East Coast Horizon, LLC, and / or its assigns would like to submit this offer to purchase the above-referenced property. This Letter of Intent outlines the material provisions that would be included in our subsequent contract of sale.

Property: All that property known as, , containing Tax Parcels TMS #421-11-00-275 consisting of 1.64 acres, TMS#421-11-00-054 consisting of 2.28 acres, TMS#421-11-00-274 consisting of 1.8 acres, and, located in the City of Charleston, South Carolina. Inclusive of the existing 80 boat slips, and the additional 16 slips that creates 4500 linear feet of dockage along with the marina building. Also the entitlements of 80 developable condominium units along with all architectural and engineering documents that is available.

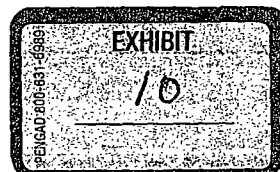
Buyer: East Coast Horizon, LLC is a North Carolina Limited Liability Company

Purchase

Price: Purchase Price shall be Twenty Million Dollars (\$20,000,000.00) which consists of 5.7 acres approximately of improved land mentioned above.

Terms: Cash at Settlement.

Deposit: Buyer will make an initial deposit of One Hundred Thousand Dollars (\$100,000.00) at the time of execution of a final Contract of Sale which sum shall be placed in the Escrow Account of Haynesworth, Sinkler & Boyd which will be held in trust during the 60 day Feasibility Study



May. 13. 2007 11:38AM DAN

No. 7746 P. 2

Period hereinafter setout. If the Buyer, for any reason decides not to purchase the above described property within said sixty (60) day Feasibility Study Period, then the Buyer will be entitled to a return of its initial deposit and the Contract of Sale between Buyer and Seller will be terminated. If Buyer elects to purchase the subject property within the Feasibility Study Period it will pay an additional Two Hundred Thousand Dollar (\$200,000.00) deposit to Seller's attorneys as setout herein. At such time the entire Three Hundred Thousand Dollars (\$300,000.00) paid by Buyer will become the sole property of Seller and Buyer will have no claim to said sums.

Contingency: None after feasibility study is completed.

Dredging: Completion of all the marina dredging is the responsibility of the Seller who will escrow the necessary amount of monies to cover all costs to completion.

Feasibility Period: East Coast Horizon, LLC, shall have a feasibility study period of 60 days From the Date of the execution of the Contract of Sale.

Closing Costs: Transfer and recordation taxes shall be split between Seller and Buyer and all any other taxes such as, recapture taxes, etc related to the property shall be the sole responsibility of the Seller.

Settlement: Settlement shall occur sixty days (60) from the ending date of the feasibility period.

Broker: Both parties acknowledge Frank Guarino Properties, LLC, as the Broker. The Seller will pay a commission of One Million Dollars (\$1,000,000.00) at time of Settlement to Frank Guarino Properties, LLC.

Financial: Within 10 business days of approval, the Buyer will provide the Seller with relevant financial information supporting its ability to purchase the subject property

May. 18. 2007 11:38AM DAN

No. 7746 P. 3

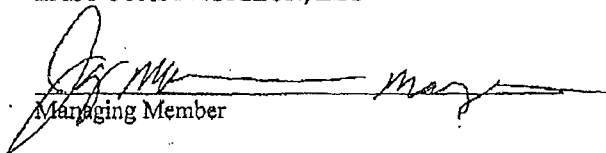
It is agreed that as a condition of your acceptance of this offer both parties will keep the terms and conditions contained herein confidential and that no negotiations with other parties shall take place with regards to the property while East Coast Horizon, LLC and the seller are actively negotiating a Contract of Sale

This Letter of Intent is subject to a final Contract of Sale which Seller will prepare within 10 days for Buyer's review and signature.

Please do not hesitate to contact me should you have any questions.

BUYER.

EAST COAST HORIZON, LLC


Managing Member

SELLER.

Accepted by: _____
Principal Title

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) PURCHASE AND SALE AGREEMENT

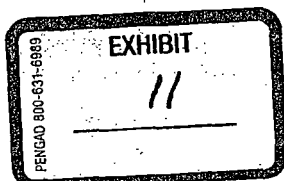
This PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between Lucorp a South Carolina liability company ("Purchaser"), and Ashley River Properties II, LLC, a South Carolina liability company ("Seller").

NOW THEREFORE, in consideration of the recitals, covenants and agreements of the parties contained in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. Property. Subject to the terms and conditions of this Agreement, the Seller agrees to sell and the Purchaser agrees to purchase the following property (collectively, the "Assets"):

- (a) the real property identified as tax parcels 421-11-00-275 (containing approximately 1.64 acres), 421-11-00-054 (containing approximately 2.28 acres) and 421-11-00-274 (containing approximately 1.8 acres) as more particularly described in the attached Exhibit "A", together with all improvements thereon, fixtures and equipment, and also together with all and singular the tenements, hereditaments, rights, easements and appurtenances now or hereafter belonging thereto (collectively, the "Real Property");
- (b) the existing marina docks, ramps, slips attached to the Real Property (collectively, the "Marina Docks");
- (c) the existing leases of Marina Docks and such other contracts and agreements relating to the Real Property and Marina Docks as the parties shall mutually determine (collectively, the "Assumed Contracts");
- (d) all assignable licenses, permits and other governmental authorizations issued by local, state and federal governmental authorities relating to the Real Property and the Marina Docks, including those listed on the attached Exhibit "B" (collectively, the "Licenses");
- (e) all of the tangible personal property owned or leased by Seller in connection with the Real Property or the Marina Docks, including pump-out, computer, communications, and office equipment and similar supplies, inventories, machinery, tools, plant, HVAC systems and other appliances, office equipment, furniture and fixtures including those items described on the attached Exhibit "C" (collectively, the "Personal Property"); and
- (f) all assignable rights of Seller in any records, plans, diagrams, blueprints and schematics, surveys, architectural plans, engineering documents, title records,

No. 3856 P. 1



LMCC Corporation Jan. 3, 2008 3:20PM

soil reports, construction plans, environmental reports and other documents relating to the Real Property or the Marina Docks (collectively, the "Marina Records").

The Assets to be acquired by Buyer under this Agreement shall not include assets of Seller that are not related to the Marina Docks or the Real Property.

2. **Purchase Price.** The purchase price for the Assets is Twenty Million (\$20,000,000.00) Dollars. The purchase Price, as adjusted in accordance with the terms of this Agreement, shall be paid in full at the Closing by wire transfer, as directed by the Seller.

3. **Deposit.** Upon execution of this Agreement, Purchaser shall deliver to Michael A. Johnson Attorneys P.C. whose address is 23 W. Second Street, Lexington, North Carolina 27292 (the "Escrow Agent") the amount of One Hundred Thousand (\$100,000.00) Dollars as earnest money (the "Deposit"), to be applied to the Purchase Price at Closing. The Deposit shall be held in a federally insured, interest bearing account, and all accrued interest shall be added to the Deposit. At the conclusion of the Inspection Period and should Purchaser elect to purchase the Property, then Purchaser shall deliver to Escrow Agent an additional One Hundred Thousand (\$100,000.00) Dollars as additional earnest monies which shall become a part of the Deposit. After the conclusion of the Inspection Period, the Deposit of \$200,000.00 plus interest shall be non-refundable except as otherwise provided in this Agreement.

4. **Closing.**

(A) The closing shall occur on or before the 30th day following the expiration of the Inspection Period, or the first business day thereafter if such date is not a business day ("Closing" or "Closing Date"). The Closing shall be held at the offices of the Purchaser's attorneys in their offices located in Charleston, South Carolina, or such other location as the parties shall mutually designate, at such time as the parties may mutually agree.

(B) The Purchaser shall have the option to exercise up to (1) extension of the Closing date. Each extension shall be for a period of thirty (30) days. In order to exercise an extension, the Purchaser shall increase the Deposit by delivering an additional \$100,000.00 in collected funds ("Extension Fees") to the Seller on or before the then current Closing date. The Extension Fees shall be earned by Seller upon delivery and shall not be credited against the Purchase Price.

5. **Purchaser's Inspection Period.**

(A) The Purchaser shall have a period of ninety (90) days from the date of the execution of this Agreement (the "Inspection Period") in which to satisfy itself as to all matters, relating to the Assets, including without limitation the suitability of the soil for construction, the status of title, and to perform such other studies, tests, inspections and surveys as the Purchaser may deem advisable in its sole discretion. The Seller agrees to provide reasonable cooperation and assistance to the Purchaser to the extent requested by Purchaser. The Seller agrees to make

available to the Purchaser for review and copying at Purchaser's expense such information and studies as the Seller has readily available relating to the Assets.

(B) The Purchaser shall have the right to terminate this Agreement for any reason by written notice to the Seller during the Inspection Period and to receive a full refund of the Deposit. Upon such termination and return of the Deposit, neither party shall have any further liability or obligation to the other, except as expressly provided herein, including without limitation the Purchaser Indemnities defined below.

(C) The Purchaser shall indemnify, defend and hold harmless the Seller, its employees, officers, shareholders and directors from all claims, damages and losses arising by reason of the actions of the Purchaser, its agents and consultants on the Property. The Purchaser agrees to promptly satisfy or cause the release any mechanic liens which arise by reason of the Purchaser's actions. The covenants contained in this subparagraph are defined as the "Purchaser's Indemnities".

6. Title.

(A) During the Inspection Period, Purchaser shall obtain, at Purchaser's expense, an opinion of its legal counsel or a commitment for an owner's policy of title insurance on the standard form A.L.T.A. owner's policy in the amount of the Purchase Price (collectively the "Title Report"). The Seller covenants that it will cause any financing liens on the Assets to be released and the Purchaser agrees that the Seller may use Closing proceeds to obtain such releases. The Purchaser agrees to give the Seller a copy of the Title Report to assist the Seller in the preparation of the Deed by the Seller.

(B) In the event that the Purchaser shall object to any title matter during the Inspection Period and the Seller shall fail or refuse to satisfy the Purchaser's objections within thirty (30) days of written notice of such objections, the Purchaser shall have the option of accepting title subject to such matters or of receiving a return of the Deposit and terminating this Agreement without further liability of either party to the other, other than the Purchaser's Indemnities.

(C) Seller shall convey and Purchaser shall accept title of the Real Property by a limited warranty deed, subject only to such encumbrances or restrictions as are contained in the Purchaser's Title Report, any title policy issued to Seller and such other deed provisions as may be required by this Agreement (collectively the "Permitted Encumbrances").

7. Seller's Knowledge. The term "Seller's Knowledge" shall mean the actual, conscious knowledge of Davidson Williams or Ryan Black and such term shall not imply any duty of inspection, other than inspection of the Seller's files and records in the present possession of the above named individual(s) and shall not imply a duty to make physical inspections or tests of the Property.

8. **Representations, Warranties and Covenants of Seller.** To induce the Purchaser to enter into this Agreement, Seller represents, warrants and covenants as of the date of this Agreement and as of the Closing Date with the same effect as if made on and as of the Closing Date as follows:

(A) Seller has the full corporate authority and power to enter into and carry out the terms of this Agreement.

(B) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated in compliance with the terms and conditions of this Agreement will not conflict with or, without the giving of notice or passage of time, result in the breach of any term or provision of or constitute a default under any instrument or agreement which the Seller is a party or to which the assets of the Seller are bound or any judgment, order or decree of any court having jurisdiction over the Seller or its properties.

(C) No labor has been performed or material furnished for the Property for which the Seller has not heretofore fully paid, or for which a mechanics' or materialmen's lien or liens or any other lien can be claimed by any other person, party or entity, other than the work contemplated to be performed by the Seller in connection with this Agreement.

(D) There are no condemnation or eminent domain proceedings pending or, to the Seller's knowledge, contemplated against the Property, any part thereof or any existing access to the Property and the Seller has received no notice of the desire of any public authority or other entity to use the Property or any part thereof.

(E) Except as may be disclosed in the Marina Records, the Seller has no Seller's knowledge that the Property contains any hazardous or toxic substances, PCB's underground storage tanks or asbestos or that any governmental agency has given written notice to Seller that any condition of or on the Property violates any law or regulation pertaining to hazardous or toxic substances.

The Seller's representations and warranties contained in this Section shall survive for period of six (6) months from the date of Closing.

9. **Representations, Warranties and Covenants of Purchaser.** To induce the Seller to enter into this Agreement, Purchaser represents, warrants and covenants as of the date of this Agreement and as of the Closing Date with the same effect as if made on and as of the Closing Date as follows:

(A) Purchaser has the full authority and power to enter into and carry out the terms of this Agreement.

(B) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated in compliance with the terms and conditions of this

Agreement will not conflict with or, without the giving of notice or passage of time, result in the breach of any term or provision of or constitute a default under any instrument or agreement which the Purchaser is a party or to which the assets of the Purchaser are bound or any judgment, order or decree of any court having jurisdiction over the Purchaser or its properties.

(C) Purchaser shall provide Seller with reasonable evidence of its financial ability to purchase the Assets in accordance with the terms of this Agreement within five (5) days of the date of this Agreement.

(D) Purchaser agrees to keep the terms, conditions and existence of this Agreement and the transactions contemplated in this Agreement strictly confidential. Purchaser agrees to bind its agents, attorneys, contractors, consultants and other representatives ("Purchaser Representatives") to the same confidentiality requirements. Without the prior written consent of Seller, Purchaser and Purchaser Representatives shall not disclose to any person any information about this Agreement or the parties' negotiations. Without limiting the preceding sentences, Purchaser and Purchaser Representatives agrees not to contact the Seller's employees, other than Ryan Black.

The Purchaser's representations and warranties contained in this Section shall survive for a period of six (6) months from the date of Closing.

10. **Dredge Agreement.** The Seller shall cause the marina to be dredged in accordance with the specifications more fully described on Exhibit "D" ("Dredging Standards") within 30 months after Closing. Prior to closing Seller shall obtain a bid proposal from a dredge contractor reasonably satisfactory to Purchaser and shall deposit the bid amount with Escrow Agent at Closing. The Escrow Agent shall be authorized to make periodic disbursements to pay for the dredge work.

11. **Closing Documents.** The respective party shall deliver at Closing the following documents:

(A) **Limited Warranty Deed.** A limited warranty deed, in form and substance reasonably satisfactory to Purchaser, with full covenants and title, in recordable form duly executed by Seller and conveying to Purchaser title to the Property, subject only to the Permitted Encumbrances.

(B) **Bill of Sale and Assignments.** A limited warranty bill of sale and such other assignments as may be necessary to convey the other Assets.

(C) **Title Affidavits.** The Seller shall provide such reasonable of title as are customarily provided by sellers of commercial properties and which are required by the Purchaser's title insurance company, including a mechanic lien affidavit, South Carolina withholding affidavit and non-foreign person affidavit.

(D) **Tax Compliance.** A Certificate of Tax Compliance from the S.C. Department of Revenue to Seller.

(E) **Management Contract.** Signed written evidence of the termination of any property management contracts.

(F) **Other Required Documents.** Such other documents as may be reasonably required by the provisions of this Agreement.

(G) **Authority of Seller.** Documentation in form and substance reasonably satisfactory to Purchaser evidencing the fact that Seller has the full and unrestricted lawful power to enter into and carry out the terms of this Agreement and execute and deliver the Deed and other documents described above.

(H) **Authority of Purchaser.** Documentation in form and substance reasonably satisfactory to Seller evidencing the fact that Purchaser has the full and unrestricted lawful power to enter into and carry out the terms of this Agreement and execute and deliver the documents to be delivered by the Purchaser above.

(I) **Possession.** Seller shall deliver to Purchaser at closing possession to the Property free of any rights of other persons or entitled to possession of the Property or any portion thereof.

12. **Taxes and Assessments.** All other ad valorem taxes for the tax year in which the closing occurs shall be pro-rated at and as of the Closing Date. Such pro-ration of current ad valorem taxes shall be based on the most recent tax bill; provided, however, the pro-ration of ad valorem taxes will be adjusted upon the final assessment and tax rates being determined. All other charges and fees customarily prorated and adjusted in similar transactions shall be prorated as of the closing date.

13. **Costs of the Parties.** Seller shall be responsible for paying the statutory recording fee on the deed. Other costs or expenses of performance of obligations hereunder and the consummation of the transactions contemplated herein which have not been specifically assumed by either party pursuant to the terms hereof shall be borne by the party incurring such cost or expense.

14. **Real Estate Commission.** In the event that the transaction contemplated by this Agreement shall close, the Seller shall pay the brokerage commission due and owing Frank Guarino Properties, LLC (the "Broker") in the amount of One Million (\$1,000,000.00) Dollars. The parties represent and warrant to each other that neither has dealt with any brokers, other than the Broker. The Seller agrees to indemnify, hold harmless and defend the Purchaser from all claims for a commission from any other brokers or agents arising by reason of the Seller's actions. The Purchaser agrees to indemnify, hold harmless and defend the Seller from all claims for a commission from any other brokers or agents arising by reason of the Purchaser's actions.

15. **Condemnation.** If prior to closing the Property is condemned in whole or in part, then Purchaser shall have the right to terminate this Agreement, and thereupon the parties shall be released and discharged from any further obligations to each other. If Purchaser does not elect to so terminate this Agreement, the closing shall proceed and the Seller shall assign to Purchaser all the awards and compensation for the taking by condemnation, and Purchaser shall be entitled to receive and keep all awards and compensation for such taking, without any change in the Purchase Price.

16. **As is/Where is.** The Seller makes no representation, warranties or claims with respect to the condition of the Property and the Property shall be conveyed "as is"/"where is" without any warranties or representation, other than the limited warranties of title contained in the deed and bill of sale.

17. **Defaults.** In the event of default by the Purchaser, Seller may elect to pursue such remedies as provided by law or to terminate this Agreement and retain the Deposit as liquidated damages. The parties agree that such liquidated damages are reasonable and would not constitute a penalty. In the event of default by the Seller, the Purchaser's sole remedies shall be either the return of the Deposit or specific performances. In no event shall the Purchaser be entitled to special, punitive, consequential or actual damages.

18. **Notices.** All notices, demand, or other written communications required under this Agreement shall be made in writing, and hand delivered, transmitted by facsimile communication or deposited in the registered or certified United States Mail, return receipt requested, postage prepaid, and

(i) if intended for the Purchaser, shall be addressed to:

Luis F. Moreno
Lacorp
220 North Main Street
Suite 105
Greenville, South Carolina 29601
Facsimile: 864-235-6724
Email: develcorp@aol.com

(ii) if intended for Seller, addressed to:

Davidson D. Williams
KRIT Management, Inc.
345 East 37th Street
Suite 312, 3rd Floor
New York, NY 10016
Facsimile: 212-599-5779
Email: ddwilliams@kritimgmt.com

With a copy to:
 Michael A Johnson PC,
 23 W. Second Street,
 Lexington, North Carolina 27292
 Facsimile: 336-249-7055

Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns; provided, however, the Purchaser shall not have any right to assign its interest in this Agreement.

20. **Escrow Agent.** If the Escrow Agent is in doubt as to its duties or liabilities under this Agreement, for any reason, it may, in its sole discretion, continue to hold the said Deposit, or so much thereof as it deems appropriate until: (a) Seller, Purchaser and Escrow Agent mutually agree to disbursement thereof, (b) an order or judgment of a court of competent jurisdiction determines the rights of the parties hereto, or (c) as an alternative, the Escrow agent shall have the right to interplead such Deposit with the Clerk of the Court of Common Pleas for the County in which the Property is located, and upon notifying both the Purchaser and Seller of such action, all duties of the Escrow Agent under the terms of the Agreement shall terminate, except to the extent of accounting for such escrow funds. The Escrow Agent shall have no duties except as stated herein and the parties agree that it shall not constitute a conflict of interest for the Escrow Agent to represent one of the parties in connection with this Agreement. The Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith provided that it acts in good faith, and without gross negligence, willful neglect or intentional breach of this Agreement. Unless a dispute shall arise relating to the Escrow Agent's duties, Seller shall be responsible for the Escrow Agent's fees. In the event that the Escrow Agent becomes involved in litigation relating to the Escrow, the non-prevailing part shall be responsible for the payment of the Escrow Agent's reasonable fees and expenses and for the reasonable attorney fees and costs of the prevailing party. The Deposit shall remain in the control of the Escrow Agent until consummation or termination of the sale transaction as contemplated in this Agreement, at which time the escrow funds will be disbursed in accordance with this Agreement subject to the terms of this paragraph. The Purchaser and Seller will indemnify and hold the Escrow Agent harmless from any claims by them relating to the actions taken by the Escrow Agent in good faith while acting as Escrow Agent under the terms of this Agreement.

21. **Like Kind Exchange.** Each party (the "Accommodating Party") agrees to cooperate with the other party (the "Exchanging Party") to facilitate a Like-Kind Exchange and the Accommodating Party agrees to sign any documents that the Exchanging Party may reasonably require in connection with a Like-Kind Exchange, provided the Accommodating Party shall not incur any increased expenses or liabilities as a result of the Accommodating Party's cooperation in facilitating a Like-Kind Exchange. Notwithstanding any other provision of this Agreement, the parties agree that the rights and liabilities of an Exchanging Party may be assigned to a separate qualified intermediary trustee in order to facilitate a 1031 Tax Free Exchange.

22. **Amendment.** This Agreement represents the entire agreement between the parties. It may not be amended, altered or modified unless the party against whom enforcement of any waiver, modification or discharge is sought does so in writing.

23. **Waiver; Modification.** Failure by Purchaser or Seller to insist upon or enforce any of their rights shall not constitute a waiver thereof and nothing shall constitute a waiver of Purchaser's rights to insist upon strict compliance with the provisions hereof. Either party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement; provided, however, no oral modification hereof shall be binding upon the parties, and any modification shall be in writing and signed by the parties.

24. **Attorneys' Fees.** In the event that any party hereto shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, shall be entitled to its court costs and reasonable attorneys' fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorney's fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

25. **Governing Law.** This Agreement shall be governed by and constructed under the laws of the State of South Carolina.

26. **Subsequent Documentation.** Each party agrees that it will, at any time, prior to, at or after closing, duly execute and deliver to the other party any additional documents or instruments which are necessary in connection with the consummation of the purchase and sale contemplated herein, and the failure of a party to demand such documents or instrument at or before the closing shall not alleviate the obligation of the other party to execute and deliver the same at any time upon reasonable demand of by such requesting party.

27. **Date of Agreement.** The date of this Agreement shall be the later date of its execution by the Seller and Purchaser.

28. **Interpretation Presumption.** This Agreement has been negotiated by the parties hereto and by the respective attorneys for each party. The parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document.

29. **Counterparts and Facsimiles.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which when taken together shall constitute one and the same agreement. The parties agree that the delivery of a party's signature by facsimile transmittal shall have the same legal effect as the delivery of such party's original signature and the parties may rely upon the binding and enforceable effect of such delivery. Each party who delivers a signature by facsimile transmittal agrees to deliver its original signature by overnight delivery within two (2) days of execution.

30. **Reports.** The Purchaser agrees that all reports, inspections and any and all other documents obtained by Purchaser from Seller in its inspection of the Property will, in the event that this Agreement is terminated, be returned to Seller. In addition, Purchaser agrees that the originals of any and all reports, inspections, permits, approvals, and all other documents obtained by Purchaser, its agents, or its representative in its inspection of the Property ("Purchaser's Inspection Reports") will be delivered to Seller without cost to Seller within five (5) days of the termination of this Agreement. In the event that the Purchaser fails to provide the Purchaser's Inspection Reports to Seller, then Purchaser acknowledges and agrees that Seller may deliver to any third party contractor or consultant who prepared any of the Purchaser's Inspection Reports a copy of this Agreement as evidence of Purchaser's consent, authorization and agreement to the delivery by such third party to Seller of any of Purchaser's Inspection Reports in its possession.
31. **Assignment of Contract.** This Contract may be assigned without permission to any entity associated with the Purchaser or his Partners.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year as hereinafter provided to this Purchase and Sale Agreement.

WITNESSES:

SELLER
ASHLEY RIVER PROPERTIES II, LLC

BY: _____

Its: _____

Date of Execution: _____

PURCHASER
LUCORP

BY: _____

Its: manly

Tax Identification Number: _____

Date of Execution: 01/02/08

ESCROW AGENT
MICHAEL A JOHNSON PC

BY: _____

Its: _____

Exhibit A	Real Property Description
Exhibit B	Licenses
Exhibit C	Personal Property List

Dredge & Marina Permits, Approvals and Agreements

1. Permit No. 2000-1P-582-P issued to Ripley Light Development Company, LLC ("RLD") by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM") on September 21, 2001 authorizing the dredging of the Ripley Light canal basin.
2. Permit No. 2001-1H-315-P issued to RLD by OCRM on November 21, 2001 authorizing the construction and development of a marina and associated bulkhead, pier and docks in the Ripley Light canal basin.
3. Permit No. 2000-1P-582 issued to RLD by the U.S. Army Corps of Engineers ("CPE") on May 9, 2002 authorizing the dredging of the Ripley Light canal basin.
4. Permit No. 2001-1H-582 issued to RLD by COE on December 20, 2002 authorizing the construction and development of a marina and associated bulkhead, pier and docks in the Ripley Light canal basin.
5. Assignment of Licenses, Permits and Approvals dated December 30, 2003 by RLD to Ashley River Properties II, LLC ("ARP-2").
6. Amendment letter from OCRM dated December 29, 2004 pertaining to Permit No. 2001-1H-315-P.
7. Amendment letter from COE dated January 18, 2005 pertaining to Permit No. 2001-1H-315.
8. Letter from OCRM to ARP-2 dated March 14, 2005 confirming the assignment of Permit No. 2000-1P-582-P from RLD to ARP-2.
9. Letter from OCRM to ARP-2 dated March 14, 2005 confirming the assignment of Permit No. 2000-1H-315-P from RLD to ARP-2.
10. Permit No. OCRM-06-368-B dated January 17, 2007 issued to ARP-2 by OCRM authorizing the continued dredging of the Ripley Canal and the disposal of dredged material at The Citadel Dredge Material Disposal Basin.
11. Statement of Award dated January 27, 2007 issued by the South Carolina Materials Management Office authorizing the lease of The Citadel's Dredge Materials Management Office authorizing the lease of The Citadel's Dredge Material Disposal Basin to ARP-2 for a seven year period commencing January 26, 2007.
12. Final draft of a Master Dredge Agreement dated February __, 2007 between ARP-2, Ripley Cove, LLC and the Ripley Light Marina POA, Inc. relating to the joint dredging of the Ripley Light Canal. (Fully executed).

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

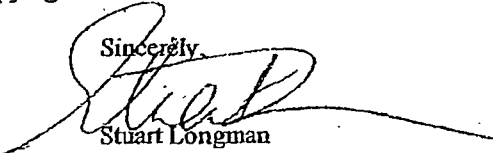
David:

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).

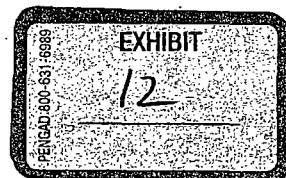
Since many of these documents are in digital form, I also expect access to the computers used by ARP II.

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

EMERALD INVESTMENTS, LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD, CT 06877

July 5, 2006

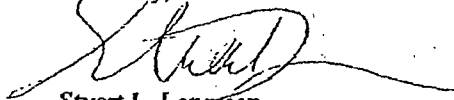
Davidson Williams
Ashley River Properties II, LLC
c/o Kriti Management, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via email and fax: 212-599-5779

Re: Demand for Books and Records of Ashley River Properties II, LLC ("ARP II")

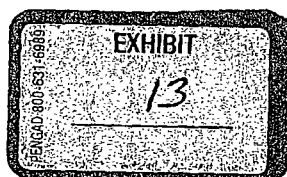
David:

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



Message Confirmation Report

JUL-05-2006 06:50 PM WED

Fax Number : 2034314456
Name : STUART LONGMAN

Name/Number : 12125995779
Page : 1
Start Time : JUL-05-2006 06:50PM WED
Elapsed Time : 00' 12"
Mode : STD ECM
Results : [O.K.]

EMERALD INVESTMENTS, LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD, CT 06877

July 5, 2006

Davidson Williams
Ashley River Properties II, LLC
c/o Krti 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

Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
(212) 599-3530

July 7, 2006

By E-Mail

Mr. Stuart Longman
Managing Member
Emerald Investments, LLC
424 West Mountain Drive
Ridgefield, CT 06877

Re: Ashley River Properties II, LLC

Dear Stu:

I refer to your letters of June 12 and July 5 demanding access to ARP-2's offices for purposes of inspecting the company's books and records.

As you know, in February of this year, Kriti Ripley made a complete and timely tender to buy out Emerald's membership interest in ARP-2 pursuant to and in accordance with the Arbitration Award dated October 31, 2005 and the provisions of the ARP-2 Operating Agreement. You and Emerald wrongfully rejected our tender, and refused to convey and assign Emerald's membership interest to us notwithstanding the terms of the award. Your refusal to comply with the award forced us to file a petition on March 10, 2006 in the U.S. District Court for the Southern District of New York to confirm the Award and order that Emerald convey its membership interest to us pursuant to the Award. That petition is now pending before Judge Daniels.

More recently, you and Emerald lost the second round of arbitration over accounting issues, which as you know were severed from the first arbitration proceeding by agreement. On June 22, Arbitrator Pruskowski found that you and Emerald owed ARP-2 and Kriti Ripley \$143,340 plus interest and costs. A petition to confirm that Award is also now pending before Judge Daniels.

Given that you have lost not one but two claims in arbitration before two different panels, and given further that Emerald would no longer be a member of ARP-2 had it complied with the first arbitration award and accepted our



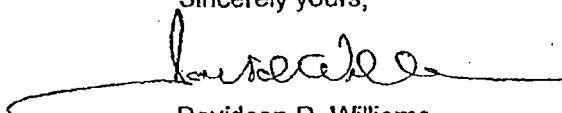
Mr. Stuart Longman
Emerald Investments, LLC

July 7, 2006
Page 2

tender to buy-out its membership interest, we believe we have no obligation to grant you access to ARP-2's offices or permit you or your agents to inspect ARP-2's books and records. We also believe your request was made purely for purposes of harassment and to force us to incur unnecessary costs. Your demand, therefore, is rejected.

Obviously, if you disagree with our position, you are free to take the issue up with Judge Daniels, who has jurisdiction over this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Davidson D. Williams", written over a horizontal line.

Davidson D. Williams
Managing Member
Kriti Ripley LLC

DDW/dh

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

DANIEL F. BLANCHARD III
dblanchard@rrhlawfirm.com

134 MEETING STREET, SUITE 200
P.O. BOX 893
CHARLESTON, SOUTH CAROLINA 29402
PHONE (843) 577-6726
FAX (843) 724-8036
www.rrhlawfirm.com

February 24, 2009

VIA HAND-DELIVERY:

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 Kriti Ripley, LLC****
Case No.: 2009-CP-10-553

Dear Will:

Please find enclosed copies of the Plaintiff's Interrogatories and Requests for Production of Documents in the above action.

With kind regards, I am

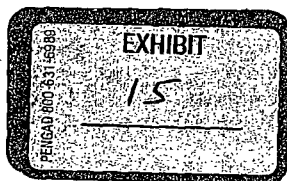
Sincerely,



Daniel F. Blanchard, III

Enclosures

Cc: Mr. Stuart Longman (w/ encls.)



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

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

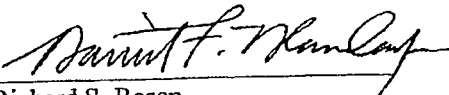
the methodology used to compute or determine the interest. If Emerald's interest or percentage has changed since December 29, 2003, please explain the nature of the change, the date on which the change occurred, and the basis for any such change.

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

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 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

Samuel F. Vandenberg

Daniel F. Blanchard, III
Attorney for Plaintiff

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 PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-553

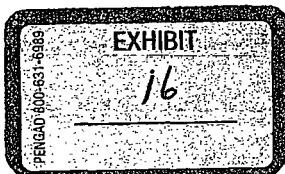
REQUESTS FOR PRODUCTION OF DOCUMENTS

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.

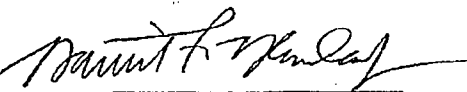
30. Any correspondence, e-mails, facsimiles, and other documents involving any communication by the Defendants or their agents or employees with Ashley River Properties I, LLC; Emerald Investments, LLC; and/or Stuart Longman or their agents or employees involving the matters or events referenced in the 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.

Buist • Moore • Smythe • McGee • P.A.

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
R 10/21/09
RSK
BFB
JLK
CAB

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.

Alvestra Eadue

EMERALD INVESTMENTS LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD CT 06877

December 13, 2010

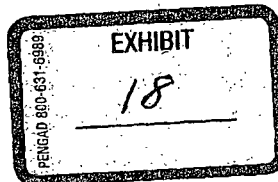
Davidson Williams
Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via Mail and Email: ddwilliams@kritimgmt.com

Re: Ashley River Properties II, LLC

David:

Please forward the ARP II General Ledger with all sub-account schedules for full year 2009 and YTD 2010. Please email the records to me at the email address below.

Sincerely,
Stuart L. Longman
Stuart L. Longman
stulongman@gmail.com



PHONE (203) 438-9006 • FAX (203) 431-4456

EMERALD INVESTMENTS LLC

424 WEST MOUNTAIN ROAD

RIDGEFIELD CT 06877

January 8, 2011

Davidson Williams
Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via Mail, Fax and Email: ddwilliams@kritimgmt.com

Re: Ashley River Properties II, LLC

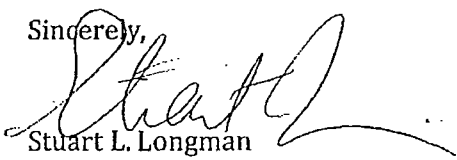
David:

One month ago, on December 13th, I emailed, faxed and mailed you a request for the 2009 and 2010 ARP II General Ledgers. Surely you received the communication, yet I have received no reply.

As majority owner of ARP II, reconfirmed by the recent arbitration held at your insistence, Emerald is entitled to current financial records of the business. The General Ledger is simply a computer file, updated regularly in the normal course as checks are written or deposits made. Emailing the file to us should present you with no difficulty.

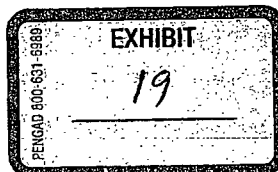
It would be common courtesy to respond. Am I to understand your lack of response as another refusal to provide this information?

Sincerely,



Stuart L. Longman
stulongman@gmail.com

cc: Richard S. Rosen, Esq.
Daniel F. Blanchard, Esq.
James A. Bruorton, IV, Esq.



Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016

January 10, 2011

By Email & US Mail

Mr. Stuart Longman
Emerald Investments, LLC
424 West Mountain Road
Ridgefield, CT 06877

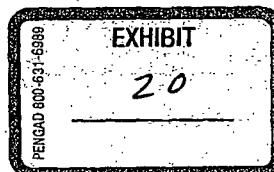
Re: Ashley River Properties II, LLC

Dear Stu:

In connection with the recent arbitration proceedings between us, we produced to you all of ARP-2 financial records through May 2010. This included the company's general ledger through that date. These records were reviewed in exhaustive detail by your own financial expert as well as by the arbitrators. On October 28, 2010, the arbitrators issued an Award finding no fault with these records or with our management or conduct of ARP-2's affairs and, consequently, denied your various claims of mismanagement and waste.

I find it incredible that, less than two months after arbitrators' award, and while Emerald and you personally still owe the company and Kriti approximately \$1.5MM under an unsatisfied judgment dating back to 2008, you find it necessary to demand production of much of the same information that was produced to you last May. Nonetheless, I will produce to you the general ledger for all of 2010, which will include the portion you already have as well as the remainder of the year. I see no point in producing 2009 since you already have it.

The general ledger will be burned onto a CD and mailed you. Please note that fiscal 2010 is not closed yet. Also, note that the company's outside accountant may need to make year-end adjusting journal entries for such things as interest accruals on our outstanding loans, which the arbitrators determined were valid and should remain as loans not recast as equity; tax-related adjustments; and so on. These AJE's are often done at tax time, when the accountant prepares the company's tax returns.



Mr. Stuart Longman
Emerald Investments, LLC

January 10, 2011
Page 2

Finally, I renew our repeated demand that you and Emerald immediately pay the 2008 judgment against you. The courtesy of a response would be most appreciated.

Sincerely yours,



Davidson D. Williams
Managing Member
Kriti Ripley LLC

Enclosure (CD)

DDW/dh

EMERALD INVESTMENTS LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD CT 06877

January 10, 2011

Davidson Williams
Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via Mail, Fax and Email: ddwilliams@kritimgmt.com

Re: Ashley River Properties II, LLC

David:

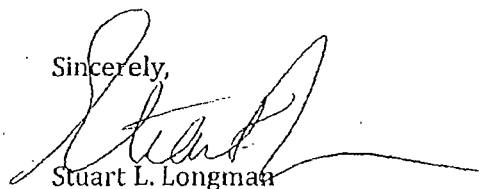
I am in receipt of your letter dated today. I will look forward to receiving the 2010 General Ledger disk, with whatever passwords are necessary to open it.

I would also like to receive a full year 2009 General Ledger. The one you produced, that I have a copy of, was a partial year, ending in June or July.

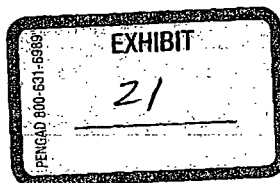
This is not the forum to argue over what the arbitrators thought of your management. The arbitrators decided your actions were protected under the business judgment rule, a definition apparently offering extremely wide latitude for competence.

Emerald is entitled to historical and current information, delivered on a timely basis, updated regularly. That's what we're requesting, and will expect to continue to receive.

Sincerely,


Stuart L. Longman
stulongman@gmail.com

cc: Richard S. Rosen, Esq.
Daniel F. Blanchard, Esq.
James A. Bruorton, IV, Esq.



PHONE (203) 438-9006 • FAX (203) 431-4456

EMERALD INVESTMENTS, LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD CT 06877

January 22, 2011

Davidson Williams
Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via Mail, Fax and Email: ddwilliams@kritimgmt.com

Re: Ashley River Properties II, LLC

David:

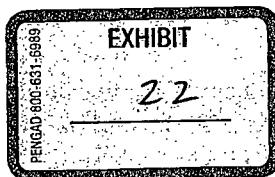
I am in receipt of the disk which appears to contain a copy of the 2010 ARP II General Ledger. Per my previous letters, please send me the same for the full year 2009, as I've only received a partial year.

Please also send me ARP II tax returns and K-1's for all previous years for which you have acted as tax matters partner, corrected as necessary to reflect the accurate ownership percentages between Emerald Investments, LLC and Kriti Ripley, LLC. I believe these are for the years 2004, 2005, 2006, 2007, 2008, and 2009.

Sincerely,


Stuart L. Longman
stulongman@gmail.com

cc: Richard S. Rosen, Esq.
Daniel F. Blanchard, Esq.
James A. Bruorton, IV, Esq.



PHONE (203) 438-9006 • FAX (203) 431-4456

EMERALD INVESTMENTS LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD CT 06877

February 14, 2011

Davidson Williams
Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via Mail, Fax (212-599-5779) and Email (ddwilliams@kritimgmt.com)

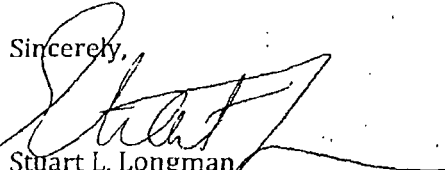
Re: Ashley River Properties II, LLC
Third Request for 2009 Full Year General Ledger & Corrected IRS Filings

David:

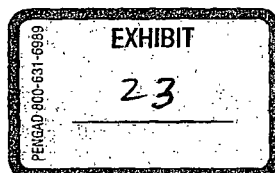
This is my third and final demand that you forward the ARP II General Ledger for the full year 2009. If we have not received it by close of business next Monday, February 21st, it will have been a month since my second request, and two months since my first request. Sufficient time has elapsed. Your continued non-response will result in our adding another count to our pending dissolution motion.

The same applies to our non-receipt of revised tax returns and K-1's to correct your misreporting ARP II tax filings from 2004 through 2009.

Sincerely,


Stuart L. Longman
stulongman@gmail.com

cc: Richard S. Rosen, Esq.
Daniel F. Blanchard, Esq.
James A. Bruorton, IV, Esq.



PHONE (203) 438-9006 • FAX (203) 431-4456

Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016

February 18, 2011

By Email & US Mail

Mr. Stuart Longman
Emerald Investments, LLC
424 West Mountain Road
Ridgefield, CT 06877

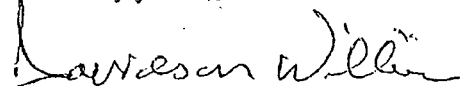
Re: Ashley River Properties II, LLC

Dear Stu:

The zeal with which you pursue your demands for copies of information you already have is exceeded only by the stubbornness with which you refuse to answer any of my many demands for payment of the judgment against you. That judgment is now approaching its 3rd anniversary, and not one cent has been paid on it.

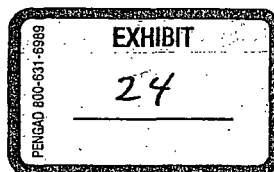
As previously advised in my letter dated January 11, the 2009 general ledger was produced to you along with all of the other accounting records of ARP-2 in connection with last year's arbitration proceeding. Concerning your inquiry about amending the tax returns, this matter is more appropriately addressed after the arbitration award has been confirmed.

Sincerely yours,



Davidson D. Williams
Managing Member
Kriti Ripley LLC

DDW/dh



EMERALD INVESTMENTS LLC
424 WEST MOUNTAIN ROAD
RIDGEFIELD CT 06877

February 19, 2011

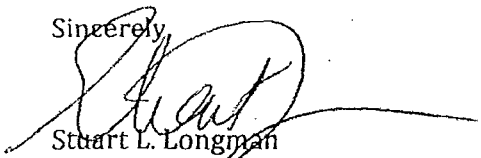
Davidson Williams
Kriti Ripley, LLC
345 East 37th Street, Suite 312
New York, NY 10016
Via Mail, Fax and Email: ddwilliams@kritimgmt.com

Re: Ashley River Properties II, LLC

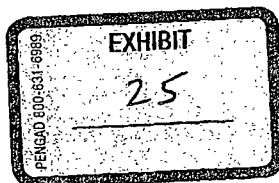
David:

I am in receipt of your response dated 2/18/11. Your continued refusal to provide business records to which we are entitled is noted. We will proceed accordingly.

Sincerely,


Stuart L. Longman
stulongman@gmail.com

cc: Richard S. Rosen, Esq.
Daniel F. Blanchard, Esq.
James A. Bruorton, IV, Esq.



PHONE (203) 438-9006 • FAX (203) 431-4456

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.

CERTIFICATE OF SERVICE

JULIE J. ARMSTRONG
 CLERK OF COURT

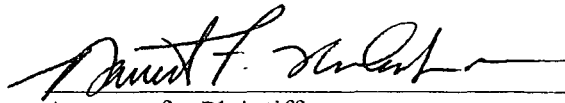
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FILED

I hereby certify that on this date a copy of the Affidavit of Stuart Longman with Exhibits 1 through 25 was 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 5, 2011.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2008-CP-10-2344
	)	
KRITI RIPLEY, LLC and ASHLEY RIVER	)	
PROPERTIES TWO, LLC,	)	
	)	
Plaintiffs,	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION TO FORECLOSE ON LIEN
vs.	)	
	)	
EMERALD INVESTMENTS, LLC. and	)	
STUART LONGMAN	)	
	)	
Defendants.	)	

Defendants Emerald Investments, LLC and Stuart Longman, by their attorneys, Richard S. Rosen, Daniel F. Blanchard, III and James A. Bruorton IV of Rosen, Rosen & Hagood, LLC submit this Memorandum in Opposition to Plaintiffs' Motion to Foreclose Judgment Lien in the above captioned action.

FACTS

Ashley River Properties II, LLC ("ARP II") is a South Carolina member managed limited liability company. See Longman Affidavit ¶ 2. 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"). See Longman Affidavit ¶ 2. Thus far ARP II has only constructed the marina slips. No condominium units have been built. See Longman Affidavit ¶ 2.

At its inception, ARP II was wholly owned by Emerald. ARP II and another Emerald owned entity, Ashley River Properties I ("ARP I"), were initially jointly involved in developing the Ripley Light project. See Longman Affidavit ¶ 3. Emerald initiated the project and was the project's developer. See Longman Affidavit ¶ 3. At the project's inception, Emerald managed

ARP II as well as ARP I. See Longman Affidavit ¶ 3. 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. See Longman Affidavit ¶ 4. Kriti Ripley, LLC ("Kriti") was that investor. See Longman Affidavit ¶ 4. At all pertinent times, Kriti is and was managed by Davidson Williams ("Williams"). See Longman Affidavit ¶ 4.

Emerald and Kriti 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. See Longman Affidavit ¶ 5. 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. See Longman Affidavit ¶ 6. Kriti paid \$1,250,000.00 for its membership interest in ARP II and Emerald's initial capital contribution to ARP II was \$2,500,000.00. See Longman Affidavit ¶ 6.

In 2004, a dispute arose between Emerald and Kriti involving the project and their respective rights under the ARP II Operating Agreement. See Longman Affidavit ¶ 7. 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. See Longman Affidavit ¶ 7. 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. See Longman Affidavit ¶ 7. 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.

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. See Longman Affidavit ¶ 8. Applying the provisions of the ARP II Operating Agreement, which were drafted by Kriti's attorney and one-sided in favor of Kriti, the New York arbitration panel issued an award on October 31, 2005 concluding that Emerald had defaulted under the terms of the Operating Agreement and that it had forfeited its "voting rights" in ARP II. See Longman Affidavit ¶ 8. However, the panel refused to order the forfeiture of Emerald's financial interest in ARP II. See Longman Affidavit ¶ 8. 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. See Longman Affidavit ¶ 8.

The 2005 arbitration award also made findings that were very critical of Kriti's conduct towards Emerald. See Longman Affidavit ¶ 9. Specifically, the panel 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. See Longman Affidavit ¶ 9. 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 capital call criticized by the arbitration panel. See Longman Affidavit ¶ 10. Subsequent to the criticized capital call and arbitration panel's findings, Kriti and Williams have issued 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%. See Longman Affidavit ¶ 10. This attempted fraud was eventually overruled by another arbitration panel in 2010.

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. See Longman Affidavit ¶ 11. The 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

Thus, the principal amount awarded by the arbitrators is less than half of the total judgment amount. See Longman Affidavit ¶ 10.

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. See Longman Affidavit ¶ 12. 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. See Longman Affidavit ¶ 12. 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.

In July of 2010, following continued disputes between Emerald and Kriti, yet another arbitration hearing was conducted in New York involving these same parties. See Longman Affidavit ¶ 13. The July 2010 arbitration, Emerald sought, among other things, a declaration that Emerald owns 70% of the membership interests of the Company. Thereafter, on October 28, 2010, the arbitrators issued their written award (hereinafter "2010 arbitration award") expressly confirming or reconfirming that Emerald still owns 70% of ARP II, finding Kriti's 2005 capital call was

defective and did not operate to dilute Emerald's interest in the company, and ordering Kriti to pay \$59,527.74 to Emerald. See Longman Affidavit ¶ 13.

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." See Longman Affidavit ¶ 14. 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. See Longman Affidavit ¶ 14. 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. See Longman Affidavit ¶ 14. 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"). See Longman Affidavit ¶ 14. Judge Young has previously denied Kriti's motion to dismiss Emerald's dissolution case filed in 2009 since only a South Carolina Court can dissolve a South Carolina Limited Liability Company.

Emerald filed the 2009 Dissolution case with this Court on January 30, 2009 because of Kriti's mismanagement of ARP II and other misconduct. See Longman Affidavit ¶ 15. 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. See Longman Affidavit ¶ 15. 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. See Longman Affidavit ¶ 15. 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. See Longman Affidavit ¶ 16.

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 filed a Motion to Foreclose Judgment Lien in this current action. See Longman Affidavit ¶ 17. 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 not made any distributions pursuant to the charging order to satisfy Kriti's money judgment. Kriti further alleges that ARP II will not be able to make any 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.

In support of its argument that ARP II is financially unable to make distributions, Kriti relies upon ARP II's purported financial statements for 2008 and 2009. See Longman Affidavit ¶ 18. However, the financial statements relied upon by Kriti appear to seriously underreport the value of ARP II's real estate holdings. See Longman Affidavit ¶ 18. The 2009 financial

statement relied upon by Kriti 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 estimating the real estate holdings to be valued at \$17.25 million. See Longman Affidavit ¶ 18. Thus, the 2009 financial statement underreports the value of ARP II's real estate holdings by approximately \$3.25 million.

To the extent that ARP II is in poor financial shape, it is a direct result of Kriti's mismanagement of the company. 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. See Longman Affidavit ¶ 19. 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. See Longman Affidavit ¶ 19.

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. See Longman Affidavit ¶ 20. In short, Williams and Kriti inherited a shovel-ready marina, a condo project ready for pre-selling, and a property ready to sell. See Longman Affidavit ¶ 20. Yet, over the past six years, Williams and Kriti have squandered all of those opportunities

leaving the company in financial distress.

The Ripley Light Project was designed to be a condominium project, with a marina as a complementary asset. See Longman Affidavit ¶ 21. Williams and Kriti had every opportunity to develop the project as conceived. See Longman Affidavit ¶ 21. Emerald received regulatory and zoning approval from the Board of Architectural Review in December of 2004, which allowed pre-sales of condos and two real estate agents (Frank Guarino and Clay Cunningham) were on site attempting to sell the condos. See Longman Affidavit ¶ 21. Kriti and Williams assumed control of ARP II in early 2005 at the apex of the housing market. See Longman Affidavit ¶ 21. 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. See Longman Affidavit ¶ 21.

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. See Longman Affidavit ¶ 22. The appraisals value "as is" rental slips at \$2.34 million and "as is" dockominium units at \$9.530 million. See Longman Affidavit ¶ 22. 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). See Longman Affidavit ¶ 22. 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. See Longman Affidavit ¶ 22.

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. See Longman Affidavit ¶ 23. However, Kriti and Williams have squandered every

opportunity to sell the project that has come ARP II's way. See Longman Affidavit ¶ 23. For example, in April of 2005, at the very beginning of Kriti's control of the Ripley Light Project, Williams and Kriti were presented with an offer from Centex 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. See Longman Affidavit ¶ 24. The offer from Centex was made before the project had incurred substantial debt to construct the marina slips on the property. See Longman Affidavit ¶ 24. If the Centex offer had been accepted, ARP II would have made a profit in 2005 of nearly \$10.5 million. See Longman Affidavit ¶ 24.

Instead of accepting the Centex offer to purchase ARP II's property, on May 9, 2006, Kriti and Williams caused ARP II to reject the offer and moved forward with the procurement of a multi-million dollar construction loan from Bank of America (hereinafter "BofA") for the purpose of constructing marina slips on the ARP II property. See Longman Affidavit ¶ 25. 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. See Longman Affidavit ¶ 25. 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. See Longman Affidavit ¶ 26.

Since procuring the BofA construction loan, 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. See Longman Affidavit ¶ 26. 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. See

Longman Affidavit ¶ 26. 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. See Longman Affidavit ¶ 26.

After Williams killed the Centex deal, ARP II did receive another opportunity to sell the property in 2007. See Longman Affidavit ¶ 27. 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. See Longman Affidavit ¶ 27. Even though Emerald was a 70% financial owner of ARP II, Kriti and Williams failed to notify Emerald of the offer. See Longman Affidavit ¶ 27. Before Emerald was even made aware of the offer from East Coast, Kriti and Williams had already caused the deal to be scuttled. See Longman Affidavit ¶ 27. 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). See Longman Affidavit ¶ 27. 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. See Longman Affidavit ¶ 27. Consequently, the deal did not happen, costing ARP II a profit of \$10 million. See Longman Affidavit ¶ 27.

After Williams had caused the Centex and East Coast deals to fail, ARP II had another chance to sell the property before the bottom fell completely out of the real estate market. See Longman Affidavit ¶ 28. 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. See Longman Affidavit ¶ 28. As was the case with the offer from East Coast, Kriti and Williams had already caused the Lucorp deal to

be scuttled before Emerald was even made aware of the offer. See Longman Affidavit ¶ 28. 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 causing the potential sale to fall through. See Longman Affidavit ¶ 28. 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). See Longman Affidavit ¶ 28.

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. See Longman Affidavit ¶ 45. Kriti has repeatedly failed or refused to produce ARP II's records and information to Emerald, despite numerous requests for the same. See Longman Affidavit ¶ 45. 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. See Longman Affidavit ¶ 45. 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. See Longman Affidavit ¶ 44. 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. See Longman Affidavit ¶ 44. The financial statements provided were designed to give Emerald 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." See Longman Affidavit ¶ 44. Yet, condominium construction was never in progress and nothing at all had been done with respect to the condominiums since the end of 2006. See Longman Affidavit ¶ 44. Kriti has consistently given Emerald belated, vague, and false financial statements for the past six years. See Longman Affidavit ¶ 44.

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. See Longman Affidavit ¶ 46. 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. See Longman Affidavit ¶ 46.

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. In this particular case, the judgment creditors seeking foreclosure are the LLC itself (ARP II) and the member with complete voting control of the LLC (Kriti). See Longman Affidavit ¶ 48. 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 (through its exclusive control of ARP II) has the ability to make distributions from the company when and in what amount it chooses. See Longman Affidavit ¶ 48. Foreclosure of Emerald's interest in ARP II is unnecessary because this Court's charging order is sufficient to protect Kriti's interests. See Longman Affidavit ¶ 48.

LEGAL ANALYSIS

A. Dissolution of ARP II or Shareholder Buyout is Most Appropriate Remedy.

Kriti has been attempting to squeeze out Emerald and Longman from any involvement with ARP II since Kriti took control of the company's management and operations in January 2005. The capital call it improperly issued was deemed a defective attempt to squeeze out Emerald's membership interest in ARP II, so Kriti is now trying a different approach to squeeze out Emerald's membership interest through an attempted foreclosure of the judgment lien which is the subject of this action. By asking the Court to foreclose on its judgment lien, Kriti is attempting to use the foreclosure process to defeat Emerald's action to dissolve ARP II based on Kriti's mismanagement of ARP II. See Longman Affidavit ¶ 47. Essentially, Kriti 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 caused directly by Kriti. See Longman Affidavit ¶ 47.

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.").

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.").

The SC LLC Act grants broad judicial discretion in fashioning remedies in actions by a member of an LLC against the LLC and/or other members. See Historic Charleston Holdings,

LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (S.C. 2009). In addition to allowing an order of forced dissolution, the statute empowers a court to grant other relief, including ordering the purchase of the shares of any shareholder, either by the corporation or by other shareholders. See Hendley v. Lee, 676 F. Supp. 1317 (SCDC 1987).

Under the circumstances of this case, an ordered buyout of the majority member by the minority member or vice versa would allow the business relationship between the parties to be wound up and satisfy any outstanding debt Emerald and Longman may have to ARP II and Kriti. In Mallon, the South Carolina Supreme Court held that the buy-out of plaintiff's interest in the LLC by defendant at fair value constituted an accord and satisfaction of any liability to the LLC on the part of the plaintiff. Mallon, 381 S.C. at 430. In fashioning an appropriate remedy, the court should consider benefit or detriment to shareholders. See Fox v. 7L Bar Ranch Co., 198 Mont. 201, 645 P.2d 929 (1982). An ordered buyout of either Kriti or Emerald's interest in ARP II, would provide fair valuation of the membership interest as opposed to a forced judicial sale of Emerald's interest at a liquidation price.

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." See July 23, 2010 Arbitration Transcript pg. 1278 [ln 21 - 23]¹. Nevertheless, the arbitration panel ruled the facts presented 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:

¹ Excerpts from the arbitration proceedings held in Emerald Investments, LLC vs. Kriti Ripley, LLC on July 23, 2010 are attached hereto as Exhibit 1.

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 acknowledges that the question of whether ARP II should be judicially dissolved pursuant to the LLC statute was not before the arbitration panel. See Kriti's Post-Hearing Brief at p. 8 ("Much of the decision deals with judicial dissolution, an issue not directly present here as the parties have acknowledged that under South Carolina law a claim for judicial dissolution is non-arbitrable"); *id.* at p. 38 ("Indeed expulsion under § 33-44-601(6)

of the LLC Act, like § 33-44-801 of the LLC Act, which provides for judicial dissolution, requires a determination by the courts in South Carolina. In its Dismissal Order . . . , the South Carolina court held that judicial dissolution of ARP-II can only be brought in a South Carolina Court. Indeed, Kriti and Emerald stipulated to this in the Consent Order [filed on April 19, 2010 in the 2009 Dissolution Lawsuit.]; *see also* Kriti's Reply Brief at p. 2 ("As the South Carolina court correctly noted, Kriti argued in the First Arbitration that the arbitrators lacked the authority to decide Emerald's judicial dissolution claim under South Carolina law.").

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).").

B. Foreclosure of a member's interest in an LLC is an unwarranted drastic remedy

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)). 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 no 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).

However, the present case is unique and distinguishable. Here the judgment creditors are the LLC itself (ARP II) and the member with complete voting control of the LLC (Kriti). Emerald has not found (and Kriti has not cited) any case law, in South Carolina or any other jurisdiction where the judgment creditor seeking to enforce the charging order is also the controlling member of the LLC. In the present case, Kriti has the ability to make distributions from the company when and in what amount it chooses. In general, when the creditor is a third-party, the Court should order a sale if the court is convinced a creditor's claim will not be satisfied in a reasonably expedient manner by other than sale; otherwise, the sale should not be ordered because of the adverse effects the sale would have on the partnership as a whole. Federal Deposit Insurance Corporation v. Birchwood Builders, Inc., 240 N.J. Super. 260, 573 A.2d 82 (1990). In this case, foreclosure is not appropriate because the previously issued charging order is sufficient to protect the judgment creditors' interests and the debtor can prove that the debt can be satisfied without the necessity of a forced sale of its distributional interest.

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 will render moot the need to foreclose on the judgment lien against Emerald’s distributional interest in ARP II. ARP II has substantial assets that can be sold at a net profit. 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 support Emerald’s claim for judicial dissolution of ARP II.

C. Kriti is precluded from foreclosing on judgment lien because of unclean hands.

The doctrine of “unclean hands” precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. Wilson v. Landstrom, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984) (citing Arnold v. City of Spartanburg, 201 S.C. 523 (1943)). “The doctrine of unclean hands expresses the

principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue.” Id.

A charging order is a statutory provision rooted in equity. See City of Arkansas City v. Anderson, 752 P.2d 673, 681-82 (Kan. 1988). Foreclosure is an equitable remedy governed by the operation of traditional equitable principles and is subject to the defense of unclean hands. See Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010); see also New Jersey Bank v. Azco Realty Co., Inc., 148 N.J.Super. 159, 166, 372 A.2d 356, 359 -60 (N.J. Super. A.D. 1977). The unclean hands doctrine may be asserted as a special defense in a foreclosure action. Thompson v. Orcutt, 257 Conn. 301, 318, 777 A.2d 670 (2001). “It is a fundamental principle of equity jurisprudence that for a complainant to show that he is entitled to the benefit of equity he must establish that he comes into court with clean hands.... The clean hands doctrine is applied not for the protection of the parties but for the protection of the court.... It is applied not by way of punishment but on considerations that make for the advancement of right and justice.” Id. at 310.

In this action, Kriti’s hands are unclean barring its right to the equitable remedy of foreclosure on its charging order lien against Emerald and Longman. Kriti’s hands are unclean in the following ways:

1. Kriti has failed to conduct the affairs of ARP II in the best interest of ARP II and its members by squandering three potential sale opportunities to potential buyers of ARP II’s property, causing ARP II to substantially and unnecessarily increase its debt burden, and diverting ARP II funds to other Kriti projects that are not related to ARP II or the Ripley Light Project;

2. Kriti fraudulently pursued a default judgment through ARP II against Emerald's other Ripley Light Project company ARP I by seeking to enforce a judgment against ARP I, without the knowledge of ARP I's attorneys, for a debt that was owed by ARP II pursuant to the first arbitration panel's findings;
3. Kriti attempted to unilaterally dilute Emerald's membership interest in ARP II by issuing a defective capital call and filing incorrect financial statements and tax documents indicating Emerald's interest in ARP II had been diluted from 70% to 21%;
4. Kriti has refused to disclose ARP II's financial records to Emerald despite repeated demands from Emerald, which allows Kriti to conceal the true financial position of ARP II;
5. Kriti has undervalued ARP II's assets by \$3.25 million in the financial statements submitted to the Court in support of its motion to foreclose on its judgment lien; and
6. Kriti has caused ARP II to spend significant legal fees fighting with Emerald and Longman about Emerald's interest in ARP II, which been confirmed by the New York arbitrators;

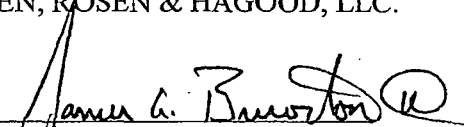
Kriti's unclean hands directly relate to the reason Kriti now seeks foreclosure. Since Kriti took over ARP II in January of 2005, it has spent the majority of its time trying to damage and squeeze out Emerald from membership in ARP II instead of focusing on the financial well-being of ARP II. Kriti claims that the charging order is insufficient to protect its interest because ARP II has made no distributions since the order was issued and future distributions from ARP II are expected in the near future. However, the lack of distributions from ARP II (controlled by Kriti) 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. Kriti's unclean hands put ARP II in its current financial position, which Kriti now seeks to take advantage of to the detriment of ARP II's majority member, Emerald. For the Court to allow such action would be unfairly prejudicial to Emerald and Longman and inequitable in nature.

CONCLUSION

For the reasons set forth above, this Court should deny Kriti's motion to foreclose on its judgment lien, consolidate the charging order action with Emerald's dissolution action, allow the dissolution action to essentially resolve the monetary disputes between the parties and award such additional equitable and legal relief it deems appropriate.

ROSEN, ROSEN & HAGOOD, LLC.

By: 

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LONGMAN

Charleston, South Carolina
April 7, 2011.

*EMERALD INVESTMENTS, LLC VS.
KRITI RIPLEY, LLC*

*PROCEEDINGS
July 23, 2010*

Ellen Grauer
COURT REPORTING
Co. LLC



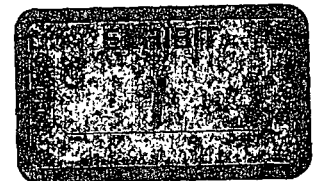
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1 WILLIAMS - DIRECT

2 years, to pay off the third-party vendees,
3 to dredge the harbor, to pay down the B of
4 A loan were proper and stand.

5 ARBITRATOR MILONAS: Meaning were
6 proper and stand as what?

7 THE WITNESS: Stand as loans, stand
8 as what they are.

9 And then the third thing I would like
10 the panel to find is that we are entitled
11 to our remedy under 1302 C of the
12 operating agreement relating to forfeiture
13 because we are litigating the same
14 arguments that were in the first
15 arbitration proceeding, that the relief
16 Mr. Longman -- he's trying to overturn
17 that and take away my boating rights, kick
18 me out of this project, and I -- he
19 narrowly escaped forfeiture last time.

20 MR. WARD: Objection.

21 THE WITNESS: I think it's time that
22 we sever our interests somehow and end
23 this nightmare.

24 CHAIRMAN RUBIN: Do you have any --
25 just to address Mr. Ward, we'll strike out

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.

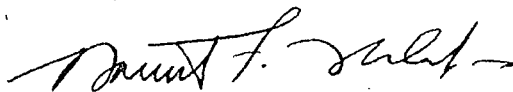
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-10-2344**CERTIFICATE OF SERVICE**

FILED
2011 APR -7 AM 9:13
JULIE A. ARISTARQUE
CLERK OF COURT

I hereby certify that on this date a copy of the Memorandum of Law in Opposition to Motion to Foreclose on Lien was 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 7, 2011:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiffs,

v.

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

Defendants.

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

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION TO FORECLOSE
JUDGMENT LIEN**

Plaintiffs Kriti Ripley, LLC ("Kriti") and Ashley River Properties Two, LLC ("ARP II") submit this Memorandum In Support of Plaintiffs' Motion to Foreclose a Judgment Lien ("Motion").

The Motion was argued before Judge Harrington on April 7, 2011.

BACKGROUND

At the hearing on April 7, counsel for Defendants made broad and sweeping allegations which are completely irrelevant to the Motion now before the Court. The facts at issue are simple and largely uncontested.

ARP II was formed in 2003 to develop waterfront property in Charleston, SC. Kriti and Defendant Emerald Investments, LLC ("Emerald") are the only two members of ARP II. Mr. Stuart Longman ("Longman") is the managing member of Emerald.

In 2005, an arbitration panel in New York found that Longman illegally diverted funds away from ARP II in contravention of ARP II's Operating Agreement. Emerald was stripped of its voting rights, and in a separate arbitration, Plaintiffs were awarded legal fees and damages. As a result of these awards, Plaintiffs now have a judgment against the Defendants in the amount of \$1,184,581.72, which, with interest accruing on that amount over the ensuing three years, totals close to \$1,500,000.

In an effort to collect on their judgment, Plaintiffs perfected a lien upon the Defendants' interest in ARP II by way of a charging order issued by this Court on October 17, 2008. With the collapse of the "dockominium" (a/k/a the boat slip condominium sales) market, however, the charging order has not succeeded in paying down Defendants' debt to Plaintiffs. ARP II has failed to make a profit and has made no distributions. In 2009, ARP II showed a net loss of \$558,016. In 2010, ARP II lost \$157,431. See Affidavit of Davidson Williams filed February 1, 2011 (the "February Williams Affidavit") at ¶¶ 6 and 7. ARP II will make no distributions in the foreseeable future. See February Williams Affidavit at ¶ 8. The charging order will therefore not succeed in paying down Defendants' debt to the Plaintiffs within a reasonable time.

As noted in the Affidavit of Davidson Williams filed in support of the Motion on April 4, 2011 (the "April Williams Affidavit"), Plaintiffs' judgment against Defendants is now more than three years old. The judgment was entered April 2, 2008, and Defendants have made no efforts to pay it down. See April Williams Affidavit at ¶ 8. Unfortunately for Plaintiffs, a separate judgment against Emerald and/or Longman for affirmative fraud and concealment has been entered against them in Connecticut, which remains unpaid since 1996. See April Williams Affidavit at ¶ 5. In addition to the 1996 fraud/concealment judgment, at least three (3) additional lawsuits are currently pending against Emerald and/or Longman. See April Williams Affidavit at ¶¶ 5 and 7. Therefore, the only practical method to ensure that Plaintiffs collect on their judgment is to foreclose the charging order on Defendants' interest in ARP II.

LEGAL ANALYSIS

South Carolina's Uniform Limited Liability Company Act of 1996 Allows for the Foreclosure of Defendants' Interests in ARP II.

At the hearing on April 7, Defendants' primary argument in opposition to foreclosure was that counsel for Defendants could find no case law in which a court specifically allowed an LLC to foreclose the interests of one of its members pursuant to a charging order. Defendants failed to mention, however, that there is also no case law on point denying an LLC's or a member's ability to seek such a foreclosure. Both the terms of the LLC statute itself and case law interpreting partnerships indicate that the law permits an LLC to foreclose on the membership interests of a member.

S.C. Code Ann. § 33-44-504, part of South Carolina's Uniform Limited Liability Company Act of 1996 ("LLC Act"), addresses rights of creditors. At subsection (b), the statute specifically allows for foreclosure on a debtor's distributional interest:

A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.

S.C. Code Ann. § 33-44-504(b).

The statutory language is clear and unequivocal, yet Defendants seek to add unseen and unintended conditions to the law. According to the law, the court may order a foreclosure at any time. Neither the plain language of the statute nor its comments suggest that foreclosures are limited only to non-members. Rather, the statute makes no distinction whatsoever as to the types of lien holders which may foreclose. Under the statute, a lien-holding member has the same foreclosure rights as any other lien holder.

Further, an examination of partnership law supports Plaintiffs' interpretation of the LLC Act. While no cases directly on point have been found in South Carolina, authority from other

jurisdictions approves the use of a charging order and foreclosure to proceed against the partnership interests of a fellow partner who is the subject of an outstanding judgment.

In *Tupper v. Kroc*, 494 P. 2d 1275 (Nev. 1972) the Supreme Court of Nevada affirmed the actions of a limited partner in obtaining a charging order against the general partner for contributions he failed to make to the partnership. The general partner's partnership interest was ultimately foreclosed and sold for a small fraction of the actual underlying debt. The result was that the general partner's distributional interest was acquired at the foreclosure sale by the limited partner. 494 P. 2d at 1280.

In *FDIC v. Birchwood Builders*, 240 N.J. Super. 260, 573 A. 2d 182 (N.J. Sup. 1990), the Court held that the Trial Court abused its discretion in failing to order a foreclosure sale where the evidence demonstrated that, like the case at bar, the distributions to the partnership interests would not satisfy the judgment within a reasonable time:

When a judgment creditor seeks a charging order and the Trial Court enters the charging order, we do not read the U.P.L. to provide the Trial Court with the discretion to deny an order for sale in absence of proof that the debt will be satisfied from the debtor's partner's share of the profits in a reasonable period of time.

573 A. 2d at 186.

Further, in *Nigri v. Lotz*, 453 S.E. 2d 780 (GA. App. 1995) the Court held,

In general, a charging order is considered the primary method of satisfying the creditor's judgment, but the further step of ordering a sale may be considered appropriate where it is apparent that distributions under the charging order will not pay the judgment debt within a reasonable period of time.

As these cases demonstrate, partnership law permits one partner or the partnership itself to foreclose the partnership interest of another partner pursuant to a charging order. At the hearing on April 7, Defendants' counsel stressed that a foreclosure could not be made due to the fiduciary duties

owed by members of an LLC. Clearly, partners owe comparable – and oftentimes greater – fiduciary duties to one another than do LLC members, and those courts which have addressed the issue have not found that the existence of such duties acts to bar a partner's statutory right to foreclosure.

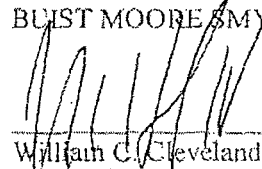
Defendants' claim that the foreclosure of a membership interest is prohibited under the LLC Act is simply not supported by the LLC Act or the case law. Instead, members of an LLC have the same rights as other lien holders when debtors, like Defendants, stubbornly refuse to pay valid judgments.

CONCLUSION

For the reasons stated above, as well as the previously-filed affidavits of Davidson Williams and the pleadings and records on file herein, Plaintiffs request this Court to GRANT their Motion to Foreclose the Judgment Lien, and DENY Defendants' Motions to Consolidate (2008-CP-10-2344 and 2009-CP-10-553), Motion to Dissolve Stay (2009-CP-10-553), and Motion to Amend Complaint (2009-CP-10-553).

Respectfully submitted,

BLIST MOORE SMYTHE MCGEE P.A.


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

Charleston, South Carolina
 April 12, 2011

CERTIFICATE OF SERVICE

I do hereby certify that on the 12th day of April, 2011 I served a copy of the

MEMORANDUM IN SUPPORT OF PLAINTIFFS' 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.

Karla Koster

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
EMERALD INVESTMENTS, LLC; and
STUART L. LONGMAN

Plaintiffs,

Vs.

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

Defendants.

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

**PLAINTIFF'S MOTION
TO ALTER, AMEND, AND/OR
RECONSIDER ORDERS**

2011 JUN 24 PM 2:05
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

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

PLEASE TAKE NOTICE that, pursuant to SCRCP 59(e), the undersigned attorneys for Emerald Investments, LLC and Stuart Longman (hereinafter "the Plaintiffs") will move before the Presiding Judge of the Circuit Court, 100 Broad Street, Charleston, SC 29401, or at such other office as the Court may direct, after ten (10) days from the date of service hereof or at such time as the Court may direct, for an Order altering, amending, and/or reconsidering (1) the Order of Judge Kristi L. Harrington filed on June 10, 2011, which *sua sponte* rescinded this Court's prior Order filed on April 19, 2011 granting the Plaintiffs' Motion to Amend Complaint, and (2) the Order of Judge Kristi L. Harrington filed on June 10, 2011, which denied the Plaintiffs' separate Motion to Dissolve Stay and Motion to Consolidate Actions.

Plaintiffs respectfully ask the Court to alter, amend, and/or reconsider its rulings as follows:

I. ORDER RESCINDING PRIOR ORDER GRANTING MOTION TO AMEND.

On December 7, 2010, the Plaintiffs simultaneously filed and served in this action (i) a Motion to Amend Complaint and (ii) a Motion to Dissolve Stay. Thereafter, on March 10, 2011, the Plaintiffs also filed a separate Motion to Consolidate this action with the action pending in this Court, entitled *Kriti Ripley, LLC and Ashley River Properties II, LLC v. Emerald Investments, LLC and Stuart L. Longman*, Case No. 2008-CP-10-2344 ("Case No. 2008-CP-10-2344"), for discovery purposes and for a joint hearing and/or trial pursuant to S.C. R. CIV. PRO. 42(a).

On April 19, 2011, following a hearing and oral argument involving all of the motions in the two cases, Judge Harrington filed an Order expressly granting the Plaintiffs' Motion to Amend Complaint in this case.¹ The Defendants did not file a timely Motion to Alter or Amend the Court's Order pursuant to SCRCP 59.

Following receipt of the Court's Order, Plaintiffs' counsel filed and served the Plaintiffs' Amended Complaint on the Defendants on April 26, 2011. Defendants have not answered or otherwise responded to the Amended Complaint.

On June 10, 2011, via a form Order, Judge Harrington *sua sponte* rescinded or vacated her prior April 19 Order. However, when a party does not make a timely motion to alter or amend an Order pursuant to SCRCP 59, South Carolina law is clear that the Circuit Judge lacks subject matter jurisdiction to *sua sponte* rescind, vacate, alter, or amend the Order more than ten days after it was issued. *See Heins v. Heins*, 543 S.E.2d

¹ Although Judge Harrington's April 19, 2011 Order did not expressly reference the Plaintiffs' Motion to Dissolve Stay that was filed simultaneously with the Plaintiffs' Motion to Amend Complaint, the Court necessarily dissolved the stay in this case by granting leave to the Plaintiffs to file and serve their Amended Complaint. Otherwise, it would have been a useless act for the Court to grant the Motion to Amend Complaint, but to continue to stay the very same action.

224 (S.C. Ct. App. 2001); *Ness v. Eckerd Corp.*, 566 S.E.2d 193 (S.C. Ct. App. 2002); *Branch Banking & Trust Co. v. Pickens*, No. 2004-UP-157, slip op. at 3 (S.C. Ct. App. filed March 10, 2004).

The June 10, 2011 Order was entered fifty-two days after the April 19 Order was entered. Because the Court's Order rescinding its prior Order was filed more than ten days after the original Order was issued, the Court lacked subject matter jurisdiction to issue the second Order. Accordingly, the Plaintiffs move that the Court's Order filed on June 10, 2011, be altered, amended, and/or reconsidered to provide that it is withdrawn, vacated, and/or rescinded because it was issued without subject matter jurisdiction. Additionally, the Plaintiffs move that the Court reinstate or affirm its prior Order granting the Plaintiffs' Motion to Amend Complaint.

II. ORDER DENYING MOTION TO DISSOLVE STAY AND CONSOLIDATE ACTIONS.

On June 10, 2011, Judge Harrington also filed another Order purporting to expressly deny (a) the Plaintiffs' Motion to Dissolve Stay filed on December 7, 2010, and (b) the Plaintiffs' separate Motion to Consolidate filed on March 10, 2011. The June 10 Order did not mention the fact that the Court had previously granted the Plaintiffs' Motion to Amend Complaint by Order filed on April 19, 2011, which necessarily meant the stay in the case had already been dissolved or lifted. For the reasons stated above, because the Court's prior April 19, 2011 Order necessarily dissolved the stay in this case, the Court lacked jurisdiction on June 10, 2011 to vacate or rescind that prior Order.² The Court's June 10, 2011 Order is also erroneous for several additional reasons.

² Along with its Motion to Consolidate filed in this action on March 10, 2011, the Plaintiffs also simultaneously filed a separate Motion to Consolidate in Case No. 2008-CP-10-2344. The Court

Plaintiffs' original Complaint in this matter asserted two counts for relief against the Defendants. Count I seeks an Order judicially dissolving ARP II and directing the winding up of its affairs pursuant to the South Carolina Uniform Limited Liability Company Act of 1996, S.C. CODE ANN. §§ 33-44-101 *et seq.*, and Count II seeks a declaratory judgment pursuant to S.C. CODE ANN. § 15-53-30 declaring that Plaintiff Emerald Investments, LLC ("Emerald") is a 70% member of ARP II.

In her June 10, 2011 Order, Judge Harrington held that the claim for judicial dissolution of ARP II (Count I) had been referred to arbitration in New York. Her Order also held that "[h]aving referred this case to arbitration, the Court was divested of jurisdiction to hear the case until the arbitration award was issued and a motion to confirm, modify or vacate the award was filed in the appropriate court." *See* Order filed 6/10/11 p. 2 (citing *Main Corp. v. Black*, 592 S.E.2d 300 (S.C. 2004) and *Steinmetz v. American Media Services, LLC*, Opinion No. 4829 (S.C. Ct. App. April 27, 2011)).

The finding that this Court lacks jurisdiction over the judicial dissolution claim is clearly erroneous in light of prior Orders entered in this same case.

[a] Judge Harrington's Order Impermissibly Overrules Prior Circuit Judge Orders in this Action that are the Law of the Case.

Judge Harrington's finding directly contradicts and conflicts with the clear terms of Circuit Judge Roger Young's prior Orders filed in this action on May 4, 2009 and June 8, 2009, and Circuit Judge Deadra Jefferson's prior Order filed in this action on April 19, 2010. Those prior Orders are the "law of the case" and cannot now be overturned or modified by another Circuit Judge.

has not yet issued any Order ruling on the Motion to Consolidate filed in Case No. 2008-CP-10-2344.

On May 4, 2009, Judge Young entered an Order specifically finding that the Plaintiffs' claim for judicial dissolution of ARP II is not encompassed by the arbitration clause in the ARP II Operating Agreement and, therefore, the claim cannot be compelled to arbitration. *See* Order filed 5/4/09 pp. 23-27. Judge Young also specifically ruled that an action to judicially dissolve ARP II must be brought in the state which created the entity. Because ARP II is a South Carolina LLC, Judge Young ruled that South Carolina's Courts have *exclusive* jurisdiction over the Plaintiffs' claim for judicial dissolution of ARP II. *See* Order filed 5/4/09 pp. 23-27; Order filed 6/8/09 p. 5. As Judge Young ruled, this action *must* be resolved by a South Carolina court.

None of Judge Young's rulings have been overturned by an appellate court. As such, they are now the law of the case and cannot now be modified or disregarded by another Circuit Judge. South Carolina's courts have steadfastly held that one Circuit Judge may not reverse another and an Order of a Circuit Judge made in the due course of a case stands as the "law of the case" until reversed by an appellate court. *See, e.g., Charleston County DSS v. Father*, 454 S.E.2d 307 (S.C. 1995); *State ex rel. Medlock v. Love Shop, Ltd.*, 334 S.E.2d 528 (S.C. Ct. App. 1985); *Tisdale v. American Life Ins. Co.*, 56 S.E.2d 580 (S.C. 1950); *C.I.T. Corp. v. Corley*, 13 S.E.2d 440 (S.C. 1941); *Wilkinson v. Wilkinson*, 7 S.E.2d 447 (S.C. 1940); *McCormick v. Rush*, 180 S.E. 43 (S.C. 1935); *Lipman v. Perry*, 123 S.E. 772 (S.C. 1924); *Odom v. Burch*, 29 S.E. 726 (S.C. 1898).

Furthermore, on April 19, 2010, Judge Jefferson entered a Consent Order in this case expressly ruling as follows:

Plaintiff Emerald Investments, LLC's ("Emerald") Complaint in this action alleges claims seeking (I) an Order judicially dissolving Ashley River Properties II, LLC ("ARP II") and directing the winding up of its affairs pursuant to the South Carolina Uniform Limited Liability Company

Act of 1996, S.C. CODE ANN. §§ 33-44-101 *et seq.* (hereinafter “judicial dissolution claim”), and (II) a declaratory judgment pursuant to S.C. CODE ANN. § 15-53-30 declaring that Emerald is a 70% member of ARP II (hereinafter “declaratory judgment claim”).

By consent of the parties, the Plaintiff’s declaratory judgment claim under Count II is hereby dismissed without prejudice pursuant to the provisions of S.C. R. CIV. PRO. 41(a)(2). The parties further agree that the claims or issues raised in Count II will be arbitrated before the American Arbitration Association in the arbitration proceeding currently pending between the parties in New York in accordance with the provisions of the Ashley River Properties II, LLC Operating Agreement.

Additionally, by consent of the parties, **the Plaintiffs’ judicial dissolution claim under Count I is hereby stayed pending the above-referenced arbitration proceeding to be conducted in New York.** Notwithstanding the above, **nothing herein shall be construed as depriving this Court of jurisdiction** or barring this Court from issuing or enforcing compliance with properly issued subpoenas compelling the attendance of parties or witnesses at depositions and/or the production of documents or things in South Carolina in conjunction with the above-referenced arbitration proceeding in New York.

See Order filed 4/19/10 pp. 1-2 (emphasis added).

The terms of Judge Jefferson’s Order make clear that she did not refer the claim for judicial dissolution of ARP II (Count I) to arbitration in New York. The Order also expressly states in clear terms that “nothing herein shall be construed as depriving this Court of jurisdiction.” *Id.* Her Order states that “the claims or issues raised in Count II [the declaratory judgment claim] will be arbitrated” in New York. *Id.* However, the Order also expressly states “that the Plaintiffs’ judicial dissolution claim under Count I is hereby stayed pending the above-referenced arbitration proceeding to be conducted in New York.” *Id.* Nothing in Judge Jefferson’s Order refers the judicial dissolution claim

(Count I) to arbitration in New York.³ Judge Jefferson's Order has not been overturned by an appellate court and is the law of the case.

Plaintiffs' claim for judicial dissolution of ARP II was not submitted to arbitration in New York; thus, this Court was never divested of jurisdiction over the matter. Judge Jefferson's Order specifically stated that the Consent Order did not deprive this Court of jurisdiction. Judge Harrington's findings in her June 10, 2011 Order that the Plaintiffs' claim for judicial dissolution of ARP II was "referred" to arbitration in New York and that this Court was "divested" of jurisdiction is clearly erroneous and must be altered, amended, and vacated. The *Main Corp.* and *Steinmetz* cases cited in Judge Harrington's Order are not applicable to this case because they involved claims that were actually referred to arbitration. In both of those cases, the *entire action* was referred to arbitration, thereby completely divesting the Court of any jurisdiction over the case. However, as discussed above, the Plaintiffs' claim for judicial dissolution of ARP II was never referred to arbitration.

Indeed, as specifically held in Judge Young's prior Orders, the judicial dissolution claim *cannot* be submitted to arbitration in New York because South Carolina's Courts have exclusive jurisdiction over the claim. The parties recognized and agreed to this well-established legal precedent in the April 19, 2010 Consent Order, which dismissed Count II (declaratory judgment claim) and sent that claim to arbitration in New York, but which also simultaneously retained jurisdiction over Count I (judicial dissolution of ARP II) and simply stayed that claim pending the results of the arbitration in New York.

³ An arbitration hearing was conducted in New York after the Consent Order was filed. On October 28, 2010, the New York arbitration panel issued a written award resolving the claims raised in Count II [the declaratory judgment claim] and explicitly found that Emerald owns 70% of ARP II. Therefore, the declaratory judgment issues have been resolved.

In short, this Court was never divested of jurisdiction over Plaintiffs' claim for judicial dissolution of ARP II. Now that the arbitration has been conducted and an award was made on October 28, 2010, there is no reason to deny relief from the stay of the judicial dissolution claim. Judge Jefferson's April 19, 2010 Consent Order specifically states that the judicial dissolution claim in Count I of Plaintiff's Complaint is stayed "pending an arbitration proceeding to be conducted in New York." The Order requires no further action after the completion of the 2010 New York Arbitration in order for the stay to be dissolved.

[b] Defendants' Inconsistent Positions to the Court Involving Effect of New York Arbitration Findings.

Judge Harrington's June 10, 2011 Order purporting to deny the Motion to Dissolve Stay and Motion to Consolidate Actions was based on the Defendants' argument to the Court that South Carolina's Courts cannot take any action premised on the findings of the New York arbitration panel until a Court confirms those findings. However, the Defendants took the exact opposite position in the South Carolina Court of Appeals in the Plaintiffs' appeal filed in Case No. 2008-CP-10-2344.

On April 9, 2009, the Plaintiffs filed an appeal in Case No. 2008-CP-10-2344. That case involves the Defendants' request for a Charging Order against Emerald's distributional interest in ARP II pursuant to S.C. CODE ANN. § 33-44-504. In opposing the request for a charging order, the Plaintiffs argued in the trial court and to the South Carolina Court of Appeals that the Circuit Judge could not validly grant a charging order until the question of Emerald's membership interest in ARP II has been determined—*i.e.*, until it is determined whether Emerald owns 70% of ARP II or some other percentage.

While the Plaintiffs' appeal was pending, the New York arbitration panel issued its award on October 28, 2010 and expressly found that Emerald owns 70% of ARP II. Shortly thereafter, the Defendants' legal counsel filed several memoranda with the Court of Appeals arguing that Emerald's appeal should be dismissed as moot *even though the arbitration award had not yet been confirmed by a Court*. See Memorandum dated 11/22/10 pp. 2-3 ("The arbitrators have issued their award establishing the percentage of Emerald's membership interest in ARP II Therefore, the only issue in this appeal is now moot. . . . Whether [Emerald's] percentage interest should have been determined before issuance of the charging order is now moot because the arbitrators have issued their award adjudicating Emerald's percentage interest in ARP II. . . . Any claim Emerald may have had to postpone the effect of the charging order until after its percentage interest has been determined has now been rendered moot because the amount of its percentage interest is no longer uncertain or contested."); Memorandum dated 12/28/10 p. 2 ("The parties have now received an arbitration award establishing the percentage of Emerald's membership interest in ARP II. Therefore, the only issue in this appeal is moot and this appeal should be dismissed. . . . Whether [Emerald's] percentage interest should have been determined before issuance of the charging order is now moot because the arbitrators have issued their award adjudicating Emerald's percentage interest in ARP II.").

The Defendants took the position that the question involving Emerald's membership interest in ARP II has now been "adjudicated," "determined," and is "moot" because of the findings in the 2010 New York Arbitration Award even though the

Defendants acknowledged that those same findings have not yet been confirmed by a Court. *See* Memorandum dated 11/22/10 p. 3, n. 2.

The Defendants also later filed a Motion to Dismiss the Plaintiffs' appeal based on the very same arguments. *See* Motion to Dismiss Appeal dated 1/4/11. The Court of Appeals later issued an Order granting the Defendants' Motion to Dismiss Appeal, dismissed the appeal as being moot, and remitted the case to the Circuit Court. *See* Order filed 1/12/11.

Shortly after the case was back in the Circuit Court, the Defendants filed their Motion to Foreclose on the lien created by the Charging Order. Judge Harrington recently denied that motion by Order filed on June 10, 2011.

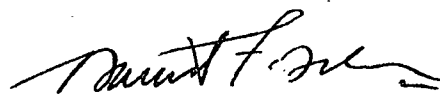
It is a trick on the Court for the Defendants to obtain a dismissal of the Plaintiffs' appeal in the charging order case based on the grounds that the New York arbitrators have issued their award (even though the award hasn't been confirmed by a Court) while the Defendants simultaneously resist relief from the stay issued in this case based on the grounds that a Court has not yet confirmed the very same arbitration award. If the unconfirmed arbitration ruling is sufficient to warrant dismissal of the Plaintiffs' appeal in the charging order case, those same findings are sufficient to warrant dissolving the stay entered in this action.

Based on the above, the Plaintiffs move that the Court's Order filed on June 10, 2011, be altered, amended, and/or reconsidered to expressly provide that the stay of the judicial dissolution claim has been dissolved and to consolidate this action with Case No. 2008-CP-10-2344, for discovery purposes and for a joint hearing and/or trial pursuant to S.C. R. CIV. PRO. 42(a).

This Motion is supported by the pleadings, affidavits, legal memoranda, documents of record, arguments of counsel, and any other matter presented at a hearing on this Motion.

WHEREFORE, ARP I respectfully moves this Court for an Order altering, amending, and/or reconsidering the Orders of Judge Kristi L. Harrington filed on June 10, 2011, in the manner set forth hereinabove, and for such other and further relief as this Court may deem just and proper.

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

ATTORNEY(S) FOR DEFENDANTS

Charleston, South Carolina
June 24, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMERALD INVESTMENTS, LLC; and
STUART L. LONGMAN

Plaintiffs,

Vs.

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

Defendants.

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

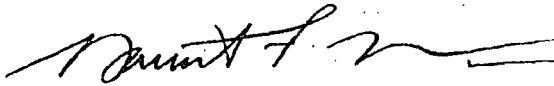
CERTIFICATE OF SERVICE

2011 JUN 24 PM 2:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I hereby certify that on this date, a copy of the Plaintiffs' Motion to Alter, Amend, and/or Reconsider Orders 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./Womble Carlyle
P. O. Box 999
Charleston, SC 29402

ROSEN ROSEN & HAGOOD, LLC



Daniel F. Blanchard, III
Attorney for Plaintiffs

June 24, 2011.

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

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CHARLESTON, SOUTH CAROLINA 29402

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DANIEL F. BLANCHARD III
dblanchard@rrhlawfirm.com

June 24, 2011

The Honorable Kristi Lea Harrington
P.O. Box 998
300B California Ave.
Moncks Corner, SC 29461Re: ****Emerald Investments, Inc. v. Ashley River Properties II, LLC and Kriti Ripley, LLC****
Case No.: 2009-CP-10-553

Dear Judge Harrington:

As required by SCRCP 59(g) I am enclosing herewith a copy of the Plaintiffs' Motion to Alter, Amend, and/or Reconsider Orders that was filed earlier today with the Charleston County Court of Common Pleas. I am also enclosing copies of materials referenced in the motion. We are copying opposing counsel on this letter with enclosures.

We thank you in advance for your consideration of this matter and, of course, please do not hesitate to contact me if you need any further information.

With kind regards, I am

Sincerely,



Daniel F. Blanchard, III

Encls.

Cc: William C. Cleveland, III, Esq. (w/ encls.)

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.	)	

MOTION TO ALTER
OR AMEND OR
RECONSIDER

FILED
2011 JUN 28 AM 10:49
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to South Carolina Rule of Civil Procedure 59(e), the Plaintiffs move the Court to alter or amend or reconsider the Court's Order entered June 10, 2011 denying Plaintiff's motion to foreclose its judgment lien.

Plaintiff requests the Court to reconsider the Court's denial of Plaintiff's motion to foreclose its judgment lien. Plaintiff's motion is made on the following grounds:

1. The cases on which the Court's Order relies in holding that "The Uniform Limited Liability Act (LLC Act) grants broad judicial discretion in fashioning remedies in actions by a member of an LLC against the LLC and/or other members." apply to disputes between members of a limited liability company or between an LLC and its members, not to claims of judgment creditors. Whereas Plaintiff is an LLC and Emerald is a member of that LLC, this dispute involves Plaintiff's claims as a judgment creditor attempting to enforce its judgment lien. Therefore, its remedies, as a judgment creditor, are limited to those remedies provided by S.C. Code Section 33-44-504. See, South Carolina Code Section 33-44-504(e) ("This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's

{02182507.}

distributional interest in a limited liability company.”) (Emphasis added) The remedies referred to in the Court’s Order of a forced dissolution and/or forcing a member to buy the membership interests of another member are not contained in S.C. Code Section 33-44-504 and therefore were not properly considered as alternative remedies available to Plaintiff as a judgment creditor.

2. Ordering foreclosure of Plaintiff’s judgment lien would not cause a forfeiture because S.C. Code Section 33-44-504(c) affords Emerald the right to redeem its distributional interest at any time before the foreclosure actually occurs. Additionally, at the time of the foreclosure sale, Emerald would have the right to purchase its interest. Moreover, the right of a judgment creditor to execute on its judgment does not create a forfeiture that implicates the policy against forfeitures referred to the Court’s Order. Because the grounds on which the Court relied in denying Plaintiff’s motion to foreclose its lien do not exist here, Plaintiff respectfully requests the Court to grant its motion to foreclose its lien.

In the alternative, the Plaintiff requests the Court to alter or amend its Order on the following grounds:

1. The Court’s Order states that foreclosure “...may not be the appropriate remedy.” and that Plaintiff’s debt “could be satisfied without the necessity of a forced sale of its distributional interest.” The Order does not describe the circumstances that would govern whether foreclosure is the appropriate remedy and the Order does not describe the evidence on which the Court relied in stating that Plaintiff’s debt could be satisfied without the necessity of foreclosure of Defendant’s distributional interest.

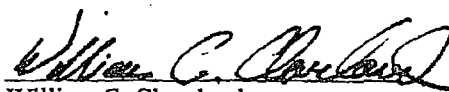
2. The Plaintiff respectfully requests the Court to address in its Order the circumstances on which the Court relied in concluding that foreclosure may not be the appropriate remedy and that the Court describe the evidence on which the Court relies in stating that Plaintiff’s debt could be

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satisfied without the necessity of foreclosure of Defendant's distributional interest. The Court's Order can fairly be read to hold that there are circumstances that could occur that would make foreclosure an appropriate remedy in this case, but the Order does not state what those circumstances are. The Plaintiff, therefore, respectfully moves the Court to alter or amend its Order to describe the circumstances, if any, under which the Plaintiff would be entitled to proceed with the foreclosure of its judgment lien.

Respectfully submitted,

BUIST MOORE SMYTHE MCGEE P.A.



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P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400

ATTORNEYS FOR THE PLAINTIFFS
KRITIRIPLEY, LLC AND ASHLEY RIVER
PROPERTIES II, LLC

June 27, 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

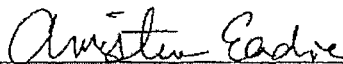
2011 JUN 28 AM 10:49
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

I do hereby certify that on the 27th day of June, 2011, I caused to be served a copy of the
Motion to Alter or Amend or Reconsider in the within entitled matter on counsel of record via Hand-
 Delivery to:

Daniel F. Blanchard, 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
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 Charleston, SC 29402
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

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

VS.)

EMERALD INVESTMENTS, LLC, and)
 STUART L. LONGMAN,)
)
 DEFENDANTS.)

CASE NO.: 2008-CP-10-2344

EMERALD INVESTMENTS, LLC,)
)
 PLAINTIFFS,)

VS.)

KRITI RIPLEY, LLC, and)
 ASHLEY RIVER PROPERTIES II, LLC,)
)
 DEFENDANTS.)

CASE NO.: 2009-CP-10-553

MOTIONS HEARING

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Thursday, April 7, 2011, Commencing at 9:20 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

COPY

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

Thomas Harper, Jr., Esquire
John Hawk, IV, Esquire
Buist Moore Smythe McGee
Post Office Box 999
Charleston, South Carolina 29402

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EXHIBITS

[None]

Ripley, et al vs. Emerald Investments
Motions Hearing
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PROCEEDINGS

MR. ROSEN: Good morning, Your Honor.

THE COURT: Good morning.

MR. ROSEN: Richard Rosen, Frank Blanchard, and
James Bruorton, all of Rosen, Rosen, Hagood, for Kriti
-- excuse me -- for Longman and Emerald.

THE COURT: Thank you.

MR. HARPER: Tom Harper and John Hawks for the
plaintiffs, Kriti Ripley, LLC, and Ashley River
Properties II, LLC.

THE COURT: All right. Mr. Parker and -- I'm
sorry. Who else is it?

MR. HARPER: Harper. And John Hawk.

THE COURT: All right. I have two motions, a
motion to foreclose judgment filed February 1st of
this year, and a motion to consolidate filed March 9th
of this year. Are those the only --

MR. ROSEN: Your Honor -- no. There are
actually four motions, Your Honor, in two different
cases separate --

Emerald, my client, has a lawsuit to dissolve,
and Kriti, Mr. Harper's client, has a lawsuit to
foreclose on a charging order on a distribution
interest in a limited liability company.

THE COURT: Are those before the Court today,
MIA PERRON, CVR-CM-M

Ripley, et al vs. Emerald Investments
Motions Hearing
April 7, 2011

1 Mr. Parker?

2 MR. HARPER: Harper. And, yes, Your Honor.

3 THE COURT: Thank you.

4 MR. HARPER: I think the motion to foreclose is
5 due up first. But I think we've all -- we've all got
6 a little background history that's going to take some
7 time --

8 So we might -- it might do the Court well to
9 hear some -- hear both sides on that subject and then
10 we can take the motions up as you see fit.

11 MR. ROSEN: Your Honor, I think all those
12 motions are actually ours.

13 THE COURT: All right. Then, Mr. Rosen, I will
14 hear from you.

15 MR. ROSEN: Your Honor, if it's okay with you
16 and Mr. Harper, I'll just cover everything at one time
17 so we don't get --

18 THE COURT: Thank you.

19 MR. ROSEN: -- and try to do it briefly with
20 these charts.

21 Your Honor, as I said, there are two cases
22 before you. These parties are members of a limited
23 liability company and they've had disputes going back
24 six years, and multiple litigation, some of which may
25 be interesting and relevant.

MIA PERRON, CVR-CM-M

Ripley, et al vs. Emerald Investments
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1 But to boil it down, my client, Emerald, started
2 the project at Ripley Lake across the Ashley near the
3 round Holiday Inn -- to the left. There's a marina
4 there. California Dreaming is there. The idea was to
5 dredge that canal, build what is now a marina, and
6 have a very high-end condo project around that.

7 My client needed funds to help complete that
8 project. He ended up doing business with Kriti
9 Ripley, Mr. Williams from that company, which is owned
10 by a couple of Greek gentlemen from Greece. He runs
11 it for them out of New York, agreed to loan him about
12 a million, million and a half dollars. They put it
13 into a limited liability company they created.

14 My client had seventy-percent of the ownership
15 interest in this project and the reason for that was
16 everything was sort of ready, all the permits were
17 done, he had gone to DHEC, gone to the Corps of
18 Engineers, been allowed to dredge, got permits to
19 build everything.

20 The project was ready to go, ready to build,
21 when Kriti takes over. They had some disagreements
22 about third-party vendee claims, people who put up
23 money to actually buy these condos which were not yet
24 built. My client was taking care of that obligation.
25 Kriti wanted it done -- they had disputes. They

MIA PERRON, CVR-CM-M

-6-

Ripley, et al vs. Emerald Investments
Motions Hearing
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1 claimed that my client had not properly accounted for
2 the money. All of this ended up in an arbitration in
3 2005.

4 Kriti took over the project as a result. They
5 purported to reduce our client's, Emerald's, interest
6 from seventy percent to twenty-one percent back in
7 2005, retroactive to 2004 tax returns. That resulted
8 later in other arbitrations. And along the way --

9 And by the way, at the end of the day, the
10 arbitrators finally found in 2010 that our client was
11 actually entitled to seventy percent. So at the end
12 of the day, as of 2010 our client wins on the issues
13 of it is -- Emerald is a seventy-percent owner. And
14 one of our motions today is to amend the complaint for
15 dissolution, to allege those facts as found by the
16 arbitrators that, in fact, our client's a seventy
17 percent owner, and what's happened since then.

18 Now, along the way -- and this is important
19 because Kriti's motion before you today is to
20 foreclose on a charging order on distributional
21 interest in a limited liability company. And what's
22 important about that I think, in your consideration
23 today, is the party trying to foreclose is the other
24 member in the LLC. So you've got the limited
25 liability company and one member trying to foreclose

Ripley, et al vs. Emerald Investments
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1 on another member and the majority member.

2 Now, I assure you this has never happened
3 before. There's not a case in the country that allows
4 this to go forward the way Kriti wants it to go
5 forward. And that's because all these disputes in
6 other courts -- the history of limited liability
7 companies, which is not that old -- but, nevertheless,
8 they're all resolved in something called dissolution,
9 which is the state procedure for business
10 corporations, partnerships, limited partnerships, and
11 limited liability companies. And the statute is right
12 on point. And they provide the mechanism for
13 resolving and dissolving companies like this as a
14 result of. Which, by the way, Kriti would get paid
15 its judgment that it claims, if it consented to go
16 through dissolution.

17 The reason they won't do that is simple. If I
18 could just show you this. Kriti has a judgment that
19 has grown, because of interest and costs and whatever,
20 to over a million dollars. Originally, they had a
21 claim for four hundred. There was a counterclaim of
22 about a hundred. On top of that is attorneys fees,
23 costs, interest. It's now gotten up over a million
24 dollars. The arbitrators originally said to Kriti,
25 you can buy out Emerald's interest for their capital

Ripley, et al vs. Emerald Investments
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1 contribution of two and a half million dollars, pay
2 them two and a half, deduct the arbitration award,
3 which at that time I think was seven or eight hundred
4 thousand dollars, and then pay that to Emerald and
5 you'll own the whole company, your judgment will be
6 satisfied, we'll be fine.

7 They didn't do that. They never did that. They
8 made an improper tender in 2006 or seven. I was not
9 involved in that; Mr. Harper was not involved in that.
10 But there was litigation in New York up there for a
11 couple of years. Finally, in 2008, Kriti abandons its
12 effort to acquire Emerald's interest and instead they
13 develop a new scheme. And here's the scheme. We will
14 report this as a judgment and we will try to forfeit
15 Emerald's interest because they can't pay the
16 judgment.

17 Now, they tried to forfeit the interest in the
18 first arbitration, they tried to forfeit the interest
19 in the next arbitration. This is their third attempt
20 to forfeit Emerald's interest. Which of course South
21 Carolina's courts -- the law in the state is very
22 clear about that.

23 The reason that dissolution is preferable is
24 their judgment gets paid, our client gets paid, and
25 they get their interest in the LLC. They don't want

Ripley, et al vs. Emerald Investments
Motions Hearing
April 7, 2011

1 that to happen. They want the whole thing. They want
2 the whole thing. They kind of want to steal it.

3 If you allow our case to go forward -- and, by
4 the way, they filed a motion to dismiss the
5 dissolution action in 2009 and Judge Young heard that
6 and denied their motion and said -- and everybody
7 agrees on this -- the only way to dissolve this
8 company is through the courts, arbitrators cannot do
9 it. So I think we all finally, after six years of
10 litigation, have come to that agreement.

11 In their post arbitration brief, Kriti concedes
12 this: that a South Carolina limited liability company
13 can only be dissolved by a South Carolina circuit
14 court judge sitting in a South Carolina court. So,
15 Your Honor, you or some other circuit court judge will
16 have the opportunity some day, if our motion is
17 granted and theirs is denied, to have a hearing on the
18 merits, which is all we seek. We'll have a hearing on
19 the merits of all these facts that have gone on for
20 all these years. We'll be able to show Kriti's
21 conduct, Emerald's conduct, then, at the end of the
22 day, either have the property sold at a forced sale or
23 bid, have Emerald given the opportunity to buy out
24 Kriti, or give Kriti the right to buy out Emerald, or
25 some other solution.

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1 And as you know, the statute is very broad and
2 the comment says the Court can fashion whatever remedy
3 is appropriate. The reason it's important is this:
4 according to an appraisal done for Kriti -- and I'll
5 call them the defendant for purposes of my case -- the
6 assets in Ripley Lake are worth over seventeen million
7 dollars. And that's a Bank of America appraisal, so I
8 think we can all rely on that.

9 The Bank of America loans them about 5.3 million
10 dollars. Kriti itself has loaned money to the tune of
11 7.6. So there's about four point three hundred and
12 fifty thousand dollars in equity in this project
13 today. My client's seventy percent interest is worth
14 over three million dollars. If there is an orderly
15 dissolution in which the parties get to do some
16 discovery, take some depositions, get a hearing on the
17 merits, have a judge hear this -- it's probably all
18 non jury -- a judge will make a decision, as they have
19 in many cases in this state, mostly business
20 corporations but also limited liability companies,
21 there will be a decision one day as to whether or not
22 a sale, a buyout, or some other solution that
23 separates these parties. Even Mr. Williams, who is
24 the defendant's representative here today, testified
25 in arbitration that he thought this thing should be

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1 over, these parties needed to be separated and it
2 needs to end.

3 So if we do it through dissolution -- and that's
4 the only way any another court has ever done it --
5 then this is the likely scenario: our client gets
6 paid 3.4 million dollars, they pay the judgment to
7 Kriti, and they take away a million and a half or two
8 million dollars. If we do it the way they want to do
9 it, then we're going to have the judgment paid,
10 they're going to be bankrupt, they're going to own the
11 whole thing, and our client gets nothing. And I just
12 don't think that can be fair.

13 I know Mr. Harper is going to argue to you that
14 the arbitrators considered all this. Throughout this
15 litigation, there's been this contention that this is
16 all for arbitration. I think we've all finally agreed
17 that that's not so.

18 The arbitrators in this case have never
19 considered judicial dissolution under the South
20 Carolina Act, and that's because they couldn't because
21 they knew, the attorneys knew, they had no power to
22 consider whether or not a company is dissolved because
23 the economic purpose of the company is being
24 frustrated, one of the other members is engaged in
25 conduct and makes it not reasonably practicable to

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1 carry on business with the other, or one of the
2 members or managers is acting in a manner that is
3 unlawful, oppressive, fraudulent or unfairly
4 prejudicial.

5 Now, nobody has considered that yet. We haven't
6 gotten to the merits on those things yet. All those
7 claims are in this case. What the arbitrators have
8 considered was this, which is the ARP, Ashley River
9 Properties II, operating agreement -- and they're very
10 explicit about this in their arbitration order.

11 All this, by the way, is attached to an
12 affidavit of Mr. Longman, so you've got the
13 arbitration orders. And we've got copies of these for
14 you, as well, which we're going to attach to a memo to
15 submit.

16 But under the operating agreement, the only way
17 to dissolve this company through arbitration is by
18 consent, which nobody will give if the company becomes
19 unlawful, which hasn't happened; certificates filed
20 dissolving the company, which hasn't happened yet; or
21 a fixed period when the company has expired. So under
22 all those items -- there's no way to dissolve, so
23 we're just stuck with continued litigation.

24 So our request is to consider all of the facts,
25 to grant Emerald's motion to amend the complaint to

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1 allege all these facts that have occurred since this
2 case was filed in 2009. And some of those facts which
3 I think may be helpful to the Court are this: Kriti,
4 among other things, filed a lawsuit in this court
5 against Emerald seeking to collect hundreds of
6 thousands of dollars on the third-party vendee claims,
7 the people who put up money and didn't get their
8 condos. In the original arbitration award, Kriti got
9 a judgment against Emerald for those amounts and the
10 arbitrator said, resolving those claims is now your
11 problem; you're going to get this judgment against
12 Emerald but you take care of those third-party
13 vendees.

14 Well, instead of doing that -- they didn't pay
15 the third-party vendees. They had the award. They
16 sued Emerald and they serve their own agent, Mr.
17 Grindel [phonetic], who was really working for them --
18 he was technically the agent service -- but they never
19 served us or Mr. Longman, who was the manager. Even
20 though we were in litigation with them at the time in
21 other matters in New York and in South Carolina, they
22 never served it. They then default judgment against
23 them, which was subsequently overturned by Judge
24 Hughston. He went to Judge Hughston on this. He
25 overturned that default. He granted Emerald the right

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1 to answer. So, you know, that's one of the scenarios
2 that's happened.

3 They unilaterally reduced Emerald's ownership
4 interest from seventy percent to twenty-one percent.
5 They filed tax returns and a K-1 schedule showing
6 that, which was improper because they had an improper
7 capital call. The arbitrators originally said the
8 capital call's suspect. The later arbitrator said it
9 was defective, which Emerald had said all along. So
10 for five or six years, they have now said they're
11 entitled to a seventy-nine percent of the ownership
12 interest and seventy-nine percent of the tax writeoff,
13 by the way, over that period of time, and they filed
14 tax returns saying that. All of which is wrong and
15 has to be corrected. So that's another example.

16 They have an appraisal of 17.25 million dollars,
17 which I've shown you, and yet they report to the
18 Court, in Mr. Williams' affidavit, that the assets are
19 worth only fifteen million dollars, which is not true.
20 And they are now, and have been, the controlling
21 members of this limited liability company since 2004.

22 Along the way, they've had several offers for
23 this property. And this is the truly sad thing about
24 this case: they had an offer from Centex, which is
25 one of the largest builders in the country, a

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1 nationally-traded Fortune I think 250 Company, for
2 fourteen-and-a-half-million dollars, which would have
3 netted them in 2005 a ten-and-a-half-million dollar
4 profit. These parties could have shared that profit.
5 That offer wasn't good enough for Kriti.

6 They had a subsequent offer for twenty-million
7 dollars but they -- by that time they have put nine
8 million dollars more in debt on the property. Even
9 so, they could have made a ten-million-dollar profit
10 in 2007. Refused to do it.

11 Again, in 2008 another purchaser came along and
12 made the same offer, twenty-million dollars, which
13 would have yielded a ten-million dollar profit. They
14 turned that down.

15 So for the past six years since they've seized
16 control of the company, Kriti has mismanaged it, given
17 up several opportunities to turn this property into a
18 profit, and now they are claiming -- their argument to
19 you today is, we can't get paid our judgment because
20 there's not enough cash flow; there's not enough money
21 to pay our judgment; therefore, we need to forfeit
22 Emerald's interest and take it through the judgment.

23 Well, they're not entitled to that under the
24 statute. They have a right to ask for it, which means
25 the court may grant it but doesn't have to. So, Your

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1 Honor, you are sitting here today in equity.
2 Forfeiture and foreclosure are both equitable
3 remedies.

4 Kriti has not shown, and cannot show, that they
5 are entitled to it. They're going to ask you to do
6 something today that no court in this country has
7 done. As far as research and so forth, we cannot find
8 any case in the country where one member of an LLC or
9 the LLC itself has been able to forfeit or take a
10 member's interest, outside of a judicial dissolution.
11 It's never happened. No arbitration has allowed it,
12 no judge has allowed it, in the way they want to do
13 it which is to foreclose on an ownership interest in
14 an LLC.

15 So, Your Honor, our request is that you deny the
16 motion to forfeit or foreclose; that you refer that to
17 a circuit court judge, that you will allow the
18 plaintiff, Emerald, to amend its complaint and
19 consolidate these actions. Put the foreclosure action
20 together with the dissolution action, have one action
21 left; let the parties take discovery; get a scheduling
22 order; and come back maybe in a few months and have a
23 hearing on the merits. That's our request. Thank
24 you.

25 I left out something.

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1 Currently, there's an order staying a
2 dissolution action an appeal. The appellate court
3 said to stay it pending arbitration. Arbitration is
4 now over. So the arbitration is over, we have the
5 findings, we know what they are, there's no reason for
6 this not to go forward. Thank you.

7 MR. HARPER: Thank you, Your Honor.

8 I like the way Mr. Rosen ended his presentation
9 on the subject of other cases in which he said he
10 couldn't find any authority on the subject. I think
11 his first crack at it was that they all say that
12 dissolution is the appropriate way. There's no case
13 law that we've found, and I think that that's what he
14 eventually came back to say, on the subject whatsoever
15 that a judgment creditor having a lien by a charging
16 order can't foreclose that lien.

17 And, Your Honor, I am newer to the case, not
18 quite as new as you, but new enough to know that I
19 would not want that same test on the facts you just
20 heard right then. There are a lot of facts. It goes
21 back a long ways. Most of those facts that Mr. Rosen
22 stated in his presentation we take great issue with,
23 but the ones that I think he did mention are the ones
24 that are probably the ones I'll start with now.

25 Kriti Ripley -- the plaintiff and the defendants

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1 were members of this LLC starting back in 2003, and
2 the defendants, Mr. Rosen's client, was removed by way
3 of a prior arbitration because of his misappropriation
4 of company money. He lost his voting rights in the
5 company because of the way he mishandled the company,
6 and that resulted in the judgment. Sort of skipped
7 over that part. That's what the judgment is for:
8 because he mistreated this company, and the other
9 members, and my client obtained a judgment for over a
10 million dollars. It's worth about 1.5 now with post-
11 judgment interest. Mr. Longman and Emerald has not
12 paid anything on that judgment.

13 In the affidavit you received in support of our
14 motion, filed on the 4th, by David Williams -- who's
15 here and he can testify if Your Honor cares for more
16 facts here. We may need to -- you may be interested
17 in some significant differences on valuation but --
18 and appraisals. And I'll respond to that but I'll do
19 that in a moment.

20 But Mr. Williams points out that this is not the
21 only judgment against these defendants, or against Mr.
22 Longman, arising from bad acts. There's a nine-
23 million-dollar judgment in Connecticut arising from
24 his fraud. So this is a person with a couple of
25 judgments, in the ten-million-dollar figure, for bad

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1 acts. And he hasn't appeared to pay his debt, he's
2 here to ask the Court not to let us foreclose on a
3 valid lien.

4 The South Carolina Court of Common Pleas has
5 found, two different judges have found, that we have a
6 valid judgment and that we have a valid charging
7 order, which is the means by which a judgment creditor
8 can reach the value of its judgment debtor's
9 membership interest.

10 And that is why we're here. We're not here to
11 talk about smoke about what appraisals are worth and
12 what service was done in some related third-party
13 vendor case that went to the registered agent, even
14 though he was really the registered agent, he was the
15 proper person for service, really was a friend. And
16 all of those other kind of things are peripheral
17 issues to divert the Court from the main fact here,
18 which is that the defendants haven't paid their
19 judgment to us and they haven't paid their other
20 judgment debtors. We have a valid lien, they're not
21 paying it and we're seeking to foreclose our lien,
22 just as any other lien creditor would have.

23 Let's talk about value for a second, Your Honor,
24 because if we were talking about -- if we were here
25 for a real estate foreclosure case, it would seem --

1 the LLC Act is new, but the principals are all the
2 same here. A person who is not paying his debts and
3 has a lien against him doesn't get to stand up and
4 say, Judge, I know I'm not paying my mortgage but
5 don't let the bank foreclose; my house has a lot of
6 equity in it. That's what Mr. Rosen is saying now.
7 Well, this is worth 17 million; don't -- I'm not
8 paying the debt, but don't foreclose it and let them
9 capture this value.

10 The law says if a lien is not paid, it can be
11 foreclosed and the judgment debtor can pay off his
12 debts and avoid the lien and the lien goes away or he
13 can bid at the foreclosure sale, which is a public
14 auction. And the law says that's prima facie evidence
15 of fair value here.

16 I've tiptoed around value, so let me say this.
17 There's nothing in the record on this seventeen-
18 million-dollar figure that you've been told this
19 company is worth. There is something in the record,
20 sworn testimony from our side, that the value of it is
21 much less. The financial records of the company, as
22 of year-end last year, were an exhibit to the
23 affidavit of Mr. Williams filed in support of the
24 motion.

25 But just rather than getting to accounting

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1 minutia, let's discuss what this company is. This is
2 a company that was going to make its money developing
3 and selling boat slips. And everybody knows how bad
4 the condominium market is post bubble burst. But the
5 only market out there that is worse than the
6 condominium market is the dockominium market. And
7 that is where this seventeen-million-dollar figure
8 from 2009 comes from that Mr. Rosen alludes to. It
9 envisioned the idea that we would condo this dock and
10 sell boat slips. And that is not happening now and
11 nobody's perceived the condominium market is coming
12 back.

13 The Bank of America, as Mr. Rosen says, is --
14 it's a pretty trustworthy source. Bank of America is
15 reappraising the property. Mr. Williams will testify
16 today that the appraisal has come in many millions of
17 dollars less than this figure now. The company is
18 insolvent.

19 In the financial records in Exhibit C to Mr.
20 Williams' affidavit that has been provided to you is a
21 profit -- is a standard profit and loss statement. It
22 shows the company lost money last year. There is no
23 cash that is being generated that the judgment
24 creditor is withholding so that he's -- it's not until
25 this judgment gets big enough so that the defendant

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1 can't pay it here. This is a straightforward
2 foreclosure suit against someone who's not paying his
3 debts.

4 The issues on the dissolution -- and, Your
5 Honor, I can talk -- we can talk about this
6 arbitration from last year. I don't agree with Mr.
7 Rosen's statement that we've all agreed that there are
8 proper grounds for dissolution going forward. I do
9 agree that the facts on that were discussed and cited
10 in the arbitration and the arbitrator found that
11 dissolution wasn't appropriate then.

12 In that case, and when we had the hearing on our
13 charging order, Your Honor, back in '09, Mr. Rosen
14 stood up and said don't grant the charging order, we
15 want to go to arbitration and figure out what our
16 ownership percentage in the company is. You may
17 recall some reference to diluting their interest
18 because of some capital calls. They won on that in
19 the arbitration, this arbitration from last year.
20 He's right. They won the seventy percent. That has
21 been decided and that is done. They've got a seventy
22 percent interest, and that interest is ripe for
23 foreclosure under the South Carolina LLC Act.

24 The other issues, Your Honor, the ones about
25 lifting the stay, about consolidating the cases: I

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1 don't see how you consolidate cases when one case is
2 stayed. So let's talk about the stay. The consent
3 order that --

4 I'm sorry, Your Honor. I have a binder of
5 pleadings in the case that I meant to hand you
6 earlier, if I may approach. These are in addition to
7 the ones that are part of the affidavit submitted in
8 our motion.

9 [Whereupon, Mr. Harper proffers documents to the
10 Court]

11 MR. HARPER: But in there at tab G, I want to
12 say, is the consent order proposing the stay that our
13 parties -- that these parties agreed to.

14 And Mr. Rosen says that the case, the 09-5 53
15 case, is stayed until the arbitration is resolved.
16 That arbitration is resolved when the order is
17 confirmed. And we are not seeking to delay that.
18 That defendant -- we wrote the defendants. This is
19 Mr. Williams' affidavit that's been presented as part
20 of the record. We wrote the defendants, who having
21 won on the issue of a seventy percent ownership last
22 year, and said, hey, let's talk about confirming the
23 order and getting that done. And we've not heard from
24 them. That was November. So it's a bit -- I won't
25 say disingenuous.

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1 But when you -- most judgment debtors try to
2 avoid paying their debts. To ask for the stay to
3 be -- to say that the stay ought to be dissolved
4 doesn't ring true when our side is the one, months
5 ago, that said let's confirm that award that you won
6 and get that in place. We haven't heard from them.

7 We then filed our motion to foreclose, and that
8 prompts this effort to consolidate the cases with the
9 state case. And that will be a result.

10 If you consolidate these cases, as Mr. Rosen is
11 seeking now, then because that order has not been
12 confirmed, because the arbitration award from last
13 year has not been confirmed, the stay remains in
14 effect and it ties up our efforts to foreclose our
15 valid lien. That's why we're here, Your Honor.
16 That's what he's trying to do is avoid our foreclosed
17 bad lien.

18 So, Your Honor, we -- and then the last thing
19 I'll say on that point: if the defendant, as I call
20 them, Emerald, Mr. Longman's efforts are to stay in
21 this company and preserve their value, to have these
22 arguments about dissolution, even though there's no
23 court authority suggesting that we ought to be allowed
24 to foreclose our lien -- there's no authority one way
25 or the other -- there's an easy remedy for that. They

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1 can pay their lien and then their interest. The
2 interest that he's sitting to protect here is liened
3 to my client for a million five that he has not paid
4 for years. And so that lien needs to be paid. He can
5 pay that lien off and then he can litigate this
6 dissolution case. But he shouldn't be allowed to
7 backdoor it into avoiding the foreclosure that would
8 go towards paying his debt by arguing again many of
9 these issues that have come up in hearings since 2003.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. ROSEN: Your Honor, if I could --

13 THE COURT: Hold on one second.

14 [Off the record momentarily]

15 THE COURT: Mr. Rosen?

16 MR. ROSEN: Just briefly, to respond to some of
17 the things Mr. Harper has said.

18 The order on the stay which he provided to you,
19 which is part of the Court's record, April 16th, 2010,
20 provides only that the judicial dissolution claim
21 under count one is stayed pending the above-referenced
22 arbitration -- so that's over, so that stay should be
23 lifted. It then goes on to say that if somebody wants
24 to use the findings, they can move to confirm it. But
25 that's got nothing to do with the stay. That's if you

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1 want to use the finding an arbitrator has made on the
2 facts, then you go to the Court in New York and you
3 file a petition to confirm those findings in the
4 court.

5 So that order has got two important paragraphs
6 on the second page: one, dissolution claim stayed
7 pending the arbitration proceeding. It doesn't say
8 it's stayed pending confirmation. It does not say
9 that. It says if you want to use the facts, go get it
10 confirmed and you can use those facts. That'll be
11 just like an affidavit or a deposition or something or
12 a prior hearing. So the stayed motion should be
13 granted because the time has elapsed.

14 Now, the defendant Kriti didn't seek foreclosure
15 until the motion to lift the stay was filed in
16 December. In other words, they've been diddling
17 around, so to speak, with this claim since 2005 or
18 six. The original amount of the judgment was only
19 \$540,000. Everything else, the million five, is all
20 interests, fees, costs, et cetera. I think that's
21 important.

22 Mr. Harper talked about insolvency. Well,
23 according to our Act, our South Carolina Statute 33-
24 44-801, that's one of the grounds that the Court
25 should look at to dissolve the company is insolvency;

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1 when it can't operate at a profit, then that's a good
2 reason to have a company dissolved. And we suggest
3 that's what should be done here.

4 As a matter of fact, the cases say -- we'll give
5 you a memo on this. The case law says that the
6 judgment creditor has got a charging lien against an
7 LLC interest has the burden of showing that there's no
8 way for the judgment to be paid outside of
9 foreclosure. In other words, there's not enough to
10 show it's insolvent; it may be insolvent and not able
11 to meet its obligations. But it's got assets. If
12 they're not seventeen million, are they fifteen
13 million, are they sixteen million? We don't know.
14 And that's an issue -- the value of the assets is an
15 issue of fact that will have to be determined by
16 somebody at some point, and all we are seeking is the
17 opportunity to have a hearing on the merits to do
18 that.

19 Mr. Harper also talked about a debtor couldn't
20 do this with a bank. Well, this is not a bank-debtor
21 situation. This is so different. These are partners
22 in an LLC, they're members of an LLC, they owe
23 fiduciary duties to each other, which doesn't exist in
24 the debtor-creditor relationship. So those issues are
25 just crying out I think for judicial resolution.

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1 We're asking only that the Court allow us to amend,
2 lift the stay, and let these parties litigate these
3 issues on the merits.

4 Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. HARPER: The last thing, Your Honor: the
7 parties have litigated these issues on the merits
8 before and the arbitrators have found that Mr. Rosen's
9 client misappropriated monies on the part of the
10 company, forfeited his rights in that -- voting rights
11 in the company.

12 So these allegations -- this is in the original
13 -- the basis of the original judgment, that is the one
14 thing, that no one getting another bite of the apple
15 at here. That has been found and it's not in dispute
16 now and that is the basis of why he's lost his voting
17 rights, because of his mistreatment of this company,
18 which it turns out he seems to have a pattern of.

19 So the allegations -- the arbitrator considered
20 dissolution before and found the company ought to be
21 dissolved. So we're back where we were. We're
22 rearguing issues that we've argued before, Your Honor,
23 and it's another effort to delay the right for us to
24 realize on some collateral, to pay a debt, that is not
25 disputed.

MIA PERRON, CVR-CM-M

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1 That's it.

2 THE COURT: Mr. Rosen, what about Mr. Harper's
3 position that the lien should just be paid and then we
4 could go on with the matters that he would have his
5 interest --

6 MR. ROSEN: That would be -- that would be
7 delightful, if the money was easily available to pay
8 it. But obviously that money is not easily available.

9 So they do have a judgment. They do have a
10 charging order. There is a way to get paid. They
11 have a way to get paid through dissolution and settle
12 assets. They said the company is insolvent -- so
13 they've conceded that it's ripe for dissolution. What
14 they're trying to say is, we've already had a bite of
15 that apple, which is of course not true because the
16 arbitrators never had the authority to order
17 dissolution. They were asked -- Mr. Harper wasn't
18 there, so I forgive them. They were asked, will you
19 consider ruling on dissolution, and they didn't answer
20 that question. And the only arbitration panel is the
21 one that said, we're going to consider it under the
22 operating agreement.

23 So no arbitration panel has taken on the
24 responsibility of considering whether or not they
25 could dissolve, pursuant to the South Carolina

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1 statute, which is much broader than the operating
2 agreement. So this is the first time that that has
3 been presented to a court in South Carolina other than
4 Judge Young, who ruled it was a proper claim. He's
5 already ruled the arbitrators couldn't do it, it could
6 only be done here. So in this very case, dissolution
7 case, one of the judges ruled that's a proper claim.

8 The only way for Kriti to get paid is to sell
9 the assets or all they're going to get is Emerald's
10 interest. What that amounts to, a forfeiture, which
11 South Carolina law says the Court should do everything
12 to avoid.

13 THE COURT: Any brief response to that?

14 MR. HARPER: Brief response, Your Honor.

15 Two things. First, I think -- I'm told I
16 misspoke and said that the -- that last year's
17 arbitrators found that it should be dissolved and, as
18 the order will show, they found that it should not be
19 dissolved.

20 And then let's see, Your Honor. There was one
21 more -- and then -- it's escaped me right now, Your
22 Honor. As soon as I sit down it will come to be, but
23 I can't right now. Thank you.

24 THE COURT: Do you need just a moment?

25 MR. HARPER: It won't be -- oh. Thank you, Your

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1 Honor. Just to respond to one thing that Mr. Rosen
2 just said, said just now.

3 What he's asking to do, the equivalent -- and I
4 appreciate the effort to distinguish it. But what
5 he's essentially asking the Court to do is ask the
6 creditor to forego its judicial sale price because
7 they think they can get more in another condo-sale
8 situation: let me dissolve, we'll put the company up
9 for sale and I think I can get more. No other lien
10 foreclosure allows a judgment debtor to control in
11 that sale. You have to pay it off before the judgment
12 creditor completes its foreclosure process, and
13 they're not allowed to say, well, judge, I can get
14 more if I had six more months to market it. That's
15 essentially what the argument comes to.

16 Do you want me to take it -- should I say that
17 again?

18 THE COURT: No. I think I understand it,
19 Mr. Harper. Thank you.

20 Anything further?

21 MR. ROSEN: Your Honor, just the law is clear
22 they've got to show there's no other way to get paid,
23 to get foreclosure. That's what state law says and
24 that's what the statute says. They can't do that.

25 Your Honor, we do have a memorandum and copies

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1 -- some small copies of some of these blowups we
2 showed you --

3 THE COURT: All right. You may approach. Have
4 you provided them to Mr. Harper?

5 [Whereupon, Mr. Rosen proffers documents to the
6 Court]

7 MR. ROSEN: Thank you, Your Honor.

8 [Whereupon, Mr. Rosen and Mr. Harper confer]

9 THE COURT: Counsel, I'm going to take time to
10 review the memoranda, in light of the arguments.
11 You'll have my ruling within ten days on all the
12 pending motions. Thank you, gentlemen.

13 MR. ROSEN: Thank you, Your Honor.

14 MR. HARPER: Thank you, Your Honor.

15 [HEARING CONCLUDES AT 9:55 A.M.]

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Ripley, et al vs. Emerald Investments
Motions Hearing
April 7, 2011

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the motions hearing held before the Honorable Kristi L. Harrington, on April 7, 2011.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 5th day of January, 2011.

Mia Perron
Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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COPY

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DANIEL F. BLANCHARD III
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April 15, 2011

The Honorable Kristi Lea Harrington
P.O. Box 998
300B California Ave.
Moncks Corner, SC 29461

Re: Kriti Ripley, LLC et al. v. Emerald Investments, LLC et al.
Case No.: 2008-CP-10-2344
Emerald Investments, Inc. v. Ashley River Properties II, LLC and Kriti Ripley,
LLC
Case No.: 2009-CP-10-553

Dear Judge Harrington:

We have received John Hawk's letter to the Court dated April 12, 2011, and his accompanying Memorandum of Law in Support of Motion to Foreclose Judgment Lien. We were unaware that Your Honor had requested or invited the parties to submit supplemental memoranda or materials to you following the hearing that was conducted on April 7. If the Court wishes for our client to file a more formal response to Mr. Hawk's memorandum, we will be glad to do so. However, in an effort to be expedient, I will simply make a few points through this letter.

Mr. Hawk's memorandum fails to cite any case law holding that a member of a South Carolina LLC has an absolute right to foreclose upon (i.e., sell off) another member's distributional interest in the LLC under the charging order statute. Instead, Mr. Hawk relies upon a 1972 Nevada case, *Tupper v. Kroc*, 494 P.2d 1275 (Nev. 1972), in which the trial court had appointed a receiver to sell and manage the general partner's interest in a limited partnership to remedy the general partner's breach of fiduciary duty to the partnership. That case involved a limited partnership statute, not South Carolina's version of the LLC Act. Moreover, the appellate court refused to consider the general partner's argument on appeal that the limited partner was required to prove that the sale of the general partner's interest was necessary before a sale could be ordered because the issue was not raised in the trial court. 494 P.2d at 1278 ("The appellant's contention that Kroc was required to affirmatively prove that a sale of Tupper's interest in the partnerships was necessary before a sale could be ordered was not raised in the court below, but raised for the first time in this appeal. Upon the rule . . . that a party on appeal cannot assume . . . a theory inconsistent with or different from that at the hearing below, we will not consider that issue.").

April 15, 2011

Page 2

Therefore, because of procedural issues, the *Tupper* Court did not even address the merits of the principal issue that was argued before you on April 7. As discussed at the hearing, the present case is unique because the judgment creditors are the LLC itself (ARP II) and the member with complete voting control of the LLC (Kriti). In other cases involving a *third-party or non-member* judgment creditor, the courts ordered a sale of the judgment debtor's distributional interest in the company *only if* it was shown that the judgment creditor's claim could not be satisfied in a reasonably expedient manner other than by a sale—*i.e.*, it was necessary to sell the member's interest for the judgment creditor to protect its judgment. Federal Deposit Insurance Corporation v. Birchwood Builders, Inc., 573 A.2d 82 (N.J. 1990).

As shown in the memorandum of law and affidavit that we previously filed with the Court in this case, a foreclosure sale of Emerald's distributional interest in ARP II is unnecessary for Kriti to protect its money judgment. Kriti has completely controlled ARP II's management, operations, and distributions since January of 2005. As shown in the papers filed in opposition to Kriti's motion, on at least three occasions spanning 2005 to 2008, Kriti caused ARP II to reject purchase offers made by third-party suitors that would have generated a profit of at least \$10 million for ARP II's members even when the company was not generating enough cash flow to cover its debt service payments. Indeed, in January of 2009, Emerald filed a lawsuit to judicially dissolve ARP II because Kriti's mismanagement of ARP II and other misconduct has financially crippled the company and harmed Emerald.

In February of 2011, two years after Emerald filed its lawsuit to dissolve ARP II, Kriti then filed its Motion to Foreclose Judgment Lien. Kriti is attempting to use the foreclosure process to defeat Emerald's action to dissolve ARP II arising from Kriti's mismanagement of the company. Kriti 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 at a fraction of its fair value because of ARP II's poor financial performance, which Kriti is solely and directly responsible for. Mr. Hawk's memorandum altogether fails to cite any case law or legal support for his contention that a managing member of a LLC should be allowed to involuntarily sell off the non-managing member's interest in the company because the managing member's own actions have rendered the company financially insolvent.

Kriti wants this Court to allow it to sell off Emerald's 70% distributional interest in ARP II to pay Kriti's money judgment of \$1,184,581.72. In making this request, Kriti significantly undervalues the company's assets by \$3.25 million in an attempt to bolster its argument that the only way to satisfy its money judgment is to sell off Emerald's interest. However, according to appraisals obtained by ARP II's own lender, ARP II has real estate assets valued at \$17.25 million and there is still substantial equity in the company, only if it will sell its assets. ARP II (which Kriti controls) has substantial assets that can be sold at a considerable net profit. Kriti has repeatedly refused to sell the assets in the past and continues to refuse to do so now, even as it urges this Court for permission to sell off Emerald's distributional interest in ARP II based on the bare assertion that "[t]here have not been any distributions from ARP II to its members and it

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does not appear that there will be any distributions by ARP II to its members in the foreseeable future." See D. Williams Affidavit dated 1/28/2011 ¶ 8.

Kriti also ignores provisions in the ARP II Operating Agreement indicating that a sale or transfer of the company's assets to satisfy a judgment creditor's judgment against a member of ARP II is preferred to an involuntarily foreclosure sale of a member's interest in the company under the charging order statute. Paragraph 3.5 of the Operating Agreement (which is attached as Exhibit 1 to Stuart Longman's affidavit) states in its entirety as follows:

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.

The Operating Agreement expressly contemplates that ARP II's property can be sold to prevent the foreclosure upon a member's interest in the company under a charging order.

In lieu of a foreclosure sale of Emerald's distributional interest in ARP II, Kriti would be able to enforce its money judgment as part of the sale of ARP II's property, the dissolution of ARP II, or the buyout of either member's interest. If any of these alternatives are followed instead of allowing a foreclosure sale to occur, Kriti can obtain a full recovery of its money judgment and Emerald can obtain a fair return on its investment in the project. Instead, Kriti is trying to squeeze out Emerald and take its equity in the company on the cheap, thereby depriving Emerald of its investment in a project that still has considerable equity.

Because it is a drastic remedy, the South Carolina LLC Act makes clear that 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)). Kriti has no absolute right to foreclose upon Emerald's interest in ARP II. Emerald has demonstrated sufficient reasons for the Court to deny foreclosure upon Emerald's distributional interest.

For the reasons stated above and argued to you at last week's hearing and in our materials filed with the Court, we respectfully ask that the Court deny Kriti's motion to foreclose on its judgment lien. We also request that the Court dissolve the stay currently entered in the dissolution case because the New York arbitration has now been conducted, to allow Emerald to amend its Complaint in the dissolution action to incorporate the findings made by the New York arbitrators in their award, to consolidate Kriti's charging order/foreclosure action with Emerald's

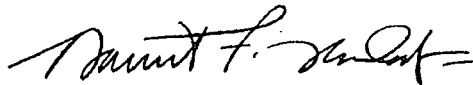
April 15, 2011

Page 4

dissolution action, and to allow both of those actions to be decided by a single judge after discovery is completed and a trial on the merits is held.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel F. Blanchard, III". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel F. Blanchard, III

Cc: William C. Cleveland, III, Esq.
Thomas L. Harper, Jr. Esq.
John C. Hawk, IV, Esq.

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DANIEL F. BLANCHARD III
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April 26, 2011

VIA HAND DELIVERY:

William C. Cleveland, III, Esq.

Buist Moore Smythe & McGee PA

5 Exchange St.

Charleston, SC 29401

APR 26 2011

Re: Emerald Investments, Inc. v. Ashley River Properties II, LLC and Kriti Ripley,
LLC
Case No.: 2009-CP-10-553

Dear Will:

Please find enclosed a copy of the Plaintiff's Amended Complaint with exhibits in the above action. This pleading was filed with the Court earlier today pursuant to Judge Harrington's recent Order.

With kind regards, I am

Sincerely,



Daniel F. Blanchard, III

Enclosures

ASHLEY RIVER v. ASHLEY RIVER PROPERTIES S.C. 295

Cite as 648 S.E.2d 295 (S.C.App. 2007)

374 S.C. 271

**ASHLEY RIVER PROPERTIES I, LLC;
Emerald Investments, LLC; and Stuart
L. Longman, Appellants,**

v.

**ASHLEY RIVER PROPERTIES II, LLC;
and Kriti Ripley, LLC, Respondents.**

No. 4260.

Court of Appeals of South Carolina.

Heard June 6, 2007.

Decided June 21, 2007.

Background: Part owner of development partnership, part owner's manager, and another entity brought action to vacate or modify arbitration award previously rendered in New York and to judicially dissolve development partnership. The Circuit Court, Charleston County, 2006 WL 4037137, Daniel F. Pieper, J., severed other entity's claims and thereafter dismissed the action on behalf of part owner and manager, and part owner and manager appealed.

Holdings: The Court of Appeals, Anderson, J., held that:

- (1) South Carolina courts lacked subject matter jurisdiction to consider motion to review arbitration award issued in a proceeding conducted in New York pursuant to the parties' written agreement, and
- (2) manager was part of partnership's operating agreement such that manager was subject to arbitration.

Affirmed.

1. Pretrial Procedure ⚖️622

A defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. Rules Civ.Proc., Rule 12(b)(6).

2. Pretrial Procedure ⚖️622

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts

sufficient to constitute a cause of action in the pleadings filed with the court. Rules Civ.Proc., Rule 12(b)(6).

3. Pretrial Procedure ⚖️681

Generally, in considering a motion to dismiss for failure to state a claim, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Rules Civ.Proc., Rule 12(b)(6).

4. Pretrial Procedure ⚖️624

A motion to dismiss for failure to state a claim should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. Rules Civ.Proc., Rule 12(b)(6).

5. Appeal and Error ⚖️863, 919

In deciding whether the trial court properly granted a motion to dismiss for failure to state a claim, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Rules Civ. Proc., Rule 12(b)(6).

6. Pretrial Procedure ⚖️622

A complaint should not be dismissed for failure to state a claim merely because the court doubts the plaintiff will prevail in the action. Rules Civ.Proc., Rule 12(b)(6).

7. Appeal and Error ⚖️863

The trial court's grant of a motion to dismiss for failure to state a claim will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. Rules Civ.Proc., Rule 12(b)(6).

8. Appeal and Error ⚖️103

Dismissal of an action for failure to state a claim is appealable. Rules Civ.Proc., Rule 12(b)(6).

9. Appeal and Error ⚖️863

Upon review of a dismissal of an action for failure to state a claim, the appellate court applies the same standard of review implemented by the trial court. Rules Civ. Proc., Rule 12(b)(6).

10. Alternative Dispute Resolution ⇨367

South Carolina courts lacked subject matter jurisdiction to consider motion to review arbitration award issued in a proceeding conducted in New York pursuant to the parties' written agreement. 9 U.S.C.A. § 9; Code 1976, §§ 15-7-120(A), 15-48-10(a), 15-48-180.

11. Alternative Dispute Resolution ⇨113

South Carolina policy favors arbitrating disputes. Code 1976, § 15-48-10(a).

12. Courts ⇨4

"Subject matter jurisdiction" is the power to hear and determine cases of the general class to which the proceedings in question belong.

See publication Words and Phrases for other judicial constructions and definitions.

13. Alternative Dispute Resolution ⇨137

Arbitration agreements are construed pursuant to the rules of contract interpretation.

14. Alternative Dispute Resolution ⇨367

The Federal Arbitration Act (FAA) expressly states that review of an award will be conducted by the court specified by the parties' agreement. 9 U.S.C.A. § 9.

15. Alternative Dispute Resolution ⇨114

The Federal Arbitration Act (FAA) was designed to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate. 9 U.S.C.A. § 1 et seq.

16. Alternative Dispute Resolution ⇨114

The Federal Arbitration Act (FAA) requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms. 9 U.S.C.A. § 9.

17. Partnership ⇨82

Manager of development partnership's part owner was part of partnership's operating agreement such that manager was subject to arbitration as provided by agreement, even though court severed other entity's claims while dismissing manager's motion to vacate or modify arbitration award, where part owner was a party to the arbitration

proceeding and a signatory to the operating agreement, and manager signed the operating agreement and was specifically adjudicated by the arbitration panel to be subject to, and a party in, the arbitration proceeding, while other entity did not sign the operating agreement and was not expressly ruled by the arbitration panel to be a party to the proceedings.

Richard S. Rosen and Daniel F. Blanchard, III, both of Charleston, for Appellants.

William C. Cleveland, III, and David B. McCormack, both of Charleston, for Respondents.

ANDERSON, J.:

Ashley River Properties I, LLC, Emerald Investments, LLC, and Stuart Longman (collectively "Appellants") appeal the dismissal of their action to vacate or modify an arbitration award previously rendered in New York and to judicially dissolve Ashley River Properties II, LLC, for lack of subject matter jurisdiction. Appellant Longman contends the circuit court erred in dismissing the causes of action as they pertain to him, because he avers he signed the operating agreement in a limited capacity. We affirm.

**FACTUAL/PROCEDURAL
BACKGROUND**

On December 29, 2003, Longman, Emerald, and Kriti Ripley, LLC ("Kriti") entered into an operating agreement to form Ashley River Properties II, LLC, a South Carolina limited liability company. Emerald retained 70% ownership in the company while Kriti owned the remaining 30%. Longman signed the agreement as Emerald's manager. In addition, he signed personally but in a limited capacity with respect to sections 3.9 (Emerald Member's Representations) and 3.10 (Indemnification).

The cover page to the operating agreement states, "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

ASHLEY RIVER v. ASHLEY RIVER PROPERTIES S. C. 297

Cite as 648 S.E.2d 295 (S.C.App. 2007)

SOUTH CAROLINA. The agreement contains the following pertinent provisions:

12.4 *Governing Law.* The 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.*

12.18 *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 directed to apply the governing law of this Agreement in rendering their decision.

(Emphasis added).

In March 2005, Kriti and Ashley River Properties II initiated arbitration proceedings against Longman and Emerald alleging breach of the operating agreement stemming from a development containing a marina and condominiums located in Charleston, South Carolina, known as Ripley Light Yacht Club Marina and Condominiums. Longman objected to his inclusion in the arbitration, asserting that he signed the agreement in limited joinder only.

On July 11, 2005, the New York arbitration panel issued a written order holding it had jurisdiction over Longman. On October 31,

2005, the arbitrators rendered their final arbitration decision, requiring, *inter alia*, that Emerald relinquish its voting rights in Ashley River Properties II and Kriti was to have the right to purchase Emerald's interest in Ashley River Properties II. The order stated: "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 ones pertaining to a final accounting in connection with the use of Ashley River Properties II, LLC, funds by Emerald and Longman."

Pending the outcome of the arbitration proceeding, Kriti and Ashley River Properties II filed a lawsuit in the United States District Court for the Southern District of New York seeking to enforce the right to control Ashley River Properties II. After the first arbitration award was issued, Emerald filed its own lawsuit in the Southern District of New York contesting whether Kriti made a proper tender for the interest awarded in the first decision from the arbitrators. Both lawsuits were assigned to the same judge. Appellants' New York counsel filed a motion to dismiss the federal action for lack of subject matter jurisdiction. A few days later, Appellants' counsel informed the court the parties had agreed to dismiss the federal court actions with prejudice because of lack of subject matter jurisdiction.

Appellants filed the current action in the Court of Common Pleas for Charleston County on November 9, 2005. An amended complaint was filed on December 30, 2005, seeking to: (1) vacate or modify the arbitration award previously rendered in New York; and (2) judicially dissolve Ashley River Properties II. Additionally, Ashley River Properties I desired a declaration of rights under the operating agreement as a good faith third party purchaser, because it was not a party to the original contract.

The circuit court severed the claims of Ashley River Properties I from the remaining causes of action. Ashley River Properties II and Kriti (collectively "Respondents") moved to dismiss based primarily on the argument that South Carolina courts lack subject matter jurisdiction over the dispute.

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Respondents asserted that New York courts have exclusive jurisdiction over the dispute pursuant to the law of South Carolina and the operating agreement. The circuit court granted Respondents' motion to dismiss, finding the claims should have been brought in New York. Additionally, the circuit court found the claim to judicially dissolve Ashley River Properties II addressed an issue already decided by the arbitrators and was therefore not properly before the court.

STANDARD OF REVIEW

[1-3] Under Rule 12(b)(6), SCRPC, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. *Plateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct.App. 2003) (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct.App.2004), aff'd 645 S.E.2d 245, 2007 WL 1321978; accord *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); see also *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on face of complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (finding trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

[4, 5] "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Plateau*, 355 S.C. at 202, 584 S.E.2d at 415; see *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999); see also *Baird*, 333 S.C. at 527, 511 S.E.2d at 73 (declaring that if the facts and inferences drawn from the facts alleged on the com-

plaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); *McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct.App.1997) (concluding a motion to dismiss cannot be sustained if the facts alleged in complaint and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case). In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. See *Gentry*, 337 S.C. at 5, 522 S.E.2d at 139; see also *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999) (explaining that looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

[6, 7] The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987). The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of S.C.*, 346 S.C. 194, 552 S.E.2d 18 (2001); see also *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 491 S.E.2d 272 (Ct.App.1997) (stating motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

[8, 9] "Dismissal of an action pursuant to Rule 12(b)(6) is appealable." *Williams*, 347 S.C. at 233, 553 S.E.2d at 500. Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. *Id.*

LAW/ANALYSIS

Appellants appeal the dismissal of their action for lack of subject matter jurisdiction. Appellant Longman contends the circuit court erred in dismissing his causes of action because he only signed the operating agree-

ASHLEY RIVER v. ASHLEY RIVER PROPERTIES S.C. 299

Cite as 648 S.E.2d 295 (S.C.App. 2007)

ment in a limited capacity and did not consent to arbitration. We disagree.

I. Subject Matter Jurisdiction

[10] Notwithstanding their agreement to arbitrate and litigate in New York, Appellants argue that because the parties' arbitration is governed by the South Carolina Uniform Arbitration Act (S.C. Ann. §§ 15-48-10 to-240 (2005)), they may, or must, apply to the courts of South Carolina to modify or vacate the arbitration award.

[11] The South Carolina Uniform Arbitration Act ("the Act") states that agreements to arbitrate are "valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." S.C.Code Ann. § 15-48-10(a) (2005). Furthermore, South Carolina policy favors arbitrating disputes. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct.App.1999).

[12] Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 236, 442 S.E.2d 598, 600 (1994). In support of their argument, Appellants cite section 15-48-180 of the South Carolina Code (2005), which states:

The term 'court' means any court of competent jurisdiction of this State. The making of an agreement described in § 15-48-10 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder. Unless otherwise provided by the arbitration agreement, when a dispute is submitted to arbitration, the arbitrators shall determine questions of both law and fact.

However, nothing in this section confers subject matter jurisdiction to South Carolina courts when, as in the case *sub judice*, the arbitration is held as agreed by the parties in New York. Appellants entered into an agreement unambiguously providing for arbitration in New York, yet now contend that section 15-48-180, by defining the word "court" to mean courts of competent jurisdiction of South Carolina, requires that an arbitration subject to the Act may be reviewed

by South Carolina's courts. However, this is not what the Act requires. Courts in South Carolina are not courts of competent jurisdiction in the face of an arbitration agreement mandating arbitration in New York.

[13] Agreements such as the one at issue are construed pursuant to the rules of contract interpretation. See generally *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 33 S.E.2d 501 (1945). The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 105, 413 S.E.2d 866, 868 (Ct.App.1992). If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. See *id.* When a contract is unambiguous, a court must construe its provisions according to the terms the parties used as understood in their plain, ordinary, and popular sense. *C.A.N. Enter., Inc. v. S.C. Health Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). The forum selection clause contained in section 12.5 of the operating agreement unambiguously provides that the courts of New York shall have sole and exclusive jurisdiction over any matter arising from the operating agreement, which includes those issues litigated in the instant case.

Additionally, section 15-48-230 of the South Carolina Code (2005) provides that the Act is to be interpreted so as to make its application uniform among the states that adopt it. Courts of other states applying the Uniform Arbitration Act to this issue have uniformly held a court's subject matter jurisdiction to consider motions related to arbitration is dependent upon, and arises from, the parties' agreement to conduct the arbitration proceedings in that state. See *Government e-Mgmt. Solutions, Inc. v. Am. Arbitration Ass'n, Inc.*, 142 S.W.3d 857, 861 (Mo.App. 2004); *Artrip v. Samons Constr., Inc.*, 54 S.W.3d 169, 171 (Ky.App.2001); *Chicago Southshore South Bend R.R. v. N. Indiana Commuter Transp. Dist.*, 184 Ill.2d 151, 234 Ill.Dec. 395, 703 N.E.2d 7, 9 (1998); *Tru Green Corp. v. Sampson*, 802 S.W.2d 951, 953 (Ky.App.1991). Accordingly, applying both

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the plain language of the Act and the cases of other states interpreting similar provisions, South Carolina courts do not have subject matter jurisdiction to consider a motion to review an arbitration award issued in a proceeding conducted in New York pursuant to the parties' written agreement.

Appellants contend section 15-7-120 of the South Carolina Code (2005) stipulates that contracts that purport to divest South Carolina courts of jurisdiction over matters otherwise within their jurisdiction are unenforceable as a matter of law. Section 15-7-120(A) provides:

Notwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action.

[14-16] However, to the extent that this section is construed to invalidate the parties' specification as to which court may vacate, modify, or confirm their arbitration award, such a construction would directly conflict with the Federal Arbitration Act, 9 U.S.C. § 9. The Federal Arbitration Act ("the FAA") expressly states that review of an award will be conducted by the court specified by the parties' agreement. As the Supreme Court of the United States noted in *Voll Info. Sciences, Inc. v. Board of Trustees of Stanford Junior University*, 489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989), "[t]he FAA was designed to 'overrule the judiciary's long-standing refusal to enforce agreements to arbitrate.'" The FAA requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms. *Id.* Furthermore, this court has held when section 15-7-120 and the FAA conflict, the FAA preempts and section 15-7-120 is unenforceable. *Tri-*

tech Elec. v. Hall, 343 S.C. 396, 400, 540 S.E.2d 864, 866 (Ct.App.2000). Because the current lawsuit brought by Appellants clearly conflicts with the FAA's policy that review be conducted by the court specified in the agreement, section 15-7-120 is preempted. Accordingly, the parties' agreement designating New York as the forum in which the parties may litigate is valid and enforceable and requires Appellants to proceed in New York to modify, vacate, or confirm the arbitration award.¹

II. Longman's Claim

[17] Longman contends that because he signed the operating agreement in limited joinder only as to Section 3.9 and 3.10, the circuit court erred in dismissing his causes of action. Longman argues the circuit court's severing of Ashley River Properties I's claims and allowing them to proceed supports his position that the circuit court should have found he was not a part of the operating agreement.

However, the circuit court's severing of Ashley River Properties I's claims is not inconsistent with its dismissal of Emerald and Longman's claims. There is no dispute that: (1) Emerald was a party to the arbitration proceeding and a signatory to the operating agreement; and (2) Longman signed the operating agreement and was specifically adjudicated by the arbitration panel to be subject to, and a party in, the arbitration proceeding. Ashley River Properties I did not sign the operating agreement and was not expressly ruled by the arbitration panel to be a party to the proceedings. Furthermore, by severing Ashley River Properties I's claims, the circuit court has not ruled on the claims; it simply has not dismissed them. The circuit court did not err in dismissing Longman's claims while severing and keeping Ashley River Properties I's claims.

1. 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.

PRESSLEY v. REA CONST. CO., INC.

S.C. 301

Cite as 648 S.E.2d 301 (S.C.App. 2007)

CONCLUSION

We hold that South Carolina does *not* have subject matter jurisdiction of an arbitration appeal from a decision by a New York arbitration panel where the parties signed a written agreement consenting to jurisdiction for New York courts in all arbitration proceedings. Based upon the foregoing, the circuit court did not err in dismissing Appellants' cause of action for lack of subject matter jurisdiction. Additionally, Longman's claims were properly dismissed as they too lacked subject matter jurisdiction. Accordingly, the circuit court's order is

AFFIRMED.

HUFF and BEATTY, JJ., concur.



374 S.C. 283

Terry PRESSLEY, Employee/Claimant,
Respondent,

v.

REA CONSTRUCTION COMPANY, INC.,
Employer, and Zurich-American Insurance Company, Insurer, Appellants.

No. 4266.

Court of Appeals of South Carolina.

Heard April 5, 2007.

Decided June 27, 2007.

Background: Employer and its insurer appealed from decision of the Circuit Court, Orangeburg County, Diane Schafer Goodstein, J., requiring them to provide workers' compensation claimant with a wheelchair accessible mobile home and awarding claimant compensation for ten hours per day of non-professional home healthcare services.

Holding: The Court of Appeals, Cureton, A.J., held that base cost of providing workers' compensation claimant housing is an ordinary necessity of life which the statu-

tory substitute for wages should be utilized by the claimant to obtain.

Affirmed in part, reversed in part, and remanded.

1. Administrative Law and Procedure
⌘657.1

Administrative Procedures Act governs judicial review of a decision of an administrative agency. Code 1976, § 1-23-380(A)(5).

2. Workers' Compensation ⌘1964

Appellate court must affirm an award of the Workers' Compensation Commission in which the circuit court concurred if substantial evidence supports the findings.

3. Administrative Law and Procedure
⌘791

"Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

See publication Words and Phrases for other judicial constructions and definitions.

4. Statutes ⌘181(1)

The primary rule of statutory construction is that the courts must ascertain the intention of the legislature.

5. Appeal and Error ⌘842(1)

The interpretation of a statute involves a question of law for the court, and thus, appellate court is free to decide matters of law with no particular deference to the trial court.

6. Statutes ⌘219(1)

Ordinarily, the construction of a statute by an agency charged with its administration will be accorded the most respectful deference and will not be overruled absent compelling reasons.

7. Workers' Compensation ⌘966

The base cost of providing workers' compensation claimant housing is an ordinary

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 Kriti 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 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 of 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 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

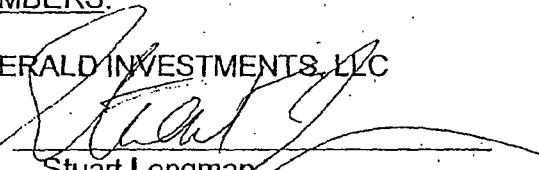
(c) the other Members may purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution to the Company, in which event: (i) the closing shall take place on a date specified in a notice given by the other Members to the Emerald Member, 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.

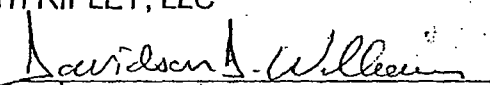
MEMBERS:

EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

KRITI RIPLEY, LLC

By: 

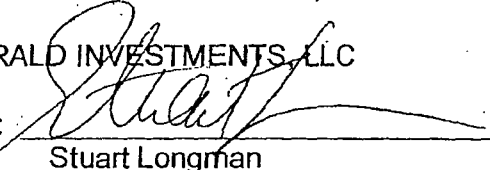
Name: DAVIDSON A. WILLIAMS

Title: Managing Member

COMPANY:

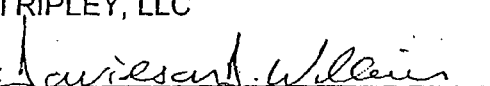
ASHLEY RIVER PROPERTIES II, LLC

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:

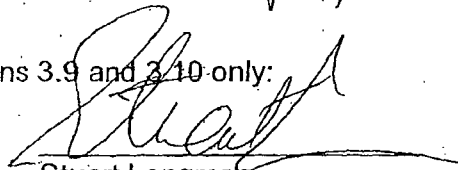
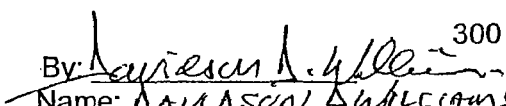

Stuart Longman

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

SCHEDULE 2.7

Legal Description

[ATTACH]

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.

ASHLEY RIVER PROPERTIES II, LLC

ASHLEY RIVER PROPERTIES II, LLC

ASHLEY RIVER PROPERTIES II, LLC

Mar 1, 2004

- ▶ Krid Ripley, LLC ("Krid Ripley") & Ashley River Properties, II ("ARP II");
 - initiated an arbitration proceeding in NY naming both Emerald and Longman as parties
- ▶ As part of the arbitration proceeding:
 - Emerald & Longman stipulated with ARP II and Krid Ripley
 - to sever certain accounting issues from the arbitration proceeding and to reserve those for a 2nd arbitration proceeding

Nov 9, 2005

- ▶ Emerald & Longman filed the lawsuit SC 2005-CP-10-4571
 - seeking to set aside the arbitration award

Nov 23, 2005

- ▶ Krid Ripley and ARP II initiated:
 - the 2nd arbitration proceeding before the AAA in NY

Aug 21, 2005

- ▶ Emerald and Longman filed:
 - the 2004-CP-10-3254 lawsuit
 - seeking to set aside the second arbitration award

Apr 29, 2008

- ▶ ARP II and Krid Ripley filed the lawsuit 2008-CP-10-2344
 - seeking to recover on their judgment against Emerald & Longman
 - A copy of the Affidavit and Judgment is attached as EXHIBIT B

Jan 30, 2009

- ▶ Emerald filed the 2008-CP-10-553 lawsuit:
 - seeking a ruling that it owed 70% of ARP II and
 - seeking an order dissolving ARP II
- ▶ On May 4, 2008, Judge Young denied Krid Ripley & ARP II's Motion to Dismiss, made on the grounds:
 - that the issue of the 70% had been submitted to the arbitrators in NY and denied
- ▶ On April 19, 2010, the Court entered a Consent Order
 - A copy of the Order is attached as EXHIBIT G
 - staying the case pending arbitration and confirmation of the award
 - The Order provides that findings of fact by the arbitrators on the dissolution issue shall be binding on the Court.

Oct 28, 2010

- ▶ The NY arbitrators issued their award finding:
 - that Emerald owed 70% of ARP II and,
 - that there was no misconduct that would support issuing an order of dissolution
 - A copy of the award is attached as EXHIBIT E

Oct 31, 2005

The arbitration Panel issued its award in favor of ARP II and Krid Ripley

Nov 23, 2005

- ▶ In the SC lawsuit 2005-CP-10-4571
 - Emerald & Longman moved
 - to stay the 2nd arbitration proceeding; but
 - the motion was denied

Jun 26, 2006

The arbitrator issued an award in the 2nd arbitration proceeding

Oct 19, 2006

- ▶ Judge Pieper dismissed the lawsuit 2005-CP-10-4571
 - On the grounds that the SC courts
 - did not have jurisdiction to review a NY arbitration award
 - Emerald & Longman appealed that decision

Jun 21, 2007

- ▶ The SC Court of Appeals affirmed the dismissal
 - of the 2005-CP-10-4571 lawsuit
 - A copy of the Decision is attached as EXHIBIT A

Sep 26, 2008

- ▶ Emerald & Longman agreed to a 40% dismissal of the 2006-CP-10-3254 lawsuit
 - A copy of the Consent Order is attached as EXHIBIT C

Nov 6, 2009

- ▶ Emerald sued ARP II in the 2009-CP-10-7025 lawsuit
 - in which Emerald sought an order of mandamus requiring ARP II to produce certain business records
- ▶ On December 18, 2009, the Court denied Emerald's petition; and,
 - stayed the case pending arbitration
 - A copy of the Order is attached as EXHIBIT D

SC 2008-CP-10-2344 & 2009-CP-10-553

SC 2008-CP-10-2344 & 2009-CP-10-553

SC 2008-CP-10-2344 & 2009-CP-10-553

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Case Tracking No. 2011201949

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

Appellants,

v.

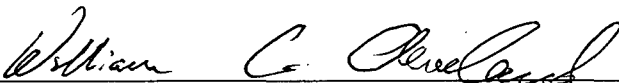
EMERALD INVESTMENTS, LLC AND STUART LONGMAN,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

By: 

William C. Cleveland, SC Bar No. 1284

Five Exchange Street

Charleston, SC 29402

Telephone: (843) 722-3400

Facsimile: (843) 723-7398

Email: wcc@buistmoore.com

Attorneys for the Appellants

Charleston, South Carolina

Dated: July 16, 2012

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Case Tracking No. 2011201949

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

Appellants,

v.

EMERALD INVESTMENTS, LLC AND STUART LONGMAN,

Respondents.

PROOF OF SERVICE

I do hereby certify that on the 16th day of July 2012, I served a copy of the **AMENDED RECORD ON APPEAL** in the within entitled matter by sending a copy of the same via hand delivery to:

Daniel F. Blanchard, III
Rosen Rosen & Hagood, LLC
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, SC 29402-0893

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC


Post Office Box 999, Charleston, SC 29402
(843) 720-4606
Attorneys for Appellant

RECEIVED
JUL 19 2012
SC Court of Appeals